

Federal Register

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 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

- WHEN:** October 17 at 9:00 am and 1:30 pm
- WHERE:** Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
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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 AGRICULTURE

Food and Consumer Service

7 CFR Part 248

RIN 0584-AB43

WIC Farmers' Market Nutrition Program

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends and finalizes an interim rule that was published on March 11, 1994 establishing requirements for the operation and management of the WIC Farmers' Market Nutrition Program (FMNP). The purposes of the FMNP are to provide resources to women, infants, and children who are nutritionally at risk, in the form of fresh, nutritious, unprepared foods (such as fruits and vegetables) from farmers' markets; to expand the awareness and use of farmers' markets; and to increase sales at such markets.

This rule also implements the nondiscretionary FMNP mandates of the

Healthy Meals for Healthy Americans Act of 1994, signed November 2, 1994.

EFFECTIVE DATE: This final rule is effective on October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman or Debra Whitford, Supplemental Food Programs Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, (703) 305-2730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12372

This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the

application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

The Department has also reviewed this rule in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Consumer Service has certified that this final rule does not have a significant economic impact on a substantial number of small entities. Participating farmers and farmers' markets will be affected by the FMNP requirements and increased sales generated by FMNP recipients. In addition, participating State and local agencies will be affected by FMNP administration requirements. Participating State and local agencies receive Federal food and administrative funds to meet the requirements established in this rule. In addition, State agencies must contribute at least 30 percent of the cost of the program, except Indian Tribal Organizations which may receive a negotiated match contribution that is less than 30 percent but not less than 10 percent. Finally, there are no costs to farmers or farmers' markets for applying for the FMNP.

Paperwork Reduction Act

The reporting requirements established by this rulemaking have been reviewed and approved under Office of Management and Budget control number 0584-0477, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section of regulations	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Reporting				
248.4	26	1	50	1,300
248.10(b)	550	1	2	1,100
248.17(b)(2)(ii)	4	1	10	40
248.18(b)	26	1	15	390
248.23(b)	26	2	4.5	234
Total	576			3,064
Recordkeeping				
248.9	26	1	1	26

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN—Continued

Section of regulations	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
248.10(a) (2) (3)	1,100	1	2	2,200
248.10(e)	110	1	2	220
248.10(f)	26	1	5	130
248.11	26	1	12	312
Total	1,126	1	2,888
Total Reporting and Recordkeeping Burden	5,952

Good Cause Determinations

This final rule incorporates several new statutory requirements from the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103-448) enacted on November 2, 1994 which became effective October 1, 1994. These provisions were not contained in the prior interim rule of March 11, 1994 and pertain primarily to funding issues. The provisions include the following: A 17 percent administrative cost reimbursement rate for all State agencies, authority to negotiate the matching requirement for Indian Tribal Organizations, expansion of the definition of State agency, change in the division of funds remaining after base grants have been allocated to 75 percent for current States for expansion and 25 percent to initiate new States, availability of up to 2 percent of total grant for market development, and elimination of carry forward authority. These resulting regulatory changes are non-discretionary, and accordingly, good cause exists for waiving prior notice and comment.

Background

Section 501 of the Hunger Prevention Act of 1988 (Pub. L. 100-435), enacted on September 19, 1988, amended the Child Nutrition Act of 1966 (CNA), 42 U.S.C. 1771 *et seq.*, to add a new subsection 17(m) which authorized up to 10 Farmers' Market Coupon Demonstration Projects (demonstration projects) for a 3-year period.

Although authorization for the demonstration projects expired at the end of Fiscal Year 1991, as part of the Rural Development, Agriculture, and Related Agency Appropriations Act for Fiscal Year 1992 (Pub. L. 102-142), Congress appropriated up to \$3 million to carry on the projects. As a result, the demonstration projects operated another year, through Fiscal Year 1992.

Based largely on the success of the demonstration projects, on July 2, 1992, the President signed the WIC Farmers' Market Nutrition Act of 1992 (Pub. L.

102-314). This Act amended section 17(m) of the CNA (42 U.S.C. 1786(m)) to authorize the FMNP as a permanent program. Therefore, on March 11, 1994, the Department published an interim rule (59 FR 11508) addressing the mandates of Pub. L. 102-314. Also included in the interim rule were references to requirements in Department-wide rules which apply to Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (7 CFR part 3016), Governmentwide Debarment and Suspension (Non-Procurement) Requirements (7 CFR part 3017), Governmentwide Requirements for Drug-Free Workplace (7 CFR part 3017), Governmentwide Restrictions on Lobbying (7 CFR part 3018), Departmental regulations on nondiscrimination (7 CFR part 15, 15a, and 15b), Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and independent audit requirements in accordance with 7 CFR part 3015, 3016.26 or part 3051.

Summary of Comments Received on the Interim Rule

The March 11, 1994 interim rule provided for a 120-day comment period, which ended on July 11, 1994. Fifteen comment letters were received from a variety of sources, including FMNP State agencies, WIC State agencies, a public interest group, a governor's office, a Congressional office, and an orchard.

The Department has given all comments careful consideration in the development of this final rule and would like to thank all commenters who responded. Following is a discussion of each provision that received comments, and an explanation of the changes made in this final rule. Provisions on which no comments were received or no changes were made as a result of Public Law 103-448, are not addressed in the

preamble and remain as published in the interim rule.

Conceptual Framework for FMNP Policy Making (Outlined in Preamble Section of the Interim Rule Under WIC Farmers' Market Nutrition Program, States With Demonstration Projects)

The interim rule stated in the preamble section that because the FMNP will operate as an adjunct to WIC, the preamble would only discuss in detail individual provisions that are unique to the FMNP. Three commenters remarked that it was inappropriate for FCS to make the statement outlined above. These commenters suggested that the final rule reflect the distinctive differences between WIC and FMNP. This statement in the interim rule was merely intended to highlight the fact that since FMNP eligibility is limited to WIC participants or persons on the WIC waiting list, the programs are intended to operate in a complementary fashion. The focus of the interim rule and this final rule, however, are the distinct rules for operation of the FMNP. WIC Program regulations are not affected by this rule.

1. Definitions (§ 248.2)

In the interim rule, "Eligible foods" were defined as fresh, nutritious, unprepared, domestically grown fruits, vegetables and herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. Honey, maple syrup, cider, nuts, seeds, eggs, meat, cheese and seafood are examples of foods not eligible under the FMNP.

Several commenters addressing this provision opposed or supported with modifications, the definition. Three commenters wanted apple cider included in the list of eligible foods because, as they indicated, "cider is not processed". Two commenters wanted herbs excluded from the definition because they believed herbs were not nutritious and were not specified in the law. Other commenters approved the

definition as long as "locally grown" replaced "domestically grown". These commenters expressed the view that this would preserve the unique identity and significance of the FMNP. They further stated that the Department should require that produce be locally grown. According to these same commenters, State agencies could then further clarify how they define locally grown.

In view of the concerns raised by commenters that "locally grown" be included in the definition of eligible foods and the Department's interpretation of the intent of Congress, we have replaced "domestically grown" with "locally grown" in the definition of eligible foods in the final rule, provided that in no instance can the State agency define "locally grown" to include foods grown outside of the United States and its territories. States shall generally consider locally grown to mean produce grown only within State borders but may define it to include areas in neighboring States adjacent to its borders.

After thorough consideration, we have determined that apple cider should remain excluded from the list of eligible food items. This conclusion was based on the Department's view that any food that has been altered from its naturally occurring state, except for usual harvesting and cleaning processes, is considered to be "processed" for purposes of the FMNP. The primary purpose of preventing FMNP coupon sales of processed foods is to prevent the value of the coupons from being expended on processing costs.

Regarding the comments concerning "herbs", the Department has retained them in the definition of eligible foods. The Department would like to point out, however, that State agencies have the ability to develop their own list of eligible foods within the regulatory definition, so a State agency may choose to exclude herbs if they wish to do so.

"Farmer" was defined as an individual authorized to sell produce at participating farmers' markets. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the FMNP. State agencies have the option to authorize individual farmers or farmers' markets.

About half of the commenters responding to this definition opposed the definition. Of those opposed, some stated that the Department should set a standard that a participating farmer must grow at least half of the produce that he/she sells at the market. Another commenter suggested that the Food and

Consumer Service (FCS) consult with the Agricultural Marketing Service and convene a taskforce of State FMNP directors to develop a definition of "farmer".

Of the commenters who supported this definition, they did so as long as "who locally grows fresh fruits and/or vegetables" is included in the definition.

The Department believes that the definition of "farmer" established in the interim rule provides each State agency with the broadest flexibility in authorizing farmers to meet the specific needs of its program. The definition allows State agencies, if they so desire, to set a standard for the amount of produce a participating farmer must grow. Therefore, the Department is retaining the definition of "farmer" as it was set forth in the interim rule.

Because the Department has included "locally grown" in the definition of eligible foods, it has not been repeated in the definition of "farmer".

"Farmers' market" was defined as an association of local farmers who assemble for the purpose of selling their produce directly to consumers. In cases where recipient access to farmers' markets is an issue, and with prior FCS approval, the definition of farmers' market may be expanded to include farmstands at which authorized farmers sell their produce.

The majority of commenters supported the definition as long as some of the issues regarding "farmstands" are modified. Some of these commenters suggested that FCS should not have to grant prior approval for every farmstand. Other commenters disagreed with the Department's discussion in the preamble which stated that farmstands are not as stable as markets. One other commenter suggested inserting "at a defined location" into the definition.

Two commenters opposed the definition. One of these commenters stated that farmstands should not be generally precluded from the FMNP. The commenter indicated that this is an example of the WIC Program focusing solely on the interests of the WIC population while ignoring the interests of the farmers' markets.

Based on the comments received, the Department has revised the definition of farmers' market by inserting "at a defined location" after the words "who assemble for the purpose of selling their produce directly to consumers". We have also clarified that prior FCS approval for farmstands may be obtained through the State Plan process.

"In-kind contributions" has been added in § 248.2 to accommodate its inclusion as an alternative for meeting

the match requirement. For purposes of the FMNP, in-kind contributions means property or services which benefit the FMNP and which are contributed by non-Federal sources without charge to the FMNP.

"Matching requirement" was defined in the interim rule as non-Federal cash outlays in an amount equal to not less than 30 percent of the total FMNP costs for the fiscal year. This match may be satisfied through non-Federal cash expenditures for the FMNP or for similar farmers' market programs which operate during the same period as the FMNP.

One commenter approved of the provision as stated and another commenter opposed it stating that the match should be reduced from 30 percent to 25 percent of the total cost of the Program.

As later explained in the definition of "similar programs", some commenters suggested that low-income be included when referencing other groups served by similar programs that are used to meet the matching requirement. Based on these comments, we have made this revision in the definition of "matching requirement" in the final rule.

The match requirement is set by statute. Section 204(v)(1) of Public Law 103-448 (November 2, 1994) amended section 17(m)(3) of the CNA (42 U.S.C. 1786(m)(3)) to allow the Secretary to negotiate a lower percentage of matching funds for Indian Tribal Organizations, but not lower than 10 percent of the total cost of the program. The negotiated match is authorized if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. The final rule has been revised to reflect this new authority. The lower negotiated rate is only available to Indian Tribal Organizations.

The Department has further revised the definition in the final rule by removing the word "cash" from the definition. This adjustment was made in order to accommodate in-kind contributions which may be used to meet the match requirement. Finally, the wording in the first sentence of the definition has been slightly modified for clarity.

"Recipient" was defined as a person chosen by the State agency to receive FMNP benefits. Such a person must be a woman, infant over four months of age, or child, who receives benefits under the WIC Program or is on the waiting list to receive benefits under the WIC Program. Infants under four months of age are excluded from eligibility in the FMNP based on the recommendation of the American

Academy of Pediatrics (AAP) that such infants not consume solids due to the level of development of their gastrointestinal tract.

One commenter suggested omitting the clause which excludes infants four months of age or younger since this is understood and since it conflicts with the legislation that allows for the serving of households.

The Department believes the definition serves as a cautionary reminder of the AAP recommendation to participants and, accordingly, has decided to retain the definition as it was stated in the interim rule.

"Similar Programs" was defined as other farmers' market projects or programs which serve women, infants and children, or other categories of recipients, such as, but not limited to, elderly persons.

The majority of commenters supported this definition as long as it was modified to state that these similar programs must serve low-income people. One commenter suggested that a maximum income guideline should be established for non-WIC households, equal to that which is used in WIC, for those States utilizing the similar programs provision to meet the matching requirement.

In view of the comments received, the Department has inserted the words "low-income" before "women, infants and children" to clarify the types of similar programs that can be used to meet the matching requirement. A corresponding adjustment has also been made to the definition of "matching requirement."

"State" has been added in § 248.2 since it is referred to in the text of the regulation. "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

"State agency." The interim rule defined "State agency" to be the agriculture, health or comparable department of each State. Section 204(v)(11) of Pub. L. 103-448 amended Section 17(m)(11)(D) of the CNA (42 U.S.C. 1786(m)(11)(D)), to expand the definition of State agency to include any other agency approved by the chief executive officer of the State. The Department wishes to clarify that, for purposes of this rule, when reference is made to, "State agencies that have not participated in the FMNP" or to "State agencies that are participating for the first time", this does not refer to a FMNP that has previously been administered by a different entity within the State. This final rule incorporates these revisions.

2. State Plan Requirements (§ 248.4(a))

a. Farmstand Locations. The interim regulations required that States wishing to authorize farmstands may do so only when recipient access to farmers' markets is an issue and with prior approval from FCS. Because the State Plan process is the vehicle States have for submitting their program plans for approval, we have clarified in § 248.4(a)(10)(ii) of this rule that State agencies desiring to authorize farmstands justify doing so through the State Plan process. For further clarification, the State Plan submission requirements in § 248.4(a)(8)(i) have been revised to include the number and location of farmstands and their proximity to clinics. The Department believes this will permit evaluation of whether recipient access to farmers' markets is at issue.

b. Requests for Market Development/ Technical Assistance Funds. As set forth in section 204(v)(2)(B) of Pub. L. 103-448 and clarified in § 248.14(h) of this rulemaking, States may use up to 2 percent of total program funds for market development or technical assistance if the Secretary determines that the State intends to promote the development of farmers' markets in socially or economically disadvantaged areas, or remote rural areas, where individuals eligible for participation in the program have limited access to locally grown fruits and vegetables. The Department believes that the State Plan process is the most efficient method for handling requests to direct program funding to market development or technical assistance. Accordingly, a new § 248.4(a)(20) is added to require State agencies desiring to fund such activities to request and to justify the need for such activities in the State Plan.

3. Data Collection (§§ 248.4 (a)(16) and (17))

The interim regulations required that State agencies submit, as an addendum to the State Plan, information on the change in consumption of fresh fruits and vegetables by recipients; and information on the effects of the FMNP on the use of farmers' markets, the marketing of agricultural products, and recipients' awareness regarding farmers' markets.

One commenter stated that the data collection requirement which assesses the effects of the FMNP on recipients and farmers is appropriate if it is cost effective and generates reliable information.

Section 204(v)(7) of Pub. L. 103-448 amended the information collection requirements as they pertain to the

collection of information on the change in consumption of fresh fruits and vegetables by recipients and the effects of the program on farmers' markets. The CNA now requires that such information shall only be collected if it is available. Sections 248.4(a) (15) and (16) of this final rule have been modified accordingly. In any data collection effort for the FMNP, the Department encourages the use of the most cost-efficient method that yields reliable information.

4. Recipient or Household Allocation of Benefits (§ 248.6(c))

This provision of the interim rule allows State agencies to allocate the quantity of benefits on an individual basis or a household basis. In situations where benefits are issued on a household basis, the household could receive fewer benefits as a unit than it otherwise would if benefits were allocated to individual household members. Under either allocation methodology, foods provided are intended for the sole benefit of FMNP recipients and are not intended to be shared with other non-participating household members.

One commenter approved of the provision as long as the statement that foods be approved for the sole use of WIC participants in the FMNP household be omitted. Other commenters indicated that since the CNA permits benefits to be issued on a household basis, it clearly suggests that the exclusion of any household member is not the intent of the FMNP.

One other commenter objected to the inclusion of a household benefit allocation option because, as was indicated, "it is not an equitable way to allocate benefits to participants".

The Department has decided to retain the definition as it was stated in the interim rule. As explained in the preamble to the interim rule, the Department believes State agencies should retain the option of reaching a greater number of households by allocating benefits on a household basis. The statement that the foods should be solely for use by FMNP participants is consistent with the FMNP's eligibility requirements.

5. Coupon and Market Management— Authorization/Training Visits (§ 248.10(a)(4))

The interim rule required that a State agency conduct a documented on-site training visit prior to, or at the time of, authorization of a farmer or farmers' market. The on-site visit shall include, at a minimum, provision of information

concerning eligible foods and proper FMNP coupon redemption procedures.

All commenters responding to this provision opposed the timeframe of the provision. These commenters stated that markets are not open prior to, or at the time of authorization, so it would be impossible to conduct on-site visits.

The primary reason for requiring the documented on-site training visit prior to, or at the time of, authorization was to ensure that farmers/farmers' markets were advised of critical program information concerning, at a minimum, eligible foods and proper FMNP coupon redemption procedures before they began accepting FMNP coupons. The Department is sensitive to the concerns raised by the commenters regarding the practical application of this provision. Therefore, based on the comments, the Department has revised the provision to read, "the State agency shall conduct face-to-face training for all newly authorized farmers and farmers' markets prior to their commencing participation in the FMNP." "Newly authorized" refers to those farmers/farmers' markets in their first year of participation in the FMNP. In addition, during their first year of participation, new farmers/farmers' markets must be considered "high-risk" and must be placed in the pool from which other high-risk farmers/farmers' markets are placed for selection of farmers/farmers' markets to monitor. Monitoring requirements are outlined in § 248.10(e).

The face-to-face training must include the minimum training requirements outlined in § 248.10(d). Face-to-face training prior to participation in the program provides safeguards to ensure that new farmers/farmers' markets are properly informed of program requirements prior to initiation of the program.

6. *Farmers' Markets Agreements* (§ 248.10(a))

The introductory paragraph of § 248.10(a) of the interim rule stated that the State agency is responsible for the fiscal management of, and accountability for, farmers/farmers' markets. Two of the commenters responding to this provision believed it created the impression that the State agency's FMNP oversight responsibilities are not just limited to FMNP-related activities. Accordingly, the introductory language in § 248.10(a) is amended by this final rule to clarify that in operating the FMNP, the State agency is only responsible for FMNP-related activities of the farmer/farmers' market, not their actions or activities in general.

The Department also wishes to clarify the face-to-face training requirements in § 248.10(d). In those State agencies that enter into authorization agreements with farmers' markets, the market managers may receive the face-to-face training and then, in turn, may provide such training to their participating farmers. This would fulfill the face-to-face training requirements of § 248.10(d). Alternatively, State agencies may meet this requirement by assuming responsibility for face-to-face training both for market managers and for participating farmers.

7. *Monitoring and Review of Farmers'/Farmers' Markets and Local Agencies and Sanctions*—(§§ 248.10(e) (2) and (4))

The interim regulations required that State agencies rank participating farmers and farmers' markets by risk factors, and that they conduct annual, on-site monitoring of at least 10 percent of farmers and 10 percent of farmers' markets beginning with those farmers and markets identified as being the highest risk. Mandatory high-risk indicators are a proportionately high volume of FMNP coupons redeemed by a farmer as compared to other farmers within the farmers' market and within the State, and recipient complaints. The interim rule also required that at least every 2 years, State agencies conduct a review of all local agencies within their jurisdiction.

Several commenters opposed these provisions. One commenter said that the transitory nature of farmers makes monitoring and sanctioning requirements not enforceable. Another commenter suggested eliminating the comparison of farmers for determination of which are high-risk, since as this commenter indicated, farmers' markets may be very small with only a low volume of coupons redeemed, and therefore, not inclined to abuse the Program.

Two commenters approved of the provisions as long as some adjustments to the provisions are made. One of these commenters suggested that it is impractical for administrative efficiency reasons, to conduct on-site monitoring of markets and farmers in strict rank order of risk.

Another commenter said that it is impractical to conduct WIC local agency reviews at the same time as the FMNP reviews, given the short amount of time (summer months) that the FMNP is being administered. The commenter suggested clarifying this section to accommodate the seasonal nature of the FMNP. One commenter stated that the 10 percent standard used for farmers

and farmers' markets should also be applied to local agencies, which the interim regulations also require to be reviewed every two years. This commenter went on to say that the requirement to review all local agencies every two years is unrealistic given staffing and budget constraints, plus the limited time FMNP coupons are actually being distributed at the local agency.

Based on some of the comments received, the Department has revised the provisions. First, we wish to clarify that even in farmers' markets where farmers are very small with a low volume of coupons redeemed, significant differences in redemption rates may indicate program abuse. Accordingly, the Department believes comparing redemption rates among farmers in each market and within the State represents a valid high-risk indicator. Although the final rule still requires State agencies to consider comparison of redemption rates among farmers in each market, the Department points out that State agencies are free to accord this factor whatever weight they deem appropriate in establishing the high-risk rankings.

The Department is further modifying the final rule to clarify that high-risk farmers and farmers' markets are not required to be visited in strict rank order of their risk. Rather, once State agencies have identified the highest risk farmers and farmers' markets to be monitored, the State agency can determine the schedule or order in which they will be visited based on location, staff resources and other factors. Accordingly, the phrase "beginning with" has been deleted from § 248.10(e)(2).

With regard to the monitoring requirements for farmers and farmers' markets contained at § 248.17(e)(1)(i), a State agency commenter suggested that the 10 percent minimum requirement targeted at farmers and markets determined to be "high-risk" was inadequate, and that it should be modified to include a monitoring visit for farmers and farmers' markets that have never previously participated in the FMNP. The Department has considered this comment and has determined that a monitoring visit to all farmers that have never previously participated in the FMNP may be excessive for some States during one FMNP season. The Department has however taken the comment into consideration and has modified § 248.10(e)(2) to require State agencies to include lack of previous participation in the FMNP, as a high-risk indicator along with the other high-risk indicators in § 248.10(e)(2). Accordingly, farmers in their first year of participation may

now be subject to monitoring visits. The final rule identifies three mandatory high-risk indicators: 1. a proportionately high volume of FMNP coupons redeemed by a farmer as compared to other farmers within the farmers' market and within the State; 2. recipient complaints; and 3. farmers and farmers' markets in their first year of FMNP operation.

The Department would like to clarify that the intent behind defining a farmer/farmers' market as high-risk in the FMNP is for purposes of identifying those farmers/farmers' markets that may be subject to a monitoring visit. It is in no way intended to stigmatize them with a label. Farmers participating in the FMNP for the first time are considered high-risk (and thus subject to monitoring) because they have not previously participated and so may not be as familiar with program operations.

If after application of the high-risk indicators, a State agency identifies fewer than 10 percent of its farmers and farmers' markets as high-risk, the State agency shall randomly select additional farmers and farmers' markets to monitor in order to meet the 10 percent minimum.

The high-risk indicators listed above generally apply to a State agency already participating in the FMNP. A State agency participating in the FMNP for the first time shall, in lieu of applying the high-risk criteria, randomly select 10 percent of its participating farmers and 10 percent of its participating farmers' markets for monitoring visits.

The Department also wishes to clarify that 10 percent of farmers and 10 percent of farmers' markets must be monitored, not 10 percent of farmers within a market selected for review. For example, if there are five farmers' markets in a participating State and 40 farmers, the State shall monitor at a minimum, one farmers' market and four farmers. These four farmers may or may not be participating within the one farmers' market being monitored.

With regard to local agency reviews, the Department encourages State agencies to conduct reviews of FMNP practices at WIC local agencies during the FMNP season. We have clarified that, when this is not practical, reviews of FMNP practices at the WIC local agency may be conducted any time during the year. Reviews conducted outside of the FMNP season would include a review of documents and procedural plans or practices of those items listed in § 248.17(c)(1)(ii). The final regulatory language at § 248.17(c)(1)(ii) has also been clarified to read as follows: "WIC State agency

reviews of WIC local agencies conducted for the WIC Program may contribute to meeting the FMNP requirement that all local agencies be reviewed once every two years if the reviews include reviews of FMNP practices."

8. FMNP Costs—Composition of Allowable Costs and Specified Allowable Administrative Costs (§ 248.12(a))

In § 248.12(a)(1)(ii) of the interim rule, the reference to "7 CFR part 3015" was in error. It has been changed to read "7 CFR part 3016" in the final rule.

Certain administrative costs associated with the first year of operating the FMNP were listed in § 248.14(g)(1) of the interim rule which concerns administrative funding. These items were previously listed as allowable start up costs eligible for the 2 percent additional administrative allowance for a State's first year of operation. Because Pub. L. 103-448 increased the general administrative allowance from 15 to 17 percent and removed the 2 percent allowance for start up expenses, these items have been consolidated with the list of general allowable administrative costs found at § 248.12(b)(8)-(13).

9. Matching Amount (§ 248.14(a)(1)(i))

Section 204(v)(1) of the Pub. L. 103-448 amended section 17(m)(3) of the Act to permit the Secretary to negotiate with an Indian State agency a lower percentage of matching funds than the 30 percent requirement, but not lower than 10 percent of the total cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band group, or council. The final rule has been amended to reflect this change in the Law.

The Department has also provided for the allowance of in-kind contributions to be used to meet the state match requirement by revising § 248.14(a)(1)(ii) to read: "A State agency may count any form of contribution authorized by 7 CFR 3016.24 toward the State matching requirement, including in-kind contributions."

10. Distribution of Funds to Previously Participating State Agencies (§ 248.14(b))

The interim rule stated that provided sufficient FMNP funds are available, each State agency that participated in the FMNP in the prior fiscal year shall receive not less than the amount of funds the State agency received in the most recent year in which it received

funding, if it otherwise complies with program requirements.

One commenter opposed the provision stating that, because of the stability clause for participating States, the FMNP could be perceived as perpetuating inequities among States which have been participating in the program longer.

This provision was derived from Section 17(m)(6)(B)(i) of the CNA which states that as long as the appropriation is sufficient and the State agency provides the required matching funds, the State agency shall receive not less than the amount of funds it received in the most recent fiscal year in which it received funds. As such, § 248.14(b) is retained in this final rule, with minor editorial changes.

11. Ratable Reduction (§ 248.14(c))

The interim rule stated that if amounts appropriated for any fiscal year for grants under the FMNP are not sufficient to pay to each previously participating State agency at the level they received in the most recent fiscal year, each State agency's grant shall be ratably reduced, except that, if sufficient funds are available, each State agency shall receive at least \$50,000 or the amount that the State agency received for the prior fiscal year if that amount is less than \$50,000.

As one commenter emphasized, it is not the intent of the Law that the \$50,000 minimum funding level apply to all States wishing to participate in the FMNP. Rather, this funding level is intended to serve as the minimum funding level a State agency will receive if ratable funding reductions are necessary due to insufficient appropriations.

Pursuant to section 204(v)(4) of the Pub. L. 103-448, the insufficient funding reduction floor has been raised from \$50,000 to \$75,000. In addition, the analysis accompanying the bill clarifies that the \$75,000 threshold is not meant to serve as a minimum grant level for first-year requests from States. Section 248.14(c) has been revised to reflect the new level of \$75,000.

12. Expansion of Participating State Agencies (§ 248.14(d))

As required by section 17(m)(6)(G) of CNA, the interim rule provided that 45 to 55 percent of any funds that remained after funding States at the level they received in the most recent fiscal year of operation shall be allocated to current State agencies to fund new participants, with the remaining 45 to 55 percent made available to State agencies which have not previously participated. Any funds recovered will be reallocated in

accordance with the appropriate method determined by FCS.

Section 204(v)(6) of Pub. L. 103-448 amended section 17(m)(6)(G) of the CNA to change this ratio so that funds remaining after funding States at the level they received in the most recent fiscal year of operation shall be allocated on a ratio of 75 percent for existing States to expand their FMNP and to 25 percent for States to start new programs. Section 248.14(d) of the final regulation has been modified to reflect this change.

13. Administrative Funding and Market Development/Technical Assistance (§ 248.14(g))

Under the interim regulations, a State agency was limited to not more than 15 percent of the total FMNP funds for administration except that: (1) Up to an additional 2 percent of total FMNP funds could be used for the first year of operation to cover certain start-up costs and (2) after the first year of operation, with the Secretary's permission, up to an additional 2 percent of total FMNP funds could be used toward FMNP administrative expenses.

Most of the commenters opposed the provision because of the 15 percent limit, suggesting instead a 17 percent rate for all States. Section 204(v)(2) of Pub. L. 103-448 amended section 17(m)(5)(F) to permit FMNP State agencies to use up to 17 percent of the total amount of the Federal grant and the required State agency match for administrative expenses. The amendment eliminated the 2 percent add-ons for new State agencies or for existing State agencies which demonstrated "financial need." Section 204(v)(2)(B)(ii) of Pub. L. 103-448 also amended the CNA to now permit State agencies to use not more than 2 percent of total program funds for market development or technical assistance to farmers' markets if the Secretary determines that the State intends to promote the development of farmers' markets in socially or economically disadvantaged areas, or remote rural areas, where individuals eligible for participation in the program have limited access to locally grown fruits and vegetables. Section 248.14(g) has been revised to reflect these changes in the administrative funding level and the availability of funds for market development or technical assistance.

14. Carry Forward/Backspend (§ 248.14(i))

Section 204(v)(9) of Pub. L. 103-448 amended the CNA to eliminate the ability of FMNP State agencies to carry forward up to 5 percent of their Federal

grant. The CNA continues to permit FMNP State agencies to "backspend" up to 5 percent of their Federal grant. Accordingly, this change is reflected in § 248.14(i) of this final rule.

15. Appeals Procedures for Farmers (§ 248.17)

For purposes of clarification, § 248.17(f) is modified by this final rule. The change is made to clarify that, where a State agency does not authorize individual farmers, it shall specify the appropriate appeals procedure to be used by a farmer who is denied authorization, disqualified or sanctioned by the farmers' market or farmers' association.

16. Records and Reports (§ 248.23)

Under the interim rule, State agencies were required to submit to FCS, financial and FMNP performance data on a yearly basis as specified by FCS and required by section 17(m)(8) of the CNA. Program performance data include recipient data by category.

One commenter opposed the provision requiring the collection of recipient data by category when benefits are allocated by household, unless additional funds are made available to enable States to develop and design computer systems to accurately compile and report the data.

The Department is retaining the definition as set forth in the interim rule since such information collection is required by section 17(m)(8)(A) of the CNA.

List of Subjects in 7 CFR Part 248

Food assistance programs, Food donations, Grant programs, Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, the interim rule adding 7 CFR part 248 which was published at 59 FR 11517-11529 on March 11, 1994, is adopted as a final rule with the following changes.

PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)

1. The authority citation for part 248 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 248.2:

a. Definitions of "In-kind contributions" and "State" are added in alphabetical order.

b. The first sentence in the definition of "Eligible foods" is revised and two new sentences are added at the end of the definition.

c. The first sentence in the definition of "Farmers' market" is revised.

d. The third sentence in the definition of "Farmstand" is revised.

e. The definition of "Matching requirement" is revised.

f. The definition of "Program or FMNP" is revised.

g. The definition of "Similar programs" is revised.

h. The definition of "State agency" is revised.

The revisions and additions read as follows:

§ 248.2 Definitions.

* * * * *

Eligible foods means fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs for human consumption. * * * State agencies shall consider locally grown to mean produce grown only within State borders but may also define it to include areas in neighboring States adjacent to its borders. Under no circumstances can produce grown outside of the United States and its territories be considered eligible foods.

* * * * *

Farmers' market means an association of local farmers who assemble at a defined location for the purpose of selling their produce directly to consumers. * * *

Farmstand * * * With prior FCS approval, through the State Plan process, a State agency may authorize a farmstand or a nonprofit organization operating a farmstand to participate in the FMNP where necessary to ensure adequate recipient access to farmers' markets.

* * * * *

In-kind contributions mean property or services which benefit the FMNP and which are contributed by non-Federal parties without charge to the FMNP.

* * * * *

Matching requirement means non-Federal outlays in an amount equal to not less than 30 percent of the total FMNP costs for the fiscal year. The Secretary may negotiate with an Indian State agency a lower percentage of matching funds, but not lower than 10 percent of the total cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. The match may be satisfied through non-Federal expenditures for the FMNP or for similar farmers' market programs which operate during the same period as the FMNP. Similar programs include other farmers' market programs which serve low-income women, infants and children (who may

or may not be WIC participants or on the waiting list for WIC services), as well as other categories of low-income recipients, such as, but not limited to, low-income elderly persons.

* * * * *

Program or FMNP * * * The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is authorized by section 17 of the Child Nutrition Act of 1966, as amended. Within section 17, section 17(m) authorizes the FMNP.

* * * * *

Similar programs means other farmers' market projects or programs which serve low-income women, infants and children, or other categories of recipients, such as, but not limited to, elderly persons.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

State agency means the agriculture department, the health department or any other agency approved by the chief executive officer of the State; an Indian tribe, band or group recognized by the Department of the Interior; an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service (IHS), an agency of the Department of Health and Human Services.

* * * * *

3. In § 248.4:

- a. Paragraph (a)(8)(i) is revised.
 - b. Paragraphs (a)(10)(ii) through (a)(10)(viii) are redesignated as paragraphs (a)(10)(iii) through (a)(10)(ix), respectively.
 - c. A new paragraph (a)(10)(ii) is added.
 - d. Paragraph (a)(15) is revised.
 - e. Paragraph (a)(16) is removed.
 - f. Paragraph (a)(17) is redesignated as paragraph (a)(16) and is revised.
 - g. Paragraphs (a)(18), (a)(19), and (a)(20) are redesignated as paragraphs (a)(17), (a)(18), and (a)(19), respectively.
 - h. A new paragraph (a)(20) is added.
- The additions and revisions read as follows:

§ 248.4 State Plan.

- (a) * * *
- (8) * * *

(i) The number and addresses of participating markets, farmstands and area WIC clinics including a map

outlining the service area and proximity of markets/farmstands to clinics; and

* * * * *

(10) * * *

(ii) For those State agencies desiring to authorize farmstands, justification for doing so.

* * * * *

(15) If available, information on the change in consumption of fresh fruits and vegetables by recipients. This information shall be submitted as an addendum to the State Plan and shall be submitted at such a date specified by the Secretary.

(16) If available, information on the effects of the program on farmers' markets. This information shall be submitted as an addendum to the State Plan and shall be submitted at such a date specified by the Secretary.

* * * * *

(20) For those State agencies requesting the extra 2 percent administrative rate for market development or technical assistance to promote such development in disadvantaged areas or remote rural areas, an explanation of their justification and plans for the use of such funds.

* * * * *

4. In § 248.8 paragraph (a) is revised to read as follows:

§ 248.8 Level of benefits and eligible foods.

(a) *General.* State agencies shall identify in the State Plan the fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs which are eligible for purchase under the FMNP. Ineligible foods for the purpose of the FMNP include, but are not limited to: honey, maple syrup, cider, nuts and seeds, eggs, cheese, meat and seafood. Locally grown shall mean produce grown only within a State's borders but may be defined to include border areas in adjacent States. Under no circumstances can produce grown outside of the United States and its territories be considered eligible foods.

* * * * *

5. In § 248.10:

- a. The second sentence of paragraph (a) introductory text is revised.
- b. Paragraph (a)(4) is revised.
- c. The introductory text of paragraph (d) is revised.
- d. The first and second sentences of paragraph (e)(2) are revised.
- e. Two new sentences are added at the end of paragraph (e)(2).
- f. The last sentence of paragraph (e)(4) is revised.

The revisions and additions read as follows:

§ 248.10 Coupon and market management.

(a) *General.* * * * The State agency is responsible for the fiscal management of, and accountability for FMNP-related activities for farmers/farmers' markets.

* * *

(4) The State agency shall ensure that face-to-face training is conducted prior to start up of the first year of FMNP participation of a farmers' market and individual farmer. The face-to-face training shall include at a minimum those items listed in paragraph (d) of this section.

* * * * *

(d) *Annual training for farmers/farmers' market managers.* State agencies shall conduct annual training for farmers/farmers' market managers participating in the FMNP. The State agency shall conduct a face-to-face training for all farmers and farmers' market managers who have never previously participated in the program prior to their commencing participation in the FMNP. After a farmer/farmers' market manager's first year of FMNP operation, State agencies have discretion in determining the method used for annual training purposes. At a minimum, annual training shall include instruction emphasizing:

* * * * *

(e) *Monitoring and review of farmers/farmers' markets and local agencies.*

* * *

(2) Each State agency shall rank participating farmers and farmers' markets by risk factors, and shall conduct annual, on-site monitoring of at least 10 percent of farmers and 10 percent of farmers' markets which shall include those farmers and markets identified as being the highest-risk. Mandatory high-risk indicators are a proportionately high volume of FMNP coupons redeemed by a farmer as compared to other farmers within the farmers' market and within the State, recipient complaints, and farmers and farmers' markets in their first year of FMNP operation. * * * If application of the high-risk indicators results in fewer than 10 percent of farmers and farmers' markets as high-risk, the State agency shall randomly select additional farmers and farmers' markets to be monitored in order to meet the 10 percent minimum. The high-risk indicators listed above generally apply to a State agency already participating in the FMNP. A State agency participating in the FMNP for the first time shall, in lieu of applying the high-risk indicators, randomly select 10 percent of its participating farmers and 10 percent of

its participating farmers' markets for monitoring visits.

* * * * *

(4) * * * WIC State agency reviews of WIC local agencies, which include reviews of FMNP practices, may contribute to meeting the requirement that all local agencies be reviewed once every 2 years.

* * * * *

§ 248.11 [Amended]

6. In § 248.11, paragraph (g) is amended by removing the reference to "§ 248.10(f)" and adding, in its place, a reference to "§ 248.10(h)".

7. In § 248.12:

a. The fourth sentence of paragraph (a)(1)(i) is revised.

b. Paragraph (a)(1)(ii) is redesignated as paragraph (a)(1)(iii) and the third sentence is amended by removing the reference to "7 CFR part 3015" and adding in its place, a reference to "7 CFR part 3016".

c. A new paragraph (a)(1)(ii) is added.

d. New paragraphs (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), (b)(13) and (b)(14) are added.

The additions and revisions read as follows:

§ 248.12 FMNP costs.

(a) *General.*—(1) *Composition of allowable costs.* * * *

(i) *Food Costs and administrative costs.* * * * Except as provided in § 248.14(g) of this part, a State agency's administrative costs under the FMNP may not exceed 17 percent of its total FMNP costs. * * *

(ii) *Market development or technical assistance costs.* Market development or technical assistance costs are those costs under § 248.14(h) incurred to promote the development of farmers' markets in socially or economically disadvantaged areas, or remote rural areas, where individuals eligible for participation in the program have limited access to locally grown fruits and vegetables. Subject to a determination by the Secretary under § 248.14(h), a State agency may, during any fiscal year, use not more than 2 percent of total program funds for such market development or technical assistance.

* * * * *

(b) *Specified allowable administrative costs.* * * *

(8) The cost of determining which local WIC sites will be utilized.

(9) The cost of recruiting and authorizing farmers'/farmers' markets to participate in the FMNP.

(10) The cost of preparing contracts for farmers'/farmers' markets and local WIC providers.

(11) The cost of developing a data processing system for redemption and reconciliation of FMNP coupons.

(12) The cost of designing program training and informational materials.

(13) The cost of coordinating FMNP implementation responsibilities between designated administering agencies.

8. In § 248.14:

a. A new sentence is added before the second sentence of paragraph (a)(1)(i).

b. Paragraph (a)(1)(ii) is revised.

c. A new sentence is added at the end of paragraph (a)(1)(iii).

d. Paragraph (b) is revised.

e. Paragraph (c) is revised.

f. The first sentence of paragraphs (d)(1) and (d)(2) are revised and paragraph (d)(3) is revised.

g. Paragraph (e)(1) is amended by removing the words "(exclusive of the 5 percent carry forward)" from the first and second sentences of that paragraph.

h. Paragraph (g) is revised.

i. Paragraphs (h), (i) and (j) are redesignated as paragraphs (i), (j) and (k) respectively.

j. A new paragraph (h) is added.

k. Newly redesignated paragraph (i) is revised.

l. Newly redesignated paragraph (j) is revised.

m. Newly redesignated paragraph (k) is revised.

The revisions and additions are as follows:

§ 248.14 Distribution of funds.

(a) *Conditions for receipt of Federal funds.*—(1) *Matching of funds.*

(i) *Match amount.* * * * The Secretary may negotiate a lower percentage of matching funds, but not lower than 10 percent of the total cost of the program, in the case of an Indian State agency that demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. * * *

(ii) *Sources of matching contributions.* A State agency may count any form of contribution authorized by 7 CFR 3016.24 toward the State matching requirement including in-kind contributions.

(iii) *Failure to match.* * * * This match amount may be lower for those Indian State agencies that have demonstrated to the Secretary financial hardship as set forth in paragraph (a)(1)(i) of this section.

* * * * *

(b) *Distribution of FMNP funds to previously participating State agencies.* Provided that sufficient FMNP funds are available, each State agency that participated in the FMNP in any prior fiscal year, shall receive not less than

the amount of funds the State agency received in the most recent fiscal year in which it received funding, if it otherwise complies with the requirements established in this part.

(c) *Ratable reduction.* If amounts appropriated for any fiscal year for grants under the FMNP are not sufficient to pay to each previously participating State agency at least an amount as identified in paragraph (b) of this section, each State agency's grant shall be ratably reduced, except that, to the extent permitted by available funds, each State agency shall receive at least \$75,000 or the amount that the State agency received for the most recent prior fiscal year in which the State participated, if that amount is less than \$75,000.

(d) *Expansion of participating State agencies and establishment of new State agencies.* * * *

(1) Of the remaining funds, 75 percent shall be made available to State agencies already participating in the FMNP that wish to serve additional recipients. * * *

(2) Of the remaining funds, 25 percent shall be made available to State agencies that have not participated in the FMNP in any prior fiscal year. * * *

(3) In any fiscal year, any FMNP funds that remain unallocated after satisfying the requirements of paragraphs (d)(1) and (d)(2) of this section, shall be reallocated in accordance with paragraph (k) of this section.

* * * * *

(g) *Administrative funding.* A State agency shall have available for administrative costs an amount not greater than 17 percent of total FMNP funds. The 17 percent administrative cost limitation shall not apply to any funds that a State agency may contribute in excess of its minimum matching requirement. A State agency may use any non-Federal contributions in excess of the 30 percent (or the negotiated percentage for those Indian State agencies that received a lower amount) matching requirement for food and/or administrative costs.

(h) *Market development.* A State agency shall be permitted to use not more than 2 percent of total program funds for market development or technical assistance to farmers' markets if the Secretary determines that the State intends to promote the development of farmers' markets in socially or economically disadvantaged areas, or remote rural areas, where individuals eligible for participation in the program have limited access to locally grown fruits and vegetables.

(i) *Transfer of funds.* A State agency may use not more than 5 percent of the

Federal FMNP funds made available for the fiscal year to reimburse expenses incurred by the FMNP during a preceding fiscal year. The State agency shall provide such justification for its request to spend back funds under this paragraph as FNS may require.

(j) *Recovery of unused funds.* State agencies shall return to FCS any unexpended funds made available for a fiscal year by February 1 of the following fiscal year.

(k) *Reallocation of funds.* Any funds recovered under paragraphs (d)(3) and (j) of this section will be reallocated in accordance with the appropriate method determined by FCS.

9. In § 248.16 the second sentence in paragraph (f) is revised to read as follows:

§ 248.16 Administrative appeal of State agency decisions.

* * * * *

(f) *Additional appeals procedures for State agencies which authorize farmers' markets and not individual farmers.*

* * * A State agency which authorizes farmers' markets and not individual farmers shall ensure that procedures are in place to be used when a farmer seeks to appeal an action of a farmers' market or association denying the farmer's application to participate, or sanctioning or disqualifying the farmer.

10. In § 248.17:

a. The third sentence of the introductory text of paragraph (b) is revised.

b. The first sentence of paragraph (c)(1)(i) is revised.

c. Two new sentences are added at the end of paragraph (c)(1)(ii).

The revisions and additions read as follows:

§ 248.17 Management evaluations and reviews.

* * * * *

(b) *Responsibilities of FCS.* * * *

These evaluations shall also include reviews of selected local agencies, and on-site reviews of selected farmers'/farmers' markets. * * *

* * * * *

(c) *Responsibilities of State agencies.*

* * *

(1) * * *

(i) Annual monitoring reviews of participating farmers'/farmers' markets, including on-site reviews of a minimum of 10 percent of farmers and 10 percent of farmers' markets, which includes those farmers and markets identified as being the highest risk. First year of operation in the FMNP shall be considered a high-risk indicator. * * *

(ii) * * * WIC State agency reviews of local agencies conducted for the WIC

Program may contribute to meeting the FMNP requirement that all local agencies be reviewed once every two years if the reviews include reviews of FMNP practices. When the WIC State agency conducts a review of the local agency outside of the FMNP season, a review of documents and procedural plans of the FMNP, rather than actual FMNP activities, is acceptable.

* * * * *

11. In § 248.25, paragraph (a) is revised to read as follows:

§ 248.25 FMNP information.

* * * * *

(a) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont: U.S. Department of Agriculture, FNS, Northeast Region, 10 Causeway Street, Room 501, Boston, Massachusetts 02222-1066.

* * * * *

12. Section 248.26 is revised to read as follows:

§ 248.26 OMB control number.

The collecting of information requirements for Part 248 have been approved by the Office of Management and Budget and assigned OMB control number 0584-0477.

Dated: September 20, 1995.
William E. Ludwig,
Administrator, Food and Consumer Service.
[FR Doc. 95-23950 Filed 9-26-95; 8:45 am]
BILLING CODE 3410-34-U

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV95-906-2-FIR]

Expenses and Assessment Rate for the Marketing Order Covering Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate modifications, the provisions of an interim final rule that authorized expenses and established an assessment rate for the Texas Valley Citrus Committee (TVCC) under Marketing Order No. 906 for the 1995-96 fiscal year. Authorization of this budget enables the TVCC to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1995, through July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456, telephone: (202) 690-3670; or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen Texas 78501, telephone: (210) 682-2833.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Texas oranges and grapefruit are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit handled during the 1995-96 fiscal year, which begins August 1, 1995, and ends July 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA),

the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 15 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 750 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of these handlers and producers may be classified as small entities.

The Texas orange and grapefruit marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable oranges and grapefruit handled from the beginning of such year. Annual budgets of expenses are prepared by the TVCC, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the TVCC are handlers and producers of Texas oranges and grapefruit. They are familiar with the TVCC's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The TVCC's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the TVCC is derived by dividing the anticipated expenses by expected shipments of oranges and grapefruit. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the TVCC's expected expenses.

The TVCC met on May 16, 1995, and unanimously recommended expenses of \$1,035,000 and an assessment rate of \$0.10 per $\frac{7}{10}$ bushel carton. In comparison, budgeted expenses for the 1994-95 fiscal year were \$1,161,244,

which is \$126,244 more than the \$1,035,000 recommended for the 1995-96 fiscal year. The assessment rate of \$0.10 is \$0.06 less than last season's assessment rate of \$0.16.

The TVCC met again on August 15, 1995, and unanimously recommended revised expenses of \$1,008,643. The recommended assessment rate remains at \$0.10 per $\frac{7}{10}$ bushel carton.

The TVCC's reduced expenses are a result of the signing of a joint management agreement with the Texas Citrus and Vegetable Association.

Major expense categories for the 1995-96 fiscal year include \$500,000 for advertising, \$180,000 for compliance operations, and \$174,000 for the Mexican Fruit Fly support program.

Assessment income for the 1995-96 fiscal year is estimated at \$832,500 based upon anticipated fresh domestic shipments of 8,325,000 cartons of oranges and grapefruit. This, in addition to a withdrawal of \$167,143 from the TVCC's reserve fund, and \$9,000 estimated interest income should be adequate to cover budgeted expenses. In comparison, the assessment income for the 1994-95 fiscal year was estimated at \$960,000 based upon anticipated fresh domestic shipments of 6 million cartons of oranges and grapefruit.

Funds in the reserve at the end of the 1995-96 fiscal year are estimated at \$315,433. These reserve funds will be within the maximum permitted by the order of one fiscal year's expenses.

The TVCC budget was authorized by an interim final rule issued on June 15, 1995, and published in the Federal Register [60 FR 32257, June 21, 1995]. A 30-day comment period was provided for interested persons. No comments were received. Although no comments were received, the TVCC met subsequent to the issuance of the interim final rule and recommended a reduction in budgeted expenses for the 1995-96 fiscal year. The recommended reduction from \$1,035,000 to \$1,008,643 is incorporated in this final rule.

While this action will impose additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such

expenses will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The TVCC needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1995-96 fiscal year for the TVCC began August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable oranges and grapefruit handled during the fiscal year; and (3) handlers are aware of this action which was recommended by the TVCC at a public meeting and published in the Federal Register as an interim final rule that is adopted in this action as a final rule with a minor modification.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601-674.

Note: This action will not appear in the annual Code of Federal Regulations.

2. The interim amendment to 7 CFR part 906 which was published at 60 FR 32257 on June 21, 1995, is adopted as a final rule with the following change:

§ 906.235 [Corrected]

On page 32258, second column, in the regulatory text, the reference to "\$1,035,000" is corrected to read "\$1,008,643."

Dated: September 20, 1995.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 95-23895 Filed 9-26-95; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 993

[Docket No. FV95-993-1FIR]

Dried Prunes Produced in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as

a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses under Marketing Order No. 993 for the 1995–96 crop year. Authorization of this budget enables the Prune Marketing Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1995, through July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918; or Richard P. Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California prunes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable prunes handled during the 1995–96 crop year, which began August 1, 1995, and ends July 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the

hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,360 producers of California dried prunes under this marketing order, and approximately 20 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of California dried prune producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 crop year was prepared by the Prune Marketing Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of dried California prunes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 22, 1995, and unanimously recommended a 1995–96 budget of \$275,280, \$5,080 more than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Executive salaries, \$87,980 (\$83,850), clerical salaries, \$19,440 (\$18,650), office rent, \$22,000 (\$21,500), postage and messenger, \$5,500 (\$5,000), rental of equipment, \$3,000 (\$500), purchase of equipment, \$5,000 (\$4,500), acreage survey, \$10,500 (\$10,000), and reserve for contingencies, \$19,310 (\$19,250). Items which have decreased compared to the amount budgeted for 1994–95 (in parentheses) are: Employee benefits, \$15,400 (\$15,800), repairs and maintenance, \$3,000 (\$4,000), stationery and printing, \$4,000 (\$6,500), and Committee travel, \$9,000 (\$9,500). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of \$1.55 per salable ton, \$0.05 less than the previous year. This rate, when applied to anticipated shipments of 177,600 salable tons, will yield \$275,280 in assessment income, which will be adequate to cover budgeted expenses. Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

An interim final rule was published in the Federal Register on August 1, 1995 (60 FR 19107). That interim final rule added § 993.346 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through August 31, 1995. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

It is further found that good cause exists for not postponing the effective

date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995-96 crop year began on August 1, 1995. The marketing order requires that the rate of assessment for the crop year apply to all assessable California prunes handled during the crop year. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the Federal Register as an interim final rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

Accordingly, the interim final rule adding § 993.346 which was published at 60 FR 39107 on August 1, 1995, is adopted as a final rule without change.

Dated: September 20, 1995.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 95-23898 Filed 9-26-95; 8:45 am]

BILLING CODE 3410-02-P

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 95-064-1]

Specifically Approved States Authorized To Receive Mares and Stallions Imported From CEM-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the animal importation regulations by adding Texas to the list of States approved to receive certain mares and stallions imported into the United States from countries affected with contagious equine metritis (CEM). We are taking this action because Texas has entered into an agreement with the Administrator of the Animal and Plant Health Inspection Service to enforce its State laws and regulations to control CEM and to require inspection, treatment, and testing of horses, as required by Federal regulations, to further ensure the horses' freedom from CEM. This action relieves

unnecessary restrictions on importers of mares and stallions from countries affected with CEM.

DATES: This rule will be effective on November 27, 1995, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before October 27, 1995.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Docket No. 95-064-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your submission refers to Docket No. 95-064-1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231, (301) 734-8423.

SUPPLEMENTARY INFORMATION:

Background

The animal importation regulations (contained in 9 CFR part 92 and referred to below as the regulations), among other things, prohibit or restrict the importation of certain animals, including horses, into the United States to protect U.S. livestock from communicable diseases. Sections 92.301(c)(2), 92.304(a)(4)(ii), and 92.304(a)(7)(ii) allow certain horses to be imported into the United States from certain countries where contagious equine metritis (CEM) exists if specific requirements to prevent their introducing CEM into the United States are met.

Mares and stallions over 731 days old must be consigned to States that have been approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) as meeting conditions necessary to ensure that the mares and stallions are free of CEM. These conditions, which concern inspection, treatment, and testing of the mares and stallions, are contained in § 92.304(a)(5) of the regulations for stallions and in § 92.304(a)(8) for mares. Texas has agreed to abide by the State regulations concerning mares and stallions imported from countries where CEM

exists, and has entered into a written agreement with the Administrator, APHIS, to enforce its State laws and regulations that meet the requirements of § 92.304(a)(5) and § 92.304(a)(8) of the regulations, to control CEM.

This direct final rule will add Texas to the list of States approved to receive certain mares (§ 92.304(a)(7)(ii)) and stallions (§ 92.304(a)(4)(ii)) imported into the United States from countries affected with CEM.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the Federal Register unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the Federal Register.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the Federal Register withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the Federal Register, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We anticipate that fewer than 20 mares and stallions over 731 days old will be imported into the State of Texas annually from countries where CEM exists. Approximately 200-300 mares and stallions over 731 days old from countries where CEM exists were imported into approved States in fiscal

year 1994. During this same period, approximately 3,598 horses of all classes were imported into the United States from countries other than Canada and Mexico through air and ocean ports; approximately 24,904 horses were imported from Canada; and, approximately 1,364 horses were imported from Mexico.

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.304 [Amended]

2. Section 92.304 is amended as follows:

a. Paragraph (a)(4)(ii), by adding, in alphabetical order, “The State of Texas”.

b. Paragraph (a)(7)(ii), by adding, in alphabetical order, “The State of Texas”.

Done in Washington, DC, this 22nd day of September 1995.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–23970 Filed 9–26–95; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 95–79]

Technical Correction of J List

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to correct the description set forth in § 134.33, the “J List”, of rails, joint bars and tie plates as articles excepted from country of origin marking requirements pursuant to 19 U.S.C. 1304(a)(3)(J). The description of rails, joint bars and tie plates now does not accurately reflect the correct tariff subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) of articles covered within the marking exception. The error in the description is due to the inadvertent omission of certain subheading numbers when the Customs Regulations were amended to implement the Harmonized System of tariff classification by converting references to the Tariff Schedules of the United States to references to the HTSUS.

EFFECTIVE DATE: This amendment is effective September 27, 1995.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Special Classification and Marking Branch, (202) 482–6980.

SUPPLEMENTARY INFORMATION:

Background

Section 134.33, Customs Regulations (19 CFR 134.33) sets forth a list of articles, including certain of the applicable tariff provisions, which are excepted from the requirements of country of origin marking pursuant to 19 U.S.C. 1304(a)(3)(J). When this “J List” was amended by T.D. 89–1 dated December 21, 1988 (53 FR 51256) to change the referenced tariff provisions from the Tariff Schedules of the United

States (TSUS) to the Harmonized Tariff Schedule of the United States (HTSUS), certain tariff classifications were inadvertently omitted from the reference in the “J List” to “Rail, joint bars and tie plates”. This document corrects those omissions by amending section 134.33 of the Customs Regulations (19 CFR 134.33) to clarify that the reference to “Rails, joint bars and tie plates” encompasses subheadings 7302.10.10 through 7302.90.00, HTSUS.

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

This document does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

Inapplicability of Public Notice and Comment Requirements and Delayed Effective Date Requirements

Because this document merely corrects an error from a previously published document, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that the notice and public comment procedures thereon are unnecessary. For the same reasons, it has also been determined, pursuant to 5 U.S.C. 553(d)(3), that good cause exists for not requiring a delayed effective date.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 134

Customs duties and inspection, Labeling, Packaging and containers.

Amendment to the Regulations

For the reasons set forth in the preamble, part 134 of the Customs Regulations (19 CFR part 134) is amended as set forth below.

PART 134—COUNTRY OF ORIGIN MARKING

1. The general authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1304, 1624.

2. In § 134.33, the entry in the “Articles” column stating “Rails, joint bars, and tie plates covered by subheadings 7302.90.00, Harmonized Tariff Schedule of the United States” is

removed and the entry "Rails, joint bars, and tie plates covered by subheadings 7302.10.10 through 7302.90.00, Harmonized Tariff Schedule of the United States" is added in its place.

George J. Weise,
Commissioner of Customs.

Approved: September 6, 1995.

Dennis M. O'Connell,
Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95-23954 Filed 9-26-95; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Wage and Hour Division

29 CFR Part 508

RIN 1205-AA88 and RIN 1215-AA68

Attestations by Employers for Off-Campus Work Authorization for Foreign Students (F-1 Nonimmigrants)

AGENCIES: Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Joint interim final rule.

SUMMARY: The Department of Labor (DOL) amends regulations relating to attestations by employers seeking to use nonimmigrant foreign (F-1) students in off-campus work. DOL continues to review comments submitted by the public on the interim final rule and expects to publish a final rule shortly. However, existing attestations expire at the close of September 1995. For that reason, this rule extends the period of applicability of attestations for two months, through November 30, 1995.

EFFECTIVE DATE: September 30, 1995.

FOR FURTHER INFORMATION CONTACT:

On 20 CFR part 655, subpart J, and 29 CFR part 508, subpart J, contact Ms. Flora T. Richardson, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N-4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-219-5263 (this is not a toll-free number).

On 20 CFR part 655, subpart K, and 29 CFR part 508, subpart K, contact Mr. Thomas Shierling, Branch of Farm Labor Programs, Wage and Hour Division, Employment Standards

Administration, Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-219-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Immigration Act of 1990 (IMMACT) sec. 221 and Immigration and Nationality Act secs. 101(a)(15)(F) and 214 create a pilot program, of limited duration, allowing a nonimmigrant foreign student admitted on F-1 visas to work off-campus if: (1) he/she has completed one academic year as such a nonimmigrant and is maintaining good academic standing at the institution; (2) he/she will not be employed off-campus for more than 20 hours per week during the academic term (but may be employed full-time during vacation periods and between terms); and (3) the employer provides an attestation to the Department of Labor (DOL) and to the educational institution that it unsuccessfully recruited for the position for at least 60 days and will pay the higher of the actual wage at the worksite or the prevailing wage for the occupation in the area of employment. The employer submits such attestations to DOL and the educational institution for foreign students to receive work authorization, if otherwise qualified. The attestation process is administered by the Employment and Training Administration. Complaints and investigations regarding violations of employer attestations are handled by the Wage and Hour Division, Employment Standards Administration. If DOL determines an employer made a materially false attestation or failed to pay wages in accordance with an attestation, the employer, after notice and opportunity for a hearing, may be disqualified from employing F-1 students under the program.

An interim final rule, requesting comments was published November 6, 1991. 56 FR 56860. The interim final rule provided that the employer's attestation may remain in effect, unless withdrawn or invalidated, through no later than September 30, 1994, the original statutory termination date for the pilot. Public Law 103-416 extended the program. Currently, existing attestations are valid through September 30, 1995. 60 FR 38957 (July 31, 1995). Analysis of the comments is ongoing. The rule published today extends attestations through November 30, 1995. A final rule is expected to be published shortly. Should that not occur, the interim final rule will be extended again.

Absent today's amendment, all previously valid attestations would

expire at the close of September 30, 1995, and no new attestations could be filed. Without the amendment, F-1 students would not have work authorization under this program. New attestations filed after the effective date of today's rule also are valid through November 30, 1995, unless withdrawn or invalidated. Today's rule alleviates hardships for covered students and employers, and the limited extension gives DOL additional opportunity to complete analysis of comments on the interim final rule.

For these reasons, DOL for good cause finds a proposed rule is impracticable and contrary to the public interest (5 U.S.C. 553(b)(B)); and finds good cause to make the rule effective immediately (5 U.S.C. 553(d)(3)). The rule is not significant under E.O. 12866. The rule was not preceded by a proposed rule and, thus, is not covered by the Regulatory Flexibility Act. When the interim final rule was published, however, DOL notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that the rule did not have a significant economic impact on a substantial number of small entities. The program is not in the Catalog of Federal Domestic Assistance.

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

29 CFR Part 508

Administrative practice and procedure, Aliens, Employment, Enforcement, Immigration, Labor, Penalties, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

Text of Joint Interim Final Rule

The text of the joint interim final rule appears below:

1. Section __.900(b)(2)(i) is amended by removing the date "September 30, 1995" and adding in lieu thereof the date "November 30, 1995".

2. Section __.900(d) is amended by removing the date "September 30, 1995" and adding in lieu thereof the date "November 30, 1995".

3. Section ____900 is amended by revising paragraph (e), to read as follows:

§ ____900 Purpose, procedure and applicability of subparts J and K of this part.

* * * * *

(e) *Revalidation of employer attestations in effect on September 30, 1995.* Any employer's attestation which was valid on September 30, 1995, is revalidated effective on September 30, 1995 and shall remain valid through November 30, 1995, unless withdrawn or invalidated.

4. Section ____910(b)(2)(i) is amended by removing the phrase "through September 30, 1995" and adding in lieu thereof the phrase "through November 30, 1995".

5. Section ____910(e) is amended by removing from the first sentence the phrase "after September 30, 1995" and adding in lieu thereof the phrase "after November 30, 1995"; and by removing from the penultimate sentence the phrase "prior to September 30, 1995" and adding in lieu thereof the phrase "prior to November 30, 1995".

6. Section ____940(d)(1)(i)(B) is amended by removing the date "September 30, 1995" and adding in lieu thereof the date "November 30, 1995".

7. Section ____940(h)(1) is amended by removing the date "September 30, 1995" and adding in lieu thereof the date "November 30, 1995".

8. Section ____940(h)(3) is amended by removing the date "September 30, 1995" and adding in lieu thereof the date "November 30, 1995".

Adoption of Joint Interim Final Rule

The agency-specific adoption of the Joint Interim Final Rule, which appears at the end of the common preamble, appears below:

TITLE 20—EMPLOYEES' BENEFITS

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

1. Part 655 of chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

a. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 665.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.* and 8 CFR 214.2(h)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; and 29 U.S.C. 49 *et seq.*

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

b. Part 655 is amended as set forth in the Joint Interim Final Rule, which appears at the end of the common preamble.

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

2. Part 508 of chapter V of title 29, Code of federal regulations, is amended as follows:

PART 508—ATTESTATIONS FILED BY EMPLOYERS UTILIZING F-1 STUDENTS FOR OFF-CAMPUS WORK

a. The authority citation for part 508 continues to read as follows:

Authority: 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

b. Part 508 is amended as set forth in the Joint Interim Final Rule, which appears at the end of the common preamble.

Signed at Washington, DC, this 21st day of September, 1995.

Raymond Uhalde,

Deputy Assistant Secretary, for Employment and Training.

Maria Echaveste,

Administrator, Wage and Hour Division Employment Standards Administration.

[FR Doc. 95-23782 Filed 9-26-95; 8:45 am]

BILLING CODE 4510-30-M; 4510-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8610]

RIN 1545-AP98

Taxable Mortgage Pools; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations, Treasury Decision 8610, which was published in the Federal Register on Monday, August 7, 1995 (60 FR 40086). The final regulation relates to taxable mortgage pools.

EFFECTIVE DATE: September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Arnold P. Golub or Marshall D. Geiring, (202) 622-3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 7701(i) of the Internal Revenue Code.

Need for Correction

As published, T.D. 8610 contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulation (T.D. 8610), which was the subject of FR Doc. 95-19285, is corrected as follows:

§ 301.7701(i)-1 [Corrected]

1. On page 40089, column 1, § 301.7701(i)-1 (c)(4)(ii), the third line from the bottom of the paragraph, the language "taxes, insurance premium, or other" is corrected to read "taxes, insurance premiums, or other".

2. On page 40091, column 3, § 301.7701(i)-1 (g)(3), paragraph (iv) of *Example 5*, the third line from the bottom of the paragraph, the language "treat the \$9,375,000 obligation as principally" is corrected to read "treat a \$9,375,000 obligation as principally".

Cynthia E. Grigsby,
Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95-23903 Filed 9-26-95; 8:45 am]

BILLING CODE 4830-01-P

POSTAL SERVICE**39 CFR Parts 20 and 111****Amendment of International Mail Manual Part 123, Customs Forms Required, and Domestic Mail Manual Part E010, Overseas Military Mail**

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service, after considering the written responses to its request published in the Federal Register on December 28, 1994 (59 FR 66839-66844), for public comment on proposed amendments to International Mail Manual part 123, Customs Forms Required, and Domestic Mail Manual part E010, Overseas Military Mail, hereby gives notice that it is implementing the amendments. Certain federal government agencies, however, are exempted as explained in the Supplementary Information.

In addition to the current requirement that all international mail containing dutiable articles must bear a customs declaration form, a customs form will be required, with certain exceptions, on the following types of mail:

- All international letters weighing more than 16 ounces;
- All international letter packages weighing more than 16 ounces;
- All international printed matter weighing more than 16 ounces;
- All international small packets, matter for the blind, M-bags, parcel post packages, and Express Mail International Service items, regardless of weight; and
- All domestic mail weighing more than 16 ounces sent to, from, or between overseas military post offices (APO and FPO destinations).

EFFECTIVE DATE: May 4, 1996.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 268-5180.

SUPPLEMENTARY INFORMATION: On December 28, 1994, the Postal Service published in the Federal Register (59 FR 66839-66844) a notice of proposed rulemaking to amend International Mail Manual part 123 and Domestic Mail Manual part E010 to change the conditions under which customs declaration forms will be used on international and military mail and under which the Postal Service will use these forms.

In addition to the current requirement that all international mail containing dutiable articles must bear a customs declaration form, a customs form will be required, with certain exceptions, on the following types of mail:

- All international letters weighing more than 16 ounces;

- All international letter packages weighing more than 16 ounces;
- All international printed matter weighing more than 16 ounces;
- All international small packets, matter for the blind, M-bags, parcel post packages, and Express Mail International Service items, regardless of weight; and
- All domestic mail weighing more than 16 ounces sent to, from, or between overseas military post offices (APO and FPO destinations).

These new requirements will strengthen aviation security by establishing procedures that deter mailers from using the mails to send, knowingly or unknowingly, dangerous material or explosives. The four key aspects of these requirements are as follows:

- (1) The face-to-face interaction between the mailer and a postal employee;
- (2) The completion of a document (the customs declaration form) containing the mailer's name, address, and signature;
- (3) The inclusion of a statement on the customs form regarding the safety of the contents of the item and the "security controls" to which the item is subject; and
- (4) The retention of one copy of the customs form until such time as delivery of the item is completed.

The Postal Service requested comments by January 27, 1995, and by that date received two comments: one from a federal government agency and one from a private individual.

The federal government agency requested that the proposal be amended to exclude official mail going to, from, or between military post offices (MPOs). The agency commented that federal government agencies sending official mail are not authorized to use permits or mailing systems for mail originating at MPOs and that all such mail bears either postage stamps or meter postage. Moreover, all government agency mailers are known mailers.

The Postal Service agrees. Accordingly, Domestic Mail Manual part E010 is amended by adding section E010.2.6 to provide that official mail going to, from, or between MPOs is exempt from the requirements for customs declaration forms unless customs declarations are necessary for customs treatment.

The other commenter noted that the new requirements will compel mailers to present at post offices many items currently permitted to be deposited into collection boxes or given to delivery employees and that these requirements will compel mailers to provide a return

address on items not currently requiring one. He stated that the new requirements provide for an automatic mail cover and questioned the ability of the Postal Service to match records of customs declaration forms retained at post offices with the corresponding items. He further stated that the Postal Service gave no explanation why matter for the blind, small packets, and Express Mail, if weighing less than 16 ounces, are not exempted from the required use of customs forms as done for nondutiable letters, letter packages, and printed matter, if weighing less than 16 ounces. In addition, he noted that no distinction exists between MPOs at overseas locations and those at domestic locations. In summary, the commenter believed that the Postal Service will gain no real benefit from the changes in its requirements for customs forms.

The Postal Service disagrees with the views expressed by this commenter. It is true that some international mail items and military mail items that do not now have to be presented for mailing at a post office will, with the implementation of the new requirements, have to be taken there for face-to-face acceptance. The 16-ounce limit was selected, in part, because only a small amount of international and military mail, weighing more than 16 ounces, is currently deposited into collection boxes or given to delivery employees. Rather, this mail usually requires mailers to have their items weighed and postage rates calculated by a postal employee at a post office. Moreover, these same mailers frequently must obtain the appropriate customs declaration forms and purchase additional international special services such as registry. The Postal Service believes that the new requirements will not increase substantially the number of window transactions in fulfilling the new customs forms requirements.

As a rule, a return address is not required on most mail. The new requirements will not change current requirements. Currently, when a mailer sending international mail uses a customs declaration form (either PS Form 2966-A or PS Form 2966-B), the mailer must include his or her name and return address on the form. This requirement will continue with the revised PS Form 2976-A; this form, when detached, will not show the mailer's name and return address on the item. The mailer will have to write his or her name and return address elsewhere on the item.

The retention of a copy of the customs declaration form by the Postal Service does not provide an automatic mail cover. The information collected on this

copy is retained for only a short time. During that time, the copy is not used to collect information except for an investigation in the event of a credible threat to aviation security. Moreover, the Postal Service already retains similar records on forms required for certain items such as Express Mail and registered mail.

The requirements for the use of customs declaration forms on small packets and on Express Mail International Service (EMS) items are not changed. All small packets currently require a customs form; this requirement is not changed. Customs declaration requirements for EMS, which vary by content and destination country, are detailed for each country in the Individual Country Listing pages of the International Mail Manual (IMM). A copy of the EMS mailing label is currently retained for each EMS item mailed, regardless of contents.

All matter for the blind will be required to bear a customs declaration form. Most of this mail weighs more than 16 ounces and only a few mailers are eligible for this service. In addition, matter for the blind mailed at the airmail rate is often indistinguishable from other types of mail.

The Postal Service continues to believe that although the change in requirements for customs declaration forms is not a foolproof measure, it serves as an additional deterrent to mailers who knowingly mail dangerous material, while it provides notice to mailers who are unaware of the regulations against mailing dangerous or prohibited material.

The requirements for the private printing of Postal Service customs declaration forms (see IMM section 123.3) are also changed to clarify and define the specifications for the new forms. The Postal Service believes that this change will ensure that privately printed customs forms meet the same specifications (that is, for color, format, size, printing, numbering, adhesive quality (if required), and barcoding) as those used for the Postal Service forms.

IMM section 123.722 is also amended by adding the requirement for a Postal Service postmark on copy 3, Dispatch

Note, of Form 2976-A. This requirement was inadvertently omitted in the proposed rule.

The Postal Service will implement the new requirements on May 4, 1996. Until that date, mailers must continue using currently required customs declaration forms.

The Postal Service hereby adopts the following amendments to the International Mail Manual and the Domestic Mail Manual, which are both incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1 and 39 CFR 111.1, respectively.

List of Subjects

39 CFR Part 20

Customs duties and inspections, Foreign relations, Foreign trade, International postal services, Postal Service.

39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended by revising part 123, Customs Forms Required, to read as follows:

123 Customs Forms

123.1 General

Only two customs declaration forms are used, as required under 123.6, for international mail: Form 2976, Customs CN 22 (old C 1); and Form 2976-A, Customs Declaration and Dispatch Note CP 72 (old C 2/CP 3/CP 2). Form 2976-E, Customs Declaration Envelope CP 91, is used with Form 2976-A for parcel post packages. Only forms dated May 1996 or later may be used.

123.2 Availability

Customs declaration forms are available without charge at post offices. On request, mailers may receive a reasonable supply for mail preparation.

123.3 Privately Printed Forms

Mailers may privately print Forms 2976 and 2976-A if authorized. Privately printed forms must be identical in size, design, and color with the Postal Service forms, and each form must contain a unique barcode number that can be read by Postal Service equipment. Form specifications may be obtained from the Manager, Business Mail Acceptance, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington DC 20260-6808. For authorization, mailers must submit at least two preproduction samples to Business Mail Acceptance, at the above address, for review and approval. If three or more items are presented at one time, the mailer may omit printing the post office copy of Forms 2976 and 2976-A if a manifest of the items is provided. The manifest must contain the same mailer's certification statement and edition date printed on the Postal Service forms. Entries on the manifest must be typewritten or printed in ink or by ballpoint pen. The manifest option must be indicated at the time that the mailer requests to produce privately printed forms.

123.4 Nonpostal Forms

Certain items must bear one or more of the forms required by the nonpostal export regulations described in chapter 5.

123.5 Place of Mailing

Items requiring customs declaration forms may be mailed only by presenting the items and completed forms at a post office or as designated by the postmaster. Express Mail items paid by corporate account, however, may be deposited into collection boxes. All other items requiring customs forms that are found in collection boxes or not presented to a postal acceptance employee are returned to the sender for proper mailing and acceptance.

123.6 Required Usage

123.61 Conditions

Customs declaration forms, either Form 2976 or Form 2976-A, must be used as shown in exhibit 123.61.

Mail class	Declared value	Required form	Place-ment	Comment
Nondutiable letter or letter package, 16 ounces and under.	N/A	None	N/A	
Dutiable letter or letter package, regardless of weight; letter or letter package, over 16 ounces.	Under \$400	2976 or	Outside .	Known mailers may be exempt from using forms on nondutiable items over 16 ounces (see 123.62).
	\$400 and over ..	2976-A*	Inside ...	
Nondutiable printed matter, 16 ounces and under.	N/A	None	N/A	
Dutiable printed matter, regardless of weight; printed matter, over 16 ounces.	Under \$400	2976 or	Outside .	Known mailers may be exempt from using forms on nondutiable items over 16 ounces (see 123.62).
	\$400 and over ..	2976-A*	Inside ...	
Matter for the blind	Under \$400	2976 or	Outside .	
	\$400 and over ..	2976-A*	Inside ...	
Small packet	Under \$400	2976 or	Outside .	
	\$400 and over ..	2976-A*	Inside ...	
Parcel post	N/A	2976-A	Outside .	Form 2976 may not be used on parcel post. See Individual Country Listings.
Express Mail	N/A	2976 or	Outside .	
		2976-A, as re-quired by IMM.	Outside .	
M-bag	Under \$400	2976 or	Outside .	
	\$400 and over ..	2976-A*	Inside ...	
		2976-A*	Inside ...	

* When Form 2976-A is enclosed in the item, the top part of Form 2976 must be affixed to the outside of the item.

Customs Declaration Forms Usage

Exhibit 123.61

123.62 Known Mailers

Known mailers having advance deposit accounts or customer identification numbers for international mailing programs (such as International Surface Air Lift, International Priority Airmail, or Valuepost/CANADA) may be exempt from providing customs declaration forms as required in 123.61 on nondutiable letters, letter packages, and printed matter, weighing more than 16 ounces. Such mailers must complete the declaration on the mailing statement, certifying that all items in the mailing contain no dangerous material.

123.63 Additional Security Controls

When the chief postal inspector determines that a unique, credible threat exists, the Postal Service may require a mailer to provide photo-identification at the time of mailing. The signature on the identification must match the signature on the customs declaration form.

123.7 Completing Customs Forms

123.71 Form 2976 (Green Label)

123.711 Preparation by Sender

A sender completes Form 2976, Customs CN 22, by:

- a. Providing a complete description of each article in the item, even if it contains a gift, merchandise, or a commercial sample. General descriptions such as "food," "medicine," "gift," or "clothing" are not acceptable. The description must be in

English, although an interline translation in another language is permitted. The exact quantity of each article in the item must be stated.

b. Declaring the value, in U.S. dollars, of each article in the item. The sender may declare that the contents have no value (declaring no value does not exempt the item from customs examination or charges in the destination country).

c. Showing the total weight of the item, if known.

d. Indicating in the appropriate checkbox on the form whether the item contains gifts, merchandise, or commercial samples. If not, the sender does not check these boxes.

e. Entering his or her full name and return address in the blocks indicated.

f. Signing and dating the form in the blocks indicated on both parts of the form. The sender's signature certifies that all entries are correct and that the item contains no dangerous material prohibited by postal regulations.

g. Affixing the form to the address side of the item and presenting it for mailing.

123.712 Acceptance by Postal Employee

The postal employee accepts the item for mailing by:

- a. Instructing the sender how to complete the customs declaration form, as required, legibly and accurately. Failure to complete the form properly can delay delivery of the item or inconvenience the addressee. Moreover, a false, misleading, or incomplete declaration can result either in the

seizure or return of the item or in criminal or civil penalties. The U.S. Postal Service assumes no responsibility for the accuracy of information that the sender enters on the form.

b. Verifying that the required information is entered on the form and that the sender has signed both parts (the part affixed to the item and the part separated for postal records).

c. Entering the weight of the item on the form, if not already done.

d. Removing the post office copy and retaining it for 30 days.

123.72 Form 2976-A

123.721 Preparation by Sender

A sender completes Form 2976-A, Customs Declaration and Dispatch Note CP 72, by:

a. Providing the names and addresses of the sender and addressee.

b. Providing information about the contents of the parcel or item. (If there is insufficient space on the customs declaration form to list all contents of the parcel or item, a second form is used to continue listing the contents. The first form must be annotated to indicate two forms. Both forms are placed into Form 2976-E (envelope).) The sender lists this information by:

- (1) Providing a complete description of each article in the parcel or item, even if it contains commercial samples, documents, gifts, or merchandise. General descriptions such as "food," "medicine," "gift," or "clothing" are not acceptable. The description must be in English, although an interline translation in another language is permitted.

(2) Showing the exact quantity of each article in the parcel or item.

(3) Declaring the value, in U.S. dollars, of each article in the parcel or item. The sender may declare that the contents have no value (declaring no value does not exempt the parcel or item from customs examination or charges in the destination country).

(4) Showing the net weight of each article in the parcel or item.

c. Indicating in the appropriate checkbox on the form whether the parcel or item contains commercial samples, documents, gifts, or merchandise. If not, the sender does not check these boxes.

d. For parcel post only, providing disposal instructions in the event that a parcel cannot be delivered. The sender checks the appropriate box on the form to indicate whether the parcel is to be returned, treated as abandoned, or forwarded to an alternate address. (Undeliverable parcels returned to the sender are subject to collection on delivery of return postage and any other charge assessed by the foreign postal authorities. The sender must check the box "Abandon" for any parcel for which the sender is unwilling to pay return postage.)

e. Signing and dating the form in the block indicated. The sender's signature certifies that all entries are correct and that the parcel or item contains no dangerous material prohibited by postal regulations.

f. Presenting the parcel post package or item for mailing at a post office and affixing Form 2976-A according to the class of mail, as follows:

(1) For parcel post, the sender must not place Form 2976-A inside Form 2976-E (envelope) before the postal acceptance employee completes the required information described in 123.722. After the postal employee completes Form 2976-A, the sender places the form inside Form 2976-E and affixes it to the outside of the parcel.

(2) For an item other than parcel post (that is, an LC or AO item) valued at \$400 or more, the sender places Form 2976-A inside the item before the postal employee accepts the item. If the sender does not want to show on the outside

wrapper the contents of the LC or AO item, the sender affixes the top part of Form 2976 CN to the wrapper and completes Form 2976-A and encloses it in the item.

123.722 Acceptance by Postal Employee

When Form 2976-A is enclosed in an LC or AO item, the postal acceptance employee does not verify or complete the entries on the form as described below for parcel post. For a parcel post package, the postal employee accepts the parcel for mailing by:

a. Instructing the sender how to complete the customs declaration form, as required, legibly and accurately. Failure to complete the form properly can delay delivery of the mail or inconvenience the addressee. Moreover, a false, misleading, or incomplete declaration can result either in the seizure or return of the parcel or item or in criminal or civil penalties. The U.S. Postal Service assumes no responsibility for the accuracy of information that the sender enters on the form.

b. Verifying that the required information is entered on the form and that the sender has signed the declaration.

c. Completing an insurance receipt and affixing the insured number label to the package, if the contents are to be insured. The postal employee enters on the form the insured number and, in U.S. dollars and SDRs, the insured amount.

d. Weighing the parcel and entering on the form the gross weight and the amount of postage.

e. Postmarking copy 3, Dispatch Note, in the appropriate place.

f. Removing the post office copy and retaining it for 30 days.

g. Returning the form set to the sender for affixing to the parcel. Form 2976-E (envelope) must be used with Form 2976-A.

* * * * *

242.3 Mailing Locations

242.31 General

Except Express Mail items paid by corporate account, items requiring

customs declaration forms may be mailed only by presenting the items and completed forms at a post office or as designated by the postmaster; such items may not be deposited into street collection boxes or post office lobby drops. Items not requiring customs forms and fully prepaid with postage stamps or meter postage may be deposited into collection boxes or lobby drops. (See exhibit 123.61 for a summary of items requiring customs forms.)

* * * * *

PART 111—[AMENDED]

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

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

4. The Domestic Mail Manual is amended by adding section 2.6 to part E010, Overseas Military Mail, to read as follows:

E010.2.6 Customs Declarations

All mail items weighing more than 16 ounces that are addressed to overseas military post offices (MPOs) must bear Form 2976, Customs CN 22, and must be presented for mailing at a post office. Certain destination MPOs require Form 2976-A, Customs Declaration and Dispatch Note CP 72, as shown in the chart "Conditions Applied to Mail Addressed to Military Post Offices Overseas," periodically published in the Postal Bulletin. Known mailers presenting bulk mailings declared on a mailing statement are not required to use customs declaration forms unless required by the chart. (International Mail Manual 123 contains procedures for completing customs forms.) Official mail going to, from, or between MPOs is exempt from the requirements of this section unless customs declarations are necessary for customs treatment.

Stanley F. Mires,

Chief Counsel, Legislative.

BILLING CODE 7710-12-P

<p>No. United States Postal Service Customs - CN 22 (Old C 1) May be opened officially (<i>Peut être ouvert d'office</i>) See instructions on Reverse</p>	<p align="center">Customs - CN 22 (Old C 1) Sender's Declaration</p> <p>I certify that the particulars given in the customs declaration are correct and that this item does not contain any dangerous article prohibited by postal regulations.</p> <p>Name of Sender</p> <p>Address (No., street, apt./suite no., city, state, ZIP Code)</p>
<p>Detailed Description of Contents</p> <p align="right">Value (US \$)</p>	<p>Weight (Poids)</p> <p><input type="checkbox"/> Gift (Cadeau) <input type="checkbox"/> Merchandise (Marchandises)</p> <p><input type="checkbox"/> Commercial Sample</p> <p>I certify that this item does not contain any dangerous article prohibited by postal regulations.</p>
<p align="right">Total</p>	<p>Signature</p>
<p align="right">Date</p>	<p align="right">Date</p>
<p>PS Form 2976, May 1996 CN 22 (Old C 1)</p>	<p align="center">Detached from PS Form 2976, May 1996</p> <p align="right">Post Office Copy</p>

Instructions

Affix only the upper portion of this label (cut on dotted line and discard lower portion) if you do not wish to list the contents on the wrapper, or in any case if their value exceeds \$400. When this is done, enclose in the package a completed Form 2976-A, *Customs Declaration and Dispatch Note*, listing contents and value in US dollars.

The contents of your article, **even if a gift or sample**, must be described correctly and completely. Failure to do so might delay your article and cause difficulty for the addressee, or even result in seizure of the article by the foreign customs authorities.

Your item must not contain any dangerous article prohibited by postal regulations.

PS Form 2976, May 1996 (Reverse)

United States Postal Service Customs Declaration and Dispatch Note		No. _____						
Sender's Name and Address (<i>Nom et adresse de l'expéditeur</i>)		Addressee's Name and Address (<i>Nom et adresse du destinataire</i>)						
List of Contents (<i>Désignation du contenu</i>) Please Print		<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 60%;">Qty.</th> <th style="width: 20%;">Value (<i>Valeur</i>)</th> <th style="width: 20%;">Net Weight (<i>Poids net</i>)</th> </tr> </thead> <tbody> <tr> <td style="height: 40px;"> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Qty.	Value (<i>Valeur</i>)	Net Weight (<i>Poids net</i>)			
Qty.	Value (<i>Valeur</i>)	Net Weight (<i>Poids net</i>)						
Insured No. V-	Insured Amount US \$ _____	SDR Insured Value US \$ _____						
Check One: <input type="checkbox"/> Commercial Sample (<i>Echantillon commercial</i>)		Postage US \$ _____						
Sender's Instructions in Case of Nondelivery (<i>Instructions de l'expéditeur en cas de non-livraison</i>)		Gross Weight _____ lb _____ oz						
<input type="checkbox"/> Return to Sender (<i>Renvoyer à l'origine</i>) NOTE: Item subject to return charges at sender's expense.		Sender's Signature and Date (<i>Signature de l'expéditeur et date</i>)						
<input type="checkbox"/> Abandon (<i>Abandonner</i>)		I certify that the particulars given in the customs declaration are correct and that this item does not contain any dangerous article prohibited by postal regulations.						
<input type="checkbox"/> Redirect to Address Below (<i>Réexpédier à</i>)		_____						
PS Form 2976-A , May 1996 CP 72 (Old C2/CP3/CP2)		Copy 1 - Customs Declaration						

United States Postal Service Customs Declaration and Dispatch Note		No. _____		
Sender's Name and Address (<i>Nom et adresse de l'expéditeur</i>)		Addressee's Name and Address (<i>Nom et adresse du destinataire</i>)		
List of Contents (<i>Désignation du contenu</i>) Please Print		Qty.	Value (<i>Valeur</i>)	Net Weight (<i>Poids net</i>)
Insured No. V-	Insured Amount US \$	SDR Insured Value US \$	Postage US \$	Gross Weight lb oz
Check One: <input type="checkbox"/> Commercial Sample (<i>Echantillon commercial</i>) <input type="checkbox"/> Documents <input type="checkbox"/> Gift (<i>Cadeau</i>) <input type="checkbox"/> Merchandise				
Sender's Instructions in Case of Nondelivery (<i>Instructions de l'expéditeur en cas de non-livraison</i>) <input type="checkbox"/> Return to Sender (<i>Renvoyer à l'origine</i>) NOTE: Item subject to return charges at sender's expense. <input type="checkbox"/> Abandon (<i>Abandonner</i>) <input type="checkbox"/> Redirect to Address Below (<i>Réexpédier à</i>)		Sender's Signature and Date (<i>Signature de l'expéditeur et date</i>) I certify that the particulars given in the customs declaration are correct and that this item does not contain any dangerous article prohibited by postal regulations.		
PS Form 2976-A , May 1996 CP 72 (<i>Old C2/CP3/CP2</i>)		Copy 2 - Customs Declaration		

United States Postal Service Customs Declaration and Dispatch Note		No. _____		
Sender's Name and Address (<i>Nom et adresse de l'expéditeur</i>)		Addressee's Name and Address (<i>Nom et adresse du destinataire</i>)		
		Customs Duty (<i>Droit de douane</i>)	Customs Stamp (<i>Timbre de la douane</i>)	Mailing Office Date Stamp (<i>Timbre du bureau d'origine</i>)
Insured No. V-	Insured Amount US \$ _____	SDR Insured Value US \$ _____	Postage US \$ _____	Gross Weight _____ lb _____ oz.
Check One: <input type="checkbox"/> Commercial Sample (<i>Echantillon commercial</i>) <input type="checkbox"/> Documents <input type="checkbox"/> Gift (<i>Cadeau</i>) <input type="checkbox"/> Merchandise				
Sender's Instructions in Case of Nondelivery (<i>Instructions de l'expéditeur en cas de non-livraison</i>) <input type="checkbox"/> Return to Sender (<i>Renvoyer à l'origine</i>) NOTE: Item subject to return charges at sender's expense. <input type="checkbox"/> Abandon (<i>Abandonner</i>) <input type="checkbox"/> Redirect to Address Below (<i>Réexpédier à</i>)		Sender's Signature and Date (<i>Signature de l'expéditeur et date</i>) I certify that the particulars given in the customs declaration are correct and that this item does not contain any dangerous article prohibited by postal regulations.		
PS Form 2976-A , May 1996 CP 72 (Old C2/CP3/CP2)		Copy 3 - Dispatch Note		

United States Postal Service Customs Declaration and Dispatch Note		No. _____	
Sender's Name and Address (<i>Nom et adresse de l'expéditeur</i>)		Addressee's Name and Address (<i>Nom et adresse du destinataire</i>)	
List of Contents (<i>Désignation du contenu</i>) Please Print		Qty.	Value (<i>Valeur</i>)
		Net Weight (<i>Poids net</i>)	
Insured No. V-	Insured Amount US \$	SDR Insured Value US \$	Postage US \$
		Gross Weight lb oz	
Check One: <input type="checkbox"/> Commercial Sample (<i>Echantillon commercial</i>) <input type="checkbox"/> Documents <input type="checkbox"/> Gift (<i>Cadeau</i>) <input type="checkbox"/> Merchandise			
Sender's Instructions in Case of Nondelivery (<i>Instructions de l'expéditeur en cas de non-livraison</i>) <input type="checkbox"/> Return to Sender (<i>Renvoyer à l'origine</i>) NOTE: Item subject to return charges at sender's expense. <input type="checkbox"/> Abandon (<i>Abandonner</i>) <input type="checkbox"/> Redirect to Address Below (<i>Réexpédier à</i>)		Sender's Signature and Date (<i>Signature de l'expéditeur et date</i>) I certify that the particulars given in the customs declaration are correct and that this item does not contain any dangerous article prohibited by postal regulations.	
PS Form 2976-A , May 1996 CP 72 (<i>Old C2/CP3/CP2</i>)			Copy 4 - Post Office

[FR Doc. 95-23994 Filed 9-26-95; 8:45 am]

BILLING CODE 7710-12-C

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[AK10-1-7022a; FRL-5287-5]

Approval and Promulgation of Implementation Plans: Alaska**AGENCY:** Environmental Protection Agency.**ACTION:** Direct final rule.

SUMMARY: The Clean Air Act (CAA) requires the states to promulgate conformity rules to ensure that Federal actions conform to the appropriate State Implementation Plan (SIP). Conformity to a SIP is defined in the CAA, as amended in 1990, as meaning conformity to a SIP's purpose of eliminating or reducing the severity and number of violations of the National ambient air quality standards (NAAQS) and achieving expeditious attainment of such standards. The Federal agency responsible for the action is required to determine if its actions conform to the applicable SIP. Environmental Protection Agency (EPA) approves most of Alaska's General conformity rules and Transportation conformity rules received on December 9, 1994 from the Alaska Department of Environmental Conservation (ADEC) and is taking no action on the remaining small portion of the submittal.

DATES: This final rule is effective on November 27, 1995 unless adverse or critical comments are received by October 27, 1995. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air & Radiation Branch (AT-082), EPA, AK10-1-7022, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT-082), Seattle, Washington 98101, and Alaska Department of Environmental Conservation, 410 Willoughby, suite 105, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Kelly Huynh, Air & Radiation Branch (AT-082), EPA, Seattle, Washington 98101, (206) 553-1059.

SUPPLEMENTARY INFORMATION:**I. Background**

The CAA section 176(c), as amended (42 U.S.C. 7401 *et seq.*), requires states to submit to EPA revisions to their implementation plans establishing transportation and general conformity criteria and procedures. EPA regulation requires the states to submit SIP revisions by November 25, 1994 and November 30, 1994. These conformity rules are to ensure that all Federal actions conform to the appropriate SIP developed pursuant to section 110 and part D of the CAA. Conformity to a SIP is defined in the CAA, as amended in 1990, as meaning conformity to a SIP's purpose of eliminating or reducing the severity and number of violations of the National ambient air quality standards (NAAQS) and achieving expeditious attainment of such standards, and that such activities will not:

1. Cause or contribute to any new violation of any standard in any area;
2. Increase the frequency or severity of any existing violation of any standard in any area; or
3. Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA ties conformity to attainment and maintenance of the NAAQS. Thus, Federal actions must not adversely affect the timely attainment and maintenance of the NAAQS or emission reduction progress plans leading to attainment. The Federal agency responsible for the action is required to determine if its actions conform to the applicable SIP. The Alaska conformity approved portions establish the criteria and procedures governing the determination of conformity for all Federal actions in the state of Alaska, including Federal highway and transit actions ("transportation conformity"). Although EPA has concluded that the conformity requirements apply in all areas, including attainment areas, EPA must first complete notice and comment rulemaking on the appropriate criteria and procedures for conformity determinations in attainment areas before requesting the state equivalent submittal. Therefore, the criteria and procedures established in this rule apply only in areas that are nonattainment or maintenance with respect to any of the criteria pollutants under the CAA: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), particulate matter (PM₁₀), and sulfur dioxide (SO₂). The rule covers direct and indirect emissions of criteria

pollutants or their precursors that are reasonably foreseeable and caused by a Federal action.

The Alaska submittal containing both the general and transportation conformity regulations is generally consistent with the CAA requirements. This was accomplished largely through the incorporation by reference of the Federal regulations as well as changes to nonattainment plans to include the conformity requirements. The portion of Alaska's submittal that is not being acted on is in direct consequence to a revision of the Federal regulation. Alaska's regulations establish procedural requirements including interagency consultation procedures. They also require the responsible agency to make their conformity determinations available for public review. Notice of draft and final conformity determinations must be provided directly to air quality regulatory agencies and to the public by publication in a local newspaper. The conformity determination examines the impacts of the direct and indirect emissions from the Federal action. The regulations require the Federal action to also meet any applicable SIP requirements and emission milestones. Each Federal agency must determine that any actions covered by the rule conform to the applicable SIP before the action is taken.

Specifically, Articles 5 through 9 are being acted on as part of the Alaska SIP as well as changes to Volume II: Analysis of Problems, Control Action of the State Air Quality Control Plan. The explanations of these approved articles are summarized as follows unless no action is specifically indicated:

Article 5, 18 AAC 50.620 was amended to include December 1, 1994 as the latest date in which the Alaska SIP was amended.

Article 6 of 18 AAC 50 was amended as Reserved.

Article 7-Conformity, included many changes to sections as follows. Section 700-Purpose, explains that the following sections are written to comply with 40 CFR part 51, subparts T and W, and that if Federal money is used for a project within a nonattainment or maintenance area that it will not hinder attainment of the National ambient air quality standards in that area.

Section 705-Coverage of 18 AAC 50.700-18 AAC 50.735, applies to transportation plans, programs or projects within the nonattainment or maintenance area, and all other federally-funded projects or activities. This section defines "responsible agency".

Section 710—Transportation Conformity: Incorporation By Reference of Federal Regulations. Most of this section is being approved as it incorporates most of the Federal regulations directly from 40 CFR part 51. The following sections of 40 CFR part 51 are incorporated by reference and are being approved: § 51.392 (except the term “regionally significant project” which is defined elsewhere in the Alaska state regulation), §§ 51.394, 51.398, 51.400, 51.404, 51.406, 51.408, 51.410, 51.412, 51.414, 51.416, 51.418, 51.420, 51.422, 51.424, 51.426, 51.428, 51.430, 51.432, 51.434, 51.436, 51.438, 51.440, 51.442, 51.444, 51.446, 51.450, 51.452, 51.454, 51.456, 51.458, 51.460, 51.462. However, EPA is taking no action at this time on 18 AAC 50.710(27). This portion of the regulation incorporates by reference Federal regulation 40 CFR 51.448, Transition from the interim period to the control strategy period, as amended through December 1, 1994. Soon after this time EPA began work to amend 40 CFR 51.448 and published the amended section on August 7, 1995. Because a portion of the Alaska regulation 18 AAC 50.710 adopted a section of the Federal regulation which has subsequently been significantly revised, EPA is taking no action on paragraph (27) of the state rule at this time. Alaska has indicated that it will revise 18 AAC 50.710(27) in a future SIP submittal.

Section 715—Transportation Conformity: Interagency Consultation Procedures. This section establishes procedures for consultation (Federal, State, and local), resolution of conflicts, including referral to the governor when necessary, and procedures for public review and comment. The regulation addresses the consultation procedure elements identified under 40 CFR 50.402.

Section 720—Transportation Conformity: Public Involvement. This section requires a public involvement process to provide opportunity for public review and comment of the public review draft before the agency issues a final conformity determination. This section also establishes public hearing or meeting requirements.

Section 725—General Conformity: Incorporation by Reference of Federal Regulations. This section incorporates the entire Federal general conformity program into the regulation except § 51.857 (Frequency of conformity determinations) and § 51.860 (Mitigation of air quality impacts) which are included in sections 730 and 735 of the state submittal.

Section 730—General Conformity: Mitigation of Air Quality Impacts. The

regulation content is consistent with that of 40 CFR 51.860, which requires that a commitment be made to conduct the air quality mitigation measures if the conformity decision is based on that amount of decreased air pollution.

Section 735—General conformity: Frequency of Conformity Determination. The regulation content is consistent with that of 40 CFR 51.857, which requires that if a Federal action is not commenced within five years and this has not been accounted for in the initial conformity determination that a new determination be conducted unless the activity is just following the natural project progression. If at any time the project increases its emissions a new conformity determination would need to be conducted.

18 AAC 50 was also amended to include Article 8 Reserved.

Article 9. General Provisions Section 900—Definitions, was amended to include two new definitions; “maintenance area” which refers to a previously designated nonattainment area that has been since designated as an attainment area and “regionally significant project” which is a transportation project that is on a facility serving regional transportation needs.

II. This Action

This action approves numerous sections of Chapter 50—Air Quality Control of the Alaska SIP. The approved sections include 18 AAC 50.620 of Article 5, Article 6—Reserved, Article 7—Conformity except section 710(27), Article 8—Reserved, and Article 9—General Provisions. EPA is taking no action on Article 7, Section 710(27). EPA also is approving certain portions of Volume II: Analysis of Problems; Control Actions, which include page III.A3–5, III.B.7–1, III.C.7–1, III.I–1 through III.I–6, III.J–1 through III.J–4.

III. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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, 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.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore,

because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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

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

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately 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 3 action for signature by the Regional Administrator under the procedures published in the Federal

Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 27, 1995 unless, by October 27, 1995 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 27, 1995.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Alaska was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: August 18, 1995.
Charles Findley,
Acting Regional Administrator.

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 C—Alaska

2. Section 52.70 is amended by adding paragraph (c)(24) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(24) On December 5, 1994 the Alaska Department of Environmental Conservation sent EPA revisions for inclusion into Alaska's SIP that address transportation and general conformity regulations as required by EPA under the CAA.

(i) Incorporation by reference.

(A) December 5, 1994 letter from the Governor of Alaska to EPA, Region 10, submitting amendments addressing transportation and general conformity revisions to the SIP:

(1) Regulations to 18 AAC 50, Air Quality Control, including Article 5, Procedure and Administration, 18 AAC 620; Article 6, Reserved; Article 7, Conformity, 18 AAC 50.700-18 AAC 50.735; Article 8, Reserved; and Article 9, General Provisions, 18 AAC 50.900, all of which contain final edits (23 pages total) by the Alaska Department of Law, were filed by the Lieutenant Governor on December 5, 1994 and effective on January 4, 1995.

(2) Amendments to the Alaska State Air Quality Control Plan, "Volume II: Analysis of Problems, Control Actions," as revised on December 1, 1994, adopted by reference in 18 AAC 50.620, containing final edits by the Alaska Department of Law, all of which were certified by the Commissioner of Alaska to be the correct plan amendments, filed by the Alaska Lieutenant Governor on December 5, 1994 and effective on January 4, 1995.

[FR Doc. 95-23841 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 52

[VA21-1-5883a; FRL-5292-2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia—VOC RACT Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to amendments to Virginia's major source volatile organic compound (VOC) reasonably available control technology (RACT) requirements applicable in the Richmond ozone nonattainment area and the Virginia portion of the Washington, DC ozone nonattainment area. The revision was submitted to comply with the RACT "Catch-up" provisions of the Clean Air Act Amendments of 1990 (The Amendments). The intended effect of this action is to approve the submitted amendments to Virginia's major source VOC RACT requirements because they strengthen Virginia's SIP. This action is being taken under section 110 of the Clean Air Act.

DATES: This final rule is effective November 27, 1995, unless notice is received on or before October 27, 1995, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs (3AT00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation & Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Maria Pino, (215) 597-9337.

SUPPLEMENTARY INFORMATION: On November 6, 1992, the Virginia Department of Environmental Quality submitted a revision to its ozone SIP to comply with the RACT "Catch-up" provisions of the Clean Air Act (the

Act). The revision consists of amendments to Virginia's major source VOC RACT regulation to: (1) Lower the applicability threshold for RACT in the Virginia portion of the Washington, DC ozone nonattainment area and; (2) add a compliance date of May 31, 1995 for major VOC sources in the Richmond nonattainment area and the Virginia portion of the Washington, DC nonattainment area to comply with RACT emission standards.

I. Background

Under the pre-amended Act (i.e. the Act prior to the 1990 Amendments), ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of control technique guideline documents (CTGs), establishing a "presumptive norm" for RACT for various categories of VOC sources. Those sources not covered by a CTG were called non-CTG sources. EPA determined that an area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under pre-amended section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major non-CTG sources (i.e. sources having potential VOC emissions of 100 tons per year (TPY) or more).

Under the pre-amended Act, EPA designated the metropolitan Washington, DC area (including a portion of Northern Virginia) and the Richmond area as nonattainment. These areas both had a pre-enactment (i.e. prior to enactment of the 1990 Amendments) attainment date of December 31, 1987 and, therefore, were required to adopt RACT for Group I, II, and III CTG categories as well as non-CTG VOC sources with the potential to emit 100 TPY or more. However, these areas did not attain the ozone standard by the approved attainment date.

On November 15, 1990, amendments to the 1977 Clean Air Act were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. Under the amended Act, EPA and the States were required to review the designation of areas and to redesignate areas as nonattainment for ozone if the air quality data from 1987, 1988, and 1989 indicated that the area was

violating the ozone standard. On November 6, 1991 and November 30, 1992, EPA issued those designations. 56 FR 56694 and 57 FR 56762. The metropolitan Washington, DC and Richmond nonattainment areas retained their nonattainment designation. The metropolitan Washington, DC area (including a portion of Northern Virginia) was classified as serious, and the Richmond area was classified as moderate. 56 FR 56694 (Nov. 6, 1991).

Section 182(b)(2) of the amended Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG (i.e. a CTG issued prior to the enactment of the Amendments); (2) RACT for sources covered by post-enactment CTGs; and (3) all major sources not covered by a CTG. This RACT requirement makes nonattainment areas that previously were exempt from RACT requirements "catch up" to those nonattainment areas that became subject to those requirements during an earlier period, and therefore, is known as the RACT Catch-up requirement. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas.

Since the metropolitan Washington, DC and Richmond nonattainment areas were previously required to adopt RACT for all CTG sources, to meet the RACT Catch-up requirement Virginia was not required to submit additional CTG RACT rules for these areas. However, the major source definition for serious areas has been lowered under the amended Act to cover sources that have the potential to emit 50 TPY of VOC or more. Therefore, Virginia was required to adopt RACT rules for all sources that exceed this cut-off in the Virginia portion of the Washington, DC nonattainment area.

In addition to the pre-enactment metropolitan Washington, DC and Richmond nonattainment areas retaining their nonattainment designations, EPA also extended their nonattainment area boundaries. Therefore, under the RACT Catch-up provision of section 182(b)(2), the Commonwealth was required, for these portions of the nonattainment areas, to submit RACT rules covering all CTGs and all non-CTG major VOC sources.

In summary, to fully comply with the RACT Catch-up provisions of the Act, Virginia is required to expand its RACT regulations to the areas which have been

added to the Virginia portion of the pre-enactment metropolitan Washington, DC nonattainment area and the pre-enactment Richmond nonattainment area. It must adopt RACT regulations for all CTG sources and all major non-CTG VOC sources (VOC sources with the potential to emit ≥ 50 TPY in the Virginia portion of the metropolitan Washington, DC nonattainment area and ≥ 100 TPY in the Richmond nonattainment area). Sources must comply with these provisions as expeditiously as possible, but no later than May 31, 1995.

This action pertains only to one portion of the RACT Catch-up provisions, the requirement to lower the applicability threshold for RACT in the Virginia portion of the Washington, DC nonattainment area. The requirement to expand the geographic applicability of Virginia's RACT rules was the subject of a separate rulemaking action. (See 59 FR 52704.)

II. Commonwealth's Submittal

Virginia's existing major source RACT regulation, section 120-04-0407, requires RACT for sources in the Virginia portion of the Washington, DC nonattainment area and the Richmond nonattainment area with the potential to emit ≥ 100 TPY of VOC. On October 19, 1994, EPA approved into the Virginia SIP revisions to Appendix P of Virginia's air quality regulations that redefined the boundaries for Virginia's ozone nonattainment areas. (See 59 FR 52701) Thus, the geographic applicability of section 120-04-0407 was revised to cover the expanded Richmond nonattainment area and the expanded Virginia portion of the Washington, DC nonattainment area.

Virginia's November 6, 1992 submittal contains amendments to section 120-04-0407 that lower the applicability threshold such that sources with potential VOC emissions of 50 TPY or greater in the expanded Virginia portion of the Washington, DC nonattainment area are now subject to RACT. Sources with potential VOC emissions of 100 TPY or greater in the expanded Richmond nonattainment area are also subject to RACT. Additionally, a compliance date of May 31, 1995 was added to the rule for sources in both the Virginia portion of the Washington, DC area and the Richmond area.

III. EPA Evaluation and Action

EPA is approving the amendments to section 120-04-0407 described above because they comply with the RACT Catch-up requirements of the Act and serve to strengthen Virginia's SIP. Detailed descriptions of the

amendments addressed in this document, and EPA's evaluation of the amendments, are contained in the technical support document (TSD) prepared for these revisions. Copies of the TSD are available from the EPA Regional office listed in the ADDRESSES section of this document.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 27, 1995, unless, by October 27, 1995, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 27, 1995.

Final Action

EPA is approving amendments to section 120-04-0407, Virginia's major source VOC RACT requirements applicable in the Richmond ozone nonattainment area and the Virginia portion of the Washington, DC ozone nonattainment area, submitted by the Commonwealth of Virginia on November 6, 1992.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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, 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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to Virginia's major source VOC RACT requirements, must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: August 24, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 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 VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(106) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(106) Revisions to the Virginia State Implementation Plan submitted on November 6, 1992 by the Virginia Department of Environmental Quality:

(i) Incorporation by reference.

(A) Letter of November 6, 1992 from the Virginia Department of Environmental Quality transmitting revisions to Virginia's State Implementation Plan, pertaining to volatile organic compound requirements in Virginia's air quality regulations.

(B) Revisions to § 120-04-0407 that lower the applicability threshold for RACT in the Virginia portion of the Washington, DC ozone nonattainment area and add a RACT compliance date of May 31, 1995 for major VOC sources in the Richmond ozone nonattainment area and the Virginia portion of the Washington, DC ozone nonattainment area, adopted by the Virginia State Air

Pollution Board on October 30, 1992 and effective on January 1, 1993.

(ii) Additional material.

(A) Remainder of Virginia's November 6, 1992 State submittal pertaining to § 120-04-0407.

[FR Doc. 95-23869 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-P'

40 CFR Part 52

[IL103-1-6696a; FRL-5283-8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On November 30, 1994, the State of Illinois submitted a State Implementation Plan (SIP) revision request to the United States Environmental Protection Agency (USEPA) for Synthetic Organic Chemical Manufacturing Industry (SOCMI) air oxidation processes as part of the State's 15 percent (%) Reasonable Further Progress (RFP) Plan control measures for Volatile Organic Matter (VOM) emissions. USEPA made a finding of completeness in a letter dated January 27, 1995. A final approval action is being taken because the submittal meets all pertinent Federal requirements. The SIP revision tightens the source applicability standard for air oxidation processes beyond the existing standard contained in subpart V of 35 Illinois Administrative Code Parts 218 and 219, thereby extending the applicability of Reasonably Available Control Technology (RACT) to additional sources. The revision also adds requirements to sources already covered under the existing SOCMI air oxidation process regulations, as well as new sources of this source category. The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this Federal Register publication, which constitutes a "proposed approval" of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. If USEPA receives comments adverse to or critical of the approval, USEPA will withdraw this approval before its effective date by publishing a subsequent Federal Register document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking

document. Please be aware that USEPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to today's action. Any parties interested in commenting on this action should do so at this time.

DATES: The "direct final" approval shall be effective on November 27, 1995, unless USEPA receives adverse or critical comments by October 27, 1995. If no such comments are received, USEPA hereby advises the public that this action will be effective on November 27, 1995.

ADDRESSES: Copies of the revision request and USEPA's analysis (Technical Support Document) are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo at (312) 886-6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo at (312) 886-6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Clean Air Act requires all moderate and above ozone nonattainment areas to achieve a 15 percent reduction of 1990 emissions of VOM by 1996 (VOM, as defined by the State of Illinois, is identical to "volatile organic compounds," as defined by the USEPA). In Illinois, the Chicago area is classified as "severe" nonattainment for ozone, while the Metro-East area is classified as "moderate" nonattainment. As such, these areas are subject to the 15 percent RFP requirement.

On June 14, 1994, the Illinois Environmental Protection Agency (IEPA) filed the proposed amendments to the SOCMI air oxidation processes rule with the Illinois Pollution Control Board (Board). A public hearing on the rule was held on August 4, 1994, in Chicago, Illinois, and on October 20, 1994, the Board adopted a Final Opinion and Order for the proposed amendments. The amended rule became effective on November 15, 1994, and it was published in the Illinois State register on November 28, 1994.

The IEPA formally submitted the amended air oxidation rule to USEPA

on November 30, 1994, as a revision to the Illinois SIP for ozone. In doing so, IEPA believes that the air oxidation rule's extended applicability and tightened control measures will help reduce VOM emissions enough to meet the 15% RFP requirements.

II. Analysis of State Submittal

The November 30, 1994, amendments to Illinois' SOCMI air oxidation process rule extended to additional sources applicability of the rule's Reasonably Available Control Technology (RACT) requirements, which include the use of a combustion device to control VOM emissions with an efficiency of at least 98% or emit VOM at a concentration less than twenty parts per million by volume, dry basis. To determine whether the requirements apply to a particular source, USEPA's Control Technique Guideline (CTG) for SOCMI air oxidation processes requires the use of a Total Resource Effectiveness (TRE) index, which takes into account all resources which are expected to be used in VOM emission control. Prior to the amendments, the Illinois rule followed the CTG's determination of source applicability to RACT by requiring that all SOCMI air oxidation processes in the Chicago and Metro-East ozone nonattainment areas with a TRE value of 1.0 or less be required to meet RACT for this source category. With these amendments, the Illinois rule's RACT applicability is extended to SOCMI air oxidation processes in the Chicago and Metro-East ozone nonattainment areas with a TRE value of 6.0 or less.

Sources with a TRE value greater than 1.0 and less than or equal to 6.0, which were in operation before October 25, 1994, must come into compliance with the rule's control measures by December 31, 1999. Other such sources with a TRE of 6.0 or less which come into operation after October 25, 1994, must meet RACT requirements upon start-up of the emission unit. Sources with a TRE level of 1.0 or less are already required to be in full compliance.

In addition, the SOCMI air oxidation processes rule has been amended to state that the TRE level will be based upon the source's individual process vent streams, or the combination thereof, whichever is more stringent. Also included in the amended rule is the requirement that air oxidation process vent streams currently controlled by combustion devices must continue to be controlled by such devices in compliance with the Illinois rule requirements. Further, once applicability has been triggered, operational changes to a source which causes the TRE index value to increase

beyond the 6.0 value do not preclude RACT requirements for that source.

Finally, the current adopted federally-approved Illinois air oxidation RACT rule allowed that pre-existing combustion devices were not required to meet the 98% control efficiency requirement until replacement, as recommended by the SOCOMI air oxidation CTG. The amended rule eliminates that exemption by requiring that all pre-existing combustion devices meet the 98% control requirement by December 31, 1999. Moreover, an additional requirement is added for sources which operate pre-existing combustion devices for phthalic anhydride air oxidation processes, which provides that such devices must meet a 90% control efficiency or emit a VOM concentration of less than 50 parts per million by volume, dry basis.

III. Final Rulemaking Action

The USEPA has undertaken its analysis of the SIP revision request based on a review of the materials presented by IEPA, the SOCOMI air oxidation CTG, and USEPA's model VOC rules, and has determined that this SIP revision request is approvable.

This amended rule, applicable to the Chicago and Metro-East St. Louis ozone nonattainment areas, amends 35 Ill. Adm. Code sections 218/219.520 (renumbered from 218/219.525) and 218/219.522, 218/219.523, and 218/219.524.

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this Federal Register publication, which constitutes a "proposed approval" of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The "direct final" approval shall be effective on November 27, 1995 unless USEPA receives adverse or critical comments by October 27, 1995. If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date by publishing a subsequent Federal Register document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking document. Please be aware that USEPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to today's action. Any parties

interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on November 27, 1995.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA 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.

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the USEPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 requires the USEPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the USEPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The USEPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the USEPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the USEPA is not required to

develop a plan with regard to small governments. This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA 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, USEPA 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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: August 9, 1995.
Valdas V. Adamkus,
Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(114) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(114) On November 30, 1994, the State submitted an amended Synthetic Organic Chemical Manufacturing Industry Air Oxidation Process rule which consisted of extended applicability and tightened control measures to the Ozone Control Plan for the Chicago and Metro-East St. Louis areas.

(i) *Incorporation by reference.* Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources.

(A) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart V; Air Oxidation Processes, Sections 218.520 Emission Limitations for Air Oxidation Processes, 218.522 Savings Clause, 218.523 Compliance, 218.524 Determination of Applicability, and 218.525 Emission Limitations for Air Oxidation Processes (Renumbered) at 18 Ill. Reg. 16972, effective November 15, 1994.

(B) Part 219: Organic Material Emissions Standards and Limitations for the Metro-East Area, Subpart V; Air Oxidation Processes, Sections 219.520 Emission Limitations for Air Oxidation Processes, 219.522 Savings Clause, 219.523 Compliance, 219.524 Determination of Applicability, and 219.525 Emission Limitations for Air Oxidation Processes (Renumbered) at 18 Ill. Reg. 17001, effective November 15, 1994.

[FR Doc. 95–23965 Filed 9–26–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 57–14–7108a; FRL–5280–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District, San Luis Obispo County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the following districts: Mojave Desert Air Quality Management District (MDAQMD) and San Luis Obispo County Air Pollution Control District (SLOCAPCD). The rules control volatile organic compounds (VOC) emissions from components at pipeline transfer stations and petroleum-related industrial sources; oil-water separators; and petroleum pits, ponds, sumps, and well cellars. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on MDAQMD Rules 464 and 1102 serves as a final determination that the findings of nonsubmittal for these rules have been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clocks associated with such submittals are stopped. Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This final rule is effective on November 27, 1995 unless adverse or critical comments are received by October 27, 1995. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75

Hawthorne Street, San Francisco, CA 94105.
Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460.
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.
Mojave Desert Air Quality Management District, 15428 Civic Drive, Victorville, California 92392.
San Luis Obispo County Air Pollution Control District, 2156 Sierra Way, Suite "B", San Luis Obispo, CA 93401.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:**Applicability**

The rules being approved into the California SIP include: MDAQMD Rule 464, Oil-Water Separators; MDAQMD Rule 1102, Fugitive Emissions of VOCs from Components at Pipeline Transfer Stations; SLOCAPCD Rule 417, Control of Fugitive Emissions of Reactive Organic Compounds; and SLOCAPCD Rule 419, Petroleum Pits, Ponds, Sumps, Well Cellars, and Wastewater Separators. These rules were submitted by the California Air Resources Board to EPA on October 19, 1994, May 13, 1993, November 30, 1994, and September 28, 1994, respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Southeast Desert¹ and San Luis Obispo County areas. 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172 (a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA

¹ The MDAQMD was created by Assembly Bill AB 2522 signed into law by the Governor of California on September 12, 1992. It includes all of the County of San Bernardino which is not included within the boundaries of the South Coast Air Quality Management District, and may include contiguous areas situated in the Southeast Desert Air Basin upon request for inclusion. The Mojave Desert District commenced operations on July 1, 1993, and on that date assumed the authority, duties and employees of the San Bernardino County Air Pollution Control District, which ceased to exist as of that date.

notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.² EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Southeast Desert area is classified as severe and the San Luis Obispo County area is classified as moderate³; therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on May 13, 1993, October 19, 1994, September 28, 1994, and November 30, 1994, including the rules being acted on in this notice. This notice addresses EPA's direct-final action for MDAQMD's Rule 464, Oil-Water Separators; MDAQMD's Rule 1102, Fugitive Emissions of VOCs from Components at Pipeline Transfer Stations; SLOCAPCD's Rule 419, Petroleum Pits, Ponds, Sumps, Well Cellars, and Wastewater Separators; and SLOCAPCD's Rule 417, Control of Fugitive Emissions of Reactive Organic Compounds. The MDAQMD adopted

² Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

³ The Southeast Desert and San Luis Obispo County areas have retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

Rules 464 and 1102 on August 25, 1994 and October 26, 1994, respectively. The SLOCAPCD adopted Rules 417 and 419 on February 9, 1993 and July 12, 1994, respectively. These submitted rules were found to be complete on December 1, 1994, January 3, 1995, July 19, 1993, and November 22, 1994 pursuant to EPA's completeness criteria which are set forth in 40 CFR part 51 Appendix V,⁴ and are being finalized for approval into the SIP.

MDAQMD Rule 464 controls VOC emissions from oil-water separators. MDAQMD Rule 1102 controls fugitive emissions of VOC due to component leaks of facilities involved in the transfer and/or storage of petroleum products, crude oil or natural gas in pipelines. SLOCAPCD Rule 417 controls fugitive emissions of VOC from components at petroleum-related industrial sources. SLOCAPCD Rule 419 controls VOC emissions from oil-water separators and oil production sumps. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of MDAQMD's and SLOCAPCD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 2. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT

⁴ EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs applicable to these rules are entitled, "Petroleum Refineries—Control of Refinery Vacuum Producing Systems, Wastewater Separators, Process Turnarounds" EPA-450/2-77-022 and "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment" EPA-450/3-83-006. This document updates the RACT criteria from the CTG for petroleum refinery equipment. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 2. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

MDAQMD's submitted Rule 464, Oil-Water Separators includes the following significant changes from the current SIP:

- A definition section was added for rule clarification.
- A provision was added stating that the cover material shall be impermeable to VOCs, and free from holes or openings.
- A fugitive vapor leak monitoring provision was added.
- The rule exempts segregated storm water runoff drain systems and non-contact cooling water systems.
- A recordkeeping section was added.
- A test method section was added for compliance verification.

MDAQMD's submitted rule 1102, Fugitive Emissions of VOCs from Components at Pipeline Transfer Stations was developed to correct deficiencies identified in District Rule 466 (Pumps and Compressors) and Rule 467 (Safety Pressure Relief Valves). For a detailed review of the existing rules and new Rule 1102, please refer to the Technical Support Document for Rule 1102 dated July 10, 1995. Rule 1102 includes the following significant changes from the current SIP rules:

- A definition section was added for rule clarification.
- A basic operating standards section was added.
- Inspection schedules and requirements were added.
- Exempt components were identified.
- Inspection and identification log requirements were added.
- A test method section was added for compliance verification.
- A compliance schedule was provided.

SLOCAPCD's submitted rule 417, Control of Fugitive Emissions of

Reactive Organic Compounds, is a new rule which establishes standards for petroleum-related industrial sources and contains the following provisions:

- The implementation of an inspection and repair program.
- A requirement that major and critical components are to be physically identified for inspection, repair, replacement, and recordkeeping purposes.

- A requirement to maintain up-to-date inspection and maintenance activity records.

- Addition of test methods to determine compliance.

- A requirement for all sources to have inspection and maintenance plans no later than 12-months from the date of rule adoption.

SLOCAPCD's submitted new rule 419, Petroleum Pits, Ponds, Sumps, Well Cellars, and Wastewater Separators contains the following provisions:

- Prohibits primary or first stage production sumps.

- Requires that affected second or third stage sumps, pits or ponds have covers that are impermeable to VOC vapors and have no holes, tears or openings which allow the emission of organic compounds into the atmosphere.

- Requires that well cellars be used only during periods of equipment maintenance or well workover and prohibits holding crude oil or petroleum materials in a well cellar for more than five consecutive calendar days.

- Requires that affected wastewater separators have a solid cover, a floating pontoon or double-deck type cover, a vapor recovery system, or other equipment with a vapor loss control efficiency of at least 90% by weight.

- Provides requirements for records to be maintained.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MDAQMD Rule 464, Oil-Water Separators; MDAQMD Rule 1102, Fugitive Emissions of VOCs from Components at Pipeline Transfer Stations; SLOCAPCD Rule 417, Control of Fugitive Emissions of Reactive Organic Compounds; and SLOCAPCD Rule 419, Petroleum Pits, Ponds, Sumps, Well Cellars, and Wastewater Separators are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D. Therefore, if this direct final action is not withdrawn, on November 27, 1995, any FIP clocks associated with the nonsubmittal of these rules are stopped.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. This action will be effective November 27, 1995, unless by October 27, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 27, 1995.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., 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, 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.

SIP approvals under sections 110 and 301(a) and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its

actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

The OMB has exempted this action from review under Executive Order 12866.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind state, local, and tribal governments to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under state law. Therefore, no additional costs to state, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 8, 1995.

Felicia Marcus,
Regional Administrator.

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 F—California

2. Section 52.220 is amended by adding paragraphs (c)(193)(i)(B), (c)(199)(i)(B), (202)(i)(D) and (207)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(193) * * *

(i) * * *

(B) San Luis Obispo County Air Pollution Control District.

(I) Rule 417, adopted February 9, 1993.

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(199) * * *

(i) * * *

(B) San Luis Obispo County Air Pollution Control District.

(I) Rule 419, adopted July 12, 1994.

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(202) * * *

(i) * * *

(D) Mojave Desert Air Quality Management District.

(I) Rule 464, adopted August 24, 1994.

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(207) * * *

(i) * * *

(D) Mojave Desert Air Quality Management District.

(I) Rule 1102, adopted October 26, 1994.

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[FR Doc. 95-23960 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[KY-087-1-6957a; FRL-5290-5]

Approval and Promulgation of Implementation Plans; Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Kentucky State Implementation Plan (SIP) to incorporate new permitting regulations and to allow the Commonwealth of Kentucky to issue Federally enforceable state operating permits (FESOP). This revision consists of Sections 1 through 7 of the State Rules in 401 KAR 50:035, entitled "Permits." On December 29, 1994, the Commonwealth of Kentucky through the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC), submitted a SIP revision which updates the procedural rules governing the issuance of air permits in Kentucky and fulfills the requirements

necessary for a state FESOP program to become Federally enforceable. In order to extend the Federal enforceability of Kentucky's FESOP program to hazardous air pollutants (HAPs), EPA is also approving Kentucky's FESOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that Kentucky may issue Federally enforceable operating permits for HAPs.

DATES: This final rule is effective November 27, 1995 unless adverse or critical comments are received by October 27, 1995. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to Yolanda Adams, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT:

Yolanda Adams, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347-3555 x4149. Reference file KY087-01-6957.

SUPPLEMENTARY INFORMATION:**I. Summary of State Submittal**

On December 29, 1994, the Commonwealth of Kentucky through the NREPC submitted revised air permitting rules for approval as part of the SIP. These rules represent Kentucky's consolidated permitting regulations, which include provisions for operating permits for major sources pursuant to title V of the CAA, construction permits for major new sources and major source modifications pursuant to Parts C and D of title I, and operating and construction permits for minor sources and minor modifications pursuant to State law. Thus, this

submittal complements Kentucky's submittal seeking EPA approval of the same regulations as satisfying title V requirements. Separate rulemaking is being conducted with respect to whether these regulations satisfy title V requirements.

Kentucky's December 29, 1994, submittal does not seek to satisfy any specific mandate under the Clean Air Act. As noted above, a separate submittal seeks to satisfy the requirements of title V. Instead, Kentucky's submittal of December 29, 1994, seeks approval of updated State permitting regulations which have superseded previously approved regulations. Kentucky intended with this submittal: (1) to provide a mechanism for intermediate size sources to obtain Federally enforceable limitations to become "synthetic minor sources," and (2) to update the Federally approved regulations to reflect the updated State permitting regulations. Each of these purposes requires evaluation under different criteria. These purposes and the associated EPA criteria for approval are discussed individually in subsequent sections.

A. Federally Enforceable Limitations on Potential To Emit

The first purpose of Kentucky's submittal was to provide a mechanism for intermediate size sources to obtain Federally enforceable limitations such that the sources' potential to emit would be below the size thresholds at which major source permits are required. This mechanism involves FESOPs incorporating the relevant limitations. Kentucky is requesting this authority with respect to HAPs as well as criteria pollutants. This voluntary SIP revision allows EPA and citizens under the CAA to enforce the terms and conditions of Kentucky's FESOP program. Operating permits that are issued under the Kentucky FESOP program after approval into the State SIP and under section 112(l) will provide Federally enforceable limits on an air pollution source's potential to emit. Limiting of a source's potential to emit through Federally enforceable operating permits can affect the applicability of Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants, and Federal air toxics requirements under section 112 of the CAA.

Criteria for EPA approval of FESOP programs are specified in a Federal Register document entitled,

"Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules." (see 54 FR 22274, June 28, 1989). In this document, EPA listed five criteria that must be met for a State's minor source operating permit program to be Federally enforceable and, therefore, approvable into the SIP. Kentucky's SIP revision satisfies the five criteria for Federal enforceability of the State's FESOP program.

The first criterion for a state's operating permit program to be Federally enforceable is EPA's approval of the permit program into the SIP. On December 29, 1994, the Commonwealth of Kentucky submitted through the DEP a SIP revision designed to meet the five criteria for Federal enforceability. Today's action will approve these regulations into the Kentucky SIP, and therefore satisfy the first criterion for Federal enforceability.

The second criterion for a state's operating permit program to be Federally enforceable is that the regulations approved into the SIP must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. Kentucky's program meets this criterion in Rule 401 KAR 50:035, section 4(1)(f)1., by requiring the permittee to comply with all conditions of the permit. The rule further states that "Noncompliance shall be a violation of this administrative regulation and, for Federally enforceable permits, is also a violation of 42 U.S.C 7401 through 7671q (the Act) and is grounds for an enforcement action, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application." Hence, the second criterion for Federal enforceability is satisfied.

The third criterion for a state's operating permit program to be Federally enforceable is that the state operating permit program must require all emissions limitations, controls, and other requirements imposed by permits to be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "Federally enforceable" (e.g., standards established under sections 111 and 112 of the CAA). Kentucky's Rule 401 KAR 50:035, section 4(1)(a) explicitly requires that issued permits include emission limitations and standards, including operational

requirements and limitations, that assure compliance with all applicable requirements. The rule further states that Kentucky will not issue permits that waive, or make less stringent, any limitation or requirements contained in or issued pursuant to the SIP or that are otherwise Federally enforceable. Therefore, this section of Kentucky's permits rule satisfies the third criterion for Federal enforceability.

The fourth criterion for a state's operating permit program to be Federally enforceable is that limitations, controls, and requirements in the operating permits be permanent, quantifiable, and otherwise enforceable as a practical matter. With respect to this criterion, enforceability is essentially provided on a permit-by-permit basis, particularly by writing practical and quantitative enforcement procedures into each permit. EPA will review the enforceability of permits using the policy memorandum entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and title V of the Clean Air Act (Act)," dated January 25, 1995, which describes the types of limitations that reduce potential to emit in a Federally enforceable manner. Nevertheless, enforceability also requires proper permit program design. Kentucky's regulations (e.g., Rule 401 KAR 50:035, section 4(1)(a) quoted above) provide for fully enforceable limitations. Concerning permanence, permit conditions have the duration provided for under title V (i.e., the conditions expire with permit expiration but are typically renewed with permit reissuance). Consequently, Kentucky's rules provide for the degree of permanence necessary for enforcement of the applicable provisions, and more generally provide that the permit limitations will be fully enforceable.

The fifth criterion for a state's operating permit program to be Federally enforceable is providing EPA and the public with timely notice of the proposal and issuance of such permits, and providing EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be Federally enforceable. This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. Kentucky's Rule 401 KAR 50:035, section 7 entitled "Procedures for Public Participation" contains explicit requirements for public notice and review of proposed permitting actions. Subsection (1) requires that public notice of the opportunity to comment be provided for the following

permit actions: (a) Issuance of a draft permit; (b) Intended denial of a permit application; (c) Issuance of a draft significant permit revision; (d) Issuance of a draft general permit; (e) Issuance of a permit renewal; and (f) Scheduling of a public hearing. Subsection (6) states that a minimum of 30 days will be provided for public comment on all permit proceedings. In addition, subsection (7) provides the opportunity for a public hearing on any permit action where the DEP believes there is sufficient interest. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review under the Kentucky FESOP program will not be Federally enforceable.

In addition to requesting approval into the SIP, Kentucky has also requested approval of its FESOP program under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAPs through the issuance of Federally enforceable state operating permits. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants.

EPA believes that the five criteria for Federal enforceability, are also appropriate for evaluating and approving FESOP programs under section 112(l). The June 28, 1989, Federal Register document did not specifically address HAPs because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants.

In addition to meeting the criteria in the June 28, 1989, document, a FESOP program that addresses HAPs must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA. The January 25, 1995, memorandum cited above, provides further discussion of these criteria and of the extent to which limits on criteria pollutants such as volatile organic compounds and particulate matter may be considered to limit sources' potential to emit HAPs.

EPA plans to codify the approval criteria for programs limiting the potential to emit HAPs, such as FESOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section

112(l) of the CAA. (See 58 FR 62262, November 26, 1993). EPA anticipates that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989, Federal Register document. The EPA also anticipates that since FESOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA has authority under section 112(l) to approve programs to limit the potential to emit HAPs directly under section 112(l) prior to the Subpart E revisions. Section 112(l)(5) requires the EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the "guidance" referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is to say, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in "maximum achievable control technology" (MACT) emission standards under section 112 and for submittal of title V permit applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. Therefore, EPA is approving Kentucky's FESOP program so that Kentucky may begin to issue Federally enforceable operating permits as soon as possible.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes Kentucky's FESOP program contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, Federal Register document is met. That is to say, Kentucky's program does not allow for the waiver of any section 112 requirements. Sources that become minor through a permit issued pursuant to this program would still be required to meet the section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes Kentucky has demonstrated that it will provide adequate resources to support the FESOP program. EPA expects that resources will continue to be adequate

to administer that portion of the State's minor source operating permit program under which Federally enforceable operating permits will be issued since Kentucky has administered a minor source operating permit program for several years. EPA will monitor Kentucky's implementation of its FESOP program to ensure that adequate resources are in fact available. EPA also believes that Kentucky's FESOP program provides for an expeditious schedule to assure compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in Kentucky's FESOP program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, EPA believes Kentucky's program is consistent with the intent of section 112 and the CAA for states to provide a mechanism through which sources may avoid classification as major sources by obtaining Federally enforceable limits on potential to emit.

Eligibility for Federally enforceable permits extends not only to permits issued after the effective date of this rule, but also to permits issued under the State's current rule prior to the effective date of today's rulemaking. If the State followed its own regulation, each issued permit that established a title I condition (e.g. for a source to have minor source potential to emit) was subject to public notice and prior EPA review. Therefore, EPA will consider all such operating permits which were issued in a manner consistent with both the State regulations and the five criteria as federally enforceable upon the effective date of this action provided that any permits that the State wishes to make federally enforceable are submitted to EPA and accompanied by documentation that the procedures approved today have been followed. EPA will expeditiously review any individual permits so submitted to ensure their conformity with the program requirements.

With Kentucky's addition of these provisions and EPA's approval of this revision to the SIP, Kentucky's FESOP program satisfies the criteria described in the June 28, 1989, Federal Register document.

B. Review of Updated New Source Review Requirements

The second purpose of Kentucky's submittal was to update the Federally approved regulations to reflect the

updated State permitting regulations. In adopting a single set of air permitting regulations for both construction permits and operating permits, the State updated numerous new source review provisions in conjunction with its adoption of title V regulations. These rules specify which sources must have title V permits (namely major sources), which sources must have State minor source permits, and which minor sources do not need a permit. Additional rules specify requirements for minor sources, which are substantially equivalent to the title V operating permit requirements in 40 CFR Part 70. These requirements include application procedures, permit content, permit processing procedures, permit revision procedures, criteria for treating activities as insignificant, Federal enforceability, and coverage by a permit shield.

Numerous provisions governing major source new source review in Kentucky are unaffected by the State's submittal. Kentucky's rules, codified at 401 KAR 51:017 and 401 KAR 51:052, continue to provide substantive requirements for prevention of significant deterioration (i.e., major new source review in attainment areas) and major new source review in nonattainment areas.

II. Final Action

In this action, EPA is approving Kentucky's air permitting regulations as submitted on December 29, 1994. Furthermore, EPA concludes that Kentucky's purposes in submitting these regulations have been fulfilled. First, Kentucky has satisfied the criteria for issuing Federally enforceable state operating permits. Second, these new permitting regulations continue to satisfy relevant new source review requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 27, 1995 unless, by October 27, 1995, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 27, 1995.

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

This action has been classified as a Table 3 action for signature by the Regional Administration under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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, 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.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in

association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State has elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind the State government to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose no new requirements, such sources are already subject to these regulations under State law. Accordingly, no additional costs to the State government, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to the State government in the aggregate or to the private sector.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: August 23, 1995.
Patrick M. Tobin,
Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401-7671q.

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(81) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(81) Revisions to air permit rules submitted by the Kentucky Natural Resources and Environmental Protection Cabinet on December 29, 1994.

(i) Incorporation by reference. Revised Rule 401 KAR 50:035, "Permits", Sections 1 through 7, effective September 28, 1994.

(ii) Other material. None.

[FR Doc. 95-23963 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[IL78-2-6839; FRL-5274-9]

Final Promulgation of Revisions to the New Source Review State Implementation Plan; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA approves a requested State Implementation Plan (SIP) revision submitted by the State of Illinois for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (amended Act) with regard to new source review (NSR) in areas that have not attained the National ambient air quality standards (NAAQS). The requested revision was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment new source review SIP for Illinois.

EFFECTIVE DATE: October 27, 1995.

ADDRESSES: Copies of the State's submittal and other information 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.

A copy of these SIP revisions is available for inspection at the following location:

Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-7548.

FOR FURTHER INFORMATION CONTACT: Jennifer Buzucky, Environmental

Protection Specialist, or Genevieve Nearmyer, Environmental Engineer, Permits and Grants Section, Regulation Development Branch (AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Anyone wishing to come to the Region 5 offices should first contact Ms. Buzucky at (312) 886-3194 or Ms. Nearmyer at (312) 353-4761. Reference file IL78-2-6839.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act (Act). The USEPA has issued a "General Preamble" describing its preliminary views on how USEPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because USEPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this proposal and the supporting rationale. The USEPA is currently developing a proposed rule to assist the implementation of the changes under the amended Act in the new source review provisions in parts C and D of title I of the Act. The USEPA anticipates that the proposed rule will be published for public comment in mid-1995. If USEPA has not taken final action on States' NSR submittals by that time, USEPA may refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. USEPA expects to take final action to promulgate a rule to implement the parts C and D changes sometime during 1995. Upon promulgation of those regulations, USEPA will review the NSR SIPs of all States to determine whether additional SIP revisions are necessary.

Prior to USEPA approval of a State's NSR SIP submission, the State may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991 and September 3, 1992.

As explained in the March 11 memorandum, USEPA does not believe Congress intended to mandate the more stringent title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to issue permits consistent

with requirements in their current NSR SIPs during that period, or apply 40 CFR part 51, appendix S for newly designated areas that did not previously have NSR SIP requirements.

The September 3 memorandum also addressed the situation where States did not submit the part D NSR SIP requirements or revisions by the applicable statutory deadline. For permit applications found complete by the SIP submittal deadline, States may issue final permits under the prior NSR rules, assuming certain conditions in the September 3 memorandum are met. However, for applications completed after the SIP submittal deadline, USEPA will consider the source to be in compliance with the Act only where the source obtains from the State a permit that is consistent with the substantive new NSR part D provisions in the amended Act. USEPA believes this guidance continues to apply to permitting pending final action on NSR SIP submittals.

In a September 23, 1994, Federal Register document, USEPA proposed approval with a contingency, and disapproval in the alternative, of Illinois' NSR SIP submittal. 59 FR 48839. The USEPA received public comment on the proposal, and compiled a Technical Support Document (TSD) which describes the State's correction of the existing deficiencies contained in its NSR submittal. In this document, USEPA is taking final action to promulgate approval of Illinois' NSR SIP requirements.

II. Final Action and Implications

A. Analysis of State Submission

The USEPA received comments from one organization supporting USEPA's proposal. A copy of this comment is available in a document contained in the docket at the address noted in the ADDRESSES section above.

In USEPA's proposal, USEPA explained that the Illinois NSR submittal contained a deficiency for which USEPA proposed approval of the State's requested SIP revision with a contingency and a proposed disapproval in the alternative. This deficiency was due to written interpretations of section 203.209(b) adopted by the State in an attempt to implement the amended Act's special provisions for serious and severe ozone nonattainment areas, section 182(c)(6)-(8). The interpretations adopted by the State were deficient in that they did not ensure the Federal enforceability of any future emission reductions used for netting credits and failed to account for all emission increases occurring during the

contemporaneous period. Because the language of the rule was itself approvable, USEPA proposed to approve section 203.209(b) adopted by the State contingent upon the State's withdrawal of its interpretations of section 203.209(b). For further explanation of USEPA's rationale see proposal. 59 FR 48841-48842.

On November 10, 1994, Bharat Mathur, the Illinois Environmental Protection Agency (IEPA) Chief of the Bureau of Air, sent a letter to USEPA committing to the withdrawal of the above-mentioned interpretations. On February 2, 1995, the IEPA and the Illinois Environmental Regulatory Group filed a Joint Motion to Reconsider the Board Opinion and Order of April 22, 1993. The motion requested that the Board strike from the Opinion and Order its interpretation of section 203.209(b) of the Amended Rule.

On February 16, 1995, the correction of the deficiencies in section 203.209(b) became effective upon the Board's adoption of a Final Opinion and Order upon Reconsideration. Because the State withdrew the interpretation of section 203.209(b) adopted previously by the Board, the State has corrected the deficiency in its NSR SIP submittal. USEPA, therefore, can finally approve the State's NSR SIP.

In addition to the above deficiency, the proposal discussed additional changes of consequence to the State's NSR SIP. One such change is the substitution of a plantwide definition of source for a dual definition of stationary source. As explained in the proposal, this change will not affect the State's ability to eventually achieve attainment. 59 FR 48843. USEPA is also approving the switch from a dual to plantwide definition of stationary source.

One additional issue of importance is the applicability of control requirements for major stationary sources of particulate matter (PM) also applying to major stationary sources of PM precursors. If USEPA determines that major stationary sources of PM precursors do not significantly contribute to PM levels that exceed the NAAQS, then section 189(e) of the Act would no longer require NSR on major precursor sources. As explained in the proposal, 59 FR 48842, USEPA promulgated a final rule on October 21, 1993, finding that precursors do not significantly contribute to PM concentrations in the LaSalle nonattainment area, and proposed a rulemaking on May 25, 1994, asserting that precursors do not significantly contribute to PM concentrations in the remaining three PM nonattainment areas of Illinois: McCook, Lake Calumet

and Granite City. (See 58 FR 54291 for final PM rulemaking in LaSalle nonattainment area; 59 FR 26988 for proposed PM rulemaking in McCook, Lake Calumet and Granite City). The McCook proposal was finalized since this rulemaking on November 18, 1994. (See 59 FR 59653 for final PM rulemaking in McCook, Lake Calumet and Granite City). Because these two rulemakings evidence that PM precursors do not significantly contribute to PM concentrations in all four PM nonattainment areas of the State, USEPA is approving that NSR is no longer required on major PM precursor sources in the State of Illinois.

B. Final Actions

As stated above, the Illinois NSR submittal contained a deficiency for which USEPA proposed approval of the State's requested SIP revision with a contingency and a proposed disapproval in the alternative. USEPA approves Illinois' NSR submittal based upon the February 16, 1995, Board withdrawal of all interpretations of section 203.209(b). USEPA also approves the State's substitution of a plantwide definition of stationary source for a dual source definition and approves the State's ability to no longer require NSR on major PM precursor sources. USEPA approves all elements of the State's NSR SIP submitted to comply with the amended Act.

III. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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

IV. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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, USEPA 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.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

V. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations,

Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: July 27, 1995.

Robert Springer,

Acting Regional Administrator.

For the reasons set out in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended to read 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 O—Illinois

2. Section 52.720 is amended by adding paragraph (c) (113) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(113) On April 27, 1995, the Illinois Environmental Protection Agency requested a revision to the Illinois State Implementation Plan in the form of revisions to the State's New Source Review rules for sources in the Chicago and metropolitan East St. Louis ozone nonattainment areas and are intended to satisfy Federal requirements of the Clean Air Act as amended in 1990. The State's New Source Review provisions are codified at Title 35: Environmental Protection Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter a: Permits and General Provisions. Part 203 Major Stationary Sources Construction and Modification is amended as follows:

(i) Incorporation by reference.

(A) Title 35: Environmental Protection, Subpart A: General Provisions, Section 203.101 Definitions, Section 203.107 Allowable Emissions, Section 203.110 Available Growth Margin, Section 203.112 Building, Structure and Facility, Section 203.121 Emission Offset, Section 203.122 Emissions Unit, Section 203.123 federally Enforceable, Section 203.126 Lowest Achievable Emission Rate, Section 203.128 Potential to Emit, Section 203.145 Volatile Organic Material, Section 203.150 Public Participation. Effective April 30, 1993.

(B) Title 35: Environmental Protection, Subpart B: Major Stationary Sources in Nonattainment Areas, Section 203.201 Prohibition, Section 203.203 Construction Permit Requirement and Application, Section 203.206 Major Stationary Source, Section 203.207 Major Modification of a

Source, Section 203.208 Net Emission Determination, Section 203.209 Significant Emissions Determination. Effective April 30, 1993.

(C) Title 35: Environmental Protection, Subpart C: Requirements for Major Stationary Sources in Nonattainment Areas, Section 203.301 Lowest Achievable Emission Rate, Section 203.302 Maintenance of Reasonable Further Progress and Emission Offsets, Section 203.303 Baseline and Emission Offsets Determination, Section 203.306 Analysis of Alternatives. Effective April 30, 1993.

(D) Title 35: Environmental Protection, Subpart H: Offsets for Emission Increases From Rocket Engines and Motor Firing, Section 203.801 Offsetting by Alternative or Innovative Means. Effective April 30, 1993. Published in the Illinois Register, Volume 17, Issue 20, May 14, 1993. [FR Doc. 95-23958 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 52

[TX-9-1-5222a; FRL-5266-4]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Permit Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document approves revisions to Texas Air Control Board (TACB) General Rules (31 TAC Chapter 101) and Regulation VI (31 TAC Chapter 116), "Control of Air Pollution by Permits for New Construction or Modification" of the Texas State Implementation Plan (SIP). The revisions approved herein include New Source Review (NSR) definitions and provisions for permitting in nonattainment areas as required by the Clean Air Act (CAA), as amended in 1990. These 1990 CAA NSR provisions were submitted by the Governor on May 13, 1992, November 13, 1992, and August 31, 1993. This action also approves other provisions of the General Rules and Regulation VI which have been submitted and not yet acted upon by EPA. These revisions were submitted by the Governor of Texas to EPA on December 11, 1985, October 26, 1987, February 18, 1988, September 29, 1988, December 1, 1989, September 18, 1990, November 5, 1991, May 13, 1992, November 13, 1992, and August 31, 1993. With the exception of the 1990 CAA NSR provisions, none of the other

revisions being acted upon in this document were required by EPA.

DATES: This final rule will become effective on November 27, 1995 unless adverse or critical comments are received by October 27, 1995. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the following address: U.S. Environmental Protection Agency, Air Programs Branch (6T-A), First Interstate Bank Building, 1445 Ross Avenue, suite 1200, Dallas, Texas 75202-2733.

Copies of documents relevant to this document may be examined at the above location or at any of the locations listed below.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460;
Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

If you wish to review these documents, please contact the person named below at least two working days in advance to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Stanley M. Spruiell at (214) 665-7212.

SUPPLEMENTARY INFORMATION: On December 11, 1985, October 26, 1987, February 18, 1988, September 29, 1988, December 1, 1989, September 18, 1990, November 5, 1991, May 13, 1992, November 13, 1992, and August 31, 1993, the Governor of Texas, after adequate notice and public hearing, submitted revisions to the Texas SIP. Specifically, the State revised TACB Regulation VI (31 TAC Chapter 116), "Control of Air Pollution by Permits for New Construction or Modification" and its General Rules (31 TAC Chapter 101). EPA has previously approved portions of certain revisions that have been submitted. In this notice, EPA is acting to approve SIP revisions that have been submitted by the Governor of Texas to EPA between December 11, 1985, and November 13, 1992, that EPA has not previously approved. EPA is also acting to approve a portion of the revision submitted August 31, 1993, more specifically, Table I of Section 116.012 (Major Source/Major Modification Emission Thresholds).

EPA has prepared a "Technical Support Document" for EPA Actions on Revisions to TACB General Rules (31 TAC Chapter 101) and Regulation VI (31 TAC CHAPTER 116), "Control of Air Pollution by Permits for New

Construction or Modification" for the revisions being acted upon in this notice. EPA has also prepared an "Annotation of Texas Air Control Board General Rules and Regulation VI, Control of Air Pollution by Permits for New Construction or Modification", as amended June 9, 1995. The annotation shows: the existing TACB Regulation VI, as amended by the TACB as of October 16, 1992; Table I in the Nonattainment Review Definitions of Regulation VI, as submitted by the Governor on August 31, 1993; revisions to the definitions in the General Rules in Section 101.1, as submitted by the Governor on May 13, 1992; sections of the General Rules and of Regulation VI that EPA believes to be in the Texas SIP; and sections of the Regulations that have been submitted to EPA by the Governor of Texas as SIP revisions but EPA has not acted upon.

Section 116.3(a)(11) of Regulation VI (previously Section 116.3(a)(13)), contains Texas' regulation for prevention of significant deterioration (PSD). This regulation was acted upon in a separate Federal Register action. The State adopted its PSD regulation on July 26, 1985, and submitted it to EPA on December 11, 1985. Additional revisions to section 116.3(a)(13) were submitted to EPA on October 26, 1987, September 29, 1988, and February 18, 1991. EPA published in the Federal Register on December 22, 1989 (54 FR 52823) a document proposing approval of the Texas PSD regulations. A document published in the Federal Register on November 4, 1986 (51 FR 40072), gave the status of the Texas visibility NSR program. EPA's approval of the PSD SIP was published in the Federal Register on June 24, 1992 (57 FR 28093). On February 18, 1991, the TACB submitted a revision to section 116.3(a)(13) to incorporate the nitrogen oxides (NO_x) increments into its PSD regulations. EPA published approval of this revision in the Federal Register on September 9, 1994 (59 FR 46556). On May 8, 1992, the TACB redesignated Section 116.3(a)(13) to section 116.3(a)(11) and made minor amendments. These changes will be approved in this action.

On September 3, 1993, the TACB merged with the Texas Water Commission (TWC). The combined agency was renamed the Texas Natural Resource Conservation Commission (TNRCC). The revisions to Regulation VI which are being acted upon herein were adopted prior to the merger of the TACB and TWC. All rules and regulations, orders, permits, and other final action taken by the TACB remain in full effect unless and until revised by the TNRCC.

In this Federal Register document, EPA is acting on the 1990 CAA NSR provisions, which were submitted by the Governor of Texas on May 13, 1992, and November 13, 1992, and Table I in the revisions submitted by the Governor on August 31, 1993. EPA is also acting on other SIP revisions which the Governor of Texas has submitted to EPA but which EPA has not yet acted upon. A brief description of each submittal and what is being acted upon from the submittal is given in this preamble. Each submittal and each section being acted upon is discussed in more detail in the technical support document. Sections of these State submittals which are not being acted upon in this action either have previously been acted upon, are being acted upon in a separate notice, or have been superseded by a later revision of the section being acted upon in this notice. Where more than one revision to a section of Regulation VI has been submitted to EPA, EPA is approving only the most recent revision of the section.

A. Summary of the 1990 CAA NSR Permitting Requirements Acted Upon in This Document

1. Background

On May 13, 1992, and November 13, 1992, the State of Texas submitted to EPA revisions to the Texas SIP to implement the 1990 CAA NSR for nonattainment areas. These rules were submitted as SIP revisions pursuant to title I, part D, of the CAA. Texas made the revisions to Regulation VI.

2. Review Criteria and Determination

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the CAA. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing 1990 CAA nonattainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)).

In this rulemaking action, EPA is applying its interpretations taking into consideration the specific factual issues presented. The discussion herein focuses on how the proposed State regulations meet the requirements of 40 CFR 51.160-165 (1994) and the 1990 CAA. The 1990 CAA includes the following NSR provisions: (1) Lower source applicability thresholds; (2) increased emissions offset ratios; (3) new definitions for stationary source; and (4) (for ozone nonattainment areas)

requirements for NO_x control and NO_x offsets.

On August 16, 1993, the TACB adopted a complete recodification of Regulation VI and made certain substantive changes as well. These regulations were submitted to EPA on August 31, 1993. In today's action, EPA is acting on only one minor piece of this submittal, i.e. Table I of Section 116.012, which corrects an earlier typographical error. Separate action will be taken on the rest of the August 1993 submittal in a subsequent rulemaking.

3. Summary of the Texas NSR SIP

a. General Nonattainment NSR Requirements

i. Baseline for determining emission offsets. The plan must include provisions to assure that calculation of emissions offsets, as required by Section 173(a)(1)(A), are based on the same emissions baseline used in the demonstration of reasonable further progress. Texas addressed this requirement in subparagraphs (7)(C) and (10)(D) of Section 116.3(a). These subparagraphs provide that the offset ratio is the ratio of the total actual reductions of pollutant emissions to the total allowable emissions increases of such pollutant from the new source. Subparagraphs (7)(C) and (10)(D) of Section 116.3(a) are being approved as adopted by the TACB on May 8, 1992.

ii. Application of lowest achievable emission rate (LAER). The plan must include provisions to assure that the emissions from a project represent the application of LAER in accordance with Section 173(a)(2) of the Act. Texas requires LAER in paragraphs 116.3(a)(7)(A), 116.3(a)(9)(A), and 116.3(a)(10)(A). Paragraph 116.3(a)(7)(A) was previously approved as paragraph 116.3(a)(8)(A) on March 25, 1980 (45 FR 19244). This paragraph was redesignated to 116.3(a)(7)(A) by the TACB on May 8, 1992. Paragraph 116.3(a)(9)(A) was previously approved as paragraph 116.3(a)(11)(A) on July 10, 1981 (46 FR 35643). This paragraph was redesignated to 116.3(a)(9)(A) by the TACB on May 8, 1992. Paragraph 116.3(a)(10)(A) was previously approved as paragraph 116.3(a)(12)(A) on August 13, 1982 (47 FR 35193). This paragraph was redesignated to 116.3(a)(10)(A) by the TACB on May 8, 1992. The revisions adopted by the TACB on May 8, 1992, were submitted to EPA on May 13, 1992. Section 116.3(a) subparagraphs (7)(A), (9)(A), and (10)(A), as redesignated by the May 8, 1992, revision, clarify the previously approved requirements to implement LAER. The revised subparagraphs

specify that LAER will be applied on each new emissions unit and each existing emissions unit at which a new emissions increase will occur as a result of a physical change or change in the method of operation of the emissions unit. These revisions are clarifications of previously approved requirements, and are consistent with the CAA and the regulations promulgated under 40 CFR 51.165.

iii. Statewide compliance determination. The plan must provide, pursuant to Section 173(a)(3), that owners or operators of each proposed new or modified major stationary source demonstrate that all other major stationary sources under the same ownership in the State are in compliance with the Act. Texas requires such demonstration of statewide compliance in paragraphs 116.3(a)(7)(B), 116.3(a)(9)(B), and 116.3(a)(10)(B). Paragraph 116.3(a)(7)(B) was previously approved as paragraph 116.3(a)(8)(B) on March 25, 1980 (45 FR 19244). This paragraph was redesignated to 116.3(a)(7)(B) by the TACB on May 8, 1992, without changes to the approved language. Paragraph 116.3(a)(9)(B) was previously approved as paragraph 116.3(a)(11)(B) on July 10, 1981 (46 FR 35643). This paragraph was redesignated to 116.3(a)(9)(B) by the TACB on May 8, 1992, without changes to the approved language. Paragraph 116.3(a)(10)(B) was previously approved as paragraph 116.3(a)(12)(B) on August 13, 1982 (47 FR 35193). This paragraph was redesignated to 116.3(a)(10)(B) by the TACB on May 8, 1992, without changes to the approved language. The revisions adopted by the TACB on May 8, 1992, were submitted to EPA in May 13, 1992. Subparagraphs (7)(B), (9)(B), and (10)(B) of Section 116.3(a) are being approved, as adopted by the TACB on May 8, 1992.

iv. Statewide implementation of the plan. The plan must provide, pursuant to section 173(a)(4), that the Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with this part. The Administrator has made no such determination for Texas nor does EPA have any indication that Texas is not adequately implementing its NSR plan. In the event that the Administrator makes such determination, the EPA will address this matter with Texas at that time.

v. Analysis of alternative sites, sizes, production processes, and environmental control techniques. Pursuant to section 173(a)(5), the plan

must require, as a prerequisite to issuing any part D permit, an analysis of alternative sites, sizes, production processes, and environmental control techniques for proposed sources that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. This Section expands the alternative site analysis to all Part D permits issued in nonattainment areas. Prior to the 1990 CAA, such analysis was only required for permitting in ozone nonattainment areas which received an extension of the attainment deadline to December 31, 1987 (see section 172(a)(2) and (b)(1)(A) of the CAA as amended in 1977). On March 25, 1980, the EPA promulgated 40 Code of Federal Regulations (CFR) 52.2272(b), which extended to December 31, 1987, the attainment date for ozone in Harris County. This extension was approved on the basis that the requirements of Section 172(b)(1)(A) and other requirements of the 1977 CAA were satisfied. On October 16, 1992, the TACB added Subparagraphs (7)(D) and (10)(E) to Section 116.3(a) to incorporate the additional provisions of the 1990 CAA to extend the analysis of alternative sites, sizes, production processes, and environmental control techniques to all Part D permits issued in nonattainment areas. EPA is approving subparagraphs (7)(D) and (10)(E) of Section 116.3(a), as adopted by the TACB on October 15, 1992.

vi. Location of offsets. The plan may contain provisions to allow offsets to be obtained in another nonattainment area if the area in which the offsets are obtained has an equal or higher nonattainment classification, and emissions from the nonattainment area in which the offsets are obtained contribute to a National Ambient Air Quality Standards (NAAQS) violation in the area in which the source would construct. See Section 173(c)(1) of the 1990 CAA. Texas Regulation VI in Sections 116.3(a)(7) and 116.3(a)(10) provides that at the time a new or modified source commences operation, the emissions increases from the new or modified facility shall be offset. Offsets shall be obtained at the offset ratio appropriate for the nonattainment area classification as defined in Section 101.1 and Table I¹ of that Section.

Section 116.3(c)(1) further provides that “[m]inimum offset ratios as specified in Table I of Section 101.1 * * * shall be used in the areas designated as nonattainment” [emphasis added].

These provisions of Texas’ Regulation VI limit a major source or modification to obtaining offsets which occur in the area in which the proposed increase occurs, and precludes the use of reductions which occur in an area other than the area in which the proposed increase occurs. Although Section 173(c)(1) of the CAA allows offsets to be obtained in an area other than the area in which the proposed increase occurs, Texas’ decision not to allow such reductions to be creditable as offsets is consistent with the provisions of Section 173(c)(1) of the CAA.

vii. Emission increases must be offset by reductions in actual emissions. The plan must include provisions to assure that emissions increases from new or modified major stationary sources are offset by real reductions in actual emissions as required by Section 173(c)(1). Texas requires in Sections 116.3(a)(7)(C) and 116.3(a)(10)(D) that offsets be obtained at the offset ratio appropriate for the nonattainment area classification in which the source is located. These paragraphs define “offset ratio” as the ratio of total actual reductions of emissions to the total allowable emissions increases of such pollutant from the new source. The plan thus satisfies this provision of Section 173(c)(1) of the 1990 CAA.

viii. Emission reductions otherwise required by the Act. The plan must include provisions, pursuant to Section 173(c)(2), to prevent emissions reductions otherwise required by the Act from being credited for purposes of satisfying the part D offset requirements. Texas addressed this requirement in Section 116.3(c)(1) which provides that for an offsetting reduction to be creditable, it must not be required by any provision of the Texas SIP approved by EPA nor by any other Federal regulation under the CAA, such as new source performance standards. This paragraph was adopted by the TACB on May 8, 1992.

ix. Sources that test rocket engines and rocket motors. The plan must, pursuant to Section 173(e), allow any existing or modified source that tests rocket engines or motors to use alternative or innovative means to offset emissions increases from firing and related cleaning, if four conditions are

met: (a) the proposed modification is for expansion of a facility already permitted for such purposes as of November 15, 1990; (b) the source has used all available offsets and all reasonable means to obtain offsets and sufficient offsets are not available; (c) the source has obtained a written finding by the appropriate, sponsoring Federal agency that the testing is essential to national security; and (d) the source will comply with an alternative measure designed to offset any emissions increases not directly offset by the source.

In lieu of imposing any alternative offset measures, the permitting authority may impose an emission offset amounting to no more than 1.5 times the average cost of stationary control measures adopted in that area during the previous three years.

On October 16, 1992, Texas addressed this provision by adding paragraph 116.3(c)(3), which includes provisions relating to offsetting emissions increases resulting from the firing and cleaning of rocket engines and motors. This paragraph allows for obtaining offsets by alternative means for increases resulting from rocket engine and motor firing. This paragraph addresses the provisions of section 173(e) of the CAA.

b. Ozone

The general nonattainment NSR requirements are found in Sections 172 and 173 of the Act and must be met by all nonattainment areas. Requirements for ozone that supplement or supersede these requirements are found in subpart 2 of part D. Subpart 2 provides criteria for classifying ozone nonattainment areas as marginal, moderate, serious, severe, and extreme, based upon the area’s design value. In addition to requirements for ozone nonattainment areas, subpart 2 includes Section 182(f), which states that requirements for major stationary sources of volatile organic compounds (VOC) shall apply to major stationary sources of NO_x unless the Administrator makes certain determinations related to the benefits or contribution of NO_x control to air quality, ozone attainment, or ozone air quality. States were required under Section 182(a)(2)(C) to adopt new NSR rules for ozone nonattainment areas by November 15, 1992.

On November 28, 1994, EPA conditionally approved two petitions from the State of Texas, each dated June 17, 1994, requesting that the Dallas-Fort Worth (DFW) and El Paso ozone nonattainment areas be exempted from NO_x control requirements of section 182(f) of the CAA, as amended in 1990. The State of Texas based its request for DFW upon a demonstration that the

¹ Table I was initially submitted May 13, 1992. Table I was revised to correct a typographical error and submitted August 31, 1993, in a recodification of Regulation VI. In the recodification, Table I was moved to Section 116.012 (Nonattainment Review Definitions) of Regulation VI. In this action, EPA is approving the revised definitions as submitted May

13, 1992, and the Revised Table I as submitted August 31, 1993. Unless otherwise stated, all references to Table I refer to the version that TACB adopted August 16, 1993, and submitted August 31, 1993.

DFW nonattainment area would attain the NAAQS for ozone by the CAA mandated deadline without the implementation of the additional NO_x controls required under section 182(f). Similarly, the State based its exemption request for El Paso on a demonstration that the El Paso nonattainment area would attain the ozone NAAQS by the CAA mandated deadline without implementing the additional NO_x controls required under section 182(f), but for emissions emanating from Mexico. These exemptions were requested under authority granted under section 182(f) of the CAA. EPA proposed to conditionally approve these petitions on August 29, 1994 (see 59 FR 44386). Following the consideration of comments submitted on the proposed action, EPA promulgated final action on November 28, 1994 (see 59 FR 60709).

On April 19, 1995, EPA approved a petition dated August 17, 1994, from the State of Texas requesting that the Houston and Beaumont ozone nonattainment areas be temporarily exempted from NO_x control requirements of section 182(f) of the CAA, as amended in 1990. The State of Texas based its request upon preliminary photochemical grid modeling which shows that reductions in NO_x would be detrimental to attaining the NAAQS for ozone in these areas. This temporary exemption was requested under section 182(f) of the CAA. The EPA proposed to approve these petitions on December 14, 1994 (see 59 FR 64640). Following the consideration of comments submitted on the proposed action, EPA promulgated final action on April 19, 1995 (see 60 FR 19515).

i. Definition of the term "major stationary source". The term "major stationary source" is defined in Section 302(j) of the CAA as 100 Tons Per Year (TPY) VOC and, presumptively, 100 TPY of NO_x as the threshold for determination of whether a source is subject to part D NSR requirements as a major source in marginal and moderate ozone nonattainment areas. In serious ozone nonattainment areas, the "major stationary source" threshold is 50 TPY of VOC and, presumptively, 50 TPY of NO_x pursuant to Section 182(c). In severe ozone nonattainment areas, the "major stationary source" threshold is 25 TPY of VOC and, presumptively, 25 TPY of NO_x pursuant to Section 182(d). Texas has no extreme ozone nonattainment areas.

Texas initially adopted these requirements in Table I of Section 101.1. A typographical error was corrected and Table I was resubmitted on August 31, 1993, as Table I of Section 116.012. In

Table I, the major source thresholds are as follows:

marginal 100 TPY of VOC and 100 TPY of NO_x
 moderate 100 TPY of VOC and 100 TPY of NO_x
 serious 50 TPY of VOC and 50 TPY of NO_x
 severe 25 TPY of VOC and 25 TPY of NO_x

ii. Offsets. The plan must include provisions to ensure that new or modified major stationary sources obtain offsets at the ratio specified for the area classification in order to obtain an NSR permit. The offset ratio in each area is as follows: 1.1 to 1 in marginal areas under Section 182(a)(4), 1.15 to 1 in moderate areas under Section 182(b)(5), 1.2 to 1 in serious areas under Section 182(c)(10), and 1.3 to 1 in severe areas under Section 182(d)(2).

Texas adopted these requirements in Table I of Section 116.012. In Table I, the applicable offset ratio of VOC or NO_x is the same as required by the above stated sections of the CAA.

iii. Special requirements for serious and severe ozone nonattainment areas. For serious and severe ozone nonattainment areas, States must submit provisions to implement Section 182(c)(6) of the Act such that any proposed emissions increase is subject to the 25-ton de minimis test. Texas addresses these requirements in Table I of Section 116.012 and in Sections 116.3(a)(7). Section 182(c)(6) provides that a particular physical change or change in the method of operation shall not be considered de minimis unless the increase in net emissions resulting from such project does not exceed 25 TPY when aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years which includes the calendar year in which such increase occurred.

Texas addresses this requirement in its new definition of "de minimis threshold" in Section 101.1 of the General Rules (submitted May 13, 1992), Table I of Section 116.012 of the Nonattainment Review Definitions (submitted August 31, 1993), and in Section 116.3(a)(7) of Regulation VI (submitted May 13, 1992).

The term "de minimis threshold" is defined in Section 101.1 as an emission level determined by aggregating the proposed increase with all other creditable increases and decreases during the previous five calendar years, including the calendar year of the proposed change, which equals the major modification level (in TPY) for the specific nonattainment area. Table I

of Section 116.012 specifies the various classifications of nonattainment along with the associated emission levels which designate a major modification for those areas. Table I specifies the de minimis thresholds as 40 TPY of VOC in marginal and moderate ozone nonattainment areas and 25 TPY of VOC in serious and severe ozone nonattainment areas. Section 116.3(a)(7) provides that a source must apply the de minimis test to any proposed increase of VOC or NO_x in moderate, serious, and severe ozone nonattainment areas. The de minimis test thresholds are the same as the major modification levels stated in Table I, but aggregated over the previous five year period, including the calendar year of the proposed change. The past net increases must be evaluated even when the proposed increase is below the major modification level. The section applies to permit applications which are filed after November 15, 1992. On the basis of EPA's evaluation, the definition of de minimis threshold in Section 101.1, Table I of Section 116.012, and Section 116.3(a)(7) are approved as satisfying the requirements of section 182(c)(6) of the Act.

c. Carbon Monoxide (CO)

The general part D NSR permit requirements apply in CO nonattainment areas, and are supplemented by the CO requirements in subpart 3 of part D. Such programs must contain a definition of the term "major stationary source" that reflects the Section 302(j) 100 TPY CO threshold for determination of whether a source is subject to part D requirements as a major source in moderate CO nonattainment areas, and the Section 187(c)(1) 50 TPY CO threshold for determination of whether a source is subject to part D requirements as a major source in serious CO nonattainment areas. Texas adopted these requirements in Table I of Section 116.012. Table I specifies major source thresholds to be 100 TPY in moderate CO nonattainment areas and 50 TPY in serious CO nonattainment areas.

d. Particulate Matter With an Aerodynamic Diameter of a Nominal 10 Microns or Less (PM-10)

PM-10 NSR programs must contain a definition of the term "major stationary source" that reflects thresholds in Section 302(j) of 100 TPY for PM-10 in moderate PM-10 nonattainment areas and reflects the Section 189(b)(3) threshold of 70 TPY for PM-10 in serious PM-10 nonattainment areas. Texas adopted this requirement in Table I of Section 116.012. Table I specifies

the major source thresholds to be 100 TPY in moderate PM-10 nonattainment areas and 70 TPY in serious PM-10 nonattainment areas. The only current PM-10 nonattainment area in Texas is the El Paso area. EPA has previously determined under Section 189(e) of the Act that NSR provisions are not required in the El Paso area for PM-10 precursors (59 FR 2532, 2533, (January 18, 1994)).

e. Sulfur Dioxide (SO₂)

States with SO₂ nonattainment areas were required to submit NSR implementation plans by May 15, 1992. Presently, Texas has no designated SO₂ nonattainment areas. NSR implementation plans must contain a definition of the term "major stationary source" that reflects the Section 302(j) 100 TPY SO₂ threshold for determination of whether a source is subject to part D requirements as a major source. Texas adopted this requirement in Table I of Section 116.012. In Table I, the major source threshold in SO₂ nonattainment areas is 100 TPY of SO₂.

f. Lead

States with lead nonattainment areas are required to submit NSR implementation plans which must contain a definition of the term "major stationary source" that reflects the Section 302(j) 100 TPY lead threshold for determination of whether a source is subject to part D requirements as a major source. Texas adopted this requirement in Table I of Section 116.012. In Table I, the major source threshold in lead nonattainment areas is 100 TPY of lead.

B. Individual SIP Submittals Acted Upon in This Notice

1. *Adopted by TACB on July 26, 1985; Governor Submitted to EPA on December 11, 1985; EPA Received December 18, 1985*

The State submitted revisions to Sections 116.1, 116.2, 116.10(a)(4), and 116.10(d) and the addition of Section 116.3(a)(13) for Prevention of Significant Deterioration (PSD). This revision to section 116.1 has been replaced by a more recent submittal being acted upon in this Federal Register action. Section 116.3(a)(13) for PSD has been acted upon in a separate Federal Register action as discussed elsewhere in this Federal Register action. Section 116.3(a)(13) was redesignated to Section 116.3(a)(11) in the May 13, 1992, submittal. EPA is approving the revisions to Sections 116.2 and section 116.10(a)(4). Section

116.10(d) provides that when a permit to construct or operate, or a special permit, will incorporate new best available control technology (BACT), the Executive Director of the TACB will notify the public of that new BACT determination by publication in the *Texas Register* within 60 days after issuance of such permit. The TACB revised Section 116.10(d) on August 11, 1989, to delete reference to special permits, and submitted the revision to EPA on December 1, 1989. EPA is approving Section 116.10(d) as revised on August 11, 1989, and submitted to EPA on December 1, 1989 (see section B.6 in this preamble for discussion of the December 6, 1989, submittal).

The revision to section 116.2 clarifies that the owner of a facility or the operator of the facility authorized to act for the owner is responsible for complying with Section 116.1, Permit Requirements, of Regulation VI. The revision to section 116.10(a)(4) adds to the requirements for publishing public notices in newspapers.

2. *Adopted by TACB on July 17, 1987; Governor Submitted to EPA on October 26, 1987; EPA Received November 10, 1987*

The State submitted revisions to Sections 116.3(a)(13) [PSD], 116.3(a)(14) [Stack Heights], 116.10(a)(1), 116.10(a)(3), and 116.10(b)(1). A revision to 116.7 [Special Permits] adopted by the State was not submitted to EPA as a SIP revision. The revision to Section 116.3(a)(13) for PSD has been acted upon in a separate Federal Register action as discussed elsewhere in this Federal Register action. Section 116.3(a)(13) was redesignated to Section 116.3(a)(11) in the May 13, 1992, submittal. The revision to Section 116.3(a)(14) for Stack Heights was approved in a Federal Register document notice published November 22, 1988 (53 FR 47191), at 40 CFR 52.2270(c)(62). The revisions to 116.10(a)(1) and 116.10(b)(1) have been replaced by more recent revisions being acted upon in this Federal Register document.

EPA is approving this revision of section 116.10(a)(3) which requires the publication of a public notice in a newspaper of an applicant's intent to construct to include the preliminary determination of the Executive Director of TACB to issue or not issue the permit only if the permit is subject to the Federal Clean Air Act (FCAA), Part C [for PSD] or Part D [Non-Attainment Areas] or to 40 CFR 51.165(b). The revision adds the requirements that the public notice must state that any person who may be affected by the emission of

air contaminants from the facility is entitled to request a hearing in accordance with TACB rules and that the notice must include the name, address, and phone number of the regional TACB office to be contacted for further information.

3. *Adopted by TACB on December 18, 1987; Governor Submitted to EPA on February 18, 1988; EPA Received February 29, 1988*

The State submitted revisions to Sections 116.5 and 116.10(a)(1) and the addition of Sections 116.10(c)(1)(A), 116.10(c)(1)(B), 116.10(c)(1)(C) and 116.10(f). The State adopted, but did not submit to EPA, revisions to Rule 116.7, Special Permits, and the addition of Rule 116.13, Emergency Orders for Damaged Facilities. Basically, these changes respond to new statutory requirements enacted by the Texas Legislature in 1987 to require the TACB to establish time frames and an applicant appeals process for staff review of permit applications and the issuance of permits. This revision to section 116.5 has been replaced by a more recent revision being acted upon in this Federal Register action.

EPA is approving this revision to sections 116.10(a)(1) and 116.10(c)(1) introductory paragraph; the addition of section 116.10(c)(1)(A), (B), and (C); and the addition of 116.10(f) [permit processing time limit]. Section 116.10(f) was redesignated 116.10(e) in the December 1, 1989, submittal.

The revision to Section 116.10(a)(1), General Requirements of the TACB Public Notification Procedures, requires the Executive Director of TACB to inform a permit applicant within 90 days of receipt of an application if the application is determined incomplete and additional information needed. If the application is determined to be complete, the Executive Director shall state his preliminary determination to issue or deny the permit. If the application is complete, for any permit subject to the Federal Clean Air Act (FCAA), Part C or D or to 40 CFR 51.165(b), the Executive Director shall state his preliminary determination to issue or deny the permit and require the applicant to conduct public notice of the proposed construction. If an application is received for a permit not subject to the FCAA, Part C or D or to 40 CFR 51.165(b), the Executive Director shall require the applicant to conduct public notice of the proposed construction.

The revision to Section 116.10(c)(1) and the addition of 116.10(c)(1)(A), (B), and (C) modifies the requirements for the notification of an applicant of the

final action on a permit application. The revised section requires the Executive Director of TACB to notify the applicant, within 180 days of receipt of a completed application, of his final decision to grant or deny the permit provided that: (A) No request for public hearing or public meeting on the proposed facility have been received; (B) The applicant has satisfied all public notification requirements of this section; and (C) The Federal regulations for PSD of Air Quality do not apply.

The addition of 116.10(f) sets a permit processing time limit. This section gives an applicant for a permit the right to appeal in writing to the Executive Director of TACB if a permit is not acted upon within the time limits provided in Section 116.10. Section 116.10(f) was redesignated 116.10(e) in the December 1, 1989, submittal.

4. Adopted by TACB on July 15, 1988; Governor Submitted to EPA on September 29, 1988; EPA Received October 12, 1988

The State submitted revisions which redesignated Rule 116.1 to Section 116.1(a), added a new Section 116.1(b), revised section 116.3(a)(13) [for PSD], and revised section 116.10(a)(7). Revisions to Rules 116.6 and 116.7 were also adopted, but were not submitted to EPA as a SIP revision.

Section 116.3(a)(13) for PSD has been acted upon in a separate Federal Register action as discussed elsewhere in this Federal Register action. Section 116.3(a)(13) was redesignated to Section 116.3(a)(11) in the May 13, 1992, submittal. The revision to Section 116.10(a)(7) has been replaced by a more recent revision of the section. EPA is approving the redesignation of section 116.1 to Section 116.1(a) and the addition of a new section 116.1(b). The addition of section 116.1(b) helps streamline the administrative procedures associated with changes in ownership of previously permitted facilities.

5. Adopted by TACB on August 11, 1989; Governor Submitted to EPA on December 1, 1989; EPA Received December 21, 1989

The State submitted revisions of sections 116.1(a), 116.3(f), 116.5, 116.10(a)(6) [Exemptions of previously permitted facilities, currently designated 116.10(a)(7) in State regulation], 116.10(b)(1), 116.10(d), 116.11(b)(3) introductory paragraph, 116.11(e), 116.11(f), the deletion/peal of section 116.10(e) [Effective Date], and the redesignation of 116.10(f) [processing time limit] to 116.10(e). The State also deleted/repealed Section

116.7, Special Permits, but did not submit this to EPA because Section 116.7, Special Permits, has never been approved as part of the Texas SIP.

Basically, this revision to Regulation VI repeals section 116.7, Special Permits, and removes all references to new special permits in Regulation VI. References to existing special permits are retained in the regulation.

EPA is approving this revision of section 116.1(a); the addition of Section 116.3(f); the revisions of 116.5, 116.10(a)(7) [Exemptions of previously permitted facilities], 116.10(b)(1), 116.10(d); the deletion/repeal of section 116.10(e) [Effective Date]; and the redesignation of 116.10(f) [processing time limit] to 116.10(e); and the revisions of 116.11(b)(3), 116.11(e), and 116.11(f).

The new section 116.3(f) provides for avoidance of a grossly deficient permit application. The revision to section 116.5 provides for a warning to applicants that a grossly deficient application may be voided. This revision to section 116.10(a)(7) [Exemptions of previously permitted facilities], adds a reference to special permits and makes editorial changes to section 116.10(a)(7)(A) and deletes section 116.10(a)(7)(B). Section 116.10(a)(7)(B) had given conditions under which a new owner could be exempted from the requirements of Regulation VI. Section 116.10(d) was revised to remove references to special permits (see discussion in Section B.1 of this preamble concerning an earlier revision to Section 116.10(d), adopted by TACB on July 26, 1985, and submitted to EPA on December 11, 1985). The deletion/repeal of section 116.10(e) [Effective Date], removes obsolete language regarding effective dates. Section 116.10(f), processing time limit, is redesignated section 116.10(e). The revisions of Sections 116.11(b)(3), 116.11(e), 116.11(f) clarify that the agency does not require fees for amendments to Special Permits and that a permit fee is not refunded if a permit application is voided.

6. Adopted by TACB on May 18, 1990; Governor Submitted to EPA on September 18, 1990; EPA Received September 28, 1990

EPA is acting on this entire submittal. This revision adds sections 116.1(c), 116.3(a)(1)(A), and 116.3(a)(1)(B) to Regulation VI.

Section 116.1(c) specifies that any application for a permit or permit amendment with an estimated capital cost of the project over \$2 million be submitted under seal of a registered professional engineer. Section

116.3(a)(1)(A) requires TACB to consider short-term and long-term side effects proposed sources will have on individuals attending schools located within 3,000 feet of the school. Section 116.3(a)(1)(B) states that a new lead smelting plant cannot be located within 3,000 feet of an individual residence.

7. Adopted by TACB on September 20, 1991; Governor Submitted to EPA on November 5, 1991; EPA Received November 15, 1991

This revision adds section 116.3(a)(15) which establishes distance requirements between new hazardous waste management facilities and areas of public access. This amendment is to satisfy the statutory requirements of Texas Senate Bill 1099. This rule does not conflict with the Federal Resource Conservation and Recovery Act and current implementing regulations. EPA is approving this revision as submitted. Section 116.3(a)(15) was redesignated to Section 116.3(a)(13) in the May 13, 1992, submittal.

8. Adopted by TACB on May 8, 1992; Governor Submitted to EPA on May 13, 1992; EPA Received May 21, 1992

This revision modifies section 116.3(a) paragraphs (1), (3), (4), and (5); deletes paragraphs (7) and (10); redesignates paragraphs (8), (9), (11), (12), (13), (14), and (15) respectively to paragraphs (7), (8), (9), (10), (11), (12), and (13); revises the redesignated paragraphs (7), (8), (9), (10), (11), (12), and (13); modifies section 116.3(c) and paragraph 116.3(c)(1); and modifies section 116.11(b)(4).

This revision includes provisions to satisfy provisions of the 1990 CAA. Those provisions are addressed in section A.3 of this Federal Register action. Other modifications are described below.

Section 116.11(b)(4) is modified to increase the previously approved permit fee from \$50,000 to \$75,000 when no estimate of capital cost is included with a permit application.

This submittal includes new and revised definitions in Section 101.1 which pertain to nonattainment permitting. These definitions are consistent with the definitions in 40 CFR 51.165(a)(1) and the terms in the 1990 CAA. Thus, EPA is approving the definitions in § 101.1 as adopted by the TACB and submitted by the Governor on May 13, 1992.

The revisions submitted on May 13, 1992, contain other minor revisions and clarifications, as described in the Technical Support Document. EPA has reviewed these changes and determines that they are approvable. Thus, EPA is

approving the provisions of Regulation VI as adopted by the TACB and submitted by the Governor on May 13, 1992.

9. Adopted by TACB on October 16, 1992; Governor Submitted to EPA on November 13, 1992; EPA Received November 16, 1992

This revision includes provisions to satisfy provisions of the 1990 CAA. Those provisions are addressed in section A.3 of this Federal Register action. Other modifications are described below.

This revision modified Section 116.12, "Review and Renewal of Permits", Paragraphs (a), (b)(1)(B), (b)(2), (c), (d), (f), (g), and (h); and added Section 116.14, "Compliance History Requirements."

Revisions to Section 116.12, "Review and Renewal of Permits" were submitted November 13, 1992. In this submittal, only revisions to paragraphs (a), (b)(1)(B), (b)(2), (c), (d), (f), and (g), and (h) of Section 116.12 were submitted. There is no record in EPA files of any other provision of this section ever being submitted. Section 116.12 was originally adopted by TACB on August 22, 1986, under the title "Review and Continuance of Operating Permits". A revision was adopted March 25, 1988. This section provides that a permit is subject to renewal 15 years from date of issuance if the permit was issued before December 1, 1991. Permits issued on or after December 1, 1991, are subject to renewal every five years after date of issuance. Section 116.12 specifies the procedures for applying for and receiving a permit renewal.

Because TACB only submitted the portions of Section 116.12 that were revised on October 16, 1992, only portions of this section were available for EPA to act on. On August 31, 1993, TACB submitted a Recodification of Regulation VI which included the provisions of Section 116.12 in a new Subchapter D: "Permit Renewals," which includes Sections 116.310, 116.311, 116.312, 116.313, and 116.314. EPA will act on this Recodification of Regulation VI in a separate Federal Register action. Because the November 13, 1992, submittal does not include the entire Section 116.12, EPA is not acting on the portions of Section 116.12 submitted November 13, 1992.

On October 16, 1992, the TACB adopted Section 116.14, "Compliance History Requirements." This Section requires that a review of an application for a construction permit, review of an amendment, or renewal of an existing permit include a review of the source's compliance history. In this action, EPA

is approving Section 116.14, as submitted by the Governor on November 13, 1992.

With the exception of the revisions to Section 116.12, EPA is approving the revisions to Regulation VI as adopted by TACB and submitted by the Governor on November 13, 1992. The revisions to Section 116.12 are not being acted on in this Federal Register for the reasons stated above.

10. Adopted by TACB on August 16, 1993; Governor Submitted to EPA on August 31, 1993; EPA Received October 4, 1993

The TACB completely recodified and reorganized Regulation VI on August 16, 1993. TACB also revised the permitting requirements in nonattainment areas to include several NSR provisions.

As discussed above in footnote 1, the only provision of this submittal that is being approved in this action is Table I which is found at Section 116.012 "Nonattainment Review Definitions." The Table was originally submitted on May 13, 1992, as part of Section 101.1 "General Rules: Definitions". However, the Table contained typographical errors which needed to be corrected in order to be approved. The TACB corrected the errors when it recodified Regulation VI. This corrected table is needed for approval of the nonattainment permitting requirements being addressed in this action. Therefore, in this action, EPA is approving the corrected Table I as submitted August 31, 1993, in lieu of Table I as submitted May 13, 1992.

The remaining provisions of the recodification are currently being reviewed by EPA and will be acted upon in a separate Federal Register action.

Final Action

By this action, EPA is approving the following revisions to TACB Regulation 101 (31 TAC Chapter 101), "General Rules" of the Texas SIP as adopted by TACB on May 8, 1992, and submitted to EPA by the Governor on May 13, 1992. EPA is approving revisions to the definitions in Rule 101.1, except for Table I. By this action, EPA is also approving the following revisions to TACB Regulation VI (31 TAC Chapter 116), "Control of Air Pollution by Permits for New Construction or Modification" of the Texas SIP.

A. Adopted by TACB on July 26, 1985, and submitted to EPA on December 11, 1985: EPA is approving revisions to sections 116.2 and 116.10(a)(4) as submitted.

B. Adopted by TACB on July 17, 1987, and submitted to EPA on October 26,

1987: EPA is approving a revision to section 116.10(a)(3) as submitted.

C. Adopted by TACB on December 18, 1987, and submitted to EPA on February 18, 1988: EPA is approving revisions to sections 116.10(a)(1) and 116.10(c)(1) introductory paragraph; the addition of section 116.10(c)(1)(A), (B), and (C); and the addition of 116.10(f) [permit processing time limit].

D. Adopted by TACB on July 15, 1988, and submitted to EPA on September 29, 1988: EPA is approving the redesignation of existing Rule 116.1 to section 116.1(a), the addition of a new section 116.1(b), and the redesignation of 116.10(a)(6) [Exemptions of previously permitted facilities] to 116.10(a)(7), as submitted.

E. Adopted by TACB on August 11, 1989, and submitted to EPA on December 1, 1989: EPA is approving revisions of sections 116.1(a), 116.3(f), 116.5; 116.10(a)(7) [Exemptions of previously permitted facilities]; revisions of 116.10(b)(1), 116.10(d), 116.11(b)(3) introductory paragraph, 116.11(e), 116.11(f); the deletion of section 116.10(e) [Effective Date]; and the redesignation of section 116.10(f) [Processing time limit] to section 116.10(e).

F. Adopted by TACB on May 18, 1990, and submitted to EPA on September 18, 1990: EPA is approving the addition of sections 116.1(c), 116.3(a)(1)(A), and 116.3(a)(1)(B), as submitted.

G. Adopted by TACB on September 20, 1991, and submitted to EPA on November 5, 1991: EPA is approving the addition of sections 116.3(a)(15), as submitted.

H. Adopted by TACB on May 8, 1992, and submitted to EPA on May 13, 1992: EPA is approving revisions to sections 116.3(a)(1), (3), (4), (5), (7), (8), (9), (10), (11), (12), and (13); and 116.3(c)(1) and (b)(4), as submitted.

I. Adopted by TACB on October 16, 1992, and submitted to EPA on November 13, 1992: EPA is approving revisions to sections 116.3(a); 116.3(a)(7) and (10); and 116.14, as submitted. No action is being taken on the revisions to section 116.12 for the reasons stated in this preamble.

J. Adopted by TACB on August 16, 1993, and submitted to EPA on August 31, 1993: EPA is approving the adoption of Table I in section 116.012. No action is being taken on other provisions of this submittal for the reasons stated in this preamble.

Regulatory Process

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial

amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, today's direct final action will be effective November 27, 1995 unless, by October 27, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 27, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately 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), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., 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, 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.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State

relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Carbide Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (S. Ct 1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Sections 110, 172, 173, 182, 187, 189, and 191 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements, such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting

and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the SIP for the State of Texas was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 10, 1995.

A. Stanley Meiburg,

Deputy Regional Administrator.

40 CFR part 52 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 SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(97) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(97) Revisions to the Texas SIP addressing revisions to the Texas Air Control Board (TACB) General Rules, 31 Texas Administrative Code (TAC) Chapter 101, "General Rules", section 101.1, "Definitions", and revisions to TACB Regulation VI, 31 TAC Chapter 116, "Control of Air Pollution by Permits for New Construction or Modification," were submitted by the Governor of Texas by letters dated December 11, 1985, October 26, 1987, February 18, 1988, September 29, 1988, December 1, 1989, September 18, 1990, November 5, 1991, May 13, 1992, November 13, 1992, and August 31, 1993.

(i) Incorporation by reference.

(A) Revisions to TACB Regulation VI, 31 TAC Chapter 116, sections 116.2 and 116.10(a)(4), as adopted by the TACB on July 26, 1985.

(B) TACB Board Order No. 85-07, as adopted by the TACB on July 26, 1985.

(C) Amended TACB Regulation VI, 31 TAC Chapter 116, section 116.10(a)(3) as adopted by the TACB on July 17, 1987.

(D) TACB Board Order No. 87-09, as adopted by the TACB on July 17, 1987.

(E) Amended TACB Regulation VI, 31 TAC Chapter 116, sections 116.10(a)(1), 116.10(c)(1), 116.10(c)(1)(A), 116.10(c)(1)(B), 116.10(c)(1)(C) and 116.10(f), as adopted by the TACB on December 18, 1987.

(F) TACB Board Order No. 87-17, as adopted by the TACB on December 18, 1987.

(G) Amended TACB Regulation VI, 31 TAC Chapter 116, redesignation of section 116.1 to 116.1(a), revision to section 116.1(b), and redesignation of

116.10(a)(6) to 116.10(a)(7), as adopted by the TACB on July 15, 1988.

(H) TACB Board Order No. 88-08, as adopted by the TACB on July 15, 1988.

(I) Amended TACB Regulation VI, 31 TAC Chapter 116, sections 116.1(a), 116.3(f), 116.5, 116.10(a)(7), 116.10(b)(1), 116.10(d), 116.10(e), 116.11(b)(3), 116.11(e), and 116.11(f), as adopted by the TACB on August 11, 1989.

(J) TACB Board Order No. 89-06, as adopted by the TACB on August 11, 1989.

(K) Amended TACB Regulation VI, 31 TAC Chapter 116, sections 116.1(c), 116.3(a)(1), 116.3(a)(1)(A), and 116.3(a)(1)(B), as adopted by the TACB on May 18, 1990.

(L) TACB Board Order No. 90-05, as adopted by the TACB on May 18, 1990.

(M) Amended TACB Regulation VI, 31 TAC Chapter 116, section 116.1(a)(15), as adopted by the TACB on September 20, 1991.

(N) TACB Board Order No. 91-10, as adopted by the TACB on September 20, 1991.

(O) Revisions to TACB General Rules, 31 TAC Chapter 101 to add definitions of "actual emissions"; "allowable emissions"; "begin actual construction"; "building, structure, facility, or installation"; "commence"; "construction"; "de minimis threshold"; "emissions unit"; "federally enforceable"; "necessary preconstruction approvals or permits"; "net emissions increase"; "nonattainment area"; "reconstruction"; "secondary emissions"; and "synthetic organic chemical manufacturing process" and to modify definitions of "fugitive emission"; "major facility/stationary source"; and "major modification" (except for Table I), as adopted by the TACB on May 8, 1992.

(P) Amended TACB Regulation VI, 31 TAC Chapter 116, sections 116.3(a)(1), (3), (4), (5), (7), (8), (9), (10), (11), (12), and (13); 116.3(c)(1); and 116.11(b)(4), as adopted by the TACB on May 8, 1992.

(Q) TACB Board Order No. 92-06, as adopted by the TACB on May 8, 1992.

(R) Amended TACB Regulation VI, 31 TAC Chapter 116, sections 116.3(a); 116.3(a)(7) and (10); 116.3(c); and 116.14 as, adopted by the TACB on October 16, 1992.

(S) TACB Board Order No. 92-18, adopted by the TACB on October 16, 1992.

(T) Amended TACB Regulation VI, 31 TAC Chapter 116, Table I, as adopted in section 116.012 by the TACB on August 16, 1993, is approved and incorporated into section 101.1 in lieu of Table I adopted May 8, 1992.

(U) TACB Board Order No. 93-17, as adopted by the TACB on August 16, 1993

(ii) Additional materials—None.

[FR Doc. 95-23962 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 180

[PP 0F3834/R2173; FRL-4978-2]

RIN 2070-AB78

Quizalofop-P Ethyl Ester; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the herbicide quizalofop-p ethyl ester [ethyl-(R)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy])propanoate], and its acid metabolite quizalofop-p, and the *S* enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the raw agricultural commodity lentils at 0.05 part per million (ppm). The regulation was requested by the E.I. du Pont de Nemours & Co., Inc., under the Federal Food, Drug and Cosmetic Act (FFDCA) and establishes the maximum permissible level for residues of the herbicide in or on lentils.

EFFECTIVE DATE: This regulation becomes effective September 27, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0F3834/R2173], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-

docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 0F3834/R2173]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 18, 1995 (60 FR 36768), EPA issued a proposed rule that gave notice that the E.I. du Pont de Nemours & Co., Inc., Walkers Mill Bldg., Barley Mill Plaza, Wilmington, DE 19880, had submitted pesticide petition (PP) 0F3834 to EPA proposing that under the FFDCA (21 U.S.C. 346a), 40 CFR 180.441 be amended by establishing a regulation to permit the combined residues of the herbicide quizalofop ethyl [ethyl-(R)-(2-[4-((6-chloroquinoxalin-2-yl)-oxy)phenoxy])propanoate]), and its acid metabolite, and the *S* enantiomers of both the acid and the ester, all expressed as quizalofop-p ethyl ester, in or on lentils.

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

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the

objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 0F3834/R2173] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 0F3834/R2262], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept

in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: September 12, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.441, by revising paragraph (c), to read as follows:

§ 180.441 Quiazalofop ethyl; tolerances for residues.

* * * * *

(c) Tolerances are established for the combined residues of the herbicide quiazalofop-p ethyl ester [ethyl (R)-(2-[4-(6-chloroquinoxalin-2-yl)oxy]phenoxy)propanoate], and its acid metabolite quiazalofop-p [R-(2-(4((6-chloroquinoxalin-2-yl)oxy)phenoxy))propanoic acid], and the S enantiomers of both the ester and the acid, all expressed as quiazalofop-p ethyl ester, in or on the following raw agricultural commodities:

Commodity	Parts per million
Cottonseed	0.05
Lentils	0.05

[FR Doc. 95-23571 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 3F4174/R2175; FRL-4979-5]

RIN 2070-AB78

Chlorethoxyfos; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide phosphorothioic acid, 0,0-diethyl 0-(1,2,2,2-tetrachloroethyl) ester (proposed common name, "chlorethoxyfos"), in or on the raw agricultural commodities of field, pop, and sweet corn at 0.01 part per million (ppm). E.I. Du Pont de Nemours & Co. submitted a petition for the regulation to establish these maximum permissible levels for residues of the insecticide pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation became effective on September 18, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F4174/R2175], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 3F4174/R2175]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Product Manager (PM-19) Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6386; e-mail: edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 21, 1993 (58 FR 54353), EPA issued the initial filing of a pesticide petition, PP 3F4174, from Du Pont, Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposing to amend 40 CFR part 180 by establishing a regulation to permit

residues of chlorethoxyfos in or on corn; sweet corn separate from field corn (corn, field, forage) at 0.01 ppm; corn, field, fodder at 0.01 ppm; corn, field, silage at 0.01 ppm; corn, pop, forage at 0.01 ppm; corn, pop, fodder at 0.01 ppm; corn, grain at 0.01 ppm; corn, sweet (kernels, cob with husk removed) at 0.01 ppm; corn, sweet, forage at 0.01 ppm; and corn, sweet, fodder at 0.01 ppm. Subsequently, EPA issued a notice of amended filing, published in the Federal Register of August 17, 1995 (60 FR 42885), which announced that E.I. Du Pont de Nemours & Co., had submitted the amended pesticide petition (PP 3F4174) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish tolerances for residues of the insecticide phosphorothioic acid, *O,O*-diethyl *O*-(1,2,2,2-tetrachloroethyl) ester ("chlorethoxyfos"), in or on the raw agricultural commodity corn [corn grain—field, pop; corn forage—field, sweet; corn fodder (stover)—field, pop, sweet; and, sweet corn—kernel and cob with husk removed] at 0.01 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notices of filing. All relevant materials have been evaluated. The toxicology data considered in support of the tolerance include:

1. A 2-year chronic feeding/carcinogenicity study in the rat with a no-observed-effect level (NOEL) of 0.154 milligram (mg)/kilogram (kg)/day (d) for males and 0.416 mg/kg/d for females (4 ppm) for cholinesterase inhibition (ChE); and a NOEL of 0.311 mg/kg/d for males and 0.416 mg/kg/d for females (8 ppm) for systemic effects.

2. An 18-month chronic feeding/carcinogenicity study in the mouse with a NOEL of 3.25 mg/kg/d for males and 4.63 mg/kg/d for females (25 ppm) and no treatment-related increases in neoplasms.

3. A 2-year chronic feeding study in the dog with a NOEL of 0.063 mg/kg/d for males and 0.065 mg/kg/d for females (2 ppm) for ChE, and a NOEL of 0.616 mg/kg/d for males and 0.591 mg/kg/d for females (20 ppm) for systemic effects.

4. A two-generation rat reproduction study with a parental NOEL of 0.296 mg/kg/d for males and 0.357 mg/kg/d for females (4 ppm), and a reproductive NOEL of 0.607 mg/kg/d for males and 0.776 mg/kg/d for females (8 ppm).

5. A developmental toxicity study in the rat with a maternal NOEL of 0.25 mg/kg/d, and a developmental NOEL of 0.25 mg/kg/d.

6. A developmental toxicity study in the rabbit with a maternal NOEL of 0.76 mg/kg/d, and a developmental NOEL of 1.38 mg/kg/d with no evidence of teratogenicity.

Chlorethoxyfos has been classified under "Group D" (not classifiable as to human carcinogenicity) by EPA's OPP/HED's Reference Dose (RfD)/Peer Review Committee.

The reference dose (RfD), based upon the combined subchronic and chronic toxicity studies in dogs with an overall NOEL of 0.061 mg/kg/d for males and 0.062 mg/kg/d for females (based on cholinesterase inhibition) (2 ppm), and an uncertainty factor (UF) of 100, was calculated to be 0.0006 mg/kg/d. The theoretical maximum residue contribution (TMRC) using proposed permanent tolerances for the proposed commodities is 0.000006 mg/kg/d for the overall U.S. population and 0.000015 mg/kg/d for children (1 to 6 years old). This represents 1.0% and 2.4% of the RfD, respectively. This is a worst-case estimate of dietary exposure with all residues at tolerance level and 100 percent of the commodities assumed to be treated with chlorethoxyfos. Dietary exposure from the proposed use will not exceed the reference dose for any subpopulation (including infants and children) based on the information available from EPA's Dietary Risk Evaluation System.

The nature of the chlorethoxyfos residue in plants and animals is adequately understood. The plant metabolite of chlorethoxyfos, trichloroacetic acid (TCA), is not of toxicological concern at the level found, and therefore will not require the establishment of tolerances. Residues of chlorethoxyfos and its oxygen analog are not expected to be detectable (less than 0.01 ppm, limit of quantitation for each) in corn grain, corn forage and stover as a result of the proposed use (by soil application). Residues of TCA are not expected to be detectable (less than 0.01 ppm) in corn grain, and no greater than 0.04 ppm in corn forage and stover. Metabolites of chlorethoxyfos in the goat via an orally administered route include carbon dioxide, serine, glycine, and lactose, with insignificant levels of undegraded parent and its oxygen analog. For the proposed use on corn, no tolerances are required for residues in animal commodities.

The submitted analytical methodology is adequate for enforcement purposes at the proposed 0.01-ppm tolerance level. The proposed enforcement methodology is a gas chromatography electron capture (GC/EC) method which has undergone

successful independent laboratory and EPA method validation.

There are adequate geographically representative crop field trial data to show that residues of chlorethoxyfos will not exceed the proposed tolerance on corn commodities at 0.01 ppm when used as directed.

The Agency is concurrently issuing a 3-year conditional registration for chlorethoxyfos use on corn. Additional toxicology and exposure studies are being conducted by the registrant, DuPont. These data are needed to more accurately refine the Agency's risk assessment for chlorethoxyfos.

There are presently no actions pending against the registration of this chemical.

This pesticide is considered useful for the purposes for which the tolerance is sought and capable of achieving the intended physical or technical effect. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3F4174/R2175] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 3F4174/R2175], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as

"economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: September 15, 1995.

Peter Caulkins,
Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. By adding new § 180.486 to read as follows:

§ 180.486 Phosphorothioic acid, 0,0-diethyl 0-(1,2,2,2-tetrachloroethyl) ester; tolerances for residues.

Tolerances are established permitting the residue of the insecticide phosphorothioic acid, 0,0-diethyl 0-(1,2,2,2-tetrachloroethyl) ester in or on the following raw agricultural commodities:

Commodity	Parts per million
Corn, field, grain	0.01
Corn, field, forage	0.01
Corn, field, stover (fodder)	0.01
Corn, pop, grain	0.01
Corn, pop, stover (fodder)	0.01
Corn, sweet (K + CWHR)	0.01

Commodity	Parts per million
Corn, sweet, forage	0.01
Corn, sweet, stover (fodder)	0.01

[FR Doc. 95-24006 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 3F4186/R2174; FRL-4979-1]

RIN 2070-AB78

Fenpropathrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes time-limited tolerances with an expiration date of November 15, 1997, for residues of the pyrethroid fenpropathrin in or on the raw agricultural commodities (RACs) strawberries and tomatoes. Valent U.S.A. submitted petitions under the Federal Food, Drug and Cosmetic Act (FFDCA) that requested a regulation to establish these maximum permissible levels for residues of the insecticide.

EFFECTIVE DATE: This regulation becomes effective September 27, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number [PP 3F4186/R2174], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted

on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 3F4186/R2174]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Second Floor, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the Federal Register of October 21, 1993 (58 FR 54354), which announced that Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, Walnut Creek, CA 94596, had submitted pesticide petition (PP) 3F4186 and food/feed additive petition (FAP) 3H5661 to EPA requesting that the Administrator, pursuant to sections 408(d) and 409(b) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) and 348(b), establish tolerances for residues of the insecticide fenpropathrin (*alpha*-cyano-3-phenoxybenzyl 2,2,3,3-

tetramethylcyclopropanecarboxylate) in or on the raw agricultural commodities (RACs) strawberries at 2 parts per million (PPM); tomatoes (fresh market, Florida only) at 0.5 ppm; and tomato cannery waste at 5 ppm. EPA issued a revised notice, published in the Federal Register of November 2, 1994 (59 FR 54911), in which Valent U.S.A. proposed to amend PP 3F4186 by increasing the tolerances for fenpropathrin in or on the RAC tomatoes from 0.5 to 0.6 ppm and removing the fresh marketing regional restrictions for tomatoes; establish tolerances for fenpropathrin in or on strawberries (caps removed) at 2.0 ppm; meat and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.1 ppm; fat of cattle, goats, hogs, horses, and sheep at 1.0 ppm; milk fat (reflecting 0.11 ppm in whole milk) at 2.75 ppm; poultry meat, fat, and meat byproducts and eggs at 0.02 ppm; and amending the FAP 3H5661 by replacing the proposed tomato cannery waste tolerance with proposals for tolerances in or on tomato pomaces (wet) at 6.00

ppm and tomato pomaces (dry) at 3.00 ppm.

In a letter dated August 30, 1995, Valent U.S.A. requested withdrawal of the feed additive petition (3H5661) in or on tomato pomaces and deletion of the proposed tolerances in meat, milk, poultry, and eggs. Valent U.S.A.'s withdrawal and deletion of certain tolerances were submitted in response to EPA's latest revision (unpublished) to Table II of the Pesticide Assessment Guidelines, Subdivision O (Residue Chemistry) Raw Agricultural and Processed Commodities and Livestock Feeds Derived from Field Crops. With respect to tomatoes, EPA concluded that tomato pomaces (wet and dry) are no longer considered significant animal feedstuffs. Although the latest revisions to the Livestock Feed Table for Subdivision O of the Pesticide Assessment Guidelines have not yet been published, pending petitions will continue to be processed based upon previous regulations, except they will be given the benefit of any appropriate revised or reduced residue data requirements if needed.

No comments were received in response to the notices of filing.

The scientific data submitted in the petitions and other relevant material have been evaluated. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of these tolerances are discussed in detail in related documents published in the Federal Register of April 14, 1993 (58 FR 19357).

A dietary exposure/risk assessment was performed for fenpropathrin using a Reference Dose (RfD) of 0.025 mg/kg/day. The RfD is based on a no-observable-effect level (NOEL) of 2.5 mg/kg/body weight/day (100 ppm) and a uncertainty factor of 100 from a 1-year dog-feeding study that demonstrated tremors in test animals at the lowest effect level. The current estimated dietary exposure for the overall U.S. population and nonnursing infants (less than 1 year old), the subgroup population exposed to the highest risk, is 0.4% and 0.5% of the RfD, respectively. The current action will increase exposure to 4.1% and 3%, respectively. Generally speaking, the Agency has no cause for concern if total residue contribution for published and proposed tolerances is less than the RfD.

The metabolism of the chemical in plants and livestock is adequately understood for this use. Any secondary residues occurring in meat, fat, meat byproducts of cattle, goats, hogs, horses, poultry, sheep and eggs will be covered by the existing tolerances. An adequate

analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration and published in the Pesticide Analytical Manual Vol. II (PAM II).

The Agency issued a conditional registration for fenprothrin for use on cotton with an expiration date of November 15, 1993 (see the Federal Register of April 14, 1993 (58 FR 19357)). The conditional registration was subsequently amended and extended to November 15, 1996 (see the Federal Register dated February 22, 1995 (60 FR 9783)). The registrations were amended and extended to allow time for submission and evaluation of additional environmental effects data. In order to evaluate the effects of the pyrethroids on fish and aquatic organisms and its fate in the environment, additional data were required to be collected and submitted during the period of conditional registration. Such requirements included a sediment bioavailability and toxicity study and a small-plot runoff study that must be submitted to the Agency by July 1, 1996. Due to the conditional status of the registration, tolerances have been established for fenprothrin on a temporary basis, (until November 15, 1997) on cottonseed, meat, fat and meat-byproducts of hogs, horses, cattle, goats, sheep, poultry, eggs, and milk to cover residues expected to be present from use during the period of conditional registration. To be consistent with the conditional registration status of fenprothrin on cotton the Agency is establishing these tolerances with an expiration date of November 15, 1997.

Residues remaining in or on the above commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term of and in accordance with provisions of the conditional registration.

There are currently no actions pending against the continued registration of this chemical. The pesticide is considered useful for the purposes which it is sought and capable of achieving the intended physical or technical effect. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the

Federal Register, file written objections to the regulation and may also request a hearing on those objections.

Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3F4186/R2174] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 3F4186/R2174], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing

Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental Protection,
Administrative practice and procedure,
Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: September 15, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR part 180 is amended as follows:

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

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

2. By amending § 180.466 in the table therein by adding and alphabetically inserting entries for the commodities tomatoes and strawberries, to read as follows:

§ 180.466 Fenpropathrin; tolerances for residues.

Commodity	Parts per million	Expiration date
Strawberries	2.0	Do.
Tomatoes	0.6	Do.

[FR Doc. 95-24004 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 0E3875/R2168; FRL-4976-5]

RIN 2070-AB78

Cyproconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a time-limited tolerance for the fungicide cyproconazole, (2RS,3RS)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1H-1,2,4-triazole-1-yl)butan-2-ol, in or on the imported raw agricultural commodity coffee beans at 0.1 part per million (ppm). Sandoz Agro, Inc., petitioned EPA pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) for this regulation to establish a maximum permissible level for residues of the fungicide.

EFFECTIVE DATE: This regulation becomes effective September 27, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0E3875/R2168], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW.,

Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 0E3875/R2168]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 259, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 9, 1995 (60 FR 40546), EPA issued a proposed rule that gave notice that Sandoz Agro, Inc., 1300 East Touhy Ave., Des Plaines, IL 60018, had petitioned EPA under section 408 of the FFDCA, 21 U.S.C. 346a, to establish a tolerance for residues of the fungicide cyproconazole, (2RS,3RS)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1H-1,2,4-triazole-1-yl)butan-2-ol, in or on the raw agricultural commodity coffee beans at 0.1 part per million (ppm).

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

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 0E3875/R2168] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [0E3875/R2168], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612),

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

List of Subjects in 40 CFR Part 180

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

Dated: September 14, 1995.

Daniel M. Barolo,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. By adding new § 180.485, to read as follows:

§ 180.485 Cyproconazole; tolerances for residues.

A time-limited tolerance is established for residues of the fungicide cyproconazole, (2RS,3RS)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1H-1,2,4-triazole-1-yl)butan-2-ol, in or on the following imported raw agricultural commodity:

Commodity	Parts per million	Expiration date
Coffee beans ¹ ..	0.1	July 1, 1997.

¹There are no U.S. registrations as of August 9, 1995 for use on coffee beans.

[FR Doc. 95-24007 Filed 9-26-95; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 6F3436/R2169; FRL-4976-6]

RIN 2070-AB78

Tralomethrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited tolerances with an expiration date of November 15, 1997,

for the combined residues of the insecticide tralomethrin and its metabolites *cis*-deltamethrin and *trans*-deltamethrin in or on the raw agricultural commodities (RACs) leaf lettuce, head lettuce, broccoli, and sunflowers. The tolerances establish the maximum permissible levels for residues of the insecticide in or on the commodities. The AgrEvo USA Co. requested these tolerances pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective September 27, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 6F3436/R2169], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 6F3436/R2169]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Environmental Protection

Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Second Floor, CM #2, 1900 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 16, 1995 (60 FR 42495), EPA issued a proposed rule that gave notice that AgrEvo USA Co. (formerly Roussel Uclaf of Paris, France; U.S. Agent: Hoechst-Roussel Agri-Vet Co.), Little Falls Center One, 2711 Centerville Rd., Wilmington, DE 19808, had submitted a pesticide petition (PP 6F3436) to EPA proposing to amend 40 CFR part 180 by establishing a regulation pursuant to the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a and 371), to establish tolerances for residues of the pyrethroid tralomethrin [(S)-*alpha*-cyano-3-phenoxybenzyl-(1R,3S)-2,2-dimethyl-3-[(RS)-1,2,2,2-tetrabromoethyl]-cyclopropane carboxylate] and its metabolites *cis*-deltamethrin [(S)-*alpha*-cyano-3-phenoxybenzyl(1R,3R)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] and *trans*-deltamethrin [(S)-*alpha*-cyano-3-phenoxybenzyl (1S,3R)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] in or on the following RACs: broccoli at 0.50 part per million (ppm), leaf lettuce at 3.0 ppm, head lettuce at 1.0 ppm, and sunflower seed at 0.05 ppm.

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

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a

statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 6F3436/R2169] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 6F3436/R2169], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address

in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: September 18, 1995.

Peter Caulkins,
Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.422 by revising the table therein, to read as follows:

§ 180.422 Tralomethrin; tolerances for residues.

* * * * *

Commodity	Parts per million
Broccoli	0.50
Cottonseed	0.02
Lettuce, head	1.00
Lettuce, leaf	3.00
Soybeans	0.05
Sunflower seed	0.05

[FR Doc. 95-24008 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180, 185, and 186

[OPP-300328A; FRL-4946-7]

RIN No. 2070-AB78

Pesticide Chemicals; Various Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revokes tolerances and food and feed additive regulations established for residues of 16 pesticide chemicals in or on certain raw agricultural commodities (RACs), processed foods, and animal feeds. A tolerance for the herbicide barban is changed to a time-limited tolerance, with an expiration date of January 1, 1998. EPA is initiating this action for those pesticides which have no food use registrations. The applicable registrations for these pesticides have been canceled because of nonpayment of maintenance fees or by registrant request.

EFFECTIVE DATE: This regulation becomes effective September 27, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number [OPP-300328A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA, Headquarters Accounting Operations Branch, OPP (tolerance fees), P.O.Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and should also be submitted to: Public Response and Program Resources Branch, Field Operations

Division (7605C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver objections and hearing requests filed with the Hearing Clerk to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300328A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Owen F. Beeder, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station #1, Westfield Building, 2800 Jefferson Davis Highway, Arlington, VA, (703)-308-8351; e-mail: beeder.owen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 14, 1994 (59 FR 17754), EPA issued a proposal to revoke all tolerances and food additive and feed additive regulations ("tolerances") established under sections 408 and 409 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a and 348) for residues of the herbicides tributylphosphorotrithioite, 2-chloroallyldiethyldithiocarbamate, norea, barban, sodium trichloroacetate, dinitramine, dipropetryn and bifenox; the plant regulators 1,2,4,5-tetrachloro-3-nitrobenzene and cycloheximide; the insecticides dimethyl phosphate of (*alpha*)-methylbenzyl 3-hydroxy-*cis*-crotonate, pirimiphos-ethyl, 2-chloro-1-(2,4-dichlorophenyl) vinyl diethyl phosphate, phenothiazine, *O,O*-dimethyl *O-p*-(dimethylsulfamoyl) phenyl phosphorothioate including its oxygen analog, and flucythrinate; and the fungicide hexachlorophene in or on raw agricultural commodities (RACs), processed foods, and feeds. EPA initiated this action because all

registered uses of these pesticide chemicals in or on RACs and processed foods and feeds have been canceled. The registrations for these pesticide chemicals were canceled because the registrant failed to pay the required maintenance fee, or the registrant voluntarily canceled all registered uses of the pesticide.

Following a review of comments received in response to this tolerance revocation proposal, the Agency has determined to proceed with the immediate revocation of the tolerances and food additive and feed additive regulations for all of the pesticides listed above with the exception of barban. In response to a comment, EPA has decided to delay the revocation of barban until January 1, 1998. EPA is effecting this delayed revocation by including an expiration date in the tolerance.

Two comments were received in response to the proposal in the Federal Register (59 FR 17754, April 14, 1994). One comment received from United Agri Products (UAP) on barban requested that the proposed tolerance revocation for barban (40 CFR 180.268) be delayed because of the adverse impact that would result to owners of existing stocks of barban and treated commodities if the revocation were to become final at this time. The Agency was advised of the existence of approximately 1,700 gallons of a formulation containing 2 lbs. of barban per gallon at UAP and of approximately 3,000 gallons at the dealer level. UAP requested that the Agency allow the existing stocks to be used over a 2-year period and proposed that January 1, 1998, be the earliest effective date for revocation of the tolerance. EPA agrees and is inserting an expiration date of January 1, 1998, in the barban (4-chloro-2-butynyl *m*-chlorocarbaniate) tolerance regulation.

The other comment was received from Remel on cycloheximide and expressed concern that the revocation of the tolerance for cycloheximide would have an adverse effect on the import of cycloheximide into the United States for use as an ingredient in biological culture media. The Agency believes that the revocation of the tolerance on cycloheximide would not prevent the import of this chemical for a nonfood use. Therefore, this comment does not affect the revocation of the tolerance.

Therefore, based on the information considered by the Agency and discussed in detail in the April 14, 1994 proposal and in this final rule, the Agency is hereby revoking the tolerances listed below in 40 CFR parts 180, 185, and 186.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [OPP-300328A] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [OPP-300328A], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Executive Order 12866

As explained in the proposal published June 30, 1992, the Agency has determined, pursuant to the requirements of Executive Order 12866, that the revocation of these tolerances is not a "major" regulatory action. The reasons for this conclusion are described in the April 14, 1994 proposed rule.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the April 14, 1994 proposed rule.

List of Subjects in 40 CFR Parts 180, 185, and 186

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

Dated: September 8, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of
Pesticide Programs.

Therefore, 40 CFR parts 180, 185, and 186 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

§ 180.186 [Removed]

b. By removing § 180.186 *Tributylphosphorotrithioite; tolerances for residues.*

§ 180.203 [Removed]

c. By removing § 180.203 *1,2,4,5-Tetrachloro-3-nitrobenzene; tolerances for residues.*

§ 180.233 [Removed]

d. By removing § 180.233 *O,O-Dimethyl O-p-(dimethylsulfamoyl) phenyl phosphorothioate including its oxygen analog; tolerances for residues.*

§ 180.247 [Removed]

e. By removing § 180.247 *2-Chloroallyldiethyldithiocarbamate; tolerances for residues.*

§ 180.260 [Removed]

f. By removing § 180.260 *Norea; tolerances for residues.*

g. By revising § 180.268, to read as follows:

§ 180.268 *Barban; tolerances for residues.*

A time-limited tolerance, with an expiration date of January 1, 1998, is established for negligible residues of the herbicide barban (4-chloro-2-butynyl *m*-chlorocarbamate) in or on the raw agricultural commodities barley, flax seed, lentils, mustard seed, peas, safflower seed, soybeans, sugar beets, sugar beet tops, sunflower seed, and wheat.

§ 180.280 [Removed]

h. By removing § 180.280 *Dimethyl phosphate of alpha-methylbenzyl-3-hydroxy-cis-crotonate; tolerances for residues.*

§ 180.302 [Removed]

i. By removing § 180.302 *Hexachlorophene; tolerances for residues.*

§ 180.308 [Removed]

j. By removing § 180.308 *Pirimiphos-ethyl; tolerances for residues.*

§ 180.310 [Removed]

k. By removing § 180.310 *Sodium trichloroacetate; tolerances for residues.*

§ 180.319 [Amended]

l. By amending § 180.319 *Interim tolerances* by removing the entry for phenothiazine from the table of pesticide chemicals therein.

§ 180.322 [Removed]

m. By removing § 180.322 *2-Chloro-1-(2,4-dichlorophenyl) vinyl diethyl phosphate; tolerances for residues.*

§ 180.327 [Removed]

n. By removing § 180.327 *Dinitramine; tolerances for residues.*

§ 180.329 [Removed]

o. By removing § 180.329 *Dipropetryn; tolerances for residues*.

§ 180.336 [Removed]

p. By removing § 180.336 *Cycloheximide; tolerances for residues*.

§ 180.351 [Removed]

q. By removing § 180.351 *Bifenox; tolerances for residues*.

§ 180.400 [Removed]

r. By removing § 180.400 *Flucythrinate; tolerances for residues*.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.3300 [Removed]

b. By removing § 185.3300 *Flucythrinate; tolerances for residues*.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 186.3300 [Removed]

b. By removing § 186.3300 *Flucythrinate*.

[FR Doc. 95-23711 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 271

[FRL-5302-8]

North Carolina; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: North Carolina has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). North Carolina's revisions consist of the provisions contained in rules promulgated between July 1, 1992, and June 30, 1993, otherwise known as RCRA Cluster III. These requirements are listed in Supplementary Information, section B of this document. The Environmental Protection Agency (EPA) has reviewed North Carolina's application and has made a decision, subject to public review and comment, that North Carolina's hazardous waste

program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve North Carolina's hazardous waste program revisions. North Carolina's application for program revisions is available for public review and comment.

DATES: Final authorization for North Carolina's program revisions shall be effective November 27, 1995, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on North Carolina's program revision application must be received by the close of business, October 27, 1995.

ADDRESSES: Copies of North Carolina's program revision application are available during normal business hours at the following addresses for inspection and copying: North Carolina Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687; U.S. EPA Region 4, Library, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347-4216. Written comments should be sent to Al Hanke at the address listed below.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State programs Section, Waste programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347-2234.

SUPPLEMENTARY INFORMATION:**A. Background**

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste program are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes

occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 124, 260 through 266, 268, 270, and 279.

B. North Carolina

North Carolina initially received final authorization for its base RCRA program effective on December 31, 1984, (49 FR 48694). North Carolina most recently received final authorization effective January 9, 1995, for HSWA Cluster I, including Corrective Action (59 FR 56000, November 10, 1994). Today, North Carolina is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed North Carolina's application and has made an immediate final decision that North Carolina's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to North Carolina. The public may submit written comments on EPA's immediate final decision up until October 27, 1995.

Copies of North Carolina's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of North Carolina's program revisions shall become effective November 27, 1995, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either: (1) a withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

North Carolina is today seeking authority to administer the following Federal requirements promulgated between July 1, 1992, and June 30, 1993, for the requirements of RCRA Cluster III.

Federal requirement	HSWA or FR reference	Promulga- tion	State authority
Checklist 107: Used Oil Filter Exclusion Corrections	57 FR 29220	7/1/92	NCGS 130A-294(c)(1) NCGS 130A-294(c)(15) NCGS 150B-21.6 15A NCAC 13A.0006(a)
Checklist 108: Toxicity Characteristics Revisions	57 FR 30657	7/10/92	NCGS 130A-294(c)(1) NCGS 130A-294(c)(7) NCGS 130A-294(c)(8) NCGS 130A-294(c)(15) NCGS 150B-21.6 15A NCAC 13A.0006(a)
Checklist 109: Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris.	57 FR 37194	8/18/92	NCGS 130A-294(c)(1) NCGS 130A-294(c)(2) NCGS 130A-294(c)(3) NCGS 130A-294(c)(4) NCGS 130A-294(c)(7) NCGS 130A-294(c)(10) NCGS 130A-294(c)(14) NCGS 130A-294(c)(15) NCGS 150B-21.6 15A NCAC 13A.0002(b) 15A NCAC 13A.0006(a) 15A NCAC 13A.0007(c) 15A NCAC 13A.0009(h) 15A NCAC 13A.0009(i) 15A NCAC 13A.0009(x) 15A NCAC 13A.0010(g) 15A NCAC 13A.0010(h) 15A NCAC 13A.0010(k) 15A NCAC 13A.0010(u) 15A NCAC 13A.0012(a) 15A NCAC 13A.0012(b) 15A NCAC 13A.0012(c) 15A NCAC 13A.0012(d) 15A NCAC 13A.0012(e) 15A NCAC 13A.0013(b) 15A NCAC 13A.0013(g) 15A NCAC 13A.0013(j)
Checklist 110: Coke-By-Products Listing	57 FR 37284	8/18/92	NCGS 130A-294(c)(1) NCGS 130A-294(c)(15) NCGS 150B-21.6 15A NCAC 13A.0006(a) 15A NCAC 13A.0006(d) 15A NCAC 13A.0006(e)
Checklist 111: Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment III.	57 FR 38558	8/25/92	NCGS 130A-294(c)(1) NCGS 130A-294(c)(15) NCGS 150B-21.6 15A NCAC 13A.0002(b) 15A NCAC 13A.0003(a) 15A NCAC 13A.0006(a) 15A NCAC 13A.0009(b) 15A NCAC 13A.0010(a) 15A NCAC 13A.0011(f) 15A NCAC 13A.0011(g)
Checklist 112: Recycled Used Oil Management Standards	57 FR 41566	9/10/92	NCGS 130A-294(b) NCGS 130A-294(c)(1) NCGS 130A-294(c)(15) 15A NCAC 13A.0002(b) 15A NCAC 13A.0006(a) 15A NCAC 13A.0009(b) 15A NCAC 13A.0010(a) 15A NCAC 13A.0011(c) 15A NCAC 13A.0011(f) 15A NCAC 13A.0018(a)-(i)
Checklist 113: Consolidated Liability Requirements	53 FR 33938 56 FR 30200 57 FR 42832	9/1/88 7/1/91 9/16/92	NCGS 130A-294(c)(7) NCGS 130A-294(c)(10) NCGS 130A-294(c)(15) NCGS 150B-21.6 15A NCAC 13A.0009(i) 15A NCAC 13A.0010(h)
Checklist 114:	57 FR 44999	9/30/92	NCGS 130A-294(c)(1)

Federal requirement	HSWA or FR reference	Promulgation	State authority
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment IV.			NCGS 130A-294(c)(7)
Checklist 115: Chlorinated Toluenes Production Waste Listing	57 FR 47376	10/15/92 NCGS 130A-294(c)(15)	NCGS 130A-294(c)(15) NCGS 150B-16 NCGS 150B-21.6 15A NCAC 13A.0011(f) 15A NCAC 13A.0011(g) NCGS 130A-294(c)(1) NCGS 150B-21.6
Checklist 116: Hazardous Soil Case-by-Case Capacity Variance	57 FR 47772	10/20/92	15A NCAC 13A.0006(d) 15A NCAC 13A.0006(e) NCGS 130A-294(c)(7) NCGS 130A-294(c)(15) NCGS 150B-21.6
Checklist 117A: Reissuance of the "Mixture" and "Derived-From" Rules	57 FR 7628 57 FR 23062 57 FR 49278	3/3/92 6/1/92 10/20/92	15 NCAC 13A.0012(b) NCGS 130A-294(c)(1) NCGS 130A-294(c)(15) NCGS 150B-21.6
Checklist 117B: Toxicity Characteristic Amendment	57 FR 23062	6/1/92	15A NCAC 13A.0006(a) NCGS 130A-294(c)(1) NCGS 130A-294(c)(7) NCGS 130A-294(c)(8) NCGS 130A-294(c)(15) NCGS 150B-21.6
Checklist 118: Liquids in Landfills II.	57 FR 54452	11/18/92	15A NCAC 13A.0006(a) NCGS 130A-294(c)(1) NCGS 130A-294(c)(7) NCGS 130A-294(c)(15) NCGS 150A-21.6 15A NCAC 13A.0002(b) 15A NCAC 13A.0009(c) 15A NCAC 13A.0009(o) 15A NCAC 13A.0010(b) 15A NCAC 13A.0010(n)
Checklist 119: Toxicity Characteristic Revision	57 FR 55114 58 FR 6854	11/24/92 2/2/93	NCGS 130A-294(c)(1) NCGS 130A-294(c)(15) NCGS 150B-21.6
Checklist 120: Wood Preserving; Revisions to Listing and Technical Requirements	57 FR 61492	12/24/92	15A NCAC 13A.0006(e) NCGS 130A-294(c)(1) NCGS 130A-294(c)(15) NCGS 150B-21.6 15A NCAC 13A.0006(d) 15A NCAC 13A.0006(t) 15A NCAC 13A.0006(r)
Checklist 121: Corrective Action Management Units and Temporary Units	58 FR 33341	2/16/93	NCGS 130A-294(c)(1) NCGS 130A-294(c)(7) NCGS 130A-294(c)(14) NCGS 130A-294(c)(15) NCGS 150B-21.6 15A NCAC 13A.0002(b) 15A NCAC 13A.0009(b) 15A NCAC 13A.0009(g) 15A NCAC 13A.0009(s) 15A NCAC 13A.0010(a) 15A NCAC 13A.0012(a) 15A NCAC 13A.0013(a) 15A NCAC 13A.0013(g)
Checklist 122: Recycled Used Oil Management Standards; Technical Amendments and Corrections I.	58 FR 26420	5/3/93	NCGS 130A-294(b) NCGS 130A-294(c)(1) NCGS 130A-294(c)(15) NCGS 130A-294(c)(15) NCGS 150B-21.6 15A NCAC 13A.0006(a) 15A NCAC 13A.0009(b) 15A NCAC 13A.0010(a) 15A NCAC 13A.0018(a) 15A NCAC 13A.0018(b) 15A NCAC 13A.0018(c) 15A NCAC 13A.0018(e)

Federal requirement	HSWA or FR reference	Promulgation	State authority
Checklist 123: Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance.	58 FR 28506	5/14/93	15A NCAC 13A.0018(f) 15A NCAC 13A.0018(g) NCGS 130A-294(c)(7) NCGS 130A-294(c)(15)
Checklist 124: Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated.	58 FR 29860	5/24/93	NCGS 150B-21.6 15A NCAC 13A.0012(b) NCGS 130A-294(c)(7) NCGS 130A-294(c)(15) NCGS 150B-21.6 15A NCAC 13A.0012(b)

C. Decision

I conclude that North Carolina's application for these program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, North Carolina is granted final authorization to operate its hazardous waste program as revised.

North Carolina now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. North Carolina also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of North Carolina's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping

requirements, Water pollution control, Water supply.

Authority: This document is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: September 15, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95-23845 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 372

[OPPTS-400082C; FRL-4977-5]

Toxic Chemical Release Reporting; Community Right-to-Know; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: This document corrects one typographical error in the technical amendment published in the Federal Register of March 10, 1995, in which EPA corrected several other listing errors from a previous Federal Register document (November 30, 1994) under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986. This typographical error appeared in the Chemical Abstracts Registry (CAS) number for one of the chemicals listed in the regulatory text.

EFFECTIVE DATE: This document is effective September 27, 1995.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Project Manager, 202-260-9592, e-mail:

doa.maria@epamail.epa.gov, for specific information on this document. For general information on EPCRA contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 800-

535-0202, Toll free TDD: 800-553-7672.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 10, 1995 (60 FR 13048), EPA issued a technical amendment to the final rule adding chemicals to the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 list of toxic chemicals. In this document, EPA corrected the spelling of 4-methyldiphenylmethane-3,4-diisocyanate in the regulatory text from the November 30, 1994 final rule (59 FR 61484). However, in the March 10, 1995 technical amendment, the CAS number for 4-methyldiphenylmethane-3,4-diisocyanate was published incorrectly as "075790-74-0" in the regulatory text, § 372.65(c), page 13048, second column of the table, second entry. The correct CAS number is "075790-84-0." The CAS number for this chemical was published correctly in the November 30, 1994 final rule and only appeared incorrectly in the March 10, 1995 technical amendment (60 FR 13047). This document corrects the error in the previous technical amendment.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: September 21, 1995.

John Melone,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

2. In § 372.65(c), by revising under the category Diisocyanates, the entry for 4-methyldiphenylmethane-3,4-diisocyanate to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

(c) * * *

Category Name	Effective Date
* * * * *	
Diisocyanates 075790-84-0 4-Methyldiphenylmethane-3,4-diisocyanate	1/1/95
* * * * *	

[FR Doc. 95-24002 Filed 9-26-95; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 350

[Docket No. R-162]

RIN 2133-AB21

Seamen's Service Awards

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending its regulations prescribing procedures for obtaining seamen's service awards to conform to the provisions of the Merchant Marine Decorations and Medals Act of 1988.

EFFECTIVE DATE: September 27, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia Thomas, Maritime Industry Analyst, Office of Maritime Labor, Training and Safety, 400 Seventh Street SW, Room 7302, Washington, DC 20590, Telephone: (202) 366-5755.

SUPPLEMENTARY INFORMATION: Public Law 100-324, the Merchant Marine Decorations and Medals Act of 1988, 46 App. U.S.C. 2001 *et seq.*, ("The Act"), recognized the service of United States merchant seamen during times of peace, war and national emergency by expanding the authority of the Secretary of Transportation (Secretary), delegated to the Maritime Administrator (MARAD), to issue medals, awards and decorations to merchant seamen who performed such service. It repealed the Act of July 24, 1956, commonly referred to as the Merchant Marine Medals Act of 1956. That statute had authorized medals and decorations for outstanding and meritorious conduct and service in the U.S. merchant marine after June 30, 1950. The regulations of MARAD, at 46 CFR part 350, are being revised to reflect

this change in the law and to implement the Act by specifying the medals, awards and decorations that the Secretary may issue and by establishing the procedure for determining eligibility to receive these indicia of recognition for service in the U.S. Merchant Marine.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking is not considered to be an economically significant regulatory action under section 3(f) of E.O. 12866, and is not considered to be a significant rule under the Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Accordingly, it was not reviewed by the Office of Management and Budget.

A full regulatory evaluation is not required because the rule has no mandatory effects and imposes no regulatory costs.

MARAD has determined that this rulemaking presents no substantive issue which it could reasonably expect would produce meaningful public comment since it merely prescribes a procedure for obtaining seamen's service to implement statutory authority for their issuance by the Secretary of Transportation. Accordingly, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(c) and (d), MARAD finds that good cause exists to publish this as a final rule, without opportunity for public comment, and to make it effective on the date of publication.

Federalism

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

Regulatory Flexibility Act

The Maritime Administration certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains an information collection that has been approved by OMB under 5 CFR part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). Approval number 2133-0506 has been assigned to the collection requirement.

List of Subjects in 46 CFR Part 350

Decorations, medals, awards; Seamen.

Accordingly, 46 CFR part 350 is revised to read as follows:

PART 350—SEAMEN'S SERVICE AWARDS

- Sec. 350.1 Purpose.
- 350.2 Special medals and awards.
- 350.3 Other original recognition of service.
- 350.4 Eligibility for awards.
- 350.5 Replacement decorations.
- 350.6 Unauthorized sale, manufacture, possession or display.
- 350.7 Special certificate of recognition.

Authority: 46 App. USC 2001 *et seq.*, 49 CFR 1.66.

§ 350.1 Purpose.

The purpose of this part is to prescribe regulations to implement the Merchant Marine Decorations and Medals Act of 1988, 46 App. USC 2001, *et seq.*, to authorize the issue of decorations, medals, and other recognition for service in the U.S. merchant marine, and for other purposes, and to provide for the replacement of awards previously

issued for service in the United States Merchant Marine under prior law.

§ 350.2 Special medals and awards.

The Secretary of Transportation, acting through the Maritime Administrator, may award decorations and medals of appropriate design for individual acts or service in the U.S. Merchant Marine.

(a) *Medals, awards.* The Secretary may award the Distinguished Service Medal, Meritorious Service Medal and Gallant Ship Unit Citation Award, as prescribed under sections 3 and 4 of Pub. L. 100-324.

(b) *Nominations.* Nominations for these awards shall be reviewed and submitted by the MARAD Merchant Marine Awards Committee to the Maritime Administrator for approval.

(c) *Inquiries.* Direct all inquiries concerning eligibility and procedures for the issuance of these medals to Chairperson, Merchant Marine Awards Committee, Office of Maritime Labor, Training and Safety, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590.

§ 350.3 Other original recognition of service.

Under the provision of Pub. L. 100-324, the Administrator has the authority to review original applications for the following decorations:

(a) *World War II Service.*

(1) *Merchant Marine Emblem,* awarded to merchant seamen for service during World War II from the period December 7, 1941 to July 25, 1947;

(2) *Victory Medal,* awarded to merchant seamen who served as members of the crews of ships for 30 days or more during the period December 7, 1941 to September 3, 1945;

(3) *Honorable Service Button,* awarded to merchant seamen who served as members of the crews of ships for 30 days or more during the period December 7, 1941 to September 3, 1945;

(4) *Mariner's Medal,* awarded to merchant seamen who, while serving on a ship from December 7, 1941 to July 25, 1947, were wounded or suffered physical injury as a result of an act of an enemy of the United States;

(5) *Merchant Marine Combat Bar,* awarded to merchant seamen who served on a ship which, at the time of such service, was attacked or damaged by an instrumentality of war, from December 7, 1941 to July 25, 1947. A star is attached if the seaman was forced to abandon ship. For each additional abandonment, a star is added;

(6) *Merchant Marine Defense Bar and Medal,* awarded to merchant seamen who served on merchant vessels

between September 8, 1939 to December 7, 1941;

(7) *Atlantic War Zone Bar and Medal,* awarded to merchant seamen who served in the Atlantic War Zone, including the North Atlantic, South Atlantic, Gulf of Mexico, Caribbean, Barents Sea, and the Greenland Sea, between December 7, 1941 and November 8, 1945;

(8) *Mediterranean-Middle East War Zone Bar and Medal,* awarded to merchant seamen who served in the zone including the Mediterranean Sea, Red Sea, Arabian Sea, and Indian Ocean west of 80 degrees east longitude, between December 7, 1941 and November 8, 1945;

(9) *Pacific War Zone Bar and Medal,* awarded to merchant seamen who served in the Pacific War Zone, including the North Pacific, South Pacific, and the Indian Ocean east of 80 degrees east longitude, during the period December 7, 1941 to March 2, 1946;

(10) *Presidential Testimonial Letter,* signed by President Harry S Truman, to all active merchant seamen who sailed during World War II;

(11) *Philippine Defense Ribbon,* awarded to merchant seamen who served as members of crews of ships in Philippine waters, for not less than 30 days, from December 8, 1941 to June 15, 1942;

(12) *Philippine Liberation Ribbon,* awarded to merchant seamen who served as members of crews of ships in Philippine Waters for not less than 30 days from October 17, 1944 to September 3, 1945;

(b) *Korean Conflict Service.* Korean Service bar and medal for merchant seamen who served in waters adjacent to Korea during the Korean Conflict, between June 30, 1950 and September 30, 1953.

(c) *Service in the Vietnam Conflict.* Vietnam Service bar and medal awarded to merchant seamen who served in waters adjacent to Vietnam between July 4, 1965 and August 15, 1973.

(d) *Operations DESERT SHIELD AND DESERT STORM.* The Merchant Marine Expeditionary Award, authorized on May 22, 1991, to those American merchant seamen who directly participated from August 2, 1990 to December 31, 1991 in the war zone designated by Executive Order 12744 as "the Persian Gulf, Red Sea, Gulf of Oman, Gulf of Aden, and that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude."

§ 350.4 Eligibility for awards.

(a) *World War II awards.* Submission of the original applications for World War II merchant marine service awards to the Maritime Administration shall include:

(1) A copy of seaman's DD Form 214, "Certificate of Release or Discharge from Active Duty" with continuation sheet, if provided. The DD Form 214 is required to verify merchant marine service on vessels during World War II. The application and instructions for applying for this document may be obtained from the Maritime Administration, Office of Maritime Labor, Training and Safety. If a seaman was not eligible for this discharge, the Maritime Administration will accept official documents, including ships' discharges;

(2) A summary of World War II sailing history to include—theater(s) of operation and ports of discharge; and

(3) Book number or United States Maritime Service (USMS) number and World War II home address.

(b) *Korean and Vietnam Awards.* Applicants for the Korean Service bar and medal, Vietnam Service bar and medal and the Merchant Marine Expeditionary Award shall provide copies of the ship(s) discharge(s) for the appropriate voyages. All awardees will be given an appropriate certification card or certificate for their awards.

(c) The information establishing eligibility, along with a written request, shall be directed to Office of Maritime Labor, Training & Safety, Maritime Administration, Washington, DC 20590, Attention: Merchant Marine Awards.

(d) MARAD has entered into agreements with vendors to supply the medals and decorations to eligible mariners at cost. After reviewing applications, MARAD will instruct eligible mariners to submit their orders for the medals and decorations to the following vendors.

OWNCO Marketing, 1705 SW. Taylor Street, Portland, OR 97205, (503) 226-3841
PIECES OF HISTORY, P.O. Box 4470, Cave Creek, AZ 85331, (602) 488-1377, (602) 488-1316 (FAX)

THE QUARTERMASTER UNIFORM COMPANY, P.O. Box 829, 750 Long Beach Blvd., Long Beach, CA 90801-0829, 800-444-8643 Toll Free 7:00 AM—7:00 PM

SHIP'S SERVICE STORE, United States Merchant Marine Academy, Kings Point, NY 11024, (516) 773-5000 ext. 5229
VANGUARD MILITARY EQUIPMENT CORP., 41-45 39th Street, Sunnyside, NY 11104, Toll Free 1-800-221-1264

VANGUARD INDUSTRIES WEST, 6155 Conte Del Cedro, Carlsbad, CA 92009, Toll Free 1-800-433-1334

PAST GLORY COMPANY, P.O. Box 4470, Alexandria, VA 22302, (703) 491-7544

(e) Compliance with the procedure set forth in paragraph (a) of this section is required when purchasing a replacement. Certification cards need not be presented to the authorized vendors in order to purchase the bars. The possession or display, including the wearing of any Merchant Marine decoration by other than authorized personnel is prohibited by law and subject to fine and imprisonment.

§ 350.5 Replacement decoration.

The following decorations that have been previously issued may be replaced at cost upon written request made to the Office of Maritime Labor, Training and Safety:

- (a) Distinguished Service Medal.
- (b) Meritorious Service Medal.
- (c) Mariner's Medal.
- (d) Gallant Ship Unit Citation Bar.
- (e) Presidential Testimonial Letter (no cost for replacement).

§ 350.6 Unauthorized sale, manufacture, possession or display.

The sale, manufacture, possession or display of any Merchant Marine decoration, or colorable imitations thereof, by anyone other than an authorized vendor is prohibited by law and subject to fine and imprisonment.

§ 350.7 Special certificate of recognition.

The Maritime Administration is authorized to issue a special certificate of recognition of service to an individual, or the personal representative of an individual, whose service in the U.S. Merchant Marine has been determined to be active duty under an earlier Act of Congress (Pub. L. 95-202). The issuance of this certificate to any individual does not entitle that individual to any rights, privileges or benefits under any law of the United States.

By order of the Maritime Administrator.

Dated: September 22, 1995.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 95-23987 Filed 9-26-95; 8:45 am]

BILLING CODE 4910-81-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94-85; RM-8482]

Radio Broadcasting Services; Falmouth and Mashpee, MA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 266A from Falmouth, Massachusetts, to Mashpee, Massachusetts, and modifies the license for Station WUNZ to specify Mashpee as its community of license in response to a petition filed by Leapfrog Radio Partnership. See 59 FR 39317, August 2, 1994. The coordinates for Channel 266A at Mashpee are 41-34-45 and 70-30-45. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 94-85, adopted September 15, 1995, and released September 22, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's 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 Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

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

Part 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by removing Falmouth, Channel 266A and adding Mashpee, Channel 266A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95-23992 Filed 9-26-95; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 94-117; RM-8520]

Radio Broadcasting Services; Bulls Gap, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Bulls Gap Broadcasting, allots Channel 264A to Bulls Gap, Tennessee, as the community's first local aural transmission service. See 59 FR 51398, October 11, 1994. Channel 264A can be allotted to Bulls Gap, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.2 kilometers (1.4 miles) west in order to avoid a short-spacing conflict with the licensed operation of Station WZJS(FM), Channel 264A, Banner Elk, North Carolina. The coordinates for Channel 264A at Bulls Gap are 36-15-23 and 83-06-34. With this action, this proceeding is terminated.

DATES: Effective November 6, 1995, 1995. The window period for filing applications will open on November 6, 1995, and close on December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94-117, adopted September 15, 1995, and released September 22, 1995. 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, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Bulls Gap, Channel 264A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95-23993 Filed 9-26-95; 8:45 am]

BILLING CODE 6712-01-F

Proposed Rules

Federal Register

Vol. 60, No. 187

Wednesday, September 27, 1995

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

Food and Consumer Service

7 CFR Parts 210 and 225

RIN 0584-ACO4

Removal of the "Cheese Alternate Products" Specifications From the National School Lunch Program

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule seeks comment on the proposed elimination of specifications governing the use of "Cheese Alternate Products" in the National School Lunch Program. The removal of these specifications should enable cheese substitute manufacturers more freedom in the production of this type of product while maintaining program nutrition standards through reliance on existing Food and Drug Administration rules.

DATES: To be assured of consideration, comments must be postmarked on or before November 13, 1995.

ADDRESSES: Ms. Marion Hinners, Section Head, Food Science and Nutrition Section, Technical Assistance Branch, Nutrition and Technical Services Division, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Ms. Marion Hinners, Section Head, Food Science and Nutrition Section, Technical Assistance Branch, Nutrition and Technical Services Division, USDA, (703) 305-2556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Consumer Service has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. There are currently fewer than ten companies participating in the Child Nutrition Programs (CNPs) affected by this regulation. In addition, the removal of this regulation is expected to reduce the regulatory burden of all companies producing a cheese alternate type product and allow the use of a wider variety of products than currently can be used in the CNPs.

Category of Federal Domestic Assistance

The National School Lunch Program and the Summer Food Service Program are listed in the Catalog of Federal Domestic Assistance under No. 10.555 and 10.559, respectively, and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule related notice at 48 FR 29112, June 24, 1983.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect unless specified in the **DATES** section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of the provisions, all applicable administrative procedures must be exhausted.

Information Collection

This proposed rule contains no new information collection requirements which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Background

Cheese alternates are cheese substitutes that are used primarily as economical replacements for natural or processed cheese in the National School Lunch Program (NSLP). Cheese alternates are a class of products required to be made from conventional ingredients which must meet nutritional and physical specifications set forth in the NSLP regulations in 7 CFR Part 210, Appendix A—Alternate Foods for Meals (Appendix A to Part 210) in order to be used as a food component contributing to the NSLP meal patterns.

On August 29, 1974, cheese alternate requirements were added to Appendix A for both the NSLP (Part 210) and the Summer Food Service Program (SFSP) (Part 225) regulations. They set forth the specifications for use of cheese alternates to meet the meal pattern requirements for meat/meat alternate. Subsequent changes in SFSP regulations removed these specifications for using cheese alternates to meet the program's meal patterns. The remaining reference to cheese alternates in the SFSP regulations at 225.16(f)(3) was left in place as an oversight. This rule would delete any reference to cheese alternate products in the SFSP by removing the existing reference at 225.16(f)(3).

The cheese alternates were originally used in the NSLP and SFSP as a less expensive means of providing additional cheese type products which are nutritious and very popular with program participants. An additional factor in favor of using cheese alternates was the Department's belief that if natural cheese became scarce, or prohibitively expensive, the use of cheese alternates could significantly reduce program costs. By including specifications in the regulations governing the use of cheese alternates, the Department ensured that program nutritional requirements would be met.

The cheese alternate requirements restrict the protein in cheese alternates to animal protein and state how a cheese alternate may be used in the NSLP. Cheese alternates are required to be made from conventional ingredients and must be equivalent to natural cheese in all major nutrients found in natural and/or process cheese, including the quality and quantity of protein. The Department arrived at the nutrient specifications by averaging the known

nutrients found in a sampling of natural and process cheeses.

After the cheese alternate requirements were published in 1974, the Food and Drug Administration (FDA) added substitute and imitation products to its Food Labeling regulations (21 CFR 101.3(e)). In order for a product to be labeled a substitute, under current FDA regulations, a product must not be "nutritionally inferior to the food for which it substitutes. * * *" This FDA rule has many of the same requirements for cheese substitutes as the current NSLP cheese alternate requirements. As previously stated, the nutritional profile in the cheese alternate requirements was determined by averaging known nutrients found in natural and process cheeses.

Because cheese substitutes are not nutritionally inferior to the cheese for which they substitute, the Food and Consumer Service (FCS) would add cheese substitutes to the Food Buying Guide for Child Nutrition Programs (FBG), Program Aid number 1331, if this rulemaking is finalized as proposed. The FBG is the reference employed by schools and FCS to determine if meal components are reimbursable. CNP nutritional standards would not be affected as the FDA rule for substitutes is actually more specific than current FCS cheese alternate standards in that each cheese substitute must meet the specific nutritional profile of the cheese for which it is substituting. It is the intention of FCS to add cheese substitutes to the FBG with a 1:1 credit. Thus, a cheese substitute could contribute to the meal pattern in the same way as natural or process cheese currently does.

As part of the nutrition labeling regulations, FDA has updated 21 CFR 101.3(e)(4)(i), "Identity labeling of foods in packaged form," to state that nutritional inferiority "does not include a reduction in the caloric or fat content. * * *" The FDA regulation, then, allows for a food product, even a reduced or lowfat version, to be considered a substitute for another if it is not nutritionally inferior. The cheese alternate requirements do not allow for these reductions and in fact require a cheese alternate to contain a minimum of 21% fat. This minimum fat requirement is inconsistent with FCS objectives to assist food service professionals to offer menus consistent with the "Dietary Guidelines for Americans," jointly published by the Departments of Agriculture and Health and Human Services.

Two additional specifications for use of cheese alternate products as meat

alternate products in NSLP would be removed by eliminating the existing FCS requirements in Appendix A to Part 210. The first is the requirement that cheese alternate products be combined with at least 50% natural or process cheese. This requirement was originally incorporated to keep the use of alternate foods limited to a maximum of 50% of the meat/meat alternate component. Under this proposed rule, cheese substitutes may be used instead of the blend of cheese and cheese alternates currently required to satisfy the meat/meat alternate component of a reimbursable meal. FCS does not believe that cheese substitutes need to be limited to 50% of the meat alternate portion of the meal, since the "not nutritionally inferior" requirement contained in FDA's food substitute regulation will assure that cheese substitutes are equivalent to cheese in all major nutrients found in cheese. Accordingly, in order to conform the regulations to the deletion of the cheese alternate section of Appendix A to 7 CFR Part 210, the words "cheese alternate products" are proposed to be deleted from 7 CFR 210.10(k)(3)(i) and 7 CFR 210.10a(d)(2)(i).

Another change that would result from the proposed deletion of the "cheese alternate" section is removal of the requirement that cheese alternates utilize an animal protein source. FDA's cheese substitute rule does not specify the need for a specific protein source as do the cheese alternate requirements. If the FDA rule for substitute foods is allowed to replace the cheese alternate requirements, the protein used in the production of the substitute cheese would not be limited to animal origin. There is no reason to exclude plant proteins since protein from plant sources can be as high quality as animal protein. Studies conducted subsequent to the inclusion of the animal protein requirement have shown that isolated soy protein can actually have a protein quality equal to casein, the animal protein in cheese. Allowing plant protein sources to be used will provide greater flexibility for manufacturers and will provide for a wider variety of cheese substitute products.

The proposed removal of the cheese alternate portion of Appendix A to Part 210 would eliminate FCS specifications for use of cheese alternates as meat alternates. This change would allow the use of cheese substitutes that are consistent with FDA regulations and allow for fat and calorie reductions. This change will add to the choices of products available to food service managers while reducing processors' regulatory burdens. In addition, the

proposed removal of the cheese alternate requirements is consistent with the Department's ongoing efforts to promote school meals consistent with the "Dietary Guidelines for Americans".

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food Assistance Programs, Grants programs—social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 225

Food Assistance Programs, Grant programs—Health, Infants and Children.

For the reasons set forth in the preamble, 7 CFR parts 210 and 225 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

§ 210.10 [Amended]

2. In 210.10, the first sentence of paragraph (k)(3)(i) is amended by removing the words "cheese alternate products,".

3. In 210.10a, the first sentence of paragraph (d)(2)(i) is amended by removing the words "cheese alternate products,".

4. In Appendix A, Alternate Foods for Meals, the section entitled "Cheese Alternate Products" is removed.

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for 7 CFR part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

§ 225.16 [Amended]

2. In 225.16, the first sentence of paragraph (f)(3) is amended by removing the words "cheese alternate products,".

Dated: September 15, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95–23910 Filed 9–26–95; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39****[Docket No. 95-NM-108-AD]****Airworthiness Directives; McDonnell Douglas Model DC-10-10, -15, and -30 Series Airplanes and Model KC-10 (Military) Airplanes****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas DC-10-10, -15, and -30 series airplanes and Model KC-10A (military) airplanes. This proposal would require inspections to detect cracks of the upper aft mating bolt hole of the wing pylon truss fittings, and various follow-on actions. This proposal is prompted by reports of cracks found in the upper aft mating bolt hole of the wing pylon truss fitting located near the engine forward mount on Model DC-10-30 series airplanes, which were caused by fatigue-related stress. The actions specified by the proposed AD are intended to prevent fatigue-related cracking, which could lead to failure of the fitting, separation of a portion of the engine forward mount truss from the pylon, and consequent separation of the engine from the airplane.

DATES: Comments must be received by November 6, 1995.**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-108-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT:

Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627-5238; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-108-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-108-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received reports of four cracks found in the upper aft mating bolt hole of the wing pylon truss fitting located near the engine forward mount on Model DC-10-30 series airplanes. Three of the four cracks were found on the No. 1 pylon truss fittings; the fourth crack was found on the No. 3 pylon truss fitting. Two of these cracks emanated toward the upper surface of the inboard fitting; the other two cracks emanated toward the upper surface of the outboard fitting. This cracking occurred on airplanes that had

accumulated between 66,959 and 85,067 total flight hours and between 14,538 and 19,889 total landings. The cause of such cracking has been attributed to fatigue-related stress. The effects of such fatigue-related cracking could lead to failure of the fitting and separation of a portion of the engine forward mount truss from the pylon. This condition, if not corrected, could result in separation of the engine from the airplane.

The area where the cracking was found on the Model DC-10-30 series airplanes is identical to that of Model DC-10-10, -15, and KC-10A (military) series airplanes (regardless of the configuration of the truss fittings installed in the wing pylons). Therefore, Model DC-10-10, -15, and KC-10A (military) series airplanes may be subject to the same cracking problems.

The FAA has reviewed and approved McDonnell Douglas DC-10 Service Bulletin 54-108, dated February 9, 1995, which describes procedures for performing an ultrasonic or eddy current inspection to detect cracks of the upper aft mating bolt hole of the engine pylon truss fittings. It also describes various follow-on actions to perform (i.e., repair, various inspections, replacement, coldwork), depending on the results of the inspection. For cases where no cracks are detected during inspection, the service bulletin describes procedures for either conducting repetitive inspections, or installing a preventative modification and performing follow-on ultrasonic inspections. The preventative modification entails enlarging, cold working, and installing bushings in the upper aft and middle mating bolt holes. Repair or replacement of the affected truss fittings will ensure structural integrity of the forward mount assembly of the engine.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive ultrasonic or eddy current inspections to detect cracks of the upper aft mating bolt hole of the wing pylon truss fittings, and various follow-on actions. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Operators should note that, although the service bulletin specifies that the operators should contact the manufacturer for disposition of certain conditions found, this proposal would require repair of those conditions to be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 376 Model DC-10-10, -15, and -30 series airplanes and Model KC-10 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 228 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 5 work hours per airplane to accomplish the proposed inspections, at an average labor rate of \$60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$68,400, or \$300 per airplane, per inspection.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this

action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 95-NM-108-AD.

Applicability: Model DC-10-10, -15, and -30 series airplanes and Model KC-10A (military) airplanes; as listed in McDonnell Douglas DC-10 Service Bulletin 54-108, dated February 9, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking, which could lead to failure of the pylon truss fitting, separation of a portion of the engine forward mount truss from the pylon, and consequent separation of the engine from the airplane, accomplish the following:

(a) For Model DC-10-15, and -30 series airplanes and Model KC-10A (military) airplanes: Prior to the accumulation of 10,000 total landings on the pylon truss fitting or within 1,000 landings on the pylon truss

fitting after the effective date of this AD, whichever occurs later, perform either an ultrasonic inspection or an eddy current inspection to detect cracks of the upper aft mating bolt hole of the wing pylon truss fittings, in accordance with McDonnell Douglas DC-10 Service Bulletin 54-108, dated February 9, 1995.

(1) If no cracks are detected, repeat the inspections as follows:

(i) If the immediately preceding inspection was conducted using ultrasonic techniques, conduct the next inspection within 5,000 landings.

(ii) If the immediately preceding inspection was conducted using eddy current techniques, conduct the next inspection within 8,000 landings.

(2) Terminating action for the repetitive inspections required by paragraph (a)(1) of this AD is as follows:

(i) Accomplish the preventative modification in accordance with Condition 1 (bushing not installed), Option III, or Condition 2 (bushing installed), Option II, of the service bulletin, as applicable. And

(ii) Prior to the accumulation of 10,000 total landings on the pylon truss fitting following accomplishment of the modification, perform an ultrasonic inspection to detect cracks of the upper aft mating bolt hole of the wing pylon truss fittings, in accordance with the service bulletin. And

(iii) Thereafter, repeat the ultrasonic inspection at intervals not to exceed 5,000 landings on the pylon truss fitting.

(3) If any crack is found in the pylon truss fitting during any inspection required by this paragraph, prior to further flight, repair it in accordance with the service bulletin. At the times specified in the service bulletin, perform follow-on actions in accordance with the service bulletin. In all cases, where the service bulletin indicates "contact Douglas for disposition," the repair must be accomplished in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(b) For Model DC-10-10 series airplanes: Prior to the accumulation of 17,000 total landings on the pylon truss fitting or within 1,500 landings on the pylon truss fitting after the effective date of this AD, whichever occurs later, perform either an ultrasonic inspection or an eddy current inspection to detect cracks of the upper aft mating bolt hole of the wing pylon truss fittings, in accordance with McDonnell Douglas DC-10 Service Bulletin 54-108, dated February 9, 1995.

(1) If no cracks are detected, repeat the inspections as follows:

(i) If the immediately preceding inspection was conducted using ultrasonic techniques, conduct the next inspection within 10,000 landings.

(ii) If the immediately preceding inspection was conducted using eddy current techniques, conduct the next inspection within 15,000 landings.

(2) Terminating action for the repetitive inspections required by paragraph (b)(1) of this AD is as follows:

(i) Accomplish the preventative modification in accordance with Condition 1

(bushing not installed), Option III, or Condition 2 (bushing installed), Option II, of the service bulletin, as applicable. And

(ii) Prior to the accumulation of 18,000 total landings on the pylon truss fitting following accomplishment of the modification, perform an ultrasonic inspection to detect cracks of the upper aft mating bolt hole of the wing pylon truss fittings, in accordance with the service bulletin. And

(iii) Thereafter, repeat the ultrasonic inspection at intervals not to exceed 10,000 landings on the pylon truss fitting.

(3) If any crack is found in the pylon truss fitting during any inspection required by this paragraph, prior to further flight, repair it in accordance with the service bulletin. At the times specified in the service bulletin, perform follow-on actions in accordance with the service bulletin. In all cases, where the service bulletin indicates "contact Douglas for disposition," the repair must be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

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

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

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

Issued in Renton, Washington, on September 21, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-23913 Filed 9-26-95; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 95N-0295]

Prominence of Name of Distributor of Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to

amend the labeling regulations to remove the requirement that the manufacturer's name be more prominent than the distributor and to permit the names of distributors to be prominently displayed on biological product container labels, package labels, and labeling. This proposed change in the labeling requirements is intended to facilitate flexible manufacturing, packaging, distribution, and labeling arrangements, and to harmonize labeling regulations applicable to biologic products licensed under the Public Health Service Act with the corresponding labeling regulations applicable to drugs approved under the Federal Food Drug and Cosmetic Act (the act). FDA is considering further revisions to the labeling requirements.

DATES: Comments by December 26, 1995.

ADDRESSES: Submit 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: Jean M. Olson or Tracey Forfa, Center for Biologics Evaluation and Research (HFM-630), 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-3074.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is being issued in accordance with the principles set forth in Executive Order 12866 and the steps described in President Clinton's memorandum of March 4, 1995, announcing his "Regulatory Reinvention Initiative." Executive Order 12866 directs Federal agencies and the Office of Information and Regulatory Affairs to implement measures that will reform and streamline the regulatory process. President Clinton's memorandum of March 4, 1995, sets forth four steps toward regulatory reform, one of which instructs agencies to revise those regulations that are in need of reform. FDA believes that this regulation is in keeping with these principles without compromising the agency's commitment to protect the public health.

Under Executive Order 12866, FDA published a notice in the Federal Register of January 20, 1994 (59 FR 3043), announcing FDA's plan to review and evaluate all significant regulations for their effectiveness in protecting the public health, while avoiding an unnecessary regulatory burden. In the Federal Register of June 3, 1994 (59 FR 28821 and 28822), FDA published two notices announcing the review and

evaluation of certain biologic and blood and blood product regulations by the Center for Biologics Evaluation and Research (CBER). The intent of the review and evaluation was to identify those regulations that are outdated, burdensome, inefficient, duplicative, or otherwise unsuitable or unnecessary.

FDA held a public meeting on January 26, 1995, that was announced in the Federal Register on January 9, 1995 (60 FR 2351). The public meeting was a forum for the public to voice comments regarding the review and evaluation of regulations being undertaken by CBER.

Some of the comments from the public meeting held to discuss the CBER regulations review questioned the need for the manufacturer's name to be the most prominent name on the label. Requests were made asking that CBER consider revising the labeling regulations so that developers of innovative new products would be able to have their names on the label, even if they contract out the manufacturing of the product. The labeling regulation addressing the name of the selling agent or distributor (§ 610.64 (21 CFR 610.64)), currently requires that the name of the manufacturer of the biological product be more prominently displayed on the label than the name of the selling agent or distributor. FDA announced its intention to issue a proposed rule to revise § 610.64 in the April 1995 National Performance Review Report, "Reinventing Regulation of Drugs and Medical Devices." FDA made a commitment to issue the proposed rule within 6 months of the report.

II. The Proposed Rule

The proposed rule is intended to facilitate flexible manufacturing, packaging, distribution, and labeling arrangements. FDA recognizes that small innovator firms may not have the facilities to manufacture commercial quantities of the product. Such innovator firms want the flexibility to contract out part or all of the manufacturing steps without being required to feature the product manufacturer's name more prominently on the label. In some cases manufacturers and distributors would prefer to have the option and the freedom to negotiate with each other for the prominence of the various firm names on the label.

The proposed rule is also intended to reduce the regulatory burden on manufacturers who produce both biologics and other drugs by harmonizing this labeling requirement with the labeling provisions approved

under the act (21 CFR 201.1), applicable to drugs.

The proposed rule removes the requirement that the manufacturer's name be more prominent than the distributor's name. The proposed rule permits a number of options for identifying the distributor so that the identification on the label may be consistent with the actual circumstances of the sale and distribution of the product. In cases where a distributor is named on the label, the proposed rule would require the use of a qualifying phrase to distinguish the manufacturer and distributor of the product. The requirement that the name, address, and license number of the manufacturer also appear on the container label (21 CFR 610.60) and package label (21 CFR 610.61) would remain unchanged.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(d)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

FDA has assessed the economic impact of the proposed rule under the Regulatory Flexibility Act. Under the Regulatory Flexibility Act, FDA must analyze regulatory options that would minimize any significant impact of the rule on small entities. This amendment does not require any entity to change its current procedures. At this time FDA cannot quantify the benefits of the rule. However, it may benefit manufacturers or distributors by allowing greater flexibility in labeling. The amendment provides labeling alternatives by allowing the names of distributors to be

as (or more, or less) prominent than names of manufacturer(s) on the label. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Paperwork Reduction Act of 1980

This rule removes an unnecessary labeling requirement. The immediate effect of the rule allowing names of distributors to be as prominent as names of manufacturers is neutral. The rule does not require any changes in current labels. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

VI. Request for Comments

Interested persons may, on or before December 26, 1995, 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.

Lists of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 610 be amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

2. Section 610.64 is revised to read as follows:

§ 610.64 Name and address of distributor.

The name and address of the distributor of a product may appear on the label provided that the name, address, and license number of the manufacturer also appears on the label and the name of the distributor is qualified by one of the following phrases: "Manufactured for _____", "Distributed by _____", "Manufactured by _____ for _____",

"Manufactured for _____ by _____", "Distributor: _____", or "Marketed by _____". The qualifying phrases may be abbreviated.

Dated: September 18, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95-23997 Filed 9-26-95; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

OSD Privacy Program

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Proposed rule.

SUMMARY: In accordance with the Privacy Act of 1974, the Office of the Joint Staff proposes to exempt the system of records JS004SECDIV, entitled Joint Staff Security Clearance Files. The exemption is needed to comply with prohibitions against disclosure of information provided the government under a promise of confidentiality and to protect privacy rights of individuals identified in the system of records.

DATES: Comments must be received no later than November 27, 1995 to be considered by this agency.

ADDRESSES: Send comments to OSD Privacy Act Officer, Directives and Records Division, Washington Headquarters Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695-970.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Director, Administration and Management, Office of the Secretary of Defense has determined that this proposed Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980.

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act.

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act proposed rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Investigative and other records needed to make the judgment of approval or denial of a security clearance may require that certain records in the system be protected using the specific exemption (k)(5), to insure that a source who furnished information to the Government under an express promise of confidentiality be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence will be afforded such protection.

List of Subjects in 32 CFR part 311

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 311.7 is amended by adding paragraph (c)(9) as follows:

§ 311.7 Procedures for exemptions.

* * * * *

(c) *Specific exemptions.* * * *

(9) *System identifier and name-* JS004SECDIV, Joint Staff Security Clearance Files.

Exemption. Portions of this system of records are exempt pursuant to the provisions of 5 U.S.C. 552a(k)(5) from subsections 5 U.S.C. 552a(d)(1) through (d)(5).

Authority. 5 U.S.C. 552a(k)(5).

Reasons. From subsections (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the government under an expressed

promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

* * * * *

Dated: August 22, 1995.

Linda L. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
 [FR Doc. 95-23943 Filed 9-26-95; 8:45 am]
BILLING CODE 5000-04-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK10-1-7022b; FRL-5287-6]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve most of the Alaska State Implementation Plan (SIP) revision for the inclusion of transportation and general conformity rules to ensure that Federal actions conform to the appropriate SIP and take no action on the remaining small portion of it. The SIP revision was submitted by the State to satisfy EPA regulation requirements. In the final rules section of this Federal Register, the EPA is approving most of the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA

will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by October 27, 1995.

ADDRESSES: Written comments should be addressed to MontelLivingston, Air Programs Section, at the EPA Regional Office listed.

Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Air Programs Section (AT-082), 1200 6th Avenue, Seattle, WA 98101.

The State of Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504.

FOR FURTHER INFORMATION CONTACT: Kelly Huynh, Air Programs Section (AT-082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553-1059.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of this Federal Register.

Dated: August 18, 1995.

Charles Findley,

Acting Regional Administrator.

[FR Doc. 95-23842 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 52

[VA21-1-5883b; FRL-5292-3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia—VOC RACT Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia on November 6, 1992. This revision pertains to amendments to Virginia's major source volatile organic compound (VOC) reasonably available control technology (RACT) requirements. In the Final Rules section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are

received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 27, 1995.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs (3AT00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 597-9337, at the EPA Regional Office listed above.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title, pertaining to Virginia's VOC RACT Requirements which is located in the Rules and Regulations Section of this Federal Register.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 24, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 95-23821 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[IL103-1-6696b; FRL-5283-9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve Illinois' November 30, 1994, request to revise the

State's Synthetic Organic Chemical Manufacturing Industry air oxidation process rule as part of the State's 15 percent Reasonable Further Progress Plan control measures for the control of Volatile Organic Matter. In the final rules section of this Federal Register, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before October 27, 1995.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR18-J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR18-J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Section, Regulation Development Branch (AR18-J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: August 9, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95-23966 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[CA 57-14-7108b; FRL-5280-4]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District, San Luis Obispo County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from components at pipeline transfer stations and petroleum-related sources; oil-water separators; and petroleum pits, ponds, sumps, and well cellars.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by October 27, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board,
Stationary Source Division, Rule

Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.
 Mojave Desert Air Quality Management District 15428 Civic Drive, Victorville, California 92392.
 San Luis Obispo County Air Pollution Control district, 2156 Sierra Way, Suite "B", San Luis Obispo, CA 93401.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1197.

SUPPLEMENTARY INFORMATION: This document concerns Mojave Desert Air Quality Management District (MDAQMD) Rule 464, Oil-Water Separators; MDAQMD Rule 1102, Fugitive Emissions of VOCs from Components at Pipeline Transfer Stations; San Luis Obispo County Air Pollution Control District (SLOCAPCD) Rule 417, Control of Fugitive Emissions of Reactive Organic Compounds; and SLOCAPCD Rule 419, Petroleum Pits, Ponds, Sumps, Well Cellars, and Wastewater Separators, submitted to EPA on October 19, 1994, May 13, 1993, November 30, 1994, and September 28, 1994, respectively, by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 8, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95-23959 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[KY-087-1-6957b; FRL-5290-6]

Approval and Promulgation of Implementation Plans; Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky for the purpose of establishing a Federally enforceable state operating permit (FESOP) program, and to update the procedural rules governing the issuance of air permits in Kentucky. In order to extend the Federal enforceability of Kentucky's FESOP to hazardous air pollutants (HAP), EPA is also proposing

approval of Kentucky's FESOP regulations pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA). In the Final Rules Section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by October 27, 1995.

ADDRESSES: Written comments should be addressed to: Yolanda Adams, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street., NE, Atlanta, Georgia 30365.

Copies of the material submitted by Kentucky may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Yolanda Adams, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347-3555 x4149.

SUPPLEMENTARY INFORMATION: For additional information, refer to the direct final rule which is published in the rules section of this Federal Register.

Dated: August 23, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95-23964 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[TX-9-1-5222b; FRL-5266-5]

Approval and Promulgation of State Implementation Plans; Texas; Permit Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes the approval of revisions to Texas Air Control Board General Rules (31 TAC Chapter 101) and Regulation VI (31 TAC Chapter 116), "Control of Air Pollution by Permits for New Construction or Modification" of the Texas State Implementation Plan (SIP). The revisions proposed herein include New Source Review (NSR) definitions and provisions for permitting in nonattainment areas as required by the Clean Air Act (CAA), as amended in 1990. These 1990 CAA NSR provisions were submitted by the Governor on May 13, 1992, November 13, 1992, and August 31, 1993. This action also proposes the approval of other provisions of the General Rules and Regulation VI which have been submitted and not yet acted upon by EPA. These revisions were submitted by the Governor of Texas to EPA on December 11, 1985, October 26, 1987, February 18, 1988, September 29, 1988, December 1, 1989, September 18, 1990, November 5, 1991, May 13, 1992, November 13, 1992, and August 31, 1993. With the exception of the 1990 CAA NSR provisions, none of the other revisions being acted upon in this notice were required by EPA.

In the Rules and Regulations section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any

parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by October 27, 1995.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the EPA Region 6 office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

U.S. Environmental Protection Agency, Air Programs Branch (6T-A), First Interstate Bank Building, 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Stanley M. Spruiell of the EPA Region 6 Air Programs Branch at (214) 665-7212 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the Rules and Regulations section of this Federal Register.

Authority: 42 U.S.C. 7401-7671q.

Dated: July 10, 1995.

A. Stanley Meiburg,

Deputy Regional Administrator.

[FR Doc. 95-23961 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Parts 180 and 185

[PP 5E4429/P631; FRL-4973-9]

RIN 2070-AC18

Oxyfluorfen; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for residues of the herbicide oxyfluorfen in or on the raw agricultural commodities blackberry and raspberry. The proposed regulation to establish maximum permissible levels for residues of the herbicide was requested in a petition submitted by the Interregional Research Project No. 4 (IR-

4) pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA). EPA also proposes deleting the metabolites of oxyfluorfen containing the diphenyl ether linkage from certain tolerance expressions.

DATES: Comments, identified by the document control number [PP 5E4429/P631], must be received on or before October 27, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Comments and data may also be submitted to OPP by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 5E4429/P631]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the "SUPPLEMENTARY INFORMATION" section of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information." CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington,

VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 5E4429 to EPA on behalf of the Agricultural Experiment Stations of Oregon, New York, Virginia, and Washington. This petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.381 by establishing a tolerance for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on the raw agricultural commodities blackberry and raspberry at 0.05 part per million (ppm). The petitioner proposed that use of oxyfluorfen on blackberry and raspberry be geographically limited to Oregon and Washington based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

EPA also proposes to amend established tolerances for oxyfluorfen by deleting the diphenyl ether linkage metabolites from the tolerance expressions under 40 CFR 180.381 and 185.4600. Tolerances are currently established for residues of oxyfluorfen and its metabolites containing the diphenyl ether linkage in or on certain raw agricultural commodities under 40 CFR 180.381 and certain processed foods under 185.4600. EPA has determined that it is no longer necessary to regulate these metabolites in raw agricultural and processed commodities. Metabolism studies with oxyfluorfen show no detectable residues of the diphenyl ether linkage metabolites in plants. Oxyfluorfen per se is the major residue found in meat, meat byproducts, fat, milk, and eggs.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. A 2-year feeding study in dogs fed diets containing 0, 100, 600, or 2,000 ppm with a no-observed-effect level (NOEL) of 100 ppm (equivalent to 2.5 milligrams (mg)/kilogram (kg)/day). Effects observed in dogs fed diets containing 600 ppm (equivalent to 15 mg/kg/day) were increased liver weight,

increases in alkaline phosphatase, renal tubule vacuolization, and thyroid C-cell hyperplasia.

2. A developmental toxicity study in rats given gavage doses of 0, 18, 183, or 848 mg/kg/day with NOEL's for maternal and developmental toxicity of 18 mg/kg/day. Developmental effects consisting of decreased fetal body weight, increased resorptions, and an increase in the incidence of left carotid artery from the innominate, bent bones of the forelimbs, and other ossification irregularities were observed at the 183-mg/kg/day dose level. These effects were confined to the mid-dose level, since there was 100 percent litter loss in the high-dose groups as a result of maternal mortality and resorptions. The lowest-observed-effect level (LOEL) for maternal toxicity was established at 183 mg/kg/day based on decreased weight gain and food consumption, increased incidences of soft or scant feces, and increased alkaline phosphatase.

3. A developmental toxicity study in rabbits given gavage doses of 0, 10, 30, or 90 mg/kg/day with NOEL's for maternal and developmental toxicity of 10 mg/kg/day. Developmental toxicity (fused sternbrae) and maternal toxicity (anorexia and decreased body weight gain) were observed at the 30-mg/kg/day dose level.

4. A two generation reproduction study in rats fed diets containing 0, 100, 400, or 1,600 ppm with NOEL's for reproductive and systemic effects of 400 ppm (equivalent to 20 mg/kg/day). Reproductive effects observed at the 1,600-ppm dose level were decreased pup body weight during lactation in both the F_{1a} and F_{2a} litters and a decreased litter size at birth in F_{1a} and F_{2a} litters. Systemic effects observed at the 1,600-ppm dose level include pelvic mineralization and pelvic papillary hyperplasia of P₁ and P₂ males and P₂ females and dilation of kidney collecting ductules in both P₂ sexes.

5. Mutagenicity studies including *Salmonella* assays, positive with and without activation in strains TA98, TA100, and TA1537; *Salmonella* assays, negative with and without activation in strains TA98, TA100, TA1535, and TA1537; *in vivo* cytogenetic assay in rats, negative for cytogenetic chromosomal aberrations both with and without metabolic activation; and mouse lymphoma forward mutation assay, positive in the presence of an activation system.

6. A 2-year chronic feeding/carcinogenicity study in rats fed diets containing 0, 2, 40, or 800/1,600 ppm (the 800-ppm dosage level was raised to 1,600 ppm at week 57 of the study) with a NOEL of 40 ppm (equivalent to 2.0

mg/kg/day) based on minimal hypertrophy of liver cells. There were no carcinogenic effects observed under the conditions of the study at any dose level tested.

7. A 20-month carcinogenicity study in CD-1 mice fed diets containing 0, 2, 20, or 200 ppm with a NOEL of 2 ppm (equivalent to 0.3 mg/kg/day) for systemic effects. Oxyfluorfen was associated with significant positive dose-related trends for liver adenoma, carcinoma, and combined adenoma and/or carcinoma in male mice when compared with historical control data from CD-1 mouse studies of 20 to 22 months duration. There was no apparent effect on the latency period for tumor occurrence, and no compound-related increase in tumors were observed in female mice.

Based on a weight-of-the-evidence determination, EPA has classified oxyfluorfen as a possible human carcinogen (Group C) with quantified risk. The qualitative categorization of carcinogenicity is based on the Agency's Guidelines for Carcinogenic Risk Assessment, published in the Federal Register of September 24, 1986 (51 FR 33992).

Although there was no compound-related increase in tumors observed in female mice or in male or female rats, and no evidence for a reduction in latency period for the time-to-liver tumor appearance in male mice, quantification of carcinogenic risk for oxyfluorfen is considered appropriate. The decision supporting a Category C classification with quantified risk is based on the significant positive dose-related trends in liver adenomas, carcinomas, and combined adenomas and/or carcinomas in male CD-1 mice. Supporting evidence includes a strong association of oxyfluorfen with diphenyl ether herbicides (a class of herbicides associated with evidence of carcinogenicity) and evidence of mutagenicity in the *Salmonella* and the mouse lymphoma assays.

A carcinogenic risk assessment for oxyfluorfen has been completed based on the available information. The potential carcinogenic risk from dietary exposure resulting from existing uses of oxyfluorfen is calculated at 1.8×10^{-6} . The dietary risk assessment is based on a potency estimator (Q1*) of 0.13 (mg/kg/day)⁻¹. Dietary exposure is calculated at 0.000014 mg/kg/day based on theoretical maximum residue contribution (TMRC) estimates for some uses and anticipated residue contribution (ARC) estimates for other uses. TMRC values assume that 100 percent of the crops are treated and that the resulting residues are at tolerance

levels. ARC values estimate expected dietary exposure based on actual residue levels that are anticipated on the treated commodities and/or the estimated percent of the crop treated. The potential carcinogenic risk from residues of oxyfluorfen in the diet is expected to be less than calculated since data were not available to estimate the percent of crop treated for several commodities which theoretically contribute significant residues to the diet. In the absence of these data, the Agency has assumed that 100 percent of the crop was treated.

Dietary exposure resulting from tolerance level residues in or on blackberry and raspberry is estimated at 0.000001 mg/kg/day. The potential carcinogenic risk to the proposed tolerance level residues for blackberry and raspberry is calculated at 6×10^{-8} , a negligible increase.

The Reference Dose (RfD) for oxyfluorfen is calculated at 0.003 mg/kg/day, based on a NOEL of 0.30 mg/kg of body weight/day from the 20-month feeding study in mice and an uncertainty factor of 100. Dietary exposure from existing tolerances and the proposed tolerances for blackberry and raspberry utilizes less than 1 percent of the RfD for the general population and for children, aged 1 to 6 years (the subgroup population most highly exposed.)

An adequate analytical method is available for enforcement purposes. The metabolism of oxyfluorfen in plants is adequately understood. An analytical method for enforcing these tolerances has been published in the Pesticide Analytical Manual, Vol. II (PAM II). No secondary residues are expected in meat, milk, poultry, or eggs since blackberry and raspberry are not considered livestock feed commodities.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCFA.

A record has been established for this rulemaking under docket number [PP 5E4429/P631] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 185

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

Dated: September 18, 1995.

Peter Caulkins,
Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that parts 180 and 185 be amended as follows:

PART 180—[AMENDED]

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

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

b. In § 180.381, by amending paragraph (a) by revising the introductory text therein and revising paragraph (b), to read as follows:

§ 180.381 Oxyfluorfen; tolerances for residues.

(a) Tolerances are established for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on the following raw agricultural commodities:

*	*	*	*
*			

(b) Tolerances with regional registration are established for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4nitrophenoxy)-4-(trifluoromethyl)benzene] in or on the following raw agricultural commodities:

Commodity	Parts per million
Blackberry	0.05
Garbanzo beans	0.05
Guava	0.05
Papaya	0.05

Commodity	Parts per million
Taro (corms and leaves)	0.05
Raspberry	0.05

PART 185—[AMENDED]

2. In part 185:
a. The authority citation for part 185 continues to read as follows:
Authority: 21 U.S.C. 346a and 348.
b. By amending § 185.4600 by revising the introductory text to read as follows:

§ 185.4600 Oxyfluorfen.

A regulation is established permitting residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on the following processed food when present therein as a result of application of the herbicide to growing crops:

*	*	*	*
*			

[FR Doc. 95-24005 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List *Mimulus clivicola* (Bank Monkeyflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list *Mimulus clivicola* (bank monkeyflower) pursuant to the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial data, the Service finds that listing this species is not warranted at this time.

DATES: The finding announced in this document was made on September 19, 1995.

ADDRESSES: Data, information, comments, or questions concerning this petition may be sent to the Field Supervisor, Portland Field Office, U.S. Fish and Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266. The petition finding, supporting data, comments, and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew F. Robinson, Jr., staff botanist, see **ADDRESSES** section or telephone 503/231-6179.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that presents substantial scientific and commercial information, the Service make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Such 12-month findings are to be published promptly in the Federal Register.

On June 28, 1989, the Service received a petition dated May 1, 1989, from Steve Paulson representing Friends of the Clearwater, Lenore, Idaho, to list *Mimulus clivicola* (bank monkeyflower) as an endangered species. The petition cited as potential threats to the species an extremely limited range, the threatened destruction of habitat (specifically the Dworshak connection road, Clearwater National Forest), and the inadequacy of existing regulatory mechanisms. At the time of the petition there were only 30 documented populations of *M. clivicola*. A 90-day finding was made by the Service that the petition presented substantial information indicating that the requested action may be warranted. The 90-day finding was published in the Federal Register on November 1, 1990 (55 FR 46080). A status review was continued for the category 2 candidate species (50 FR 6214; February 21, 1990). The Service reclassified *Mimulus clivicola* as a category 3C candidate on September 30, 1993 (58 FR 51175) as a result of new information about the status of the species. Category 3C candidates are those taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat.

Mimulus clivicola is an annual herb up to about 6 inches in height with purple flowers and opposite elliptic leaves. *M. clivicola* occurs within fairly mountainous regions from 1,200 feet to 7,120 feet elevation in Idaho and Oregon. The plant is typically found where there is exposed mineral soil, including sites where the soil has been exposed because of big game activity or

manmade disturbance along trails and roadcuts. However, the species also needs moist areas that are saturated in the spring. Today there are 152 known extant populations with a combined population size varying from 46,000 to 63,000 plants that occupy 132 acres of habitat. The majority of the populations (92 percent) occur on Federal land including 6 populations occurring on Bureau of Land Management lands and 134 on Forest Service lands. Only 12 populations (8 percent) occur on private lands.

A Species Management Guide, which specifically addresses conservation strategies for *Mimulus clivicola* on Forest Service lands was prepared in 1992 by the Forest Service. Of the 134 populations occurring on Forest Service lands, 58 were identified for protection with the 1992 Species Management Guide. The construction of Dworshak Reservoir on the North fork Clearwater River destroyed habitats occupied by *M. clivicola* (the Ahasanka and Dent populations). Although road building/maintenance, mining, recreational activities, timber harvest, cattle grazing, and alien plant invasions still disturb 118 out of 152 populations (78 percent) of *M. clivicola*, recent information indicates that this species is tolerant of moderate disturbance. This conclusion is based on the fact that much of the habitat with areas of exposed mineral soil that support *M. clivicola* populations was along the tops of older roadcuts or beside trails. Currently 20 populations grow along trails and 68 grow along roads. Eight populations occurring on the Payette National Forest in Idaho and Wallowa-Whitman National Forests in Oregon are subject to damage by livestock grazing. Exclosures were constructed around two of these populations in the Wallowa-Whitman National Forests in 1990 to protect these sites. The presence of *Bromus tectorum* (cheatgrass), a weedy alien annual plant, has been documented as being present in 59 (39 percent) populations of *M. clivicola*. Preliminary laboratory studies suggest that *B. tectorum* inhibits germination (allelopathic affects) of selected native plants. *M. clivicola* is an annual species, and thus the presence of *B. tectorum* and the possibility of it inhibiting germination of seed of *M. clivicola* may affect these populations. However, there is no information at this time to indicate that the continued existence of *M. clivicola* as a species is threatened by the presence of such invasive alien plants.

The service has reviewed the petition, other available literature and information, and consulted with biologists and researchers familiar with

Mimulus clivicola. On the basis of the best scientific and commercial information available regarding *M. clivicola*, the Service finds that the petitioned action is not warranted at this time because the taxon is not in danger of extinction or likely to become so in the foreseeable future. The Service reclassified *M. clivicola* as a category 3C candidate on September 30, 1993 (58 FR 51175). Category 3C candidates are those taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat. If information becomes available indicating that *M. clivicola* may be threatened with extinction, the Service would reevaluate this decision.

References

A complete list of references used in the preparation of this finding is available upon request from the Portland Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Dr. Andrew F. Robinson Jr., Portland Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: September 19, 1995.

John G. Rogers,

Director, Fish and Wildlife Service.

[FR Doc. 95-23974 Filed 9-26-95; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List Desert Redband Trout in the Snake River Drainage Above Brownlee Dam and Below Shoshone Falls as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the desert populations of interior redband trout (*Oncorhynchus mykiss gairdneri*) in the Snake River drainage above Brownlee Dam and below Shoshone Falls as a threatened or endangered species under the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial scientific or commercial information

indicating that the petitioned action may be warranted because it fails to substantiate that these populations of redband trout constitute a distinct population segment.

DATES: The finding announced in this document was made on September 20, 1995.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Snake River Basin Office, 4696 Overland Road, Room 576, Boise, Idaho 83705. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia Klahr, staff biologist (see **ADDRESSES** section) (telephone 208/334-1931).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition and must be promptly published in the Federal Register.

On April 11, 1995, a petition dated April 3, 1995, was received by the Service from the Idaho Watersheds Project, Inc., Oregon Natural Desert Association, Oregon Natural Resources Council, Idaho Sporting Congress, Idaho Conservation League, Committee for Idaho's High Desert, Elko County Conservation Association, Nevada Wildlife Federation, and Dr. Don W. Johnson (petitioners). The petitioners requested the Service list the desert redband trout (*Oncorhynchus mykiss spp.*) in the Snake River drainage above Brownlee Dam and below Shoshone Falls as threatened or endangered under the Act. The Service accepts the taxonomic system proposed by Behnke (1992) and recognizes the interior redband trout as the subspecies *Oncorhynchus mykiss gairdneri*. An amendment to this petition, dated July 6, 1995, and received on July 7, 1995, changed the species' range under consideration to exclude forested higher altitude watersheds and include lower elevation desert rivers and streams. The petitioners state that these populations

of interior redband trout have been recognized as distinctive based on their physiological tolerance to severe desert environments and on their external appearance. Threats that were identified include degradation of riparian habitat resulting from land use practices and decreased stream flows due to irrigation withdrawals.

The interior redband trout is designated a species of concern to the Service (formerly category 2 species, 59 FR 58982, November 15, 1994). This designation includes taxa for which information in the Service's possession indicates that listing is possibly appropriate but for which the Service lacks sufficient information upon which to base a proposal to list as endangered or threatened.

The Service has reviewed the petition, the literature cited in the petition, and other literature and information available in the Service's files. On the basis of the best scientific and commercial information available, the Service finds the petition does not present substantial information indicating that the petitioned action may be warranted because there is insufficient information to show that interior redband trout of the middle Snake River desert area are a distinct population segment under the Act.

Within the trout species *Oncorhynchus mykiss*, Behnke (1992) includes three major groups composed of four subspecies. The petitioned populations of redband trout are found within the Columbia River basin east of the Cascade Mountains and are included by Behnke (1992) as part of *O. m. gairdneri*. This subspecies currently includes anadromous steelhead populations, populations adapted to lakes (kamloops trout), and resident stream populations. Behnke (1992) describes the subspecies' distribution as the Columbia River basin east of the Cascades to barrier falls on the Kootenai, Pend Oreille, Spokane, and Snake rivers; the upper Fraser River basin above Hell's Gate; and Athabasca River headwaters of the Mackenzie River basin. The historical range of the interior redband trout includes Idaho, Montana, Nevada and Oregon (56 FR 58815, November 21, 1991).

There has been confusion regarding the taxonomic classification of interior redband trout (Behnke 1986, Behnke 1992), probably due to similar morphological and meristic characteristics with other rainbow and cutthroat trout species (Berg 1987). The taxonomy is further complicated by the subspecies' diversity and adaptability, as interior redband trout are found in high mountain streams as well as in arid

desert drainages. A Service review of the literature and discussions with regional fisheries biologists reveals an ongoing debate about the definition of interior redband trout. Presently there appears to be general agreement that the interior rainbow trout "complex" includes redband trout of the Columbia basin east of the Cascade range up to barrier falls, and including anadromous steelhead, making the distribution of this subspecies wide and diverse.

The petitioners state that redband trout in the Snake River drainage upstream of Brownlee Dam and below Shoshone Falls constitute a distinct vertebrate population segment because geographic and ecological isolation of the individuals have resulted in unique adaptations for survival in habitat unsuitable to other trout, as well as other genetic differences. Further, the external appearance of redband trout is distinctive, displaying characteristics of both rainbow and cutthroat trout.

The petitioners did not present genetic data to support differentiation of "desert" redband trout from other populations of redband trout. Genetic information cited in the petition described genetic differences between interior redband trout, and trout of hatchery origin or coastal rainbow trout (*O. m. irideus*) (Wallace 1979, Leary et al. 1983, Sage et al. 1992, Williams and Shiozawa 1993). In addition, the physical appearance of redband trout is not unique to "desert" redband trout (Behnke 1992), and therefore is not an indication of distinctness for redband trout from the Snake River drainage upstream of Brownlee Dam and below Shoshone Falls.

Therefore, the petition does not provide any information to support the claim that significant ecological isolation has occurred such that this grouping of redband trout has evolved apart from the remainder of the subspecies. Specifically, no information was provided to indicate that the petitioned group of redband trout is distinct or discrete from the redband trout populations occupying hundreds of miles of habitat in the inland northwest. In addition, this petitioned group does not constitute a significant portion of the range of the interior redband trout.

The Service concludes that the data contained in the petition, referenced in the petition, and otherwise available to the Service do not present substantial information that the petitioned action may be warranted. The Service will retain the interior redband trout as a species of concern and will continue to seek information regarding the status of, and threats to the subspecies. If

additional data become available in the future, the Service may reassess the listing priority for this subspecies or the need for listing.

References cited

A complete list of all references cited herein are available upon request from the Snake River Basin Office (see **ADDRESSES** section).

Author

The primary author of this document is Patricia C. Klahr (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U. S. C. 1531 *et seq.*).

Dated: September 20, 1995.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95-23975 Filed 9-26-95; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 656

[Docket No. 950915230-5230-01; I.D. 062895A]

RIN 0648-AH57

Atlantic Striped Bass Fishery; Change in Regulations for Exclusive Economic Zone

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS requests public comments on a proposed rule which would remove a Federal moratorium on the harvest or possession of Atlantic striped bass in the exclusive economic zone (EEZ), 3-200 nautical miles (5.6-370.6 km) offshore from Maine to Florida, and impose a minimum size limit of 28 inches (71.1 cm) (total length), for Atlantic striped bass possessed in or harvested from the EEZ. State regulations would apply to any striped bass being transported into a state's jurisdiction from the EEZ.

DATES: Written comments must be received on or before October 27, 1995.

ADDRESSES: Send comments on this proposed rule or supporting documents to Richard H. Schaefer, Director, Office of Fisheries Conservation and

Management, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the environmental assessment/regulatory impact review are available from the same address.

FOR FURTHER INFORMATION CONTACT: William T. Hogarth, 301-713-2339.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule is promulgated under the Atlantic Striped Bass Conservation Act (Act), Public Law 100-589, reproduced at 16 U.S.C. 1851 note. Section 6 of the Act requires the Secretary of Commerce (Secretary) to promulgate regulations on fishing for Atlantic striped bass in the EEZ that the Secretary determines to be consistent with the national standards in section 301 of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*); and necessary and appropriate to (1) ensure the effectiveness of State regulations or a Federal moratorium on fishing for Atlantic striped bass within the coastal waters of a state; and (2) achieve conservation and management goals for the Atlantic striped bass resource. In developing the regulations, the Secretary is required to consult with the Atlantic States Marine Fisheries Commission (ASMFC), the appropriate Regional Fishery Management Councils (Councils), and each affected Federal, state and local government entity. The ASMFC, and the Mid Atlantic and New England Regional Fishery Management Councils have agreed that the moratorium should be removed.

The Atlantic striped bass occurs predominantly in internal state waters and the territorial sea. Historically, only about 7 percent of commercial landings have been taken seaward of 3 miles (5.6 km) from the coastline. Management responsibility for Atlantic striped bass in coastal waters resides primarily with the coastal states through the ASMFC's Interstate Fisheries Management Plan for Striped Bass (Striped Bass Plan). The Striped Bass Plan was adopted in 1981 by the coastal states from Maine through North Carolina in response to a severe decline in commercial landings and a decline in juvenile production in Maryland.

There have been five amendments to the Striped Bass Plan to respond to the changing condition of the stocks. Increasingly stricter state regulations were imposed by Amendments 1 through 3 to the Striped Bass Plan from 1981 through 1989. These regulations restricted further harvest of Atlantic striped bass by recreational and

commercial fisheries and allowed rebuilding of the stocks. Amendment 4 to the Striped Bass Plan, approved by ASMFC in October 1989, allowed for a limited increase in harvest beginning in 1990. In November 1990, a moratorium on the harvest and possession of striped bass in the EEZ was implemented under the Act, to support the ASMFC Striped Bass Plan.

Amendment 5, approved in March 1995, completely replaced the original Striped Bass Plan and all subsequent amendments and addenda. Even though the ASMFC declared the striped bass stocks restored as of January 1, 1995, with the exception of the Delaware river and the Roanoke/Albemarle sound stocks, Amendment 5 took a conservative approach and established a 2-year transition period during which the increase in harvest is limited to a fishing mortality (F) rate of 0.33, rather than a restored stock level of F = 0.40.

The Federal ban on the harvest and possession of striped bass in the EEZ is being re-examined in view of the ASMFC's declaration that striped bass have been restored and the ASMFC's regulations implementing Amendment 5 to the Striped Bass Plan.

Relevant Activities Pursuant to Section 6

In response to Section 6 of the Act, NMFS considered several regulatory options for the EEZ and consulted with the ASMFC, the New England and Mid-Atlantic Councils, and other affected Federal and state entities. There was no consensus view on what action NMFS should take. As a result, NMFS considered the following four options:

Option 1 - Open the EEZ with no harvest or possession restrictions on Atlantic striped bass.

Option 2 - Continue the prohibition on the harvest of Atlantic striped bass in the EEZ.

Option 3 - Apply state regulations to fish caught in the EEZ.

Option 4 - Promulgate specific Federal regulations on Atlantic striped bass fishing in the EEZ.

Discussion

The ASMFC has declared the Atlantic striped bass to be recovered and consequently increased the allowable harvest in Amendment 5. The allowable harvest is conservatively increased for the next 2 years (until 1997) as a precautionary measure to assure the continued rebuilding of the stocks. During this transitional fishery, an unrestricted harvest of Atlantic striped bass from the EEZ (option 1) would be contrary to the continued rebuilding of

the stocks and could potentially damage the spawning stocks.

Without restrictions on the harvest in the EEZ, as would be the case in option 1, there is potential for a major commercial harvest from the EEZ. Striped bass could be harvested in the EEZ and transported to a state without striped bass regulations. This could be detrimental to the continued health of the striped bass stocks.

Fishermen have been patient during the moratorium in the EEZ. To continue the moratorium under option 2, after the ASMFC has declared the stock recovered, would not be a good management practice or support the ASMFC's actions under Amendment 5.

Option 3 is unacceptable, because applying the variety of state regulations in the EEZ would be impractical and could possibly discriminate among residents of different states. This approach would require that current regulations in each state be reviewed and found consistent with the national standards, and again reviewed if a state changed its regulations. This option would also be impractical given the wide variety of regulatory measures that states have implemented.

Option 4 is the most acceptable, because regulations in the EEZ can be developed to complement ASMFC's Striped Bass Plan. The management of Atlantic striped bass in state waters is primarily the responsibility of the coastal states, and is accomplished through the ASMFC's Striped Bass Plan. The ASMFC chose 28 inches (71.1 cm) as the minimum size a state may select as a baseline conservation measure without having to impose additional restrictions such as shorter seasons, smaller quotas, etc., to compensate for a state size limit lower than 28 inches (71.1 cm). The ASMFC selected the 28-inch (71.1 cm) minimum size to allow a significant portion of the striped bass population to reproduce before reaching the harvest size. NMFS believes that a minimum size limit of 28 inches (71.1 cm) for striped bass in the EEZ would best complement the ASMFC's Striped Bass Plan. The minimum size of 28 inches (71.1 cm) in the EEZ would prevent a fishery from developing on the 12–14 inch (30.5–35.6 cm) pan size fish that existed before the collapse of the striped bass stocks.

In addition, NMFS does not intend to interfere with the enforcement of state regulations within state waters. NMFS has examined the individual state regulations, and has concluded that the state regulations are consistent with the objective of the proposed Federal regulation, and that application by states of their regulations to fish

harvested in the EEZ (as long as no striped bass under 28 inches (71.1 cm) are harvested or possessed in the EEZ) and transported into state waters is necessary for effective state enforcement. An example of how this would work is that in a state such as Massachusetts which has a 34-inch (86.4 cm) minimum size limit for recreationally caught striped bass, a daily creel limit of one fish and a season that is open all year, a fisherman who had five fish that were 28 inches (71.1 cm) in length in the EEZ off Massachusetts would be fishing legally until he entered state waters, at which time the state requirements of one fish at a minimum size of 34 inches (86.4 cm) would be enforced by the state. The same is true for a commercial fisherman in Massachusetts. The minimum size limit is 34 inches (86.4 cm) and the season is from 1 July until the quota is reached. When a commercial fisherman reaches the state waters of Massachusetts, the striped bass must be at least 34 inches (86.4 cm) in length, the commercial season open, and the fish must meet any other state striped bass regulations. The bottom line is that striped bass taken in the EEZ must be at least 28 inches (71.1 cm), but also, more importantly, must comply with the state striped bass regulations when the striped bass are transported into state waters. In addition, any striped bass taken in the EEZ and transported into state waters for sale, must meet the state's commercial sale regulations (proper state licenses, etc.) and the catch would be applied against the state's seasonal quota. The actual quota is the same whether the EEZ is open or not.

Only two states will have a minimum size limit of less than 28 inches (71.1 cm). These two states have a 24-inch (61.0 cm) minimum size limit and meet the ASMFC conservation requirements by implementing additional restrictions to compensate for the smaller size limit. The ASMFC has currently frozen state size limits during the 2 year transition period of the target mortality rate required by Amendment 5 to the Striped Bass Plan. However, NMFS is concerned that the potential exists for every state to reduce its size limit below 22–24 inches (55.9–61.0 cm), which could have a negative impact on the rebuilding of spawning stocks. NMFS solicits comments on this issue. NMFS will continue working with the ASMFC to ensure striped bass stocks are protected.

Proposed Action

The proposed action would (1) remove the current moratorium on the possession in or harvest from the EEZ of

striped bass; and (2) prohibit the possession in or harvest from the EEZ of striped bass less than 28 inches (71.1 cm) total length (measured from the tip of the snout to the tip of the tail fin). The possession in the EEZ of striped bass less than 28 inches (71.1 cm) total length, would be illegal, regardless of where the fish were caught.

Classification

The Assistant Administrator for Fisheries has preliminarily determined that these actions are consistent with the national standards. The Secretary, before making the final determinations, will take into account the data, views, and comments received during the comment period.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 656

Fisheries, Fishing.

Dated: September 21, 1995.

Henry A. Beasley,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR Part 656 is proposed to be revised to read as follows:

PART 656—ATLANTIC STRIPED BASS FISHERY

Sec.

- 656.1 Purpose and scope.
- 656.2 Relation to the Magnuson Act.
- 656.3 Definitions.
- 656.4 Civil procedures.
- 656.5 Specifically authorized activities.
- 656.6 Management measures.
- 656.7 Prohibitions.

Authority: 16 U.S.C. 1851 note.

§ 656.1 Purpose and scope.

This part implements section 6 of the Atlantic Striped Bass Conservation Act Appropriations Authorization, Public Law 100–589, and govern fishing for and possession of Atlantic striped bass on the Atlantic coast.

§ 656.2 Relation to the Magnuson Act.

The provisions of sections 307 through 311 of the Magnuson Act, as amended, regarding prohibited acts, civil penalties, criminal offenses,

forfeitures, and enforcement apply with respect to this part as if this part were issued under the Magnuson Act.

§ 656.3 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:

Act means the Atlantic Striped Bass Conservation Act Appropriations Authorization, Public Law 102-130, reproduced at 16 U.S.C. 1851 note.

Atlantic striped bass means members of stocks or populations of the species *Morone saxatilis*, found in the waters of the Atlantic ocean north of Key West, FL.

Land means to begin offloading fish, to offload fish, or to enter a port with fish.

Total length measurement of fish from tip of snout to the tip of the tail fin.

§ 656.4 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, seizures, and forfeitures under the Act and the regulations of this part.

§ 656.5 Specifically authorized activities.

NMFS may authorize, for the acquisition of information and data, activities that are otherwise prohibited by this part.

§ 656.6 Management measures.

(a) *Minimum size in EEZ.* Except as provided in paragraph (b) of this section, the minimum allowable size for Atlantic striped bass possessed in or harvested from the EEZ, regardless of state regulations, is 28 inches (71.1 cm) total length (measured from tip of the snout to the tip of the tail fin); and

(b) *Regulations in state waters.* Nothing in this part is intended to interfere with any state's enforcement of that state's regulations concerning Atlantic striped bass.

§ 656.7 Prohibitions.

In addition to the prohibitions set forth in § 620.7 of this chapter, the following prohibitions apply. It is unlawful for any person to do any of the following:

(a) Possess in or harvest from the EEZ any Atlantic striped bass that is less than the minimum size specified in § 656.6;

(b) Catch, take, possess, or harvest and retain any Atlantic striped bass in the EEZ that is less than the minimum size specified in § 656.6;

(c) Fail to return to the water immediately, with the least possible injury, any Atlantic striped bass taken in the EEZ less than 28 inches (71.1 cm) in total length;

(d) Possess (on board a vessel) any Atlantic striped bass less than the minimum size specified in § 656.6 while such vessel is in the EEZ; or

(e) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, shipping, transporting, selling, offering for sale, purchasing, importing or exporting, or transferring of any Atlantic striped bass.

[FR Doc. 95-23879 Filed 9-26-95; 8:45 am]
BILLING CODE 3510-22-F

Notices

Federal Register

Vol. 60, No. 187

Wednesday, September 27, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95-070-1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not

have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737-1237; (301) 734-7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant

pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
94-297-01 ..	Monsanto Company	8-28-95	Strawberry plants genetically engineered to express genes that alter fruit ripening.	Florida.
95-143-01 ..	Texas A&M University .	8-30-95	Sugarcane plants genetically engineered to express tolerance to the herbicide glufosinate.	Texas.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372; 60 FR 6000-6005, February 1, 1995).

Done in Washington, DC, this 22nd day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-23971 Filed 9-26-95; 8:45 am]

BILLING CODE 3410-34-P

Food and Consumer Service

Public Notification That Several Products Are Now Excluded From the "Soda Water" and "Certain Candies" Category of "Foods of Minimal Nutritional Value"

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This notice serves to inform the public that Canadian Pure Beverage Distributing, Inc., Knudsen and Sons,

Inc. and Farley's Foods U.S.A. have petitioned the Food and Consumer Service (FCS) to exempt products from the "Categories of Foods of Minimal Nutritional Value" under the National School Lunch Program and the School Breakfast Program. Based upon data furnished by the manufacturers, FCS has determined that these products should not be classified as foods of minimal nutritional value. The petitioners have been notified of this determination in writing and that FCS does not prohibit the sale of the products in school food service areas during breakfast or lunch period.

DATES: The effective dates of this Notice are October 20, 1993 for Canadian Pure Beverage Distributing, Inc., June 27, 1994 for Knudsen and Sons, Inc., and March 31, 1995 for Farley's Foods U.S.A. This corresponds with the dates the companies were notified of approval.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia H. Ford, Chief, Technical Assistance Branch, Nutrition and Technical Services Division, Food and Consumer Service, 3101 Park Center Drive, Room 607, Alexandria, Virginia, 22302, or by telephone at (703) 305-2556.

SUPPLEMENTARY INFORMATION: The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under No. 10.555 and under No. 10.553, respectively, and are thereby subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and the final rule-related Notice published June 24, 1983 (48 FR 29114)).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

This Notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

On January 29, 1980, the Department published final regulations (45 FR 6758 at 6772), commonly known as the competitive foods rule, which identified categories of foods of minimal nutritional value. These foods were identified as soda water, water ices, chewing gum and certain candies (hard candies, jellies and gums, marshmallow candies, fondants, licorice, spun candy, and candy coated popcorn). The sale of

such foods is prohibited in food service areas during breakfast and lunch periods by the regulations governing the School Breakfast Program, 7 CFR 220.12(a), and the National School Lunch Program, 7 CFR 210.11(b).

As defined in 7 CFR 210.11(a)(2) and 220.2(i-1), foods of minimal nutritional value provide less than five percent of the Reference Daily Intake (RDI) for each of eight specified nutrients per 100 calories and less than five percent of the RDI for each of the eight specified nutrients per serving. In the case of artificially sweetened foods, only the "per serving" measure applies. The eight specified nutrients are: protein, vitamin A, vitamin C, niacin, riboflavin, thiamine, calcium, and iron. The competitive foods rule has been amended many times but it still retains its original intention of keeping foods of minimal nutritional value from competing with foods served in school lunch and breakfast program service areas. Under 7 CFR 220.12(a) and 210.11(b) school food authorities have the right to restrict and even forbid the sale of foods that would otherwise be permitted under the competitive foods rule. If competitive foods are allowed to be sold in food service areas during breakfast and lunch periods, all income from such sales must accrue to the benefit of the nonprofit school food service or the school or student organization approved by the school.

The competitive foods rule contains provisions for amending Appendix B—Categories of Foods of Minimal Nutritional Value, of Part 210, National School Lunch Program, and Part 220, School Breakfast Program, to exempt an individual food from a category of foods of minimal nutritional value as listed in Appendix B or to add a particular category of food to Appendix B as a category of foods of minimal nutritional value. These provisions are found in section 210.11(a)(2) and in Part 210, Appendix B, (for the National School Lunch Program) and in section 220.12(b) (for the School Breakfast Program). The public may petition FCS to request that an exception from or an addition to the food categories listed in Appendix B be made. A schedule for petitioners regarding submission deadlines is furnished in Part 210, Appendix B(b)(3), and Part 220, Appendix B. The petition must include a statement of the percent of the RDI for the eight nutrients listed in sections 210.11(a)(2) and 220.2(i-1) that the food provides per serving and per 100 calories and the petitioner's source of this information. FCS determines whether or not the individual food is a food of minimal nutritional value and

informs the petitioner in writing of such determination, and the public by notice in the Federal Register. In determining whether a food is a food of minimal nutritional value, discrete nutrients added to the food are not taken into account.

The Department received petitions from Canadian Pure Beverage Distributing, Inc., dated July 15, 1993, Knudsen and Sons, Inc., dated May 29, 1994, and Farley's Foods U.S.A., dated March 21, 1995, with all necessary petition components. Both per serving and per 100 calorie nutrient analysis data show that one of the eight nutrients (Vitamin C) is greater than 5% of the RDI in each of the products. Therefore, the following products are exempt from the identified category of "Foods of Minimal Nutritional Value" (7 CFR Part 210, Appendix B(a) and Part 220, Appendix B): "Sparkling Spring Water Beverage with natural strawberry flavour," "Sparkling Spring Water Beverage with natural black cherry flavour," "Sparkling Spring Water Beverage with natural raspberry flavour," and "Sparkling Spring Water Beverage with natural peach and orange flavour" produced by Canadian Pure Beverage Distributing, Inc. Likewise, the FJ FIZZ brand "Black Cherry," "Strawberry," "Orange," "Cherry Cola," "Grape," and "Red Raspberry" produced by Knudsen & Sons, Inc. are exempt from the "soda water" category. "The Roll (SLP)" and "Fruit Funnies (SLP)" produced by Farley's Foods U.S.A. are exempt from the "jellies and gums" section of the "certain candies" category.

Program regulations do not prohibit the sale of these products in a school food service area during breakfast or lunch period.

In compliance with petitioning schedules, the companies were notified in writing of this decision and this Notice documents public announcement.

Although required by the regulations to publish this notice, the Department emphasizes that such notification is not to be construed as either approval or endorsement of any food product or manufacturer identified in this notice. Nor is it certification that such food product has a significant nutritional value. Nor in any way is it guidance or encouragement to State Agencies and School Food Authorities concerning their possible purchase of any class or type of food product identified in this notice.

Dated: September 14, 1995.
 William E. Ludwig,
Administrator, Food and Consumer Service.
 [FR Doc. 95-23911 Filed 9-26-95; 8:45 am]
 BILLING CODE 3410-30-U

Forest Service

Upper Ocoee River Recreation Management, Ocoee Ranger District, Cherokee National Forest, Polk County, TN

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposed action to construct and administer new dispersed and developed recreational facilities in the upper Ocoee River Corridor. Included in the analysis and decision making process is the future management of the facilities being constructed for pre-Olympic and Olympic events in connection with the 1996 Olympic Slalom Canoe and Kayak events.

The Forest Service, Tennessee Valley Authority (TVA), and State of Tennessee Department of Environment and Conservation (State hereafter) jointly manage commercial and noncommercial recreational use on sections of the lower Ocoee River, the management of which is not part of this analysis. The Forest Service is the lead agency responsible for preparing the environmental impact statement, since the focus of the analysis centers on lands administered by the Cherokee National Forest. The Tennessee Valley Authority will participate as a cooperating agency in the environmental analysis. TVA has responsibility for providing approval under section 26a of the TVA Act for construction of water use facilities and for managing water flows within the Ocoee River watershed for power generation. The State of Tennessee has a strong interest in the Ocoee Region and will provide valuable resource information during the environmental analysis.

The Forest Service gives notice and invites comment on the scope of the environmental analysis and decisionmaking process. This will ensure that interested and affected individuals, groups, organizations, and agencies have the opportunity to participate in and contribute to the environmental analysis and decision making process.

DATES: Comments should be received by November 6, 1995, to ensure timely consideration.

ADDRESSES: Send written comments to Dave Carroll, Future Use Team Leader, Cherokee National Forest, P.O. Box 2010, Cleveland, TN 37320.

FOR FURTHER INFORMATION CONTACT: Dave Carroll, NEPA Coordinator, (423) 476-9700.

SUPPLEMENTARY INFORMATION: On March 23, Forest Supervisor John F. Ramey signed a Record of Decision (ROD) authorizing the construction of the Olympic Canoe and Kayak Slalom Venue on the Ocoee River within the Cherokee National Forest. The venue which is still under construction consists of a 1700 foot competitive channel, a 7600 square foot administrative building and two bridges across the Ocoee River. The ROD did not make a decision concerning the use of the venue site beyond the Olympic games because of uncertainties connected with water availability. As a cooperating agency, TVA issued its own ROD on May 18, 1994 granting 26a approval for construction of the venue and other facilities within the 100 year floodplain and authorizing water release for pre-Olympic and Olympic events. At the time both RODs were signed, it was recognized that the facilities could possibly be used for athlete training, future competitive events and general recreational use. However, any proposed use of the facilities beyond the 1996 Olympic games would require additional environmental analysis.

In addition to the recreational aspects of the Venue, there are additional opportunities in the Upper Ocoee River corridor for recreational development. The existing recreational facilities within the lower Ocoee River corridor are approaching maximum use capacity. The growing public demand for recreational areas requires facilities that will provide quality developed and dispersed recreational opportunities while protecting the natural beauty and resources of the area. Use on the lower Ocoee so far this summer is thirty percent greater than for the same period in 1994. Over 230,000 people have used the services of commercial outfitters and an estimated 30,000 recreational boaters have paddled the lower Ocoee. Forest Service developed swimming areas and campgrounds are heavily used. Parking areas are generally filled to overflowing and pullouts along U.S. Highway 64 are heavily used for parking. There is high demand for water-based recreational access to the deep, blue-green pools that occur within the upper Ocoee River channel. This area is used by local

residents as well as tourists. **DECISIONS TO BE MADE:** The following decisions are to be made upon completion of the environmental analysis by the Forest Service and TVA. The decisions to be made by the Forest Service are:

1. Whether to construct additional dispersed and developed recreation facilities and if facilities are developed, where they will be located. Facilities include trails, picnic areas, campgrounds, river access roads or tails, and launch facilities for kayakers, canoers, tubers, and rafters.

2. Whether commercial outfitting and associated facilities such as parking areas, change houses, and put-ins and take-outs will be allowed on National Forest System lands.

3. Whether to allow future competitive use of the Olympic venue (venue includes all facilities constructed for the Olympic competition) and under what conditions any such use would be allowed.

The decisions to be made by TVA are:

1. Whether to provide section 26a approval of proposed facilities.

2. Whether to provide water releases on the Upper Ocoee for post Olympic competitive, recreational and/or commercial uses of the river.

Scoping

Preliminary scoping between TVA and Forest Service personnel has identified the following preliminary issues related to development of the upper Ocoee River:

1. What are the appropriate opportunities within the upper river corridor;

2. What are the effects of additional recreational use within the upper Ocoee corridor on the adjacent Little Frog Wilderness and the wilderness experience;

3. What are the short-term and long-term effects of increased recreational development on the local and regional demographics and economies;

4. What are the effects of increased visitation on river management, commercial outfitters, private users, and natural and heritage resources within the river corridor;

5. What impact will increased development have on fish and wildlife habitat especially, threatened and endangered species;

6. How will water quality be affected by increased visitation and by scheduled water releases;

7. What impact will increased demand for downstream recreational water have on upstream reservoirs;

8. What are the effects on the complexity and cost of TVA's water management and power generation

systems of scheduled water releases from Dam Number 3;

9. Will scheduled water releases into the Ocoee River channel between Dam Number 3 and Dam Number 2 impact the re-establishment of aquatic life in this section of river and if so will this affect operation of TVA's Toccoa/Ocoee River power generation operations; and

10. How will transportation facilities in the general area be affected.

In preparing the environmental impact statement, a range of alternatives will be considered to meet the purpose and need for the proposed action including at a minimum, the proposed action and the no action alternatives. Additional alternatives may be developed to address significant issues received during the scoping process. The EIS will disclose the direct, indirect, and cumulative effects of implementing each of the alternatives.

Development of recreation opportunities may impact the floodplain of the Ocoee River. Consonant with Executive Order 11988, Floodplain Management Guidelines, the environmental impact statement will analyze and disclose impacts to floodplains and the potential effects of facility construction within the Ocoee River floodplain.

Public participation will be especially important at several points during the analysis process. The first point in the analysis is the scoping process (40 CFR 1501.7). The scoping process includes, but is not limited to:

- (1) Identifying potential issues,
- (2) Identifying issues to be analyzed in depth,
- (3) Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis,
- (4) Exploring additional alternatives, and
- (5) Identifying potential environmental effects (i.e., direct, indirect, and cumulative) of the alternatives.

The Forest Service is seeking information, comments, and assistance from Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the proposal. This information will be used in the preparation of the draft environmental impact statement. Notification letters will be sent to all known interested and/or affected parties and the media to solicit public participation.

Public briefings will be held to provide information and to gather issues and concerns on the proposed action. When the dates and locations of workshops have been determined, this

information will be made known through local media, direct contact with known interested publics, and direct mailings.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March 1996. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Upon release of the draft environmental impact statement, projected for March 1996, reviewers must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers position and contentions.

Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, Supp. 1334 (E.D. Wis. 1980) Because of these court rulings, it is very important that those interested in this proposal participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the draft environmental impact statement, the comments will be analyzed, considered, and responded to by Agencies in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by June 1996.

The responsible official will consider the comments, responses, and environmental consequences disclosed in the final environmental impact statement, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision made and reasons for the decision in a Record of Decision.

The responsible official is John F. Ramey, Forest Supervisor, Cherokee National Forest, P.O. Box 2010, Cleveland, TN 37320.

Dated: September 8, 1995.

John F. Ramey,

Forest Supervisor.

[FR Doc. 95-23704 Filed 9-26-95; 8:45 am]

BILLING CODE 3410-11-M

Grain Inspection, Packers and Stockyards Administration

Pilot Programs Allowing More Than One Official Agency to Provide Official Services Within a Single Geographic Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice

SUMMARY: GIPSA announces two pilot programs allowing more than one official agency to provide official services within a single geographic area.

EFFECTIVE DATE: November 1, 1995.

ADDRESSES: Neil E. Porter, Director, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202-720-8262.

SUPPLEMENTARY INFORMATION:

Sections 7(f) and 7A of the United States Grain Standards Act, as amended (Act), were amended by the U.S. Grain Standards Act Amendments of 1993 (Public Law 103-156) on November 24, 1993, to authorize GIPSA's Administrator to conduct pilot programs allowing more than one official agency to provide official services within a single geographic area without undermining the declared policy of the Act. The purpose of pilot programs is to evaluate the impact of allowing more than one official agency to provide

official services within a single geographic area.

GIPSA requested comments on five possible pilot programs in the March 14, 1994, Federal Register (59 FR 11759): timely service; barges on selected rivers or portions of rivers; exceptions; commercial inspections; and submitted samples. Comments were due by April 22, 1994. GIPSA received 41 comments on these possible pilot programs: seventeen comments from official agencies or employees of official agencies opposed these pilot programs; twenty-two comments from grain firms, grain trade associations, and a few official agencies supported these pilot programs; and two comments from official agencies were neutral.

The comments submitted by official agencies expressed their concern over being pressured to grade more leniently or risk losing customers, the possible issuance of multiple original grades on a single lot of grain, losing major customers to competing official agencies, being forced to give preferential treatment to large customers over small customers, and maintaining a relatively uniform inspection volume sufficient to preserve their personnel base.

Comments from the grain trade noted difficulty in getting services when needed to avoid additional charges and the possibility of better service and/or lower cost if they could choose the official agency to provide such services. They also indicated a desire for pilot programs encompassing all services, a more specific proposal to comment on, and a concern that the structure of a pilot program could determine its success or failure.

After considering these comments and other information, GIPSA, in the March 10, 1995, Federal Register (60 FR 13113), developed and asked for comments on two proposed pilot programs: "Timely Service" (one of the original five pilot programs) and "Open Season" (an additional pilot program). The remaining four pilot programs proposed in March 14, 1994, Federal Register (barges on selected rivers or portions of rivers, exceptions, commercial inspections, and submitted samples) were determined to be too narrow in scope to conduct an appropriate pilot program.

Comments on these two proposed pilot programs were due by May 5, 1995. GIPSA received 15 comments. Seven official agencies and one official agency organization opposed these pilot programs citing their belief that the pilot programs would have an adverse impact on the integrity of the official inspection system. Three of these agencies also

expressed concern about grain handling facilities being able to participate in the open season pilot program as a result of seasonal shipping patterns or doing without official services for 6 months. GIPSA recognizes these concerns, but believes that there are adequate safeguards in the proposed pilot programs. Two official agencies, one grain handling facility, and four grain trade organizations supported these pilot programs citing their belief that the pilot programs would promote more timely official inspection services. Two of the trade organizations recommended that timely service be redefined to mean when the final grades are received by the customer. GIPSA agrees and has modified the Timely Service pilot program to differentiate between obtaining sampling/weighing services and receiving inspection results.

The following two pilot programs will start on November 1, 1995, and end on October 31, 1996.

1. Timely Service. This pilot program allows official agencies to provide official services to facilities outside their assigned geographic area on a case-by-case basis when these official services can not be provided in a timely manner by the official agency designated to serve that area. A timely manner is defined as follows:

Sampling/weighing services. 6 hours when a service request is received between 6 a.m. and noon, Monday through Friday, by the official agency designated to provide service; and 12 hours when a service request is received any other time by the official agency designated to provide service. This means 6 hours or 12 hours to have a sampler/weigher at the facility requesting service unless the customer requests a later arrival.

Inspection results. 12 hours from the completion of sampling of the units to be inspected. This means that the official agency providing the service shall provide inspection results to the customer not later than 12 hours upon completion of the sampling. This notification of results may be by telephone, telefax, or other electronic means, and does not apply to certification.

Facilities unable to obtain service within these time limits may request such service from another official agency. Customers using this pilot program must maintain sufficient documentation to establish that they could not receive timely service from the official agency designated to serve them (e.g., copy of faxed request for service). If GIPSA determines that a customer violates the provisions of this pilot program, such customer will no

longer be permitted to participate in the program.

Official agencies are encouraged to establish a means to accept customer orders during other than normal business hours. Official agencies must handle customer requests for service in the order received, where practicable. Official agencies asked to provide official services outside their assigned geographic area under the Timely Service pilot program must notify the Compliance Division, GIPSA.

The definition of timeliness in this pilot program supersedes the definition of "timely manner" currently stated in section 800.46(b)(5), and also, supersedes the time requirements stated in section 800.116(b) of the regulations under the Act for purposes of the pilot program only. These sections state that official personnel may not be available to provide requested services if the request is not received by 2 p.m., the preceding business day.

2. Open Season. This pilot program would allow official agencies an open season during which they may offer their services to facilities outside their assigned geographic area where no official sample-lot or official weighing services have been provided in the previous 6 months. Official agencies desiring to participate in this pilot program must submit their plans to provide official services to customers outside their assigned geographic area to Compliance Division, GIPSA, for review in consultation with the field office supervising the official agency. Upon approval by the Compliance Division, these official agencies would be permitted to participate in this program.

Official agencies participating in these pilot programs can provide, during the test period, any official services for which they are designated. Official agencies participating in pilot programs must arrange for any equipment (including laboratories and access to diverter-type mechanical samplers) that may be needed to provide official services at each site outside the area they are currently designated to serve.

These pilot programs will run for 1 year, starting November 1, 1995, and ending October 31, 1996. During this time, GIPSA will monitor these pilot programs. If, at any time, GIPSA determines that a pilot program is having a negative impact on the official system or is not working as intended, the pilot program may be modified or discontinued.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 19, 1995
 David R. Shipman
 Deputy Administrator
 [FR Doc. 95-23908 Filed 9-26-95; 8:45 am]
 BILLING CODE 3410-EN-F

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Materials Processing Equipment Technical Advisory Committee will be held October 25, 1995, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing and related technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of status of Core List negotiations.
4. Election of Chairman.

Closed Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be 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: Lee Ann Carpenter, TAC Staff/BXA/ Room 1621, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., 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: September 21, 1995.
 Lee Ann Carpenter,
 Director, Technical Advisory Committee Unit.
 [FR Doc. 95-23916 Filed 9-26-95; 8:45 am]
 BILLING CODE 3510-DT-M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application for an Amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. §§ 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-10A004."

AMT—The Association For Manufacturing Technology's ("AMT") original Export Trade Certificate of Review was issued on May 19, 1987 (52 FR 19371, May 22, 1987) and was previously amended on December 11, 1987 (52 FR 48454, December 22, 1987), January 3, 1989 (54 FR 837, January 10, 1989), April 20, 1989 (54 FR 19427, May 5, 1989), May 31, 1989 (54 FR 24931, June 12, 1989), May 29, 1990 (55 FR 23576, June 11, 1990), June 7, 1991 (56 FR 28140, June 19, 1991), November 27, 1991 (56 FR 63932, December 6, 1991), July 20, 1992 (57 FR 33319, July 28, 1992), and May 10, 1994 (59 FR 25614, May 17, 1994).

Summary of the Application

Applicant: AMT—The Association For Manufacturing Technology, 7901 Westpark Drive, McLean, Virginia 22102-4269, Contact: Jerome D. Sorkin, legal counsel, Telephone: (202) 662-5569
 Application #: 87-10A004
 Date Deemed submitted: September 15, 1995.

Request for Amended Conduct

AMT seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate: Acro Automation Systems, Inc., Milwaukee, Wisconsin; Automatic Design Concepts, Bridgeport, Connecticut; Bentz, Incorporated, Detroit, Michigan; Capco, Inc., Roanoke, Virginia; Creative Automation, Inc., Plymouth, Michigan; Edgetek Machine Corporation, Meriden, Connecticut; ESAB L-TEC Cutting Systems, Florence, South Carolina; GEC Alsthom Cyril Bath Company, Monroe, North Carolina; Grav-i-Flo Corporation, Sturgis, Michigan; Hobart Brothers Company, Livermore, California; ISI Robotics, Frazer, Michigan; Jasco Tools, Inc., Rochester, New York; Keller Industries, Hollandale, Minnesota; K.T. Design &

Prototype, Winchester, Virginia; Metalsoft, Inc., Santa Ana, California; MHI Machine Tool USA, Inc., Bristol, Connecticut (controlling entity: Mitsubishi Heavy Industries of America); MHO Corporation, Emeryville, California; Natco/Carlton L.P., Richmond, Indiana; OMAX Corporation, Auburn, Washington; Optical Gaging Products, Inc., Rochester, New York; Precitech Inc., Keene, New Hampshire; RWC Incorporated, Bay City, Michigan; Taurus Products, Inc., Sterling Heights, Michigan; Wisconsin Machine Tool Corporation, West Allis, Wisconsin.

2. Delete each of the following companies as a "Member" of the Certificate: Airlock Manufacturing Company; Autospin, Inc.; Black Brothers Co.; Bracker Corporation Pittsburgh; Cammann, Inc.; Curtin Hebert Co. Inc.; DEA; DeHoff Incorporated; Ekstrom, Carlson & Company; Federal Press Company; Feldmann, Inc.; Grotnes Metalforming Systems, Inc.; Hoglund Technology Corporation; IRD Mechanalysis, Inc.; Imperial Stamp & Engraving Company; J.A.C.P., Inc.; Kalamazoo Saw Co.; Louis Levin & Son Inc.; Morgan Industries, Inc.; Multipress Division; Rank Taylor Hobson Inc.; S-P/Sheffer International, Inc.; Schuler Incorporated.

3. Change the listing of the company name for each current "Member" cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: Cellular Concepts Company (Cellular Concepts Co.); Control Laser Corporation (Excel/Control); Debur Corporation (Surf/Tran Burlytic Systems Division); S.E. Huffman Corporation (Huffman); Katy/CRL, Inc. (CRL Industries, Inc.); Komatsu-Cybermation (Komatasu Cutting Technologies); Mattison Machine Works (Mattison Technologies); Moore Special Tool Co., Inc. (Moore Tool Co.); Morey Machinery, Inc. (Morey Machinery Manufacturing Corp.); Niagara Machine & Tool Works (Clearing Niagara); Positech Corporation (CM Positech); Roberts Machine Corp. (Niagara Falls Grinders); Setco Sales Company (Setco); Sheffield Schaudt Grinding Systems, Inc. (United Grinding Technologies); Whitnon Spindle Division/GMN (Whitnon Spindle Division/Setco).

Dated: September 19, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95-23915 Filed 9-26-95; 8:45 am]

BILLING CODE 3510-DR-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Poland

September 22, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 28, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62718, published on December 6, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
September 22, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, by the Chairman, Committee for the Implementation

of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on September 28, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC):

Category	Twelve-month restraint limit ¹
410	2,445,546 square meters.
433	21,517 dozen.
435	14,706 dozen.
443	232,430 numbers.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-23938 Filed 9-26-95; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

September 22, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6705. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously,

for swing, special shift, carryover and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 62645, published on December 20, 1994). Also see 60 FR 8344, published on February 14, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 22, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 9, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 26, 1995, you are directed to amend the directive dated February 9, 1995 to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
340/640	1,744,280 dozen.
341	4,015,211 dozen of which not more than 2,299,620 dozen shall be in Caegory 341-Y ² .
342/642	1,124,346 dozen.
345	148,259 dozen.
347/348	535,263 dozen.
351/651	254,949 dozen.
363	34,532,650 numbers.
369-D ³	1,173,920 kilograms.
641	993,514 dozen.
647/648	396,289 dozen.
Group II	
200, 201, 220-229, 237, 239, 300, 301, 330-333, 349, 350, 352, 359-362, 600-607, 611-629, 630-633, 638, 639, 643-646, 649, 650, 652, 659, 665-O ⁴ , 666, 669, 670 and 831-859, as a group.	99,288,114 square meters equivalent.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1994.

² Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

³ Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

⁴ Category 665-O: Category 665-O: all HTS numbers except 5702.10.9030, 5702.42.2020, 5702.92.0010 and 5703.20.1000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-23939 Filed 9-26-95; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and OMB Control Number: Air Force Academy Precandidate Questionnaire; USAFA

Form 149; OMB Control Number 0701-0087

Type of Request: Expedited Processing—Approval date requested: Not later than 30 days following publication in the Federal Register
Number of Respondents: 11,250
Responses per Respondent: 1
Annual Responses: 11,250
Average Burden per Response: 24 minutes
Annual Burden Hours: 4,500
Needs and Uses: The information collected hereby, is utilized in the screening process to conduct a preliminary assessment of a candidate's eligibility status, qualifications, and prospects for formal application and selection for entry into the United States Air Force Academy
Affected Public: Individuals or households

Frequency: One time
Respondent's Obligation: Required to obtain or retain benefits

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: September 22, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-23977 Filed 9-26-95; 8:45 am]

BILLING CODE 5000-04-M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and OMB Control Number: Unescorted Entry Authorization Certificate; Air Force Form 2586; OMB Control Number 0701-0042.

Type of Request: Expedited Processing—Approval date requested: Not later than 30 days following publication in the Federal Register.

Category	Adjusted twelve-month limit ¹
Levels in Group I	
218	12,554,621 square meters.
219	52,238,883 square meters.
313	31,726,050 square meters.
314	5,998,656 sqare me-ters.
315	11,867,317 square meters.
317	25,329,201 square meters.
326	7,645,900 square me-ters.
334/634	126,325 dozen.
335/635	520,924 dozen.
336/636	740,530 dozen.
338/339	3,638,856 dozen.

Number of Respondents: 20,000.
Responses Per Respondent: 1.
Annual Responses: 20,000.
Average Burden Per Response: 3 minutes.

Annual Burden Hours: 1,000.
Needs and Uses: The information collected hereby, is utilized to administer the physical security program on military installations world-wide. It enables commanders to make informed decisions in allowing unescorted entry of personnel into controlled and restricted areas.

Affected Public: Business or other for-profit; State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: September 22, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-23978 Filed 9-26-95; 8:45 am]

BILLING CODE 5000-04-M

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATES: October 27, 1995, 8 a.m. to 5:00 p.m. and October 28, 1995, 8 a.m. to 1:00 p.m.

ADDRESSES: Floreal Hotel, Koning Albertlaan 59, 8370 Blankenberge,

Belgium; Telephone: 011-32-50-432111.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela Williams, DoD Education Activity, 4040 N. Fairfax Drive, Arlington, Virginia 22203-1635; Telephone number: 703-696-4246, extension 124.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95-561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)-(5), of Public Law 99-145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Department, 12 members are appointed jointly by the Secretaries of Defense and Education. Members include representatives of educational institutions and agencies, professional employee organizations and unions, unified military commands, school administrators parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes reports about topics raised during ACDE team visits to schools in Germany, England, The Netherlands, and Belgium; the DoD Education Activity (DoDEA) Community Strategic Plan, to include communications, technology, assessment, budget, and organizational restructuring.

Dated: September 22, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-23942 Filed 9-26-95; 8:45 am]

BILLING CODE 5000-04-M

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on October 3, 1995; October

10, 1995; October 17, 1995; October 24, 1995; and October 31, 1995, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92-463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301-4000.

Dated: September 22, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-23941 Filed 9-26-95; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Thursday, October 5: 9:00 a.m.-5:00 p.m.; Friday, October 6: 8:30 a.m.-4:00 p.m.

ADDRESSES: The session will be held at: Cavanaugh's, 1101 North Columbia Center Blvd., Kennewick, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Yerxa, Public Participation Coordinator, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA, 99352.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

October Meeting Topics

The Hanford Site Group will receive information on and discuss issues related to: Management and Integration Contractor for Hanford Site, DOE Strategic Planning, and Plutonium Risks and Solutions. The Committee will also receive updates from various Subcommittees, including reports on: Tank Waste Remediation System Privatization, St Louis Plan Update, and Hanford Site Group Administrative Matters, including operating procedures revision, and Executive Committee formation.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jon Yerxa's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the Federal Register notice is being published less than fifteen days before the date of the meeting.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Jon Yerxa, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509)-376-9628.

Issued at Washington, DC on September 22, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95-23951 Filed 9-26-95; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket Nos. RP95-408-000 and RP95-408-001]

Columbia Gas Transmission Corporation; Notice of Technical Conference

September 21, 1995.

Take notice that a technical conference will be convened to discuss issues concerning Columbia's tracking mechanisms, and changes to Columbia's terms and conditions of service. The conference will be held on Tuesday, October 17, 1995, at 9:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested persons and staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95-23906 Filed 9-26-95; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1951-037-GA]

Georgia Power Company; Notice Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

September 21, 1995.

The license for the Sinclair Hydro Project No. 1951, located on the Oconee River, in Baldwin County, Georgia, expires on August 31, 1997. The statutory deadline for filing an application for new license is August 31, 1995. An application and Draft Environmental Assessment (DEA) for new license has been filed as follows:

Project No.	Applicant	Contact
P-1951-037.	Georgia Power Company.	Mr. C.M. Hobson, Georgia Power Co., 333 Piedmont Ave., Bin No. 10170, Atlanta, GA 30308, (404) 526-7778.

The following is an approximate schedule and procedures that will be followed in processing the application and DEA:

Date	Action
Sept. 15, 1995 ..	Commission notifies applicant that its application has been accepted.

Date	Action
Sept. 22, 1995 ..	Commission issues a combined notice for public notice of the accepted application establishing dates for filing motions to intervene and protests, and a Ready for Environmental Assessment (REA) notice soliciting comments, final terms and conditions and any prescriptions.
Oct. 30, 1995	Commission's deadline for applicant for filing a final amendment, if any, to its application.

Any questions concerning this notice should be directed to Kelly Fargo at (202) 219-0231.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95-23905 Filed 9-26-95; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5303-6]

Agency Information Collection Activities up for Renewal

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 Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before November 27, 1995.

ADDRESSES: Comments should be sent to the Nonpoint Source Control Branch, Assessment and Watershed Protection Division (4503-F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dov Weitman at (202) 260-7088 (phone), (202) 260-7024 (facsimile), weitman.dove@epamail.epa.gov (E-mail); or Amy Sosin at (202) 260-7058 (phone), (202) 260-7024 (facsimile), sosin.amy@epamail.epa.gov (E-Mail).

SUPPLEMENTARY INFORMATION:

Affected Entities

Entities affected by this action are those are States and 5 Territories with

Federally-approved Coastal Zone Management Programs. These States and Territories are required to submit coastal nonpoint programs under § 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), in accordance with the Program Development and Approval Guidance developed by the U.S. Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA).

Title

Program Development and Approval Guidance for Coastal Nonpoint Pollution Control Programs (CZARA Section 6217). OMB Control Number 2040-0153, expiration date January 31, 1996.

Abstract

The Program Development and Approval Guidance implements Section 6217 of the 1990 Coastal Zone Management Act Reauthorization Amendments. The guidance requires 24 coastal States and 5 coastal Territories with approval Coastal Zone Management Programs to submit Coastal Nonpoint Programs to EPA and NOAA for joint review in July 1995. This one-time submittal will be used to determine if States and Territories receiving Clean Water Act Section 319 and Coastal Zone Management Act Section 306 Federal grants will face reductions in fiscal year 1996.

Based on initial reviews of many of the Coastal Nonpoint Programs that have been submitted for review, EPA and NOAA anticipate that many programs are likely to receive conditional approvals. These conditional approvals may require States and Territories to submit additional information at a later date prior to receiving final program approval.

The EPA would like to solicit comments to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information

technology, e.g., permitting electronic submission of responses.

Burden Statement

The original Information Collection Request estimated that the reporting burden to develop coastal nonpoint programs under the Program Development and Approval Guidance would average 1,874 hours per response (29 respondents), including the time for reviewing instruction, searching existing data sources, completing and reviewing the information, and preparing the final report. Because most of the coastal States and Territories have completed a large portion of their program development at this time, EPA estimates that the remaining reporting burden will be approximately 20 percent of the original burden estimate, or appropriately 375 hours per response.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: September 19, 1995.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 95-23957 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-530229]

Public Water System Supervision Program: EPA Tentatively Approves Program Revisions Corresponding to the National Primary Drinking Water Regulations for Lead and Copper for the State of Kansas

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Kansas is revising its approved State Public Water System Supervision (PWSS) Program. Kansas has adopted regulations for (1) synthetic organic chemicals and inorganic chemicals (Phase II), that correspond to the National Primary Drinking Water Regulations (NPDWR) published by EPA on January 30, 1991 (56 FR 3526); (2) volatile organic chemicals (Phase IIB), that correspond to the NPDWR published by EPA on July 1, 1991 (56 FR 30266); (3) lead and copper, that correspond to the NPDWR published by

EPA on June 7, 1991 (56 FR 26460), and as amended on July 15, 1991 (56 FR 32112) and June 29, 1992 (57 FR 28785); and total coliforms, that correspond to the NPDWR published by EPA on June 10, 1992 (57 FR 24744); and (4) synthetic organic chemicals and inorganic chemicals (Phase V) that correspond to NPDWR published by EPA on July 17, 1992 (57 FR 31776).

EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. This determination was based upon an evaluation of Kansas's PWSS program in accordance with the requirements stated in 40 CFR 142.10. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted to the Regional Administrator, within thirty (30) days of the date of this Notice, at the address shown below. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days from this Notice date.

Insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Requests for a public hearing should be addressed to: Ralph Langemeier, Chief, Drinking Water Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional

Administrator in the Federal Register and in newspapers of general circulation in the State of Kansas. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Kansas. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

ADDRESSES: A copy of the primacy application relating to this determination is available for inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, at the following locations: U.S. EPA Region VII Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, and the Kansas Department of Health and Environment, Public Drinking Water Program, Bureau of Water, Forbes Field, Building 740, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT: Elizabeth Murtagh Yaw, EPA Region VII Drinking Water Branch, at the above address, telephone (913) 551-7440.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: September 18, 1995.

Dennis Grams,

Regional Administrator, EPA, Region VII.

[FR Doc. 95-23843 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5305-2]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of an open public advisory meeting: Common Sense Initiative Council.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Common Sense Initiative Council (CSIC) is convening an opening meeting on Wednesday, October 18, 1995, from 8:30 a.m. to 5:00 p.m. at the Hall of the States, 444 North Capitol Street NW., Suite 237 Washington, DC.

The Council will meet to discuss and take action on a variety of topics including: the CSI parameters of

cleaner, cheaper, smarter; environmental justice in CSI; potential cross-cutting, multi-sector issues and recommendations from the Metal Finishing and Computer and Electronics Sector Subcommittees.

Limited time will be provided for members of the public wishing to make oral comments during the meeting. In general, each individual or group making oral presentations will be limited to a total of three minutes. Any person or organization interested in submitting written comments to the Council should contact the CSI Program Staff Office on (202) 260-7417. Written comments must be forwarded with at least 35 copies by October 16, 1995.

For further information on this meeting, please call either Prudence Goforth, Designated Federal Officer, or Elaine Wright, CSI Director at EPA Headquarters, on (202) 260-7417.

FOR FURTHER INFORMATION AND INSPECTION OF CSIC DOCUMENTS:

Documents relating to the Council will be available at the meetings. Thereafter, these documents, together with official minutes for the Council meetings, will be available for public inspection in room 2417 Mall of EPA Headquarters, Common Sense Initiative Program Staff, 401 M Street SW., Washington, DC 20460, phone (202) 260-7417. CSIC information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.epa.gov.

Dated: September 22, 1995.

Prudence Goforth,

Designated Federal Officer.

[FR Doc. 95-23968 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-62151; FRL-4979-3]

Dialogue Process on Identification of Lead-Based Paint Hazards; Notice of Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established the schedule for meetings of the Dialogue Process to support the forthcoming rulemaking under section 403 of the Toxic Substances Control Act (TSCA). Section 403 directs the Agency to "... promulgate regulations which shall identify... lead-based paint hazards, lead contaminated dust and lead contaminated soil." Through the Dialogue Process, the Agency seeks to obtain information and individual perspectives on specific policy questions related to the rulemaking.

DATES: The meetings will be held from 10 a.m. to 6 p.m. on: October 19, 1995; November 16, 1995; December 14, 1995; and January 18, 1996.

ADDRESSES: The meetings will be held at the Grand Hyatt Washington, 1000 H St., NW., Washington, DC 20001.

All comments should be submitted in triplicate to: TSCA Document Receipts (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-G99, 401 M St., SW., Washington, DC 20460. All comments should be identified by the docket number OPPTS-62151.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: nctic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS-62151. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

FOR FURTHER INFORMATION CONTACT: For information on the Dialogue Process or the schedule, please contact: Andrea Yang, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-4918, e-mail: yang.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Dialogue Schedule

Section 403 of TSCA, 15 U.S.C. 2683 directs EPA to promulgate regulations that identify lead hazards in paint, household dust, and bare residential soil. Title IV of TSCA, titled "Lead Exposure Reduction," which includes section 403, was added to TSCA by the Residential Lead-Based Paint Hazard Reduction Act of 1992. To support the rulemaking, EPA has established a Dialogue Process to obtain input from interested parties early in the rulemaking process. Establishment of the Dialogue Process was announced in the Federal Register of July 18, 1995 (60 FR 36806).

All meetings are open to the public and will provide opportunity for public comment on a first-come, first-served basis. Thirty minutes will be allocated at each meeting for public comment.

Due to the need to accommodate as many interested parties as possible during the public comment periods, EPA will limit comments to 5 minutes for representatives of organizations and 3 minutes for individuals. Members of the public interested in offering comment at a meeting of the Dialogue should sign-up at the meeting registration desk.

Individuals wishing to provide comments to EPA, but who cannot be accommodated during the comment period or cannot attend the Dialogue meetings may submit written comments to EPA at the address listed in the **ADDRESSES** unit of this Notice.

Individuals who have information or data that they wish to share with Dialogue participants should send 30 copies to Andrea Yang at the address listed in the **FOR FURTHER INFORMATION CONTACT** unit of this Notice.

II. Confidential Business Information

A person may assert a claim of confidentiality for any information, including all or portions of written comments, submitted to EPA in connection with the Dialogue Process. Any person who submits a comment subject to a claim of confidentiality must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons must mark information claimed as confidential by circling, bracketing, or underlining it, and marking it with **CONFIDENTIAL** or some other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

III. Public Docket

A record has been established for this action under docket number "OPP-62151" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

List of Subjects

Environmental protection and Lead.

Dated: September 20, 1995.

William H. Sanders III,
Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95-24000 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-00175; FRL-4978-6]

Forum on State and Tribal Toxics Action (FOSTTA) Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Open Meetings.

SUMMARY: The four Projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings open to the public at the time and place listed below in this notice.

DATES: The four Projects will meet October 23, 1995 from 8 a.m. to 5 p.m., with a plenary session from 1 p.m. until 2:00 p.m., and on October 24, 1995 from 8 a.m. to noon.

ADDRESSES: The meetings scheduled will be held at The Holiday Inn, 480 King St., Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Erica Phipps, Office of Pollution Prevention and Toxics (7408), U. S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460, telephone: (202) 260-9094.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the states/tribes and between the states/tribes and U.S. EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and Office of Enforcement and Compliance Assurance

(OECA). FOSTTA currently consists of the Coordinating Committee and four issue-specific Projects. The Projects are: (1) The Toxics Release Inventory Project; (2) The State and Tribal Enhancement Project; (3) The Chemical Management Project; and (4) The Lead (Pb) Project.

List of Subjects

Environmental Protection

Dated: September 19, 1995.

James B. Willis,

Acting Director, Environmental Assistance Division Office of Pollution Prevention and Toxics.

[FR Doc. 95-23998 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50811; FRL-4975-9]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

34147-EUP-8. Issuance. AgroEvo USA Company, Little Falls Centre One, 2711 Centerville Road, Wilmington, DE 19808. This experimental use permit allows the use of 300 pounds of the insecticide (1R,3S)3[(1'RS)(1',2',2',2'-tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid (S)- α -cyano-3-phenoxybenzyl ester on 3,020 acres of cotton and soybeans to evaluate the control of various insects. The program is authorized only in the States of Alabama, Arizona, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. The experimental use permit is effective from May 1, 1995 to December 30, 1995. (George LaRocca, PM 13, Rm. 204, CM

#2, 703-305-6100, e-mail: larocca.george@epamail.epa.gov)
 45639-EUP-57. Issuance. AgroEvo USA Company, Little Falls Centre One, 2711 Centerville Road, Wilmington, DE 19808. This experimental use permit allows the use of 55 pounds of the insecticide bendiocarb on 5,000 acres of residential areas to evaluate the control of mosquitoes. The program is authorized only in the State of Florida. The experimental use permit is effective from August 8, 1995 to August 8, 1996. (Dennis Edwards, PM 19, Rm. 207, CM #2, 703-305-6386, e-mail: edwards.dennis@epamail.epa.gov)
 62719-EUP-31. Issuance. DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268. This experimental use permit allows the use of 2.67 pounds of the herbicide N-(2,6-dichlorophenyl)-5-ethoxy-7-fluoro[1,2,4]triazolo-[1,5-c]pyrimidine-2-sulfonamide on 86 acres of soybeans to evaluate the control of broadleaf weeds and sedges. The program is authorized only in the States of Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Virginia. The experimental use permit is effective from July 18, 1995 to March 1, 1997. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 241, CM #2, 703-305-6900, e-mail: taylor.robert@epamail.epa.gov)
 264-EUP-95. Issuance. Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. This experimental use permit allow the use of 31.46 pounds of the insecticide 5-amino-1-(2,6-dichloro-4-(trifluoromethyl)phenyl)-4-((1,R,S)-(trifluoromethyl)sulfinyl)-1-H-pyrazole-3-carbonitrile on 242 acres of field corn to evaluate the control of northern and western corn rootworm larvae and wireworms. The program is authorized only in the States of Illinois, Indiana, Iowa, Minnesota, Nebraska, Ohio, South Dakota, and Wisconsin. The experimental use permit is effective from March 28, 1995 to March 28, 1996. (Richard Keigwin, PM 10, Rm. 713, CM #2, 703-305-7618, e-mail: keigwin.richard@epamail.epa.gov)
 264-EUP-100. Issuance. Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. This experimental use permit allow the use of 10.1 pounds of the insecticide 5-amino-1-(2,6-dichloro-4-(trifluoromethyl)phenyl)-4-((1,R,S)-(trifluoromethyl)sulfinyl)-1-H-pyrazole-3-carbonitrile on 264 acres of turf grass on golf courses to evaluate the control of mole crickets. The program is

authorized only in the States of Alabama, Georgia, Florida, Mississippi, North Carolina, and South Carolina. The experimental use permit is effective from July 17, 1995 to December 31, 1996. (Richard Keigwin, PM 10, Rm. 713, CM #2, 703-305-7618, e-mail: keigwin.richard@epamail.epa.gov)
 612-EUP-8. Issuance. Unocal Agriproducts, c/o Delta Analytical Corp., 7910 Woodmont Ave., Suite 1000, Bethesda, MD 20814. This experimental use permit allows the use of 269,664 pounds of the fungicide/insecticide/nematicide sodium tetrathiocarbonate on 800 acres of non-bearing fruit and nut trees to evaluate the control of plant parasitic nematodes, oak root fungus, and phytophthora root rot. The program is authorized only in the States of Alabama, California, Georgia, Idaho, Michigan, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, and West Virginia. The experimental use permit is effective from July 31, 1995 to July 20, 1997. This permit is issued with the limitation that only non-bearing fruit and nut trees are treated. (James Stone, Acting PM 22, Rm. 229, CM #2, 703-305-7391; e-mail: stone.james@epamail.epa.gov)
 Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: September 8, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95-23570 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

[PP 4G4414/T682; FRL 4977-4]

Cyclanilide; Establishment of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the

plant growth regulator cyclanilide in or on the raw agricultural commodity cottonseed. This temporary tolerance was requested by Rhone-Poulenc Ag Company.

DATES: This temporary tolerance expires August 14, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: James Stone, Acting Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-7391; e-mail: stone.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc Ag Company, P.O. Box 12014, Research Triangle Park, NC 27709, has requested in pesticide petition (PP) 4G4414 the establishment of a temporary tolerance for residues of the plant growth regulator cyclanilide, 1-(2,4-dichlorophenylaminocarbonyl)-cyclopropane carboxylic acid in or on the raw agricultural commodity cottonseed at 0.5 parts per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 264-EUP-97 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of a temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rhone-Poulenc Ag Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires August 14, 1996. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally

applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

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

Dated: September 8, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95-23713 Filed 9-26-95; 8:45 a.m.]

BILLING CODE 6560-50-F

[OPP-30392; FRL-4971-4]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide product containing new active ingredient not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by (insert date 30 days after publication in the Federal Register).

ADDRESSES: By mail, submit written comments identified by the document control number [OPP-30392] and the file symbols to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on

disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-30392]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person: Contact the person named in each registration at the following office location/telephone number:

Contact Person	Office location/telephone number	Address
Michael Mendelsohn,	5th Fl, CS #1 (703-308-8715); e-mail: mendelsohn.mike@epamail.epa.gov.	Environmental Protection Agency Westfield Building North Tower 2800 Crystal Drive Arlington, VA 22202
Denise Greenway,	5th Fl, CS #1 (703-308-8263); e-mail: greenway.denise@epamail.epa.gov.	-Do-
Rita Kumar,	5th Fl, CS #1 (703-308-6757); e-mail: kumar.rita@epamail.epa.gov.	-Do-
James Boland,	5th Fl., CS #1 (703-308-8728); e-mail: boland.james@epamail.epa.gov.	-Do-
Paul Zubkoff,	5th Fl, CS #1 (703-308-8694); e-mail: zubkoff.paul@epamail.epa.gov.	-Do-

SUPPLEMENTARY INFORMATION: EPA received an applications as follows to register pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of

section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 55638-GU. Applicant: Ecogen Incorporation, 2005 Cabot Blvd. West, Longhorne, PA 19047-3023. Product name: Crymax Bioinsecticide.

Biological Insecticide. Active ingredient: *Bacillus thuringiensis* subspecies *kurstaki* strain EG 7841 Lepidopteran toxin at 15 percent. Proposed classification/Use: None. For the control of lepidopteran pests on a variety of crops. (Mike Mendelsohn)

2. File Symbol: 69111-R. Applicant: L.P.C. USA, P.O. Box 685, Peculiar, MO 64078. Product name: Escape Gel. Insecticide. Active ingredient: An unique formula of essential oils of litsea, pinus, cymbogon, and cinnamomum. Proposed classification/Use: General. As an insect repellent on animals. (Rita Kumar)

3. File Symbol: 68173-E. Applicant: Kaken Pharmaceutical Co., Ltd. Agrochemicals and Animal Health Products Division, 3-4-10, Nihonbashi-Honcho Chuo-ku, Tokyo 103, Japan. Product name: Stopit Wettable Powder Turf Fungicide. Fungicide. Active ingredient: Polyoxorim-zinc (1:1), zinc 5-[[2-amino-5-O-(aminocarbonyl)-2-deoxy-L-xylonoyl]amino]-1-(5-carboxy-3,4-dihydro-2,4-dioxo-1(2H)-pyrimidinyl)-1,5-dideoxy-β-D-allofuranuronate at 2.5 percent. Proposed classification/Use: None. For the control of brown patch and large patch caused by *Rhizoctonia solani* on turf (except turf grown for sale or other commercial use as sod or for seed production, or for research purposes). (Denise Greenway)

4. File Symbol: 68173-R. Applicant: Kaken Pharmaceutical Co., Ltd. Fungicide. Product name: Polyoxin D Salt Technical. Fungicide. Active ingredient: Polyoxorim-zinc (1:1), zinc 5-[[2-amino-5-O-(aminocarbonyl)-2-deoxy-L-xylonoyl]amino]-1-(5-carboxy-3,4-dihydro-2,4-dioxo-1(2H)-pyrimidinyl)-1,5-dideoxy-β-D-allofuranuronate at 25.1 percent. Proposed classification/Use: None. For manufacturing use only for the production of fungicide formulations for use on turf. (Denise Greenway)

5. File Symbol: 007173-ERT. Applicant: LipaTech, Inc., 3101 West Custer Ave., Milwaukee, WI 53209. Product name: Nitragin Biological Fungicide. Fungicide. Active ingredient: *Bacillus cereus* strain UW85 (not less than 2 X 10⁹ viable spores per milliliter) at 0.75 percent. Proposed classification/Use: None. For use as a seed treatment. (James Boland)

6. File Symbol: 007173-EEN. Applicant: LipaTech, Inc. Product name: Nitragin Biological Fungicide. Fungicide. Active ingredient: *Bacillus cereus* strain UW85 (not less than 2 X 10⁹ viable spores per milliliter) at 0.75 percent. Proposed classification/Use: None. This technical product is for manufacturing use only. (James Boland)

II. Products Involving a Changed Use Pattern

1. File Symbol: 67748-E. Applicant: Meiji Milk Product Co., Ltd. Kyobashi, 2 - 3 - 6, Chou-ku, Tokyo, 104 Japan. Product name: Phytohealth M 14 Post-Harvest Fungicide. Fungicide. Active ingredient: Sodium bicarbonate at 80.00 percent. Proposed classification/Use: None. To include in its presently registered use a new use to control green mold on citrus fruits after harvest during their storage and transport. (Denise Greenway)

2. File Symbol: 67748-R. Applicant: Meiji Milk Product Co., Ltd. Product name: Phytohealth J08 Post-Harvest Fungicide. Fungicide. Active ingredient: Sodium bicarbonate at 80.00 percent. Proposed classification/Use: None. To include in its presently registered use a new use to control green mold on citrus fruits after harvest during their storage and transport. (Denise Greenway)

3. File Symbol: 53219-RR. Applicant: Mycogen Corporation, 5501 Oberlin Drive, San Diego, CA 92121-1718. Product name: Thinex Blossom Thinner. Plant Growth Regulator. Active ingredients: Pelargonic acid and related fatty acids (C6-C12) at 57.0 and 3.0 percent respectively. Proposed classification/Use: None. To include in its presently registered use a new use as a thinning agent on apples, nectarines, peaches, grapes, ornamental trees, and shrubs. (Paul Zubkoff)

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP-30392] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency,

Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov
Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703-305-5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 15, 1995.

Janet L. Andersen,
Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95-23714 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-00415; FRL 4978-3]

Notice of Availability of Pesticide Data Submitters List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of an updated version of the Pesticide Data Submitters List which supersedes and replaces all previous versions.

FOR FURTHER INFORMATION CONTACT: By mail: John Jamula, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 226, Crystal

Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-6426; e-mail: jamula.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Pesticide Data Submitters List is a compilation of names and addresses of registrants who wish to be notified and offered compensation for use of their data. It was developed to assist pesticide applicants in fulfilling their obligation as required by sections 3(c)(1)(f) and 3(c)(2)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and 40 CFR part 152 subpart E regarding ownership of data used to support registration. This notice announces the availability of an updated version of the Pesticide Data Submitters List which supersedes and replaces all previous versions.

II. Ordering Information

Microfiche copies of the document are available from the National Technical Information Service (NTIS) ATTN: Order Desk 5285 Port Royal Road, Springfield, VA 22161. Telephone: (703) 487-4650. When requesting a document from NTIS, please provide its name and NTIS Publication Number (PB). The NTIS Publication for this version of the Pesticide Data Submitters List is PB95-264149.

III. Electronic Access

The Pesticide Data Submitters List is available on EPA's gopher server and two other pathways on the Internet. The Internet address of EPA's gopher server is GOPHER.EPA.GOV. This information also is available using File Transfer Protocol (FTP) on FTP.EPA.GOV or using World Wide Web (WWW) on WWW.EPA.GOV.

The Pesticide Data Submitters List is also available on the Pesticides Special Review and Reregistration Information System Bulletin Board System. This Bulletin Board System (BBS) is a computer set up to accept calls from over a telephone line and allow callers to use the computer. Anyone with a computer or terminal connected to a phone line or networked to one can dial into the BBS and perform the functions it is set up to allow.

The telephone number of this bulletin board is (703) 308-7224. To connect to this or any other BBS, several parameters in your communication software must be set appropriately. The settings for this BBS are the standard settings for most: 8 data bits, no parity, and 1 stop bit (abbreviated as 8N1). Communication speeds from 2400 bps to 28.8K bps are available, accommodating almost all speeds

available in modems on the market today. The system displays color ANSI graphics as well as ASCII text.

IV. From the Internet

The Pesticide Special Review and Reregistration Information System can be accessed via GSA's Fedworld system. Telnet or FTP to FEDWORLD.GOV and follow the onscreen instructions to get to the gateway.

V. From a LAN

Many Local Area Networks (LANs) are connected to the telephone network. While it is not possible to address the multitude of possible configurations here, your network administrator will be able to tell you if you are able to dial out to other systems from your LAN and what specific software you have available to do this.

List of Subjects

Environmental protection.

Dated: September 11, 1995.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 95-23999 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

[PP 5G4438/T681; FRL 4975-6]

Phloxine B and Uranine; Establishment of an Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established an exemption from the requirement of a tolerance for use of the insecticide Phloxine B and Uranine, in or on certain raw agricultural commodities.

DATES: This temporary exemption from the requirement of a tolerance expires August 9, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Product Manager (PM 14), Registration Division (7505C) Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-6600; e-mail: forrest.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Agricultural Research Service (ARS), Department of Agriculture (USDA), Rm. 358A, Washington, DC 20250-0108, has requested in pesticide petition PP 5G4438, the establishment of an

exemption from the requirement of a tolerance for use of the insecticide Phloxine B and Uranine on coffee, grapefruit, and oranges. This temporary exemption from the requirements of a tolerance will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 11312-EUP-100, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. USDA/ARS, must immediately notify the EPA of any findings from the experimental use permit that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires August 9, 1997. Residues remaining in or on all raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant

economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

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

Dated: September 6, 1995.

Peter Caulkins, Acting
Director, Registration Division, Office of
Pesticide Programs.

[FR Doc. 95-23712 Filed 9-26-95; 8:45 am]
BILLING CODE 6560-50-F

[PP 3G4272/T680; FRL 4975-4]

Sulfentrazone; Establishment of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the herbicide sulfentrazone in or on the raw agricultural commodity soybeans at 0.05 part per million (ppm).

DATES: This temporary tolerance expires January 1, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-7830; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: FMC Corporation, Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103, has requested in pesticide petition (PP) 3G4272, the establishment of a temporary tolerance for residues of the herbicide sulfentrazone *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide in or on the raw agricultural commodity soybeans at 0.05 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permits 279-EUP-131, and 279-EUP-134, which are being issued under the Federal Insecticide,

Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.
2. FMC Corporation must immediately notify the EPA of any findings from the experimental uses that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires January 1, 1997. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerance. This tolerance may be revoked if the experimental use permits are revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

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

Dated: September 7, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of
Pesticide Programs.

[FR Doc. 95-23715 Filed 9-26-95; 8:45 am]
BILLING CODE 6560-50-F

[OPP-30108; FRL-4974-4]

Denial of Administrative Exception Request to Worker Protection Standard Early-Entry Prohibition for Hand Harvest of Cantaloupe and Squash in Chlorothalonil-Treated Fields

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of administrative exception.

SUMMARY: EPA is denying the State of Delaware's exception request for early entry into chlorothalonil-treated fields to allow hand labor harvesting of cantaloupes and squash 24 hours after application. In this decision, EPA is also denying an exception to Florida, Illinois, Indiana, Iowa, Maryland, Michigan, Ohio, Pennsylvania, Tennessee, and Virginia, for all crops that were requested during the public comment period for Delaware's proposal. Under § 170.112(e) of the Worker Protection Standards (WPS), EPA may establish additional exceptions to the WPS provision of prohibiting early entry to perform routine hand labor tasks. The Agency grants or denies a request for an exception based on a risk-benefit analysis. Chlorothalonil, a wettable granular fungicide, has eye and skin irritation concerns and other kidney effects. It has also been classified a probable human carcinogen. In consideration of increased risks associated with performing early entry hand labor tasks on chlorothalonil-treated crops, and incomplete economic benefits information, the Agency has determined that the risks outweigh the benefits of allowing early entry into chlorothalonil-treated fields for hand harvest activities.

FOR FURTHER INFORMATION CONTACT: Sara Ager or Ameesha Mehta, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1121, 1921 Jefferson Davis Highway, Crystal Mall #2, Arlington, VA, (703-305-7371), e-mail: ager.sara@epamail.epa.gov. or mehta.ameesha@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Worker Protection Standard

On August 21, 1992 (57 FR 38102), EPA issued a final rule revising the Worker Protection Standard (WPS) for agricultural pesticides (40 CFR part 170). The WPS became fully implemented on January 1, 1995. The 1992 WPS expanded the scope of the original WPS to include not only workers performing hand labor operations in fields treated with pesticides, but also workers in or on farms, forests, nurseries, and greenhouses, as well as handlers who mix, load, apply, or otherwise handle pesticides for use at these locations in the production of agricultural commodities. The WPS contains requirements for training, notification of pesticide applications, use of personal protective equipment (PPE), restricted entry intervals (REIs), decontamination, and emergency medical assistance.

B. WPS Early-Entry Restrictions

The 1992 WPS includes provisions under § 170.112 prohibiting agricultural workers from entering a pesticide-treated area to perform routine hand labor tasks during a REI. The WPS defines hand labor as any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with treated surfaces (such as plants or soil) that may contain pesticide residues. The REI is the time after the end of a pesticide application during which entry into the treated area is restricted.

C. WPS Exceptions to Early-Entry Restrictions

The WPS currently contains exceptions to the general prohibition against worker entry during the REI for the following purposes: (a) Entry resulting in no contact with treated surfaces; (b) entry allowing short-term tasks (less than 1 hour) to be performed with PPE and other protections; and, (c) entry to perform tasks associated with agricultural emergencies. Under these exceptions, workers engaging in early-entry work are not permitted to engage in hand labor.

Under § 170.112(e) of the WPS, EPA may establish additional exceptions to the Standard's provision of prohibiting early entry to perform routine hand labor tasks. EPA will grant or deny a request for an exception based on a risk-benefit analysis. On June 10, 1994 (59 FR 30265), EPA granted an exception which allows, under specified conditions, early entry into pesticide-treated areas in greenhouses to harvest cut roses. In the Federal Register of May

3, 1995 (60 FR 21953), two additional exceptions have been granted which allow early-entry to perform irrigation and limited contact tasks under specified conditions.

D. Delaware's Petition for an Exception

The State of Delaware petitioned the Agency, under § 170.112(e), to allow early entry by workers into chlorothalonil-treated cantaloupe and squash fields to perform hand labor harvesting 24 hours after the spray application. Chlorothalonil is an agricultural fungicide used to control Downy mildew and other fungal diseases. The existing label REI is 48 hours. The pre-harvest interval (PHI) for melons and squash is zero days. The PHI is the time that must elapse, in days, from the last day of application to the first day that a crop can be harvested. Delaware's petition states that if growers cannot harvest daily they will suffer substantial economic losses. The time period requested was from July 1 through September 15, 1995.

1. *Need for early entry.* According to the petition, cantaloupe and squash are under severe disease pressure from Downy mildew in Delaware, which if unchecked, can destroy the crop. Standard practice is to make preventive (prophylactic) applications of chlorothalonil every 7 days where Downy mildew is a problem. Delaware contends that considerable quantities of fruit could be damaged or lost during a 48-hour REI, due to the inability to harvest mature crops. The alternatives to chlorothalonil are maneb or penncozebe, both of which have a PHI of 5 days. Chlorothalonil has a PHI of zero days, and therefore is used in order to accommodate daily harvesting for fresh market. Under the 48-hour REI, growers must wait 2 days to harvest. Under the requested early-entry exception, growers would only have to wait 24 hours after application to begin harvesting. Delaware contends that regardless of how a grower schedules sprays, there would be a 48-hour REI following a spray application, and weather and crop maturity may require harvest during that time. According to Delaware, the average plot size is 1 acre and will require two to five workers 1 hour to harvest. Workers can harvest several fields over an 8-hour day. Machine harvesting of cantaloupe or squash is not currently feasible.

2. *Proposed terms of exception request.* The State of Delaware proposed the following protective measures:

- (a) No harvesting would be permitted until 24 hours after application.
- (b) Growers harvesting cantaloupe and squash between 24 and 48 hours

following the application of chlorothalonil would provide oral warnings to workers to avoid contacting their eyes with their hands and forearms or any clothing which may be in contact with the foliage during the harvest. They would give this warning at the start of each workday.

(c) Workers would be given instructions at the beginning of the workday to wash their hands, forearms, and faces after every 2 hours or at the conclusion of a harvest period if less than 2 hours.

(d) To accommodate the increased use of water at the field decontamination site, the grower would provide 3 gallons of water or have running water available, as opposed to the WPS recommendation of 1 gallon of water per worker.

The State of Delaware concludes that the costs of these measures are inconsequential when compared with the expected loss in the crop value.

3. *Economic impact.* The exception request estimates that 450 acres of cantaloupe and squash production are potentially affected by the Downy mildew disease in Delaware. Based on Delaware's 1993 statistics, the revenue amount for cantaloupe is \$2,250 per acre. The inability to harvest in time would result in decreased revenue per acre.

II. Summary of Comments Received and Major Issues

EPA received numerous comments on the proposed exception. Comments were received from State agencies, grower groups, farm worker groups, EPA regions and individuals. A summary of the major issues and EPA's response are provided below.

A. Additional States

During the public comment period, the following States petitioned to be included under Delaware's early-entry exception request: Florida, Illinois, Indiana, Iowa, Maryland, Michigan, Ohio, Pennsylvania, Tennessee, and Virginia. These States asked for the early-entry exception to be granted for several crops, including cantaloupes, cucumbers, cucurbits, snap beans, squash, stone fruits, and tomatoes. The State of Missouri commented that it did not want to be included under the exception, but suggested that a national exception be considered if these requests were scientifically valid and workers could be adequately protected.

B. Economic Need for Exception

The original exception request from the State of Delaware estimated 450 acres of cantaloupe and squash

production potentially affected by the Downey mildew disease. During the comment period, EPA provided Delaware and the other States with a list of questions requesting detailed information on the economics and exposure parameters of early entry during the 48-hour REI. During the comment period, the Agency received similar requests from 10 other States for cantaloupe, squash, and other crops. States provided differing information on economic impacts, length of harvest seasons and acreage treated, but all presented similar scenarios on the frequency of harvesting and chlorothalonil application.

Under the most common scenario and depending on disease pressures, chlorothalonil is applied every 7 days for a period of several weeks and cantaloupe and squash are harvested daily from the treated acreage. Chlorothalonil has a zero day PHI, and with the former REI, the most that growers would have to delay the harvest would be 24 hours. According to Delaware and other States, a delay of more than 24 hours could cause the fruit to become overripe and, consequently, downgraded.

EPA is aware that prices for crops are set by grade and market type, including fresh local markets and bulk processing. Cantaloupes are produced for a fresh market only, their price being determined by the size and quality of the fruit. Squash are graded according to size, width, and quality, and are produced for both fresh market and bulk processing. If the fruit is too ripe when harvested, it will be considered lower grade, and therefore not appropriate for fresh local market. The State of Ohio submitted information on revenue loss for cucumbers of approximately \$100 per acre because of lower grading of fruit. Because there is not a market for lower grade cantaloupe, growers could potentially experience a loss in revenue for the 1 day a week they could not harvest. However, according to the Virginia Extension Service, if a good preventive spray schedule is maintained pre-harvest, then chlorothalonil application may not be necessary during the harvest period and losses in cantaloupe production due to the additional 24-hour delay in harvest may not occur. Virginia Extension Service also states that a 2 to 3-year crop rotation practice and the use of disease resistant varieties is important to delay onset of various disease infestations. Furthermore, disease pressures due to varying environmental conditions vary from year to year.

Several States have claimed that significant economic loss may occur if

growers must wait until the expiration of the 48-hour REI to harvest. However, no State submitted detailed information that allowed the Agency to quantify or complete a reliable qualitative assessment of the projected economic impacts due to the additional delay of 24 hours. During the comment period, the Agency provided a list of questions to States, which requested incremental yield losses for each 12-hour REI period. The information was requested to assess what yield losses occurred during a 12-hour, 24-hour, and a 48-hour delay in harvest. Additional information was elicited on 5-year historical net and gross revenues, production budgets, and marketing strategies on the crop of concern. This information would aid EPA in assessing if the significant losses in yield were a direct result of the longer 48-hour REI.

Maryland estimated that a maximum of 10 to 15 percent loss of yield would be incurred for both cantaloupe and squash. Although Maryland did not provide any historical data on net and gross revenues to reliably quantify the projected economic impacts, Maryland did estimate that the yield loss was due to an additional 24-hour (1 day) delay in harvest each week which would result in a loss of $\frac{1}{7}$ (14 percent) of growers' total production. This yield loss may constitute a higher portion of grower income. Also, the State of Delaware estimated that 50 to 75 percent of grower net revenue would be lost if the exception was not granted. However, also Delaware stated that these substantial losses in grower profit may not occur because growers may choose alternative cash crops to avoid risk.

The Agency did not have historical data (3 to 5 years) on acreage, yields and prices; therefore, the Agency was not able to assess and confirm if yield losses would be due to an additional 24-hour delay in harvest or other factors. Furthermore, cost of production (growers' expenses) and marketing options (growers' revenue) are used to estimate grower profit. However, incomplete information was provided with regards to cost of productions, revenues, and marketing options (e.g., bulk processing, fresh market, and local market) to confirm if growers would experience 50 to 75 percent loss in profits. EPA realizes that States do not normally collect detailed economic information on minor crops, but the information is essential for EPA to base its decision on the required complete risk-benefit analysis. Further discussion of necessary economic information is contained in Unit IV. of this document.

C. Risk to Workers

Several commenters noted that 35 percent of the farm worker population is made up of women and children. Furthermore, children constitute a potentially sensitive population to the risks associated with pesticides. In comments received from the Delaware Rural Ministries, it was stated that a large number of the harvesters of cantaloupe in that State were farm or neighborhood children.

Another commenter noted that growers are experiencing difficulty understanding why there is a need for a 48-hour REI when the PHI is zero days. The commenter also noted that growers do not understand the risk distinction between eating and harvesting chlorothalonil-treated vegetables. The residues that harvesters may contact are far greater than residues a consumer may contact from eating a treated vegetable. Harvesting activities may result in a substantial portion of the body being exposed to chlorothalonil residues found on the foliage. In some cases, harvesting activities may result in the same amount of pesticide exposure as those obtained during handler activities. Additionally, EPA limits the levels of pesticide residue by establishing tolerances on food crops. A tolerance is the legal limit of a pesticide residue allowed in or on a raw agricultural commodity and, in appropriate cases, on processed foods. Appropriately, EPA limits the levels of pesticide residues to workers by establishing REIs for all pesticides which have agricultural uses.

D. Potential Mitigation Options

One commenter noted that the REI is the single most effective way to reduce the risk of farm worker pesticide poisonings and reliance on PPE is the least effective and least practical way to protect field workers. EPA agrees that PPE is less likely to mitigate the risks associated with this exception and may be impractical due to heat stress concerns. The Agency received further numerous comments questioning the feasibility and practicality of these requirements. For instance, many commenters, including the Florida Fruit and Vegetable Association and the Farmworker Justice Fund asserted that the PPE imposed by the label, especially the coveralls and goggles, are too cumbersome and would place an undue hardship on workers performing their tasks. One commenter noted that perspiration and dirt accumulate on the eyewear, thereby hindering the workers' vision. Additionally, the coveralls, when worn in hot, humid climates,

cause worker discomfort and significantly increase the risk of heat-related illnesses. The University of Florida remarked that in their State, the risk of heat stress was a far more real concern than the potential risk of exposure to chlorothalonil residues. Many commenters stated that the level of PPE had a direct effect on a worker's income since workers are paid according to the amount of produce that they harvest and burdensome PPE or heat illness decreases the worker's harvesting speed and efficiency. Consequently, many workers may be reluctant to wear the label-specified PPE. Hence, EPA primarily relied on administrative controls, such as reduction in application rates and limits in time allowed for harvesting in evaluating this exception request. At the present, engineering controls such as mechanical harvesting are not available for cantaloupe and squash production.

The State of Michigan commented that on cantaloupes the average application rate for chlorothalonil is 1.47 pints/acre. Due to the limited efficacy and economic data submitted, the Agency was not able to assess and quantify the impacts to growers of reducing the application rate, the mean expected yield loss if growers use the next best practical means of controlling the pest, or the anticipated impact of not controlling the pest without the use of a pesticide.

III. EPA's Exception Decision

A. EPA's Risk Assessment

Chlorothalonil has acute concerns such as eye and skin irritation. Chlorothalonil exposure also results in adverse kidney effects which appear to be precursors to kidney cancer. EPA has classified chlorothalonil as a probable human (Category B₂) carcinogen. EPA has conducted a preliminary risk assessment utilizing a chlorothalonil dislodgeable foliar residue study on cucumbers. This study was submitted by the registrant to determine an active ingredient based REI. Data indicate that field residues from the high rate of application persist for longer than the REI and would result in unacceptable risks to harvesters.

Based on the exposure information provided by commenters, EPA conducted its preliminary risk assessment using the following assumptions: an 8-hour workday; 70 kg body weight of an adult male; and the appropriate dermal absorption rate for chlorothalonil. Therefore, EPA assumed that only a small percentage of the total residues are absorbed through the skin. EPA then calculated the margin of

exposure (MOE) to estimate the potential harmful kidney effects to workers who were exposed to chlorothalonil on a seasonal basis. The MOE is a numerical value that characterizes the degree of safety related to a toxic chemical. EPA's policy for acceptable chlorothalonil exposure is an MOE of 100 or greater. A value of 100 or more provides an acceptable margin of safety to protect workers from potential health risks. For subchronic dermal exposure (between 1 week and several months of harvesting), a no-observed-effect-level (NOEL) of 1.5 mg/kg/day was determined from a subchronic study in rats. The NOEL refers to the dose rate of chemical at which there are no statistically or biologically significant increases in adverse effects in laboratory animals. The MOEs for chlorothalonil were calculated by dividing the NOEL of 1.5 mg/kg/day, by the harvesters' daily exposure (mg/kg/day), and resulted in values significantly less than 100. The exposure resulting from hand labor activities would place male workers at an unacceptably high risk of developing harmful kidney effects. Risks to children and women would be higher.

After consideration of all the comments on potential and feasible mitigation techniques, and EPA's preliminary risk assessment, the only mitigation option that would result in MOEs of 100 or greater was a significant reduction in the maximum allowable application rate. This would mean that the maximum application rate would have to be reduced from 4.0 pts/acre (2.09 lbs ai/acre) to 1.5 pts/acre (0.78 lbs ai/acre).

EPA is further evaluating data necessary to complete its RED for chlorothalonil. The RED is scheduled for completion this year and an increase to the REI may occur with the current maximum label application rate. Upon completion of the RED, EPA will be in a better position to make an accurate determination of worker risks from chlorothalonil for all crops.

B. Economic Analysis

The State of Delaware and the other States requesting this exception have not made a case, based on the submitted data, that entry during the REI to harvest cantaloupes and squash is necessary, and that prohibiting such entry could have a substantial adverse economic impact on growers of these commodities. Incomplete information was submitted in areas such as cost of production, 3 to 5-year historical data on acreage yields and prices, and potential marketing options (e.g., bulk processing, fresh market, and local

market). Based on the submitted information, EPA is not able to quantify or complete a reliable qualitative assessment of the projected economic impacts, yield loss and grower profit associated with loss of harvest days. Therefore, EPA could not conclude that cantaloupe and squash growers would suffer a substantial adverse economic impact if early-entry harvesting is not permitted.

C. Delaware Decision

EPA has evaluated the available information on the risks and benefits of granting this exception. Based on its complete review of a preliminary risk assessment, the submitted economic information and the potential mitigation options, EPA has determined that the risks of the exception outweigh the benefits, and has decided to deny the State of Delaware's exception request.

D. Additional States Decision

EPA also received requests for the exception from other States for crops other than cantaloupe and squash, including cucumbers, cucurbits, muskmelons, snap beans, stone fruits, and tomatoes. EPA is also denying requests from additional States based on the results of the assessment conducted for workers harvesting chlorothalonil-treated squash and cantaloupes in Delaware.

IV. Guidance on Supporting Information for Exception Requests

For similar, but non-WPS, exemption requests such as a section 18 exemption, under 40 CFR 166.22, States are also required to provide detailed economic information. Data used to assess significant economic loss includes, at minimum:

(a) Historical (5-year) net and gross revenues for the crops, including cost of production budgets.

(b) Estimated gross revenues without the proposed pesticide based on the mean expected yield loss if growers use the next best practical means of controlling (rather than on worst-case maximum yield reductions if no alternative control measure is used).

(c) The anticipated impact of not controlling the pest.

EPA is in the process of developing guidance to clarify § 170.112(e) required information that must be submitted by a petitioner requesting an early-entry exception. The Agency is aware that many States do not collect historical yield and revenue information on minor crops. The Agency is further aware that substantial time would be needed to acquire that information. Therefore, EPA will provide guidance on the type,

quality, and degree of specificity of the information that must be submitted by States and commodity groups. It is expected that with experience gained in implementing the WPS, and with the 1995 season to pursue alternative production and marketing practices, the need for early entry will decrease.

List of Subjects

Environmental protection,
Occupational safety and health, and
Pesticides and pests.

Dated: September 19, 1995.

Lynn R. Goldman,

*Assistant Administrator for Prevention,
Pesticides and Toxic Substances.*

[FR Doc. 95-24003 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Transition Subcommittee of the Public Safety Wireless Advisory Committee; Meeting

AGENCY: The National

Telecommunications and Information
Administration (NTIA), Larry Irving,
Assistant Secretary for Communications
and Information, and the Federal
Communications Commission (FCC),
Reed E. Hundt, Chairman.

ACTION: Notice of the second meeting of
the Transition Subcommittee of the
Public Safety Wireless Advisory
Committee.

SUMMARY: The NTIA and the FCC
established a Public Safety Wireless
Advisory Committee and
Subcommittees to prepare a final report
to advise the NTIA and the FCC on
operational, technical and spectrum
requirements of Federal, state and local
Public Safety entities through the year
2010. The establishment of the
committee is in the public interest. In
accordance with the Federal Advisory
Committee Act, Public Law 92-463, as
amended, this notice advises interested
persons of the meeting of the Transition
Subcommittee of the Public Safety
Wireless Advisory Committee.

DATES: Monday, October 16, 1995; 9:00
a.m. to 1:00 p.m.

ADDRESSES: Fountaine Bleau Hilton
Hotel; 4441 Collins Avenue; Miami
Beach, Florida; 33140.

SUPPLEMENTARY INFORMATION: The
agenda for the second meeting is as
follows:

1. Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work

5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The Transition Subcommittee has an
open membership. All interested parties
are invited to attend and to participate
in the Second Meeting of this
Subcommittee. This policy will ensure
balanced participation.

FOR FURTHER INFORMATION CONTACT:

For information regarding the Transition
Subcommittee, contact: Ronnie Rand or
Ali Shahnamy at 904-322-2500. For
general information relating to the
Advisory Committee, contact: William
Donald Speights, NTIA, at 202-482-
1652, or John J. Borkowski, FCC, at 202-
418-0680, Co-Designated Federal
Officers of the Public Safety Wireless
Advisory Committee (PSWAC). You
may also obtain more information from
the Internet at the Public Safety
Wireless Advisory Committee homepage
(<http://pswac.ntia.doc.gov>).

Federal Communications Commission.

Robert H. McNamara,

*Chief, Private Wireless Division, Wireless
Telecommunications Bureau.*

[FR Doc. 95-23991 Filed 9-26-95; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the Emergency Management Institute

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section
10(a)(2) of the Federal Advisory
Committee Act, 5 U.S.C. App. 2, FEMA
announces the following committee
meeting:

Name: Board of Visitors for the
Emergency Management Institute.

Dates of Meeting: October 16-17,
1995.

Place: Federal Emergency
Management Agency, National
Emergency Training Center, Emergency
Management Institute, Conference
Room, Building N, Emmitsburg,
Maryland 21727.

Time: Monday, October 16, 1995, 8:30
a.m.-5:00 p.m.; Tuesday, October 17,
1995, 8:30 a.m.-12:00 noon.

Proposed Agenda: Discuss the board's
1995 Annual Report and 1995
Workplan. The board will devise its
1996 Workplan, and attend sessions
regarding EMI's training programs.

SUPPLEMENTARY INFORMATION: The
meeting will be open to the public with

approximately 10 seats available on a
first-come, first-served basis. Members
of the general public who plan to attend
the meeting should contact the Office of
the Superintendent, Emergency
Management Institute, 16825 South
Seton Avenue, Emmitsburg, MD 21727,
(301) 447-1286.

Minutes of the meeting will be
prepared and will be available for
public viewing in the Office of the
Superintendent, Emergency
Management Institute, Federal
Emergency Management Agency,
Building N, National Emergency
Training Center, Emmitsburg, MD
21727. Copies of the minutes will be
available upon request 30 days after the
meeting.

Dated: September 18, 1995.

Kay C. Goss,

*Associate Director, Preparedness, Training,
and Exercise Directorate.*

[FR Doc. 95-23946 Filed 9-26-95; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the
following ocean freight forwarder
license has been reissued by the Federal
Maritime Commission pursuant to
section 19 of the Shipping Act of 1984
(46 U.S.C. app. 1718) and the
regulations of the Commission
pertaining to the licensing of ocean
freight forwarders, 46 CFR Part 510.

License No.	Name/Address	Date Reissued
3216	Express International Cargo Services, Inc., 3405 NW., 72nd Avenue, Building A., Suite 101, Miami, FL 33122.	Aug. 21, 1995.

Bryant L. VanBrakle,

*Director, Bureau of Tariffs, Certification and
Licensing.*

[FR Doc. 95-23909 Filed 9-26-95; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM**GreatBanc, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities**

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 10, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *GreatBanc, Inc.*, Aurora, Illinois; to acquire Local Loan Company, Chicago Heights, Illinois, and thereby engage in making and servicing loans to be made by a finance company, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-23920 Filed 9-26-95; 8:45 am]

BILLING CODE 6210-01-F

SunTrust Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 20, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia; and *Sun Banks, Inc.*, Orlando, Florida, to merge with *Ponte Vedra Banking Corporation*, Ponte Vedra Beach, Florida, and thereby indirectly acquire *Ponte Vedra National Bank*, Ponte Vedra Beach, Florida.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *American Bank Shares, Inc.*, Rapid City, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of *American State Bank of Rapid City*, Rapid City, South Dakota.

2. *Norwest Corporation*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of *Canton Bancshares,*

Inc., Canton, Illinois, and thereby indirectly acquire *Canton State Bank*, Canton, Illinois.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Equity Bancshares, Inc.*, Mulhall, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of *Oklahoma State Bank*, Mulhall, Oklahoma.

2. *Norcon Financial Corporation*, Conway Springs, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of *The First National Bank of Conway Springs*, Conway Springs, Kansas, and *Farmers State Bank of Norwich*, Norwich, Kansas.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *First Delaware Bancorp, Inc.*, Dover, Delaware, *Texas Financial Bancorporation, Inc.*, Minneapolis, Minnesota, and *First Bancorp, Inc.*, Denton, Texas; to acquire up to 100 percent of the voting shares of *United Commerce Bank of Highland Village*, National Association, Highland Village, Texas.

Board of Governors of the Federal Reserve System, September 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-23921 Filed 9-26-95; 8:45 am]

BILLING CODE 6210-01-F

Kari P.T. Torgerhagen; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than October 20, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Kari P.T. Torgerhagen*, Milan, Minnesota; to retain 8.96 percent, for a total of 29.094 percent of the voting shares of Milan Agency, Inc., Milan, Minnesota, and thereby indirectly retain shares of Prairie State Bank, Milan, Minnesota.

Board of Governors of the Federal Reserve System, September 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-23922 Filed 9-26-95; 8:45 am]

BILLING CODE 6210-01-F

West One Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a

hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp*, Portland, Oregon; to acquire 100 percent of the voting shares of West One Bancorp, Boise, Idaho, and thereby indirectly acquire West One Bank, Idaho, Boise, Idaho; West One Bank, Oregon, Portland, Oregon; West One Bank, Oregon, S.B., Hillsboro, Oregon; West One Bank Washington, Seattle, Washington; West One Bank, Utah, Salt Lake City, Utah; and Idaho First Bank, Boise, Idaho.

In connection with this application, U.S. Bancorp also has applied to acquire West One Trust Company, Salt Lake City, Utah, and West One Trust Company, Washington, Seattle, Washington; and thereby engage in trust company services, pursuant to § 225.25(b)(3) of the Board's Regulation Y; West One Life Insurance Company, Phoenix, Arizona; and thereby engage in credit life and disability reinsurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y; West One Financial Services, Inc., Boise, Idaho, and thereby engage in residential and commercial mortgage servicing, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

In addition to this application, U.S. Bancorp has applied to acquire 19.9 percent of the voting shares of West One Bancorp, and West One Bancorp has applied to acquire 19.9 percent of the voting shares of U.S. Bancorp, Portland, Oregon, and thereby indirectly acquire U.S. National Bank of Oregon, Portland, Oregon; U.S. Bank of Idaho, N.A., Coeur D'Alene, Idaho; U.S. Bank of Nevada, Reno, Nevada; U.S. Bank of Washington N.A., Seattle, Washington; U.S. Bank of California, Sacramento, California; U.S. Bank of Southwest Washington, Vancouver, Washington; U.S. Bank, N.A., Beaverton, Oregon; U.S. Savings Bank of Washington, Bellingham, Washington; and First State Bank of Oregon, Canby, Oregon.

Board of Governors of the Federal Reserve System, September 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-23924 Filed 9-26-95; 8:45 am]

BILLING CODE 6210-01-F

Whitney Corporation of Iowa, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 10, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Whitney Corporation of Iowa*, Atlantic, Iowa; to engage *de novo* in making and servicing loans through the purchase loan participations from its subsidiary bank, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Universal Bancorp*, Bloomfield, Indiana; to engage *de novo* through a

joint venture, Precedent Bloomfield Financial, LLC, Indianapolis, Indiana, in lending and leasing on manufacturing equipment, office equipment, and real estate up to \$500,000, pursuant to § 225.25(b)(1) and (5) of the Board's Regulation Y. The geographic scope for these activities is the State of Indiana.

Board of Governors of the Federal Reserve System, September 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-23923 Filed 9-26-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D-0236]

Gender Studies in Product Development, Scientific Issues and Approaches; Notice of a Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a public workshop entitled "Gender Studies in Product Development: Scientific Issues and Approaches" is being held on November 6 and 7, 1995. The workshop will focus on issues related to FDA's guideline entitled "Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs." The guideline provides guidance on FDA's expectations regarding inclusion of both genders in drug development.

DATES: The public workshop will be held on November 6 and 7, 1995, from 7:30 a.m. to 4 p.m.; an opportunity for public comment is planned on November 6, 1995, from 2:15 p.m. to 3:15 p.m. Interested persons should register by October 23, 1995. Attendance will be limited based on the availability of seating. Submit written notices of participation by October 23, 1995. Time may be limited depending on the number of participants scheduled to speak.

ADDRESSES: The public workshop will be held at Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852, 301-468-1100. Participants who wish to speak during the public comment session should request time by sending their name, affiliation, address, and phone number to John Sellman, Sociometrics, Inc., 8300 Colesville Rd., suite 550, Silver Spring, MD 20910,

301-608-2151, or FAX 301-608-3542. There is no registration fee, for this workshop. Those persons interested in attending the public workshop should mail their registration to Sociometrics, Inc. (address above). Copies of the transcript of the workshop summary will be available from the Freedom of Information Public Records and Documents Center (HFI-35), 5600 Fishers Lane, Rockville, MD 20057.

FOR FURTHER INFORMATION CONTACT: Mary C. Gross, Office of External Affairs (HF-60), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-3364.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 22, 1993 (58 FR 39406), FDA published a notice on a guideline entitled "Guideline for the Study and Evaluation on Gender Differences in the Clinical Evaluation of Drugs." The guideline discusses: Inclusion of patients of both genders in drug development; analyses of clinical data by gender; assessment of potential patient differences on the basis of gender, age, race, disease state, organ function, body size, genetic polymorphism and other characteristics that may affect responses to drugs, biologics or medical devices. The workshop will encourage an open scientific exchange in order to raise questions and issues related to the guideline.

Optimal treatment of patients in some instances, may depend on an awareness of the effect of these characteristics so that suitable adjustments may be made in dosage amount and dosage schedules. Questions have arisen, however, regarding the clinical trials that are needed or that can be developed to carry out appropriate gender analysis and detect important clinical differences in gender related responses.

It is expected that by using gender as the model characteristic in this workshop, important information may be derived regarding patient characteristics that affect the safety and efficacy profile of medical products.

Dated: September 19, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95-23996 Filed 9-26-95; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Environmental Health Sciences Review Committee.

Date: November 16-17, 1995.

Time: 8:30 a.m. to Adjournment.

Place: National Institute of Environmental Health Sciences, Building 101 Conference Rooms A, B, & C, South Campus, Research Triangle Park, North Carolina.

Contact Person: Dr. Ethel Jackson, Scientific Review Administrator, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541-7826.

Purpose: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Research and Manpower Development, National Institutes of Health.)

Dated: September 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95-23902 Filed 9-26-95; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Chemistry and Related Sciences.

Date: October 19, 1995.

Time: 1:00 p.m.

Place: NIH, Rockledge II, Room 5154, Telephone Conference.

Contact Person: Dr. Alec Liacouras, Scientific Review Administrator, 6701 Rockledge Drive, Room 5154, Bethesda, Maryland 20892, (301) 435-1740.

Name of SEP: Multidisciplinary Sciences.

Date: October 30-November 1, 1995.

Time: 8:00 p.m.

Place: Oklahoma City, Oklahoma.
Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, Maryland 20892, (301) 435-1180.

Name of SEP: Clinical Sciences.

Date: October 31, 1995.

Time: 8:00 a.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435-1783.

Name of SEP: Multidisciplinary Sciences.

Date: November 1-3, 1995.

Time: 8:00 p.m.

Place: Urbana, Illinois.

Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, Maryland 20892, (301) 435-1180.

Name of SEP: Clinical Sciences.

Date: November 7, 1995.

Time: 1:00 p.m.

Place: NIH, Rockledge II, Room 4112, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435-1783.

Name of SEP: Multidisciplinary Sciences.

Date: October 10-13, 1995.

Time: 7:30 p.m.

Place: Radisson Inn, West Lebanon, New Hampshire.

Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 5104, Bethesda, Maryland 20892, (301) 435-1165.

Name of SEP: Multidisciplinary Sciences.

Date: October 16-17, 1995.

Time: 8:00 a.m.

Place: Ramada Inn, Rockville, Maryland.

Contact Person: Dr. Dharam Dhindsa, Scientific Review Administrator, 6701 Rockledge Drive, Room 5206, Bethesda, Maryland 20892, (301) 435-1174.

Name of SEP: Multidisciplinary Sciences.

Date: October 19-20, 1995.

Time: 1:00 p.m.

Place: Doubletree Hotel, Rockville, Maryland.

Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435-1169.

Name of SEP: Clinical Sciences.

Date: October 25, 1995.

Time: 8:00 a.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435-1783.

Name of SEP: Multidisciplinary Sciences.

Date: November 6-7, 1995.

Time: 8:00 a.m.

Place: Wyndham Bristol Hotel, Washington, DC.

Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, Maryland 20892, (301) 435-1180.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable

material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 20, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95-23904 Filed 9-26-95; 8:45 am]

BILLING CODE 4140-01-M

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment National Advisory Council Meeting in September

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA).

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the Federal Register on September 7, 1995 (Vol. 60, No. 173, page 46623) that the Center for Substance Abuse Treatment National Advisory Council would be meeting on September 27 at the Rockwall II Building, 6th Floor Conference Room, 5515 Security Lane, Rockville, Maryland. The date of this meeting has subsequently been changed to September 26.

The agenda and hours of the open and closed sessions of the meeting and the contact for additional information remain as announced.

Dated: September 17, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95-23892 Filed 9-22-95; 10:07 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. FR-3948-N-02]

Notice of Debenture Recall

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces a debenture recall of certain Federal Housing Administration debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT:

Richard Keyser, Room B133, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, Telephone (202) 755-7510; TDD: (202) 708-4594. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Pursuant to Section 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD regulations at 24 CFR 207.259(e)(3), the Federal Housing Commissioner, with approval of the Secretary of the Treasury, announces the call of all Federal Housing Administration debentures except for those debentures subject to "debenture lock agreements," that have been registered on the books of the Federal Reserve Bank of Philadelphia, and are, therefore, "outstanding" as of September 30, 1995. The date of the call is January 1, 1996. To insure timely payment, debentures should be presented to the Federal Reserve Bank of Philadelphia by December 1, 1995.

The debentures will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. Final interest on any called debentures will be paid with the principal at redemption.

During the period from the date of this notice to the call date, debentures that are subject to the call may not be used by the mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer or denominational exchanges of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after October 1, 1995. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date. Payment of final principal and interest due on January 1, 1996, will be made to the registered holder or assignee.

Instructions for the presentation and surrender of debentures for redemption will be provided to holders by the Department.

Dated: September 11, 1995.

James E. Schoenberger,

Associate General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95-23899 Filed 9-26-95; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Western Water Policy Review Commission

Notice of Establishment

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92-463). Notice is hereby given that the Secretary of the Interior is establishing the Western Water Policy Review Advisory Commission pursuant to the Western Water Policy Review Act of 1992, Public Law 102-575, to provide advice and assistance, in accordance with applicable requirements of the Federal Advisory Committee Act, in the President's preparation of the report required by section 3003(a) of the Act.

Further information regarding the Commission may be obtained from the Commissioner of the Bureau of Reclamation, Department of the Interior, 1849 C Street, N.W., Washington, D.C. 20241.

The certification of establishment is published below.

Certification

I hereby certify that establishment of the Western Water Policy Review Advisory Commission is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 30 U.S.C. 1-8.

Dated: September 15, 1995.

Bruce Babbitt,

Secretary of the Interior.

President Clinton has announced his intention to appoint the following members to the Western Water Policy Review Commission:

Denise D. Fort of New Mexico, Chair. Ms. Fort is Director of the Water Resources Administration at the University of New Mexico and an Assistant Professor at the School of Law. She is the former director of the New Mexico Environmental Improvement Division.

Bruce Babbitt of Arizona serves on the Commission as a function of serving as the Secretary of the Interior.

Togo West of the District of Columbia serves on the Commission as a function of serving as the Secretary of the Army.

Huali G. Chai of California is an attorney specializing in civil torts and an expert in biochemistry, for which she was awarded two National Science Foundation grants. Ms. Chai is the former Chair of Asian, Inc., a non-profit group advocating minority small business in San Francisco.

Janet C. Neuman of Oregon is an attorney specializing in water and natural resource issues. She is also a Professor at the Northwestern University School of Law and former director of the Oregon Division of State Lands.

Jack Robertson of Oregon is Deputy Administrator of the Bonneville Power Administration, the largest Federal power marketing administration in the country.

John E. Echohawk of Colorado is an attorney for the Native American Rights Fund and an enrolled member of the Pawnee Tribe of Oklahoma. He previously served as a member of the Senate Task Force on Treaties and the Federal-Indian Relationship.

Patrick O'Toole of Wyoming is a sheep rancher and a former member of the Wyoming legislature.

[FR Doc. 95-23952 Filed 9-26-95; 8:45 am]

BILLING CODE 4310-10M

Bureau of Land Management

[AZ-055-05-1330-00; CAAZCA 36103]

California; Notice of Realty Action: Availability of Long-Term Recreation Concession Lease in Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is announcing the availability of a long-term recreation concession lease in support of BLM's recreation program, pursuant to the regulations at 43 CFR 2920. The site for the proposed concession is located on public lands on the west bank of the Colorado River about 12 miles south of Blythe, California, in Imperial County. BLM is seeking a concessioner to develop a new recreation concession which will include a quality recreational vehicle (RV) trailer park and supporting facilities associated with RV use.

DATES: Applications for developing the site will be accepted only at the BLM Yuma Resource Area Office, Yuma District, 3150 Winsor Avenue, Yuma, AZ 85365, from October 25, 1995, to December 31, 1995. If a satisfactory application/proposal is received, selection of the successful applicant will be made by January 30, 1996, without further publication. Lease issuance will not be simultaneous with final selection, but will occur by March 15, 1996, after the term of the lease, stipulations, and other items have been agreed upon by BLM and the successful applicant. The 30-day comment period for the environmental assessment will be in January-February 1996.

FOR FURTHER INFORMATION CONTACT: Area Manager Joy Gilbert or Supervisory Lands and Minerals Specialist Pat Boykin, BLM, Yuma Resource Area, 3150 Winsor Avenue, Yuma, AZ 85365, (520) 726-6300.

SUPPLEMENTARY INFORMATION: BLM is ending an occupancy leasing program which was begun to legalize a trespass subdivision on public land for an area known as "Harvey's Fishing Hole" or "Sportsman's Paradise."

The 27-acre site is 1,320 feet deep with approximately 860 feet of riverfront. The legal description of the subject parcel is as follows:

San Bernardino Meridian, California

T. 9 S., R. 22 E.,

Sec. 9, portion of lots 1, 2, 5, and 6.

BLM has determined through its land use plans that the site is suitable for the development of a recreation concession. Development of a recreation concession would be in the public interest.

The focus of concession development will be to provide facilities, visitor services, and products for the enhancement of recreational visitors' use and enjoyment. BLM will require a "no-development-zone" 120-foot setback from the waterfront, with no trailer spaces situated on the waterfront. Permanent occupancy will not be allowed, and the length of stay on concessions in the Yuma District is 5 months (150 days), either consecutively or in aggregate per 1-year period. Mobile homes will not be allowed. The proposed plan of development must reflect a phase-out of the existing occupancy use within no more than 5 years from lease issuance. Existing improvements will be removed by each occupant, or each occupant will bear the cost of removal of improvements, in accordance with their lease agreements with BLM.

A long-term lease is available to a qualified applicant who presents a plan

of development acceptable to BLM which offers a diversity of opportunities and services to the recreating public. The lease term is negotiable and will be based on the plan of development, the timetable for development, and the capital investment involved. The term of the lease is for an extended use of the public lands for development purposes and will provide a reasonable amortization of capital investment.

The concession lease will be offered through a competitive process under the regulations at 43 CFR 2920. The land use authorization will be awarded on the basis of the public benefits to be provided, a development plan acceptable to the BLM, the financial and technical capability of the bidder to undertake the project, feasibility of the proposal, impacts on the environment, assessment of applicants through the use of established applicant criteria, and the bid offered. No application will be considered for less than 4 percent of the total gross receipts to be derived annually from products and services offered at the concession. The high bid is part of the criteria for selecting a successful applicant, but it is not an overriding consideration.

All applications must include a reference to this Notice and a complete description (development plan) of the proposed facilities and services to be offered. Such development plan must be in sufficient detail to allow evaluation of the feasibility of the proposed land use, impacts on the environment, and public benefits from the land use. This can be accomplished by providing details of the proposed use and activities; a description of all facilities and access needs; a map of sufficient scale to be legible; a legal description of the proposed project location, including acreage; the approximate cost of the proposal; schedule of facility construction; and any other information (such as an analysis of projected performance) that may aid in evaluating the proposal. Applicants must furnish evidence satisfactory to BLM that they have, or will have prior to commencement of construction, the technical and financial capability to construct, operate, maintain, and discontinue the authorized land use.

Applications should be clearly marked on the exterior of the envelope or parcel, "Harvey's Fishing Hole Proposal." All applications received will be held as proprietary information unless released by the applicant. For more details of application content, refer to 43 CFR 2920, Copies of which are available at the BLM Yuma Resource Area Office. Also available is a prospectus containing more detailed

information about application content, such as parameters and constraints relating to development of the concession.

Dated: September 20, 1995.

Joy Gilbert,

Area Manager, Yuma Resource Area.

[FR Doc. 95-23969 Filed 9-26-95; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-7122-00-D063; CACA 35800]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of the Army Los Angeles District, Corps of Engineers, has filed an application to withdraw approximately 310,295 acres of public lands to expand the Army's National Training Center at Fort Irwin. This notice closes the lands for up to 2 years from surface entry and mining. The lands will remain open to mineral leasing.

DATES: Comments and requests for meeting should be received on or before December 26, 1995.

ADDRESSES: Comments and meeting requests should be sent to the California State Director (CA-931), BLM, 2800 Cottage Way, Room E-2845, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, BLM California State Office, 916-979-2858.

SUPPLEMENTARY INFORMATION: On June 26, 1995, the United States Department of the Army filed an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

San Bernardino Meridian

T. 18 N., R. 1 E.,

Sec. 13, S $\frac{1}{2}$, unsurveyed;

Sec. 14, S $\frac{1}{2}$, unsurveyed;

Sec. 15, S $\frac{1}{2}$, unsurveyed;

Sec. 17, S $\frac{1}{2}$, unsurveyed;

Sec. 18, S $\frac{1}{2}$, unsurveyed;

Secs. 19 to 24, inclusive, unsurveyed.

T. 18 N., R. 2 E.,

Sec. 13, S $\frac{1}{2}$;

Sec. 14, S $\frac{1}{2}$;

Sec. 15, S $\frac{1}{2}$, unsurveyed;

Sec. 17, S $\frac{1}{2}$, unsurveyed;

Sec. 18, S $\frac{1}{2}$, unsurveyed;

Secs. 19 to 22, inclusive, unsurveyed;

Sec. 23, partly unsurveyed;

Sec. 24.

T. 18 N., R. 3 E.,

Sec. 13, SW $\frac{1}{4}$, unsurveyed;

Sec. 14, S $\frac{1}{2}$, unsurveyed;

Sec. 15, S $\frac{1}{2}$, unsurveyed;

Sec. 17, S $\frac{1}{2}$;

Sec. 18, lot 1 of SW $\frac{1}{4}$, lot 2 of SW $\frac{1}{4}$, and SE $\frac{1}{4}$;

Secs. 19 to 24, inclusive.

T. 18 N., R. 4 E.,

Sec. 13, S $\frac{1}{2}$, unsurveyed;

Sec. 14, S $\frac{1}{2}$, partly unsurveyed;

Sec. 15, S $\frac{1}{2}$;

Sec. 17, S $\frac{1}{2}$;

Sec. 18, lot 1 of SW $\frac{1}{4}$, lot 2 of SW $\frac{1}{4}$, and SE $\frac{1}{4}$;

Sec. 19;

Secs. 20 and 21, partly unsurveyed;

Sec. 22; Secs. 23 and 24, partly unsurveyed.

T. 12 N., R. 5 E.,

Secs. 1 to 4, inclusive.

T. 13 N., R. 5 E.,

Sec. 13;

Secs. 24, 25, and 26;

Secs. 34 and 35.

T. 17 N., R. 5 E.,

Secs. 1, 2, and 3, unsurveyed, excluding patented land;

Sec. 4, unsurveyed;

Secs. 5 and 6, unsurveyed, excluding patented land;

Sec. 7, unsurveyed;

Sec. 8, unsurveyed, excluding patented land;

Secs. 9 to 12, inclusive, unsurveyed.

T. 18 N., R. 5 E.,

Sec. 13, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 14, S $\frac{1}{2}$;

Sec. 15, S $\frac{1}{2}$, partly unsurveyed, excluding patented land;

Sec. 17, S $\frac{1}{2}$, unsurveyed;

Sec. 18, S $\frac{1}{2}$, unsurveyed, excluding patented land;

Sec. 19, unsurveyed, excluding patented land;

Sec. 20, unsurveyed;

Sec. 21, unsurveyed, excluding patented land;

Sec. 22, partly unsurveyed, excluding patented land;

Sec. 23, partly unsurveyed;

Sec. 24;

Sec. 25, partly unsurveyed;

Secs. 26, 27, and 28, unsurveyed, excluding patented land;

Secs. 29 to 33, inclusive, unsurveyed;

Secs. 34 and 35, unsurveyed, excluding patented land;

T. 12 N., R. 6 E.,

Sec. 5, lot 1 of NW $\frac{1}{4}$, lot 2 of NW $\frac{1}{4}$, and W $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 6;

T. 13 N., R. 6 E.,

Secs. 1 to 5, inclusive;

Secs. 7 and 8;

Sec. 9, partly unsurveyed;

Secs. 10 to 15, inclusive, unsurveyed;

Secs. 17 to 21, inclusive;

Sec. 22, partly unsurveyed;

Secs. 23, 24, and 25, unsurveyed;

Sec. 26, partly unsurveyed;

Secs. 27 to 32, inclusive;

Sec. 33, N $\frac{1}{2}$ and NW $\frac{1}{4}$ SW $\frac{1}{2}$;

Sec. 34, N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$;

T. 14 N., R. 6 E.,

Sec. 1 partly unsurveyed;

Sec. 2;

Sec. 11;

- Secs. 12 and 13, unsurveyed, excluding patented land;
 Sec. 14;
 Sec. 23;
 Sec. 24, unsurveyed;
 Sec. 25, partly unsurveyed;
 Sec. 26;
 Secs. 33, 34, and 35;
- T. 15 N., R. 6 E.,
 Secs. 1 and 2;
 Sec. 11, lots 1, 2, and 3, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 12, lots 1, 3 to 6, inclusive, E $\frac{1}{2}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 13, lots 3, 4, and 5, E $\frac{1}{2}$, NE $\frac{1}{2}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 14, lots 1, 2, and 3, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Secs. 23 to 26 inclusive;
 Sec. 35.
- T. 16 N., R. 6 E.,
 Sec. 1, unsurveyed, excluding patented land;
 Sec. 2, unsurveyed;
 Sec. 11, unsurveyed;
 Secs. 12 and 13, unsurveyed, excluding patented land;
 Sec. 14, unsurveyed;
 Secs. 23 to 26, inclusive, unsurveyed;
 Sec. 35, unsurveyed.
- T. 17 N., R. 6 E.,
 Secs. 1 to 4, inclusive, unsurveyed;
 Secs. 5 to 8, inclusive, unsurveyed, excluding patented land;
 Secs. 9 to 15, inclusive, unsurveyed;
 Secs. 17 and 18, unsurveyed;
 Secs. 22 to 27, inclusive, unsurveyed;
 Secs. 34 and 35, unsurveyed.
- T. 18 N., R. 6 E.,
 Sec. 13, excluding that portion located within WSA CDCA 220 (South Saddle Peak Mountains);
 Sec. 15, S $\frac{1}{2}$, excluding that portion located within WSA CDCA 220 (South Saddle Peak Mountains);
 Sec. 17, S $\frac{1}{2}$, excluding that portion located within WSA CDCA 220 (South Saddle Peak Mountains);
 Sec. 18, lots 1 of SW $\frac{1}{4}$ and 2 of SW $\frac{1}{4}$, and SE $\frac{1}{4}$, excluding that portion located within WSA CDCA 220 (South Saddle Peak Mountains);
 Secs. 19, 20, and 21;
 Secs. 22, 23, and 24, inclusive, excluding that portion located within WSA CDCA 220 (South Saddle Peak Mountains);
 Sec. 25;
 Secs. 26 to 30, inclusive, partly unsurveyed;
 Sec. 31, unsurveyed, excluding patented land;
 Secs. 32 to 35, inclusive, unsurveyed.
- T. 13 N., R. 7 E.,
 Secs. 5 to 8, inclusive, unsurveyed.
- T. 14 N., R. 7 E.,
 Secs. 1 to 12, inclusive;
 Secs. 17 to 21, inclusive;
 Secs. 28 to 33, inclusive.
- T. 15 N., R. 7 E.,
 Secs. 1 to 15, inclusive;
 Sec. 17;
 Secs. 18 and 19, excluding patented land;
 Secs. 20 to 35, inclusive.
- T. 16 N., R. 7 E.,
 Sec. 1;
 Sec. 2, partly unsurveyed;
- Secs. 3, 4, and 5, unsurveyed;
 Secs. 6 and 7, unsurveyed, excluding patented land;
 Secs. 8 to 11, inclusive, unsurveyed;
 Secs. 12 and 13;
 Secs. 14 and 15, unsurveyed;
 Secs. 17 to 23, inclusive, unsurveyed;
 Secs. 24 and 25;
 Secs. 26 to 34, inclusive, unsurveyed;
 Sec. 35, partly unsurveyed.
- T. 17 N., R. 7 E.,
 Secs. 1, 2, and 3;
 Secs. 4 and 5, partly unsurveyed;
 Secs. 6 to 9, inclusive, unsurveyed;
 Secs. 10 to 14, inclusive;
 Sec. 15, partly unsurveyed;
 Secs. 17 to 22, inclusive, unsurveyed;
 Secs. 23 and 26, inclusive;
 Secs. 27 to 34, inclusive, unsurveyed;
 Sec. 35.
- T. 18 N., R. 7 E.,
 Secs. 13, 14, and 15;
 Sec. 17, partly unsurveyed;
 Secs. 18 and 19, unsurveyed;
 Sec. 20, partly unsurveyed;
 Secs. 21 to 29, inclusive;
 Sec. 30, partly unsurveyed;
 Sec. 31, unsurveyed;
 Sec. 32, partly unsurveyed;
 Secs. 33 to 35, inclusive.
- T. 14 N., R. 8 E.
 Secs. 6 and 7.
- T. 15 N., R. 8 E.,
 Sec. 1, partly unsurveyed;
 Secs. 2 to 11, inclusive;
 Sec. 12, partly unsurveyed, excluding that portion in the Hollow Hills Wilderness;
 Secs. 13 and 14, excluding that portion in the Hollow Hills Wilderness;
 Sec. 15;
 Secs. 17 to 21, inclusive;
 Secs. 28 to 31, inclusive.
- T. 16 N., R. 8 E.,
 Sec. 1, unsurveyed, excluding patented land;
 Sec. 2, partly unsurveyed, excluding patented land;
 Sec. 3, partly unsurveyed;
 Secs. 4 to 15, inclusive;
 Secs. 17 to 35, inclusive.
- T. 17 N., R. 8 E.,
 Secs. 1 to 15, inclusive;
 Secs. 17 to 20, inclusive;
 Secs. 21, 22, and 23, partly unsurveyed;
 Secs. 24 to 27, inclusive, unsurveyed;
 Sec. 28, partly unsurveyed;
 Secs. 29 to 32, inclusive;
 Sec. 33, partly unsurveyed;
 Secs. 34 and 35, unsurveyed.
- T. 18 N., R. 8 E.,
 Secs. 13, 14, and 15, partly unsurveyed;
 Secs. 17 to 21, inclusive;
 Secs. 22, 23, and 24, partly unsurveyed;
 Secs. 25 to 35, inclusive.
- T. 15 N., R. 9 E.,
 Sec. 4 and 5, unsurveyed, excluding Hollow Hills Wilderness Area;
 Sec. 6, unsurveyed;
 Sec. 7, unsurveyed, excluding Hollow Hills Wilderness Area.
- T. 16 N., R. 9 E.,
 Secs. 5 and 6, partly unsurveyed;
 Secs. 7 and 8;
 Secs. 17 to 20, inclusive;
 Sec. 29, unsurveyed;
 Sec. 30, partly unsurveyed;
- Secs. 31 and 32, unsurveyed.
 T. 17 N., R. 9 E.,
 Secs. 5 to 8, inclusive;
 Secs. 17 and 18;
 Sec. 19, partly unsurveyed;
 Sec. 20;
 Secs. 29 and 30, partly unsurveyed;
 Secs. 31 and 32, unsurveyed.
- T. 18 N., R. 9 E.,
 Secs. 17 to 20, inclusive;
 Secs. 29 to 32, inclusive;
 The areas described aggregate approximately 310,295 acres in San Bernardino County.
- For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.
- Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.
- The application will be processed in accordance with the regulations set forth in 43 CFR 2300.
- For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are licenses, permits, cooperative agreements, discretionary land use authorizations of a temporary nature, and rights-of-way, including those associated with approved utility corridors BB and D.
- Dated: September 7, 1995.
 David McIlroy,
 Chief, Branch of Lands.
 [FR Doc. 95-22915 Filed 9-26-95; 8:45 am]
 BILLING CODE 4310-40-P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This

notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-806574

Applicant: Larry E. Johnson, Yorba Linda, CA

The applicant requests a permit to export two captive-born ring-tailed lemurs (*Lemur catta*) to Zoologico de Chapultepec, Mexico, for enhancement of the species through captive propagation.

PRT-806867

Applicant: Eldon Randolph, Huntington, WV

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by the Tsolwana Game Reserve, Republic of South Africa, for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: September 22, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95-23973 Filed 9-26-95; 8:45 am]

BILLING CODE 4310-55-P

Notice of Availability of a Draft Recovery Plan for the Alabama Streak-sorus Fern for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Alabama streak-sorus fern (*Thelypteris pilosa* var. *alabamensis*). The fern is only known to

occur along the Sipsey Fork, a tributary of the Black Warrior River, in Winston County, Alabama. Plants take root in crevices and on rough rock surfaces of Pottsville sandstone on bluffs along the river. The majority of the extant sites are on U.S. Forest Service land (Bankhead National Forest), others are on private land. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 15, 1995, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Filed Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Cary Norquist at the above address (601/965-4900, ext. 28).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these

comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is the Alabama streak-sorus fern (*Thelypteris pilosa* var. *alabamensis*). This small fern occurs in crevices and on rough rock surfaces of Pottsville sandstone on bluffs along the Sipsey Fork (a tributary of the Black Warrior River) in Winston County, Alabama. Plants typically occur on ceilings of sandstone overhangs (rockhouses), on ledges beneath overhangs, and on exposed cliffs. Most of the known sites occur on U.S. Forest Service land on the Bankhead National Forest; several others occur on private land. The Alabama streak-sorus fern was listed as threatened in 1992 due to its vulnerability as a result of its extremely limited distribution (the population is restricted to an approximately 4-mile segment of the river), past destruction of a population from bridge construction/stream impoundment, and potential threats from recreational overuse of habitat, logging, and future road improvements for those sites located near a road.

The objective of this proposed plan is to delist the Alabama streak-sorus fern. Delisting will be considered when the population on the Sipsey Fork and, at least two other populations on different drainages, are protected and determined to be viable. Actions needed to reach this goal include: (1) protecting, managing, and monitoring populations; (2) surveying for new populations; (3) maintaining material in cultivation as a safeguard; and (4) establishing additional populations (if found to be necessary). After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 21, 1995.

Paul Hartfield,

Acting Field Supervisor.

[FR Doc. 95-23956 Filed 9-26-95; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for the Heliotrope Milkvetch (*Astragalus montii*) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Heliotrope milkvetch (*Astragalus montii*). The Heliotrope milkvetch occurs in Sanpete and Sevier Counties, Utah. The Service solicits review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before November 27, 1995, to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Written comments and materials regarding this plan should be sent to the Field Supervisor at the Salt Lake City address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist (see **ADDRESSES** above), at telephone 801/524-5001.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development or recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and

comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

The Heliotrope milkvetch is a perennial, herbaceous plant in the legume family (Fabaceae). The species is very low growing, nearly stemless plant approximately 1 to 5 centimeters (0.4 to 2 inches) tall, with two to eight pinkish purple flowers with white wing-tips. The species range includes Heliotrope Mountain in Sanpete County, Utah, and White Mountain in Sevier County, Utah. Currently, three populations are known with a total population of approximately 200,000 individuals, occupying a total area of about 400 acres.

The Heliotrope milkvetch (*Astragalus montii*) was listed as a threatened species on November 6, 1987 (52 FR 42657), under the authority of the Act. Critical habitat has been designated for the species western Heliotrope Mountain population. This species was listed due to its limited habitat and small population size, and to current and potential threats from grazing and oil and gas surface disturbing activities to the species habitat. The goal of the recovery plan is to maintain viable populations of the species at its known sites to ensure the species survival, and to guide recovery efforts to facilitate delisting of the species. Recovery efforts will focus on protecting the species population and habitat from habitat destroying activities through the sections 7 and 9 prohibitions of the Act for plant species. Biological and ecological research of the species' biology and its relationship and interaction with its environment is necessary to guide future management of the species population and habitat to ensure its continued survival and the preservation of the species ecosystem. Additional recovery efforts will focus on inventory of potential habitat and minimum viable population studies of its known populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described above. All comments received by the date specified in the **DATES** section above will be considered prior to approval of the recovery plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 21, 1995.

Elliott N. Sutta,

Acting Regional Director.

[FR Doc. 95-23944 Filed 9-26-95; 8:45 am]

BILLING CODE 3410-55-M

Notice of Availability of a Draft Recovery Plan for the Louisiana Quillwort Fern for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Louisiana quillwort (*Isoetes louisianensis*). This quillwort is only known from eight locations in two parishes in southeastern Louisiana (St. Tammany and Washington Parishes). It is restricted to sandy soils and gravel bars in or near shallow blackwater streams in riparian woodland/bayhead forest areas of pine flatwoods. All sites are located on private land. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 15, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A. Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Cary Norquist at the above address (601/965-4900, ext. 28).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions

considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is the Louisiana quillwort (*Isoetes louisianensis*). This small, semi-aquatic plant is in a family of primitive seedless plants closely related to ferns (Isoetaceae). It occurs in the East Gulf Coast Physiographic Province in shallow, sandy blackwater streams in riparian woodland/bayhead forest areas included in a landscape of pine flatwoods. It is currently known only from St. Tammany and Washington Parishes in southeastern Louisiana where it occurs on private land. This species is extremely vulnerable because of its small population size and restricted range. Any activity which would affect the hydrology or stability of the streams in which the plant occurs, such as gravel mining and timbering (without the use of Best Management Practices), could potentially affect this species.

The objective of this proposed plan is to delist the Louisiana quillwort. Delisting will be considered when 10 viable and geographically distinct populations from separate drainages are protected. Actions needed to reach this goal include: (1) Protecting and monitoring populations; (2) surveying for new populations; (3) conducting life history studies; and (4) educating the public on the conservation needs of this species. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 21, 1995.

Linda LaClaire,

Acting Field Supervisor.

[FR Doc. 95-23955 Filed 9-26-95; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for the Utah Pediocactus: San Rafael Cactus (*Pediocactus despainii*) and Winkler Cactus (*Pediocactus winkleri*) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Utah Pediocactus: San Rafael Cactus (*Pediocactus despainii*) and Winkler Cactus (*Pediocactus winkleri*). The two cacti occur in Emery and Wayne Counties, Utah. The Service solicits review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before November 27, 1995, to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Written comments and materials regarding this plan should be sent to the Field Supervisor at the Salt Lake City address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist (see **ADDRESSES** above), at telephone 801/524-5001.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for

recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

The San Rafael cactus is a small, leafless, stem succulent, with yellowish to peach color flowers 1.5 to 2.5 cm (0.6 to 1.0 in) long and 1.8 to 2.5 cm (0.7 to 1.0 in) in diameter. The San Rafael cactus is restricted to the San Rafael Swell of central Emery County, Utah, and is known from three populations with a total number of individuals estimated to be about 20,000.

The Winkler cactus is a small, leafless, stem cactus with peach to pink flowers borne on the upper end of the tubercles near the apex of the stem. The flowers are 1.7 to 2.2 cm (0.7 to 0.9 in) long and 1.7 to 3.0 cm (0.7 to 1.2 in) in diameter. The Winkler cactus is restricted to Wayne and Emery Counties, Utah, and is known from six populations with a total number of individuals estimated to be about 5,000.

The San Rafael cactus was listed as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act), on September 16, 1987 (52 FR 34917). The Winkler cactus was proposed for listing as an endangered species under the authority of the Act on October 6, 1993 (58 FR 52062). The final rule listing the Winkler cactus has been held up in the recent moratorium on listing actions. The U.S. Fish and Wildlife Service (Service) expects to publish the final rule once the moratorium is lifted. For that reason, and because the Service is also preparing multispecies recovery plans and recovery plans that address candidate species where appropriate, the Winkler cactus is included in this recovery plan.

These species were listed due to being highly desirable specimen plants for cactus collections, their limited habitat and small population size, and to current and potential threats from off-road vehicle use, trampling by both

humans and domestic livestock, and by mineral resource exploration and development. The goal of the recovery plan is to maintain viable populations of the species at their known sites to ensure the species survival, and to guide recovery efforts to facilitate downlisting of the species.

Recovery efforts will focus on protecting the species' population and habitat from habitat destroying activities and preventing collections from natural populations through the sections 7 and 9 prohibitions of the Act for plan species. Biological and ecological research of the species' biology and their relationships and interactions with their environment is necessary to guide future management of the species' population and habitat to ensure their continued survival and the preservation of the species' ecosystem. Additional recovery efforts will focus on inventory of potential habitat and minimum viable population studies of their known populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described above. All comments received by the date specified in the **DATES** section above will be considered prior to approval of the recovery plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 21, 1995.

Elliot N. Sutta,

Acting Regional Director.

[FR Doc. 95-23945 Filed 9-26-95; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Gary Marina, Final Environmental Impact Statement

AGENCY: National Park Service, Interior
ACTION: Availability of the final environmental impact statement for the proposed Gary Marina, adjacent to Indiana Dunes National Lakeshore.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the final environmental impact statement (FEIS) for the Gary Marina. The city of Gary proposes to construct a marina on Lake Michigan adjacent to the west boundary of Indiana Dunes National Lakeshore. The proposed marina would require an access road through Indiana Dunes National Lakeshore. The FEIS was prepared by the city of Gary and the NPS.

The city of Gary's and the NPS's preferred alternative for marina access is to construct a road on the abandoned Indiana Harbor Belt Railroad bed, within the west end of Indiana Dunes National Lakeshore, and on U.S. Steel Corporation property adjacent to but outside Indiana Dunes National Lakeshore. The city of Gary's and the NPS's preferred alternative for the marina location is behind an existing breakwater on land currently owned by U.S. Steel Corporation.

The FEIS includes written responses to comments received on the supplement to the draft environmental impact statement (SDEIS), released in April of 1994, as well as minor changes to the text of the SDEIS.

The 30-day no action period for review of the FEIS will end on October 28, 1995. A Record of Decision will be issued following the 30-day no action period.

ADDRESSES: Public reading copies of the FEIS, 1994 SDEIS, and the 1989 DEIS will be available for review at the following locations:

Headquarters and Visitor Center (corner of Hwy 12 and Kemil Road), Indiana Dunes National Lakeshore, 1100 N. Mineral Springs Road, Porter, Indiana 46304 (219-926-7561)
City Hall, City of Gary, 401 Broadway, Gary, Indiana 46402 (219-881-1332)
Gary Public Library, City of Gary, 220 West 5th Avenue, Gary, Indiana 46402 (219-886-2484)

A limited number of the FEIS, the 1994 SDEIS, and the 1989 DEIS are available on request from the Superintendent of Indiana Dunes National Lakeshore (refer to address below).

FOR FURTHER INFORMATION CONTACT: Mr. Dale Engquist, Superintendent, Indiana Dunes National Lakeshore, 1100 N. Mineral Springs Road, Porter, Indiana 46304, 219-926-7561.

Dated: September 18, 1995.

William W. Schenk,

Field Director, Midwest Region, National Park Service.

[FR Doc. 95-23985 Filed 9-26-95; 8:45 am]

BILLING CODE 4310-70-P

Notice of Inventory Completion of Native American Human Remains and Associated Funerary Objects from the Island of Kaua'i in the Collections of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of the inventory of human remains and associated funerary objects from the Island of Kaua'i by the Bernice Pauahi Bishop Museum Honolulu, HI.

A detailed inventory and assessment of these human remains and associated funerary objects has been made by Bishop Museum's professional staff, and representatives of the following Native Hawaiian organizations: Kaua'i / Ni'ihau Island Burial Council, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, and the Office of Hawaiian Affairs, Native Hawaiian organizations under 25 U.S.C. 3001(11) and individuals Mr. Edward Ka'iwi and Ms. Aletha Kaohi, of Kaua'i.

The human remains represent at least 85 individuals and 32 associated funerary objects. These remains came to Bishop Museum from the following sources:

In 1900, J. K. Farley donated one skull from Kōloa. In 1916, J. F. G. Stokes collected one calvarium from Māhā'ulepū with a shell and four glass beads. In 1918, the Museum purchased one skull from Wailua from H. Schultz. In 1922, Herbert E. Gregory, Director, and Edwin H. Bryan, Curator of Collections, at Bishop Museum, with Kaua'i residents H. & R. von Holt, L. Thurston, and Lindsay Anton Faye, removed seventeen remains, one stone flake, twenty shells and two wood fragments from Kalalau, Nu'alolo Valleys. In 1922, Gerrit P. Wilder donated a skull from Kīpū Kai. In 1926, C. J. Fern and W. W. Henderson donated one set of fragmentary remains from Hanalei. In 1927, H. E. Gregory collected one fragmentary set of skeletal remains from Kīpū Kai. In 1928, Wendell C. Bennett and Kenneth P. Emory, Anthropologists at Bishop Museum, collected two sets of remains from sands dunes, Lihu'e district. In October 1928, W. C. Bennett shipped twelve remains, mostly skulls, from Waimea. In December 1928, Bishop Museum received four crania from Keālia, from W. C. Bennett. In 1929, W. C. Bennett removed fifteen sets of remains from Kīpū Kai, Kaunalewa caves, and Nu'alolo. The remains from Nu'alolo were associated with 1 bead. In 1936, the Museum received one set of human remains from Hā'ena from an anonymous donor. In 1947, George Arnemann donated one skull from Kalihi Kai and one from Ka'aka'aniu. In 1948, Mrs. William Weinrich donated one skull from Kaua'i. In 1949, a group of students under K. P. Emory, excavated thirteen human remains a

rock and shell fragments from a bulldozed site at Wailua. In 1951, the Museum recorded one set of human remains from Po'ipū from an anonymous donor. In 1956, Lawrence P. Richards donated one skull from Aweoweonui. In 1959, Adna Clarke, Jr., donated one set of human remains from Hanapēpē. In 1964, Robert N. Bowen, Museum employee, collected a single vertebra at Kōloa. In 1964, Frederic O. Wolf, donated one skull from Kaua'i. In 1965, Lloyd J. Soehren, Museum anthropologist, excavated one set of human remains and an animal bone fragment from Nu'alolo. In 1974, John E. Reinecke donated the remains of four partial skeletons from Po'ipū. In 1984, Stella Hobby donated one skull from Kaua'i. In 1989, Andrew J. Hingsberger donated one skull from Nu'alolo.

No known individuals were identified. In consultation with Native Hawaiian organizations and at their recommendation, the Bishop Museum decided that no attempt would be made to determine the age of the human remains from Kaua'i. Geographic location of the remains, types of associated funerary objects, and method of burial preparation are recognizable as burial practices of Native Hawaiians ancestral to contemporary Native Hawaiian organizations.

Based on the above information, officials of the Bishop Museum, in consultation with representatives of the Kaua'i / Ni'ihau Island Burial Council, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, the Office of Hawaiian Affairs, Edward Ka'iwi and Aletha Kaohi, have determined pursuant to 25 U.S.C. 3001(2) that there is a relationship of shared group identity which can be reasonably traced between these remains and present-day Native Hawaiian organizations.

This notice has been sent to the Kaua'i / Ni'ihau Island Burial Council, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, the Office of Hawaiian Affairs, Edward Ka'iwi and Aletha Kaohi. Representatives of any Native Hawaiian organization which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Anita Manning, NAGPRA Representative, Bernice Pauahi Bishop Museum, P. O. Box 19000, Honolulu, Hawai'i, 96817-0916, <manning@bishop.bishop.hawaii.org>, 808-848-4117, before October 27, 1995.

Dated: September 21, 1995.

Francis P. McManamon

*Departmental Consulting Archeologist
Archeology and Ethnology Program*

[FR Doc. 95-23893 Filed 9-26-95; 8:45 am]

BILLING CODE 4310-70-F

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463).

MEETING DATES AND TIMES: Wednesday, October 18, 1995; 6:30 p.m. to 9:30 p.m.
ADDRESSES: Minnesota Department of Revenue, 8th Floor—Skagstad Room, 10 River Park Plaza, Saint Paul, Minnesota.

An agenda for the meeting will be available by October 6, 1995, from the Superintendent of the Mississippi National River and Recreation Area at the address below. Public statements about matters related to the Mississippi National River and Recreation Area will be taken at the meeting.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100-696, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Superintendent JoAnn Kyril, Mississippi National River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, Minnesota 55101 or telephone 612-290-4160.

Dated: September 15, 1995.

William W. Schenk,

Field Director.

[FR Doc. 95-23984 Filed 9-26-95; 8:45 am]

BILLING CODE 4310-70-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 753-TA-32]

Carbon Steel Wire Rod From Zimbabwe

Determination

Pursuant to section 753(b)(4) of the Tariff Act of 1930 (19 U.S.C. 1675b(b)(4)) (the Act), the Commission hereby determines that an industry in the United States is not likely to be materially injured by reason of imports from Zimbabwe of carbon steel wire rod if the countervailing duty order on such merchandise were to be revoked.

Background

Section 753(a) of the Act provides that, in the case of a countervailing duty order issued under section 303 of the Act with respect to which the requirement of an affirmative determination of material injury under

section 303(a)(2) was not applicable at the time the order was issued, interested parties may request the Commission to initiate an investigation to determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked. Further, section 753(a)(3) requires that such requests must be filed with the Commission within 6 months of the date on which the country from which the subject merchandise originates became a signatory to the Agreement on Subsidies and Countervailing Measures (the Subsidies Agreement), as referred to in section 101(d)(12) of the Uruguay Round Agreements Act.

On May 26, 1995, the Department of Commerce (Commerce) published in the Federal Register notice of opportunity to request injury investigation(s) under section 753 of the Act (60 FR 27963, May 26, 1995). In that notice, Commerce stated that, for those countries becoming signatories to the Subsidies Agreement on January 1, 1995, requests for injury investigations must be filed with the Commission no later than June 30, 1995. In addition, Commerce noted that in the case of Zimbabwe, that country became a signatory to the Subsidies Agreement on March 3, 1995. 2

Section 753(b)(4) of the Act provides that, if a request for an injury investigation is not made within 6 months of the time the country of origin of the subject merchandise became a signatory to the Subsidies Agreement, the Commission shall notify the administering authority that it has made a negative determination with regard to the question of the likelihood of material injury by reason of imports of the subject merchandise if the order is revoked. As of September 5, 1995, the Commission had not received a request for investigation under section 753(a) with regard to the outstanding countervailing duty order on carbon steel wire rod from Zimbabwe. Accordingly, pursuant to section 753(b)(4) of the Act, the Commission hereby notifies Commerce of its negative injury determination with regard to the outstanding countervailing duty order on carbon steel rod from Zimbabwe.

For Further Information Contact: Jonathan Seiger (202-205-3183) or Vera Libeau (202-205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810.

Authority

These determinations are being made under authority of the Tariff Act of 1930, title VII, as amended by the URAA. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: September 18, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95-23980 Filed 9-26-95; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 332-360]**International Harmonization of Customs Rules of Origin**

AGENCY: United States International Trade Commission.

ACTION: Request for public comment on draft rules for Harmonized System chapters 25, 26, and 27.

EFFECTIVE DATE: September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (202-205-2595), or Lawrence A. DiRicco (202-205-2606). Questions with regard to specific chapters of the Harmonized Tariff Schedule of the United States (HTS) should now be directed to the following coordinators in view of product reassignments:

Chapters 1-24, 41-49—Ronald H. Heller (202-205-2596)

Chapters 25-40—Edward J. Matusik (202-205-3356)

Chapters 50-63—Janis L. Summers (202-205-2605)

Chapters 64-83, 86-89, 92-97—Lawrence A. DiRicco (202-205-2606)

Chapters 84-85, 90-91, 98-99—Craig M. Houser (202-205-2597)

Parties having an interest in particular products or HTS chapters and desiring to be included on a mailing list to receive available documents pertaining thereto should advise Diane Whitfield by phone (202-205-2610) or by mail at the Commission, 500 E St SW, Room 404, Washington, DC 20436. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. The media should contact Margaret O'Laughlin, Director, Office of Public Affairs (202-205-1819).

Background

Following receipt of a letter from the United States Trade Representative (USTR) on January 25, 1995, the Commission instituted Investigation No. 332-360, International Harmonization

of Customs Rules of Origin, under section 332(g) of the Tariff Act of 1930 (60 FR 19605, April 19, 1995).

The investigation is intended to provide the basis for Commission participation in work pertaining to the Agreement on Rules of Origin (ARO), developed during the Uruguay Round of trade negotiations and adopted along with the Agreement Establishing the World Trade Organization (WTO), as part of the General Agreement on Tariffs and Trade (GATT) 1994.

The ARO is designed to harmonize and clarify nonpreferential rules of origin for goods in trade on the basis of the substantial transformation test; achieve discipline in the rules' administration; and provide a framework for notification, review, consultation, and dispute settlement. These harmonized rules are intended to make country-of-origin determinations impartial, predictable, transparent, consistent, and neutral, and to avoid restrictive or distortive effects on international trade. The ARO provides that technical work to those ends will be undertaken by the Customs Cooperation Council (CCC) (now informally known as the World Customs Organization or WCO), which must report on specified matters relating to such rules for further action by parties to the ARO. Eventually, the WTO Ministerial Conference is to "establish the results of the harmonization work program in an annex as an integral part" of the ARO.

In order to carry out the work, the ARO calls for the establishment of a Committee on Rules of Origin of the WTO and a Technical Committee on Rules of Origin (TCRO) of the CCC. These Committees bear the primary responsibility for developing rules that achieve the objectives of the ARO.

A major component of the work program is the harmonization of origin rules for the purpose of providing more certainty in the conduct of world trade. To this end, the agreement contemplates a 3-year CCC program, to be initiated as soon as possible after the entry into force of the Agreement Establishing the WTO. Under the ARO, the TCRO is to undertake (1) to develop harmonized definitions of goods considered wholly obtained in one country, and of minimal processes or operations deemed not to confer origin, (2) to consider the use of change in Harmonized System classification as a means of reflecting substantial transformation, and (3) for those products or sectors where a change of tariff classification does not allow for the reflection of substantial transformation, to develop supplementary or exclusive origin criteria based on value, manufacturing

or processing operations or on other standards.

To assist in the Commission's participation in work under the Agreement on Rules of Origin (ARO), the Commission is publishing for public comment a draft of proposed rules for goods of chapters 25, 26, and 27 of the Harmonized System that are not considered to be wholly made in a single country. The rules rely largely on the change of heading as a basis for ascribing origin.

These proposals, which have been reviewed by interested government agencies, are intended to serve as the basis for the U.S. proposal to the Technical Committee on Rules of Origin (TCRO) of the Customs Cooperation Council (CCC) (now known as the World Customs Organization or WCO). The proposals do not necessarily reflect or restate existing Customs treatment with respect to country of origin applications for all current non-preferential purposes. Based upon a decision of the Trade Policy Staff Committee, the proposals are intended for future harmonization for the nonpreferential purposes indicated in the ARO for application on a global basis. They seek to take into account not only U.S. Customs' current positions on substantial transformation but additionally seek to consider the views of the business community and practices of our major trading partners as well. As such they represent an attempt at reaching a basis for agreement among the contracting parties. The proposals may undergo change as proposals from other administrations and the private sector are received and considered. Under the circumstances, the proposals should not be cited as authority for the application of current domestic law.

If eventually adopted by the TCRO for submission to the Committee on Rules of Origin of the World Trade Organization, these proposals would comprise an important element of the ARO work program to develop harmonized, non-preferential country of origin rules, as discussed in the Commission's earlier notice. Thus, in view of the importance of these rules, the Commission seeks to ascertain the views of interested parties concerning the extent to which the proposed rules reflect the standard of substantial transformation provided in the Agreement. In addition, comments are also invited on the format of the proposed rules and whether it is preferable to another presentation, such as the format for the presentation of the NAFTA origin or marking rules.

Forthcoming Commission notices will advise the public on the progress of the TCRO's work and will contain any harmonized definitions or rules that have been provisionally or finally adopted.

Written Submissions

Interested persons are invited to submit written statements concerning this phase of the Commission's investigation. Written statements should be submitted as quickly as possible, and follow-up statements are permitted; but all statements must be received at the Commission by the close of business on October 20, 1995, in order to be considered in the drafting of the final U.S. proposal to the TCRO. Information supplied to the Customs Service in statements filed pursuant to notices of that agency has been given to us and need not be separately provided to the Commission. Again, the Commission notes that it is particularly interested in receiving input from the private sector on the effects of the various proposed rules and definitions on U.S. exports. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Office of the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Issued: September 18, 1995.

By order of the Commission.

Donna R. Koehnke,
Secretary.

Annex—Draft Proposal by The United States Harmonized Rules of Origin

Chapter 25—Salt; Sulphur; Earths and Stone; Plastering Materials, Lime and Cement

General Rule

Except as otherwise provided in the additional rules specified below, goods of this chapter that are not wholly obtained in one country are deemed to be goods of the last country where non-originating materials have undergone a change of classification to a heading of this chapter from any other heading, including another heading within the chapter.

Additional Rules

1. Goods which have been subjected to the following processes or have undergone a specified change of classification at the subheading level are deemed to be goods of the last country where such processes were performed or where the change of subheading occurred:

(a) Calcining of uncalcined materials of headings 25.11, 25.12, 25.18, 25.20, 25.28 or 25.30, provided the process results in a change in the chemical structure of such goods;

(b) A change to subheading 2517.30 (tarred macadam) from any other subheading;

(c) A change to tarred dolomite of subheading 2518.30 from subheadings 2518.10 or 2518.20; and

(d) Fusing of materials of headings 25.18 or 25.19.

Explanation

Except where the context of the heading permits additional processing (e.g., calcining, roasting, agglomeration, sintering, or other heat-treatment), Chapter 25 covers only minerals in their crude state. Goods of Chapter 25 that have been processed beyond that permitted by Chapter Note 1 tend to fall within Chapter 28 or Chapter 68.

Consequently, most goods of this chapter are in or nearly in their condition as extracted and many can be expected to be wholly obtained in a single country. With the notable exceptions of macadam of slag, dross or other industrial waste (subheading 2517.20), tarred macadam (subheading 2517.30), and certain slag cements (heading 25.23), most goods of the chapter cannot be derived from headings outside the chapter and will not undergo a change to a heading of Chapter 25 from a heading outside that chapter. Accordingly, the general rule of origin for Chapter 25 has been drafted to reflect this situation.

Within Chapter 25, most headings cover a distinct category of goods that are not derived from goods of other headings within the chapter. Again, exceptions occur, such as under heading 25.17 which includes crushed stone, chips, etc., of stone of other headings within the chapter. In those cases change in heading occurs and in our opinion reflects a substantial transformation (i.e., significant reduction in size). In some cases, a substantial transformation occurs, but there is no change in heading or only a change from one subheading to another subheading. To account for those situations, Additional Rules to the General Origin Rule have been provided:

Additional Rule 1(a) reflects the substantial transformation of uncalcined minerals of specified headings by calcination (a process that alters the chemical form of the mineral) where both uncalcined and calcined forms of the minerals fall within the same heading. We note here that the proposed rule would cover all the goods of the chapter where calcined goods remain to be classified in the chapter, except in the case of clays of headings 2507 and 2508. Calcining of clay serves merely to drive off water of hydration, does not result in modifying the chemical structure of the material, and does not result in substantially transforming the clay.

Additional Rule 1(b) reflects the substantial transformation of mineral products covered by other subheadings of Heading 2517 into tarred macadam by mixing with bituminous products of other chapters.

Additional Rule 1(c) reflects the substantial transformation of dolomite of subheadings 2518.10 or 2518.20 resulting from mixing with bituminous products of other chapters.

Additional Rule 1(d) reflects the substantial transformation of minerals of the specified headings by fusing where both the fused and untreated minerals fall within the same heading.

Draft Proposal by the United States Harmonized Rules of Origin

Chapter 26—Ores, Slag and Ash

General Rule

Except as otherwise provided in the additional rules specified below, goods of this chapter that are not wholly obtained in one country are deemed to be goods of the last country where non-originating materials have undergone a change of classification to a heading of this chapter from any other heading, including another heading within the chapter.

Additional Rules

1. Goods which have been subjected to the following processes or have undergone a specified change of classification at the subheading level are deemed to be goods of the last country where such processes were performed or where the change of heading or subheading occurred:

(a) Conversion of ores of headings 26.01 through 26.17 to concentrates of that group;

(b) Calcining or roasting of concentrates of headings 26.01 through 26.17, provided that the process results in a change in the chemical structure of the material.

Explanation

Except where the headings permit additional processing (e.g., roasting, agglomeration), Chapter 26 covers only ores (i.e., certain metalliferous minerals defined in Note 1 to the Chapter) in their crude state, concentrates of such ores derived by processes that do not alter the chemical composition of the basic material, ash and residues of a kind used in industry either for the extraction of metals or as a basis for the manufacture of chemical compounds, and all other ash and residues.

Most goods classified in this chapter are in or nearly in their condition as extracted, physically concentrated, or produced. In most cases it is expected that these goods will be wholly obtained in a single country.

With the exception of the ash and residues of headings 26.20 and 26.21, the goods of this chapter cannot be derived from goods classified outside the chapter. In most cases, these goods are unlikely to undergo a change of classification from one heading to another within the chapter. It is recognized that there could be cases where part of an ore may undergo a change of heading within the chapter (e.g., crude copper ores of heading 26.03 containing lead, silver, and gold, that are processed into copper concentrates of heading 26.03, lead concentrates of heading 26.07 and precious metal concentrates of heading 26.16).

Additional rule 1(a) reflects the substantial transformation resulting from the concentration of crude ores, even though a change of heading or subheading is unlikely to occur. Similarly, Additional rule 1(b) recognizes calcining or roasting of concentrates to be substantial transformations that confer origin.

Draft Proposal by the United States Harmonized Rules of Origin

Chapter 27—Mineral Fuels, Mineral Oils and Products Of Their Distillation; Bituminous Substances; Mineral Waxes

Chapter 27

General Rule

Except as otherwise provided in the additional rules specified below, goods of this chapter that are not wholly obtained in one country are deemed to be goods of the last country where non-originating materials have undergone a change of classification to headings of this chapter from any other heading, including another heading within the chapter.

Additional Rules

1. Goods of any heading or subheading of this chapter (other than heading 2709) which have undergone a chemical reaction, including refinery processes such as cracking, catalytic reforming, desulfurization (removal of bound sulfur) or dehydroalkylation, are deemed to be goods of the country where the reaction occurred.

2. Goods of headings 27.07 or 27.10 which have been formulated by blending are deemed to be goods of the country where blending occurred, provided the following conditions are satisfied:

(a) The goods have been deliberately blended to conform to specific predetermined physical specifications, such as boiling point range, viscosity, solidification temperature, random or motor octane numbers, or cetane number, which are different from the specifications of the input materials, and

(b) In the case of motor fuels (other than diesel fuels) or motor fuel blend stock, the good has undergone a minimum change of 10 octane units, and

(c) In the case of other goods, the product is suitable for end use without further processing and not more than 70 percent by weight of the product is composed of materials originating from a country other than the country where the blending occurred.

3. Goods of heading 27.11 which have undergone a deliberate process of separation into individual gases of heading 27.11 and residual components resulting from such separation are deemed to be goods of the country where the separation occurred.

4. Calcining of petroleum coke of subheading 2713.12 from uncalcined petroleum coke of subheading 2713.11 is deemed to have origin in the country where such process was performed.

5. The following processes are not to be considered origin-conferring:

(a) Cleaning, decanting, desalting, dewatering or dehydrating, filtering, coloring, or marking, separately or in combination, of any of the goods of chapter 27;

(b) Blending of materials of subheading 27.13.20 or heading 27.14 to produce goods of heading 27.15.

Explanation

Chapter 27 covers crude petroleum, bituminous materials, and crude products from the cracking, fractional distillation, or heating of these materials (such as coking). Chapter 27 also covers crude benzene, toluene, xylene, and other coal tar products. These are

distinguished from the pure chemicals of chapter 29 by their purity levels. Crude coal tar products will have a purity range from 50 to 95 percent by weight, while products of chapter 29 tend to have a purity of 95 percent or higher.

Most goods of this chapter are the result of basic refinery operations, including cracking and fractional distillation. The inputs for these operations include coal, crude petroleum and petroleum gases, which are classified in chapter 27, and the outputs may remain to be classified in the same or other headings of this chapter or other chapters.

Certain refinery and formulation processes, such as blending of fuel components, are considered to result in substantial transformation for the purposes of conferring origin because the result of the operation is a product which possesses specific properties or characteristics that render it different (and further finished), than the starting material. The additional rules attempt to account for instances of substantial transformation where a change of heading or subheading does not occur, and these are detailed below.

In addition, there are several minor processes that would result in a change of subheading, but substantial transformation is deemed not to have occurred because the changes are either only changes in the physical state (i.e., from gas to liquid), or they represent only minor phases of refinery processing.

Additional Rule 1 reflects the processing of many materials that undergo a chemical reaction resulting in a substantial transformation, but without a change in classification necessarily occurring.

Additional Rule 2 reflects the transformation of raw materials to finished goods as a result of blending operations for goods of headings 27.07 and 27.10 that are classified within the same heading or subheading as the starting material. The rule requires discriminate blending in order to conform the product to stated requirements, such as those contained in ASTM standards, for origin to be conferred. Additional Rule 2(c) recognizes that the blending of covered products results in a substantial transformation in cases where no more than 70 percent by weight of the blending stock originates in a single country other than the country where the blending occurs.

Additional Rule 3 concerns the substantial transformation resulting from the physical separation of petroleum hydrocarbons into individual

gases and residual products. These processes do not include the incidental separation of individual components of a gas during its conveyance through a pipeline.

Additional Rule 4 reflects the substantial transformation of uncalcined petroleum coke of subheading 2713.12 to calcined petroleum coke of subheading 2713.11.

Additional Rule 5(a) enumerates preparatory operations involved in refineries and processing plants that are not considered to be origin conferring.

Additional rule 5(b) provides that blending of bituminous materials of subheading 27.13.20 or heading 27.14 to produce bituminous mixtures of heading 27.15 is not to be considered origin conferring.

[FR Doc. 95-23981 Filed 9-26-95; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-369]

Certain Health and Beauty Aids and Identifying Marks Thereon; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Rhonda M. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3083.

SUPPLEMENTARY INFORMATION: On December 2, 1994, Redmond Products, Inc. filed a complaint with the Commission alleging a violation of section 337 of the Tariff Act of 1930 in the importation, the sale for importation, and the sale within the United States after importation of health and beauty aids bearing marks that infringe Redmond's registered and common law trademarks.

The Commission instituted an investigation of the complaint, and published a notice of investigation in the Federal Register on January 19, 1995. 60 FR 3,875 (1995). The notice

named Belvedere International, Inc. of Ontario, Canada as respondent.

On July 13, 1995, complainant and respondent filed a joint motion to terminate the investigation on the basis of a settlement agreement. On August 25, 1995, the ALJ granted the joint motion and issued an ID (Order No. 17) terminating the investigation on the basis of a settlement agreement. No petitions for review were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Copies of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: September 19, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95-23979 Filed 9-26-95; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 94-01555 (HHG), D.D.C.]

United States v. AT&T Corporation and McCaw Cellular Communications, Inc.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)-(h), the United States publishes below the comments received on the proposed Final Judgment in *United States v. AT&T Corporation and McCaw Cellular Communications, Inc.*, Civil Action 94-01555 (HHG), United States District Court for the District of Columbia, together with the response of the United States to the comments.

Copies of the response and the public comments are available on request for inspection and copying in Room 200 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, DC 20530, and for inspection at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and

Constitution Avenue, N.W., Washington, DC 20001.

Constance Robinson,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

In the Matter of: United States of America, Plaintiff, v. AT&T Corp. and McCaw Cellular Communications, Inc., Defendants. Civil Action No. 94-01555 (HHG). Received July 25, 1995.

Response to Public Comments to the Proposed Final Judgment

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)-(h) (1994) ("APPA"), the United States of America hereby files its Response to Public Comments to the proposed Final Judgment in this civil antitrust proceeding. The United States has reviewed the comments on the proposed Final Judgment and remains convinced that its entry is in the public interest.

A proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with this Court.¹ The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory sixty-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)-(h).

I. Compliance with the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. 16(b). The United States has received four comments² and a response

¹ See 59 FR 44,158 (1994).

² Comments objecting to the proposed decree were submitted to the Department by Bell Atlantic and NYNEX (jointly), SBC Communications Inc. ("SBC"), BellSouth Corp. ("BellSouth") and the Ad Hoc Association Long Distance Carriers ("Ad Hoc IXCs"). SBC requested permission from the Court to file supplemental comments on January 17, 1995; however, that request has not been granted by the Court. SBC's supplemental comments request that the decree be clarified and modified to provide that pending conversion of the McCaw systems to equal access, AT&T is prohibited from (1) expanding its calling areas, and (2) advertising its existing interLATA calling areas so as to disadvantage cellular systems that are competing with the McCaw systems. SBC also believes that AT&T should be required to restrict the scope of such calling areas pending conversion to equal access. AT&T's response to these comments asserts that it has not expanded the McCaw calling areas, and that the purpose of the proposed decree is not to establish identical calling areas with those of the Bell Operating Companies (BOCs). Further, AT&T maintains that to impose additional requirements pending the completion of its conversion to equal access this fall would simply encourage additional frivolous complaints with no competitive benefit and could delay the conversion of its cellular systems to equal access. The Department believes that the changes proposed by SBC are

to those comments from AT&T,³ all of which are filed with this response. Upon publication of the comments and this response in the Federal Register, pursuant to 15 U.S.C. 16(d) of the APPA, the procedures required by the APPA will be completed. The United States will then move the Court for entry of the proposed Final Judgment, and the Court may then enter it.

Under the APPA, the primary responsibility for enforcing the antitrust laws and protecting the public interest in competitive markets rests with the Department of Justice.⁴ In carrying out its responsibilities, the Department has very broad discretion in prosecuting alleged antitrust violations and determining appropriate relief for the settlement of cases.⁵ Before entering a proposed consent decree, the Court must determine that the decree is in the public interest, 15 U.S.C. 16(e).⁶ That test, however, is limited to ensuring that the government has met its public interest responsibilities—that is, determining that the proposed Final Judgment falls within the range of the government's antitrust enforcement discretion.⁷

II. Background

The transaction giving rise to the government's complaint was the acquisition by AT&T Corp. ("AT&T") of the stock of McCaw Cellular Communications Inc. ("McCaw") in exchange for AT&T stock valued at \$12.6 billion. The transaction was the largest acquisition in the history of the telecommunications industry. Immediately upon the announcement of the transaction, the Department received complaints from competitors of McCaw

inappropriate, and that the scheduled conversion of the McCaw systems will achieve the competitive benefits sought by the proposed decree.

³ Defendant's Response to the Public Comments on the Proposed Final Judgment, submitted to the Department of Justice on March 15, 1995.

⁴ *United States v. Waste Management, Inc.*, 1985-2 Trade Cas. (CCH) ¶ 66,651 at page 63,045 (D.D.C. June 6, 1985).

⁵ *United States v. Microsoft*, Nos. 95-5037, 95-5039, slip op. (D.C. Cir. June 16, 1995); *United States v. Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508 at page 71,980 (W.D. Mo. May 17, 1977) (citing *Sam Fox Publishing Co. v. United States*, 366 U.S. 683, 689 (1961) and *Swift & Co. v. United States*, 276 U.S. 311, 331-32 (1928)).

⁶ This determination can be properly made on the basis of the Competitive Impact Statement and this Response. The additional procedures of 15 U.S.C. 16(f) are discretionary, and a court need not invoke any of them unless it believes that the comments have raised significant issues, and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93d Cong. 2d Sess. 8-9 reprinted in 1974 U.S.C.A.N. 6535, 6538.

⁷ *United States v. Microsoft*, Nos. 95-5037, 95-5039 slip op. (D.C. Cir. June 16, 1995); *United States v. Western Electric Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993).

and cellular equipment customers of AT&T expressing concerns as to the possible anticompetitive effects of the proposed transaction.

The Department commenced an extensive investigation of the acquisition during which these complaints were thoroughly examined. The Department received more than one million pages of documents from AT&T, McCaw, other cellular service providers including the BOCs, and AT&T's cellular equipment competitors. In addition, the Department conducted more than a dozen on the record interviews with employees and officers of AT&T and McCaw and interviewed dozens of persons in various positions in the wireless industry.⁸

AT&T is the largest domestic long distance provider with about 60% of the overall interexchange market and a higher percentage of the cellular long distance market.⁹ McCaw is one of the largest cellular mobile telephone providers and owns interests in systems that provide service to about 17% of cellular customers.¹⁰ McCaw's systems all operate in the "A Block" of the cellular spectrum that was originally assigned by the FCC to non-local exchange carriers.¹¹

Cellular carriers provide mobile telephone service using transmitters that are located in multiple "cell sites" to establish radio connections with the customers' terminal equipment. These cell sites are linked to centralized mobile telephone switching offices ("MTSO's") by either fixed microwave radio links or landline transmission facilities. In general, calls to telephones within the service area of the cellular system are completed over connections from the MTSO to the local landline

⁸ In order to complete the transaction, AT&T needed the approval of the FCC for the transfer to it of McCaw's radio licenses. After the Department completed its investigation of the transaction and filed the proposed consent decree with the district court, the FCC approved the license transfers. Applications of Craig O. McCaw and AT&T, File No. ENF-93-44, Memorandum Opinion and Order, FCC 94-238 (Sept. 19, 1994). The Court of Appeals recently affirmed the FCC action after considering some of the same issues that were raised by the commenters in this proceeding. *SBC Communications Inc. v. FCC*, Nos. 94-1637, 94-1639, slip op. (D.C. Cir. June 23, 1995).

⁹ AT&T Response at 57.

¹⁰ AT&T Response at 9.

¹¹ The "B Block" spectrum was awarded to the local telephone companies serving the areas covered by the cellular licenses. After these licenses were issued, the local exchange carriers were permitted to purchase the systems of the nonwireline carriers in areas where they did not have the wireline licenses, and the BOCs and GTE then acquired a substantial portion of these licenses as well. See Cellular Communications Systems, 86 FCC 2d 469, 493-95 (1981); 47 C.F.R. § 22.901(d) (1994).

telephone company that are arranged for by the cellular provider.

Calls originating on the cellular system to telephones outside the cellular service area, with some exceptions, are transported from the MTSO to an interexchange carrier either through direct trunks or through the switched network of the local telephone company. These long distance calls are generally charged to the customer separately from the cellular service and are provided either as a service rendered to the customers directly by the interexchange carriers or as a resold service provided by the cellular carrier. Prior to its acquisition by AT&T McCaw mostly provided long distance service by reselling AT&T services, which it procured at wholesale rates. McCaw also did not offer its customers their choice of interexchange carriers, except in those systems which it jointly owned with a BOC.

Under the Modification of Final Judgment entered in *United States v. Western Electric Co.* ("MFJ"),¹² the BOCs are required to provide equal access to all interexchange carriers for the origination and termination of interexchange calls. Interexchange calls under the MFJ are those which transit the boundary of an exchange area or "LATA." The LATAs applicable to the BOC's cellular systems have been modified by numerous waivers granted by the Court. Pursuant to a request made by the BOCs, the District Court has recently ruled on a waiver request for the BOCs to provide interexchange services from cellular systems.¹³

III. The Complaint and Proposed Final Judgment

The Complaint alleges that the proposed acquisition by AT&T of McCaw violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, in the markets for cellular service, cellular infrastructure equipment, and interexchange service to cellular subscribers. On the same day that the complaint was filed, the Department also filed a proposed Final Judgment that would mitigate the anticompetitive consequences of the transaction in each of these markets.

First, the proposed Final Judgment contains provisions that substantially mitigate the incentive and ability of the merged AT&T-McCaw to disadvantage other cellular companies which compete against McCaw. It requires that

¹² *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd mem. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

¹³ *United States v. Western Electric Co.*, Civ. No. 82-0192 (D.D.C. April 28, 1985) ("April 28 Order").

McCaw's wireless systems be maintained in a separate subsidiary from AT&T and restricts the flow of certain confidential information between these entities and within the AT&T unit that sells cellular infrastructure equipment. It obligates AT&T to continue to deal with unaffiliated cellular equipment customers on terms established prior to the acquisition, and on terms not less favorable than those offered to McCaw after the acquisition. In addition AT&T is required to assist, and not to interfere with, an incumbent customer's decision to change infrastructure suppliers, and to buy back network equipment sold to a competitor/customer if AT&T fails to comply with its obligations to that customer under Section V of the judgment. The decree does not, however, prohibit AT&T from using information relating to its own interexchange customers to market cellular services.

Second, to mitigate the anticompetitive concerns in the cellular interexchange market, the proposed Final Judgment requires McCaw cellular systems to provide equal access to interexchange competitors of AT&T, which McCaw did not provide prior to the acquisition in its systems (other than systems jointly owned by McCaw and a BOC). The provisions of equal access on these systems will increase competition in interexchange services to cellular customers. Finally, the proposed Final Judgment restrains McCaw from providing certain confidential information related to its cellular infrastructure equipment suppliers to AT&T's manufacturing division to prevent anticompetitive harm to the cellular infrastructure equipment market.

IV. Comments on the Proposed Decree

A. Concerns That the Vertical Relationship Created by Merging AT&T's Manufacturing Business With McCaw Will Have Anticompetitive Effects on McCaw's Cellular Competitors

The Joint Bell Atlantic and NYNEX Comments ("Joint Comments") argue that the merger of the manufacturing business of AT&T with the McCaw cellular operations will have anticompetitive effects on cellular markets that are not sufficiently mitigated by the terms of the proposed decree. These alleged effects are primarily the result of the "lock-in" that occurs when a cellular system operator purchases a cellular switch and associated radio equipment from a manufacturer. Once a cellular operator selects a manufacturer, it must purchase

upgrades and additional equipment from the same manufacturer, as other manufacturers' equipment will not function with the existing equipment. The interfaces between the switches, radios, and software are today generally proprietary. Thus, the cellular operator cannot change equipment vendors without replacing most or all of the system's equipment, and is to an extent "locked-in" to the manufacturer for further purchases of radio equipment to expand or enhance its services.¹⁴

The Joint Comments allege that the injunctive provisions of the proposed decree intended to remedy the lock-in problem are not sufficient, and that in order to prevent anticompetitive harm the government should either (1) require the divestiture of McCaw, (2) require the divestiture of AT&T's cellular equipment business, or (3) require AT&T, along with other injunctive relief, to build switches and other equipment pursuant to publicly available standards and to license the use of any necessary intellectual property so that third parties could manufacture and sell equipment fully compatible with AT&T equipment.¹⁵ The provisions of the proposed Final Judgment are insufficient, according to Bell Atlantic and NYNEX, because AT&T can engage in certain anticompetitive activities that would be difficult to police and punish. They state "AT&T can raise equipment prices in a disparate fashion without an appearance of discrimination."¹⁶ and "AT&T can restrict or delay equipment customers' access to important new

features or technologies without detection."¹⁷ Finally, although the decree prohibits the transfer of commercial information of AT&T's equipment customers to McCaw, NYNEX and Bell Atlantic maintain that the prohibitions are inadequate because they allow such information to go to senior officers of AT&T's manufacturing unit, who may use that information for the benefit of McCaw.¹⁸

AT&T has responded to the Joint Comments largely by contending that the "lock-in" effect is much less significant than alleged by McCaw's cellular competitors. In fact, AT&T claims to face intense competition for its cellular equipment business, even where it is the incumbent supplier.¹⁹ In addition, AT&T argues that courts have rejected "lock-in" as a basis for establishing market power and, therefore, additional relief cannot be predicated on its alleged impact.²⁰ AT&T maintains that the telecommunications equipment market is very competitive and that because it is a significant market for AT&T,²¹ it has very incentive to bend over backwards to satisfy its customers. Finally, AT&T contends that the proposed decree adequately protects competing cellular systems from anticompetitive conduct since it expressly enjoins each type of anticompetitive activity of concern to the Department, and also contains provisions that reduce the alleged "lock-in" effect and that increase AT&T's incentives to abide by the restrictions contained in the decree.

The Department concluded that certain competitors of McCaw were "locked-in" to AT&T cellular equipment and, therefore, disagrees with AT&T's attempts to minimize this problem. However, the Department has concluded that the provisions contained in the proposed Final Judgments combined with other market factors would constrain AT&T's ability to impede competition in cellular markets. As described in the CIS, the proposed decree contains provisions aimed specifically at preventing anticompetitive abuse by AT&T of

¹⁴ To a somewhat lesser degree, the cellular operator may also face a "lock-in" effect with regard to the purchase of additional switches within a cellular operating area, since there are proprietary interfaces between switches that are more efficient than the open interfaces that have been standardized by the industry.

¹⁵ Joint Comments at 2. The Joint Comments argue that such relief is appropriate because evidence exists that AT&T has engaged in efforts to thwart the development of open standards for cellular equipment sponsored by other industry manufacturers. Joint Comments at 3. In order to comply with such a requirement, AT&T would presumably have to design and implement an additional open interface which would allow other manufacturers' radio equipment to work with its switches, and possibly would also need to disclose proprietary engineering data about its current system design. The imposition of such a requirement would necessarily involve the Department and the Court in determinations of numerous technical and controversial issues of system design and is unnecessary in light of the ability of the proposed decree to alleviate the potential problems associated with the acquisition.

¹⁶ Joint Comments at 4. Apparently, the concern is that AT&T will be able to selectively alter prices of cellular infrastructure equipment so as to disadvantage the cellular systems it competes with in a manner that would not violate the proposed decree or would not be detectable by the parties or the Department.

¹⁷ Joint Comments at 5.

¹⁸ Joint Comments at 6.

¹⁹ AT&T notes that there have been several "swap-outs" of recently installed infrastructure equipment in the last few years and that progress in the development of open standards for interconnecting different manufacturers' equipment is lessening whatever barriers currently exist to switching between different vendors' products. AT&T Response at 19-23.

²⁰ AT&T Response at 5, 35-40.

²¹ AT&T maintains that its \$10 billion manufacturing business is too important to it to risk engaging in predatory conduct against its customers. AT&T Response at 5.

cellular systems which use AT&T equipment and which compete against McCaw systems. Misuse of nonpublic information is prohibited by section V.A of the decree to prevent McCaw from gaining access to information AT&T obtains as an equipment vendor to its wireless competitors. The details of how these provisions will be implemented are to be set forth in the implementation plan required by Section VII.A to be filed with the Department. Section V.A.4.b assures that nonpublic information of unaffiliated wireless infrastructure equipment customers is not misused by AT&T as a result of any proprietary development work it performs for these customers.

The proposed Final Judgment also contains provisions that will prevent AT&T from raising the costs of McCaw's wireless competitors that are currently using AT&T equipment. Section V.B.1 requires AT&T to provide its unaffiliated cellular infrastructure equipment customers with the following products and services, in accordance with the same pricing and business practices that prevailed prior to August 1, 1993: (a) Technical support and maintenance; (b) installation, engineering, repair and maintenance services; (c) additional switching and cell site equipment to be deployed in that system; (d) upgrades and other AT&T cellular infrastructure equipment developed for use with these systems; and (e) spare, repair or replacement parts. AT&T also may not discriminate in favor of McCaw cellular systems or McCaw minority owned cellular systems in the way in which such products or services are made available to cellular systems that compete with McCaw or McCaw minority owned cellular systems. If AT&T discontinues offering any cellular infrastructure equipment service, part or product, it must either arrange an alternative source of supply for the product or, if unsuccessful, provide any affected cellular carrier with the licenses to use (and rights to sublicense) whatever technical information is necessary to provide such services, parts or products (to the extent AT&T is able to do so), so that the carrier can obtain the service, part or product from another source.

The proposed decree will also prevent AT&T from discriminating against McCaw wireless competitors that are using AT&T equipment by failing to provide or develop new products and features. If AT&T engages in the development of new features or functions for use with AT&T equipped cellular systems that are not intended for a single customer, AT&T shall disclose such enhancements to

unaffiliated carriers at the same time it discloses them to McCaw or McCaw minority owned cellular systems, and shall make them available to unaffiliated customers at the same time it makes them available to McCaw.

Section V.D contains provisions that would make it easier for customers that desire to replace AT&T equipment to do so. In the event that a customer has deployed or contracted to deploy an AT&T equipped cellular system prior to the entry of the judgment, and the customer wishes to redeploy the AT&T equipment (e.g., to facilitate its replacement) or to replace or supplement it with another manufacturer's equipment, AT&T is required to provide reasonably necessary technical assistance and cooperation to allow the customer to accomplish such replacement or redeployment and to permit inter-operation of the AT&T equipment with the new manufacturer's equipment.

To provide additional assurance that AT&T will abide by these requirements, Section V.E provides that AT&T will be required to buy back the cellular infrastructure equipment it has sold to an unaffiliated customer that competes with McCaw if the Department determines that it has violated any of its duties under Section V of the decree.

Finally, Section III requires that, so long as the judgment is in effect, McCaw and McCaw affiliates that are involved in the operation of wireless systems and the provision of local wireless services shall be maintained as corporations or partnerships separate from AT&T, and a structural separation plan is to be filed for approval by the United States pursuant to section VII.A. McCaw and McCaw affiliates are to maintain their own officers and personnel, and books, financial or operating records, and to retain all wireless service licenses and title and control of the wireless infrastructure equipment used by its systems, and the responsibility for the operation of their wireless services. It may not delegate substantial responsibility for such business activities to AT&T.

Although the Department recognizes that some forms of discrimination feared by the BOCs may be hard to detect and prove, McCaw's cellular competitors are very sophisticated customers of infrastructure equipment and are well informed about the quality and prices of equipment provided to the industry. They therefore are able to identify and report any conduct that might violate the decree. In view of the likelihood of detection and the severe sanctions that would befall AT&T's manufacturing business if an investigation were to

determine that it had discriminated against its equipment customers to advantage its affiliate wireless services business, the Department considers the likelihood of such conduct by AT&T to be minimal.²² If prohibited conduct should occur, the proposed decree provides adequate authority to correct such abuses so that any substantial damage to competition would be punished.

The proposed final judgment contains substantial constraints on the operation of AT&T's equipment business. These constraints were formulated after extensive consultation with, among others, the firms that are now objecting to the settlement. Other constraints suggested by the commenters were considered and rejected, such as development of an open interface, which the Department believed would not be feasible in the short term, would require the cooperation of other equipment suppliers not parties to this transaction, and in any event would not alleviate the "lock-in" of customers who had already installed AT&T equipment.

The Department believes that the constraints contained in the proposed decree are sufficient to alleviate the potential harms to McCaw's cellular competitors from this acquisition and, therefore, additional relief is unwarranted.

B. The Effect on Competition From the Combination of McCaw's and AT&T's Cellular Long Distance Businesses

As stated in the CIS, the merger will "foreclose competition between the two largest providers of interexchange service in the highly concentrated markets in which McCaw currently provides interexchange service to its cellular customers." 59 FR 44,169 (1994). NYNEX and Bell Atlantic argue that the antitrust violation resulting from the acquisition of AT&T's strongest competitor for cellular long distance is not cured by the proposed decree because the decree's equal access provisions cannot make up for the loss of McCaw itself as an independent long distance provider. Although McCaw provided long distance services to its cellular customers primarily by reselling services procured from interexchange carriers (mainly AT&T), it also deployed some of its own interexchange facilities. The Joint Comments state that "McCaw's long distance network was already significantly completed at the state and regional levels * * *

²² It is also not in AT&T's business interest to treat its existing equipment customers unfairly as AT&T must compete against other equipment manufacturers for new business (including the sale of PCS equipment) to these same customers.

particularly the Pacific Northwest and Florida.”²³ The Joint Comments also allege that the evidence developed in their private case showed that AT&T regarded McCaw as a potentially powerful interexchange competitor.²⁴

AT&T responds to the concerns raised in the Joint Comments by maintaining that there really is not a cellular long distance market separate from the overall long distance market, and that in an overall long distance market, McCaw is not a significant competitor. AT&T argues that, in any event, the proposed decree mitigates the effect of the acquisition on long distance competition by imposing on McCaw's cellular systems equal access requirements that are more stringent than those to which AT&T stated publicly it would commit and assures that the acquisition will create competition for the first time in the provision of long distance services used by McCaw's customers.²⁵

The Department agrees with the comments of BellSouth and NYNEX that the acquisition of McCaw by AT&T without the proposed decree would have substantially reduced cellular long distance competition. Although McCaw resold AT&T long distance service, it was free to use another interexchange carrier, or to build its own facilities, and, thus, was in competition with AT&T just as other resellers compete with AT&T. The Department investigation showed that McCaw has insisted that its customers for cellular services use its long distance services, and has refused customers' requests to use alternative long distance providers' services, thereby preventing the customer from establishing a separate relationship with an interexchange carrier. McCaw's customers in geographic areas where the other cellular carrier was not providing equal access were only able to choose between McCaw's cellular service combined with its interexchange service or the competing cellular carrier and the long distance services offered by that system. Where the competing cellular carrier offered equal access to long distance carriers, its customers were able to

choose among a number of interexchange carriers including AT&T. In such markets, AT&T held a predominant share of the long distance business and was clearly competing at the retail level with McCaw's package of cellular and long distance services.

The Department found that in areas where both McCaw and AT&T long distance services were offered, McCaw's long distance service differed in rates and calling areas from AT&T's. Particularly in the case of large business customers, AT&T offered discounts for cellular long distance services that were not available to McCaw's customers. In some instances, AT&T encouraged corporate customers to purchase cellular services from an equal access carrier in order to obtain AT&T long distance offerings which included the ability of employees to access the corporations' private network services from their cellular phones, a feature not available from McCaw. If after AT&T and McCaw merged their operations, and McCaw had been permitted to continue its refusal to allow equal access to other interexchange carriers, there would have been many areas in which competition would have been lessened, as customers would have had fewer alternatives and AT&T-McCaw would have had less incentive to offer competitive long distance services to cellular customers.

The Department disagrees with Bell Atlantic and NYNEX, however, on whether the stringent equal access conditions contained in the decree are sufficient to remove the adverse effect on long distance competition from the AT&T-McCaw acquisition. The Department believes that the decree, on balance, will enhance competition in long distance services. By giving the other interexchange carriers access to McCaw's cellular exchange customers for the first time, the Department expects the proposed decree to offer substantial new opportunities for reducing the concentration in the provision of long distance cellular service. Many of McCaw's "captive" customers are presumably customers of other long distance carriers who will now have the option of using the same carrier for cellular and wireline interexchange calling.

The equal access requirement also removes a possible impediment to competition in the overall long distance market by assuring that AT&T will not be the only interexchange carrier able to offer its customers the ability to combine its cellular long distance service with its landline long distance services to obtain volume discounts or to offer additional services to employees

using cellular phones, such as private network services. Thus, the Department believes that subject to the terms of the proposed decree, the acquisition will not adversely affect competition for long distance cellular services.

C. Concerns Relating to Use of Competitively Sensitive Information About AT&T's Customers

The Joint Comments and SBC Comments contend that allowing McCaw to use information regarding AT&T's cellular long distance customers in marketing cellular services will cause serious anticompetitive harm. Use of this information allegedly will permit McCaw to target its marketing effort on the BOCs' customers that have the most attractive usage patterns.²⁶ AT&T strenuously defends its right to use information regarding its own cellular long distance customers for marketing other services, including wireless services. AT&T maintains this is consistent with the FCC's policies on the use of customer information.²⁷

The Department believes that interexchange carriers preselected by a customer in an equal access process should be able to use the interexchange usage information they obtain from serving those customers to market other services or equipment. All the interexchange carriers (not just AT&T) providing services to customers of the BOCs' and McCaw's wireless exchange systems will naturally accumulate information about their customers' interexchange usage patterns.

D. The Application of the Decree to Cellular Properties Where McCaw Has Only 50% Ownership

BellSouth comments on the provision that imposes obligations on systems in which McCaw is a 50-50 partner with BellSouth and in which McCaw has only "negative control," i.e., the ability to veto actions with which it disagrees. BellSouth argues that the proposed decree should not be construed to apply to such systems, arguing that in such situations, McCaw "would lack 'the power to direct or to cause the direction of the management and policies' of the cellular system."²⁸

The Department rejects this suggested clarification from BellSouth. The purpose of the decree language applying the equal access requirements to systems with "negative control" was in part intended to avoid a situation where the BOCs and AT&T are 50-50 partners in a system and both claim that they do

²³ Joint Comments at 7.

²⁴ Bell Atlantic and NYNEX filed a private suit against AT&T that raised issues common to the Department's action. They suggest that the Justice Department should review the record in their case. Although the Department has reviewed selected materials from that case, it was not necessary, in light of the extensive investigation that the government conducted in connection with this transaction, that the entire record of the private litigation be reviewed. Subsequent to filing their comments, Bell Atlantic and NYNEX reached a settlement with AT&T and dismissed their action.

²⁵ AT&T Response at 6-7.

²⁶ SBC comments at 9-10, 14.

²⁷ AT&T Response at 50-58.

²⁸ BellSouth Comments at 13.

not have the authority to implement equal access and nondiscrimination requirements. BellSouth's proposal would create exactly this situation, where both parties could seek to avoid responsibility for such conduct.

E. Concerns Regarding Alleged Disparities Between the Terms of the Proposed AT&T-McCaw Decree and the MFJ

BellSouth argues that the Court should not consider the entry of the proposed AT&T-McCaw decree until after it has acted on the generic wireless waiver and determined whether the BOCs wireless operations are subject to the interexchange prohibition of the MFJ.²⁹ Since the Court has denied BellSouth's motion seeking to have the Court find that the MFJ is not applicable to wireless, and ruled on the BOCs' motion for an interexchange wireless waiver,³⁰ this point is now moot.

BellSouth also contends that the proposed decree is deficient by not covering possible future AT&T wireless ventures in the PCS spectrum band. It argues that PCS and cellular services will be competitive with each other and that there is no justification for applying the equal access obligations only to McCaw's cellular systems. The basis for BellSouth's concern is that the MFJ waiver under which it would be permitted to provide interexchange services from wireless exchange systems requires that such systems provide equal access regardless of whether they operate on the cellular or PCS spectrum band.

The Department believes that it was correct in not extending the proposed decree's equal access obligations to include possible PCS operations of AT&T. The equal access provisions of the proposed decree are intended to remedy the effects of the acquisition on cellular long distance competition in the geographic markets where McCaw and AT&T competed prior to the acquisition. Absent this provision, AT&T would have been able to control the use of McCaw's exchange access facilities which constituted about half of the spectrum available for mobile services in those markets. Under the FCC regulations, McCaw's use of one of the cellular frequency blocks in those markets substantially restricts the ability of AT&T to acquire PCS spectrum in those geographic markets. If AT&T were to acquire any PCS spectrum for use in the McCaw markets, it would not be as a result of this acquisition. In addition, it is not possible at this time, to predict

if the services to be offered using the smaller PCS spectrum bands will be directly competitive with the services of the cellular carriers.

Both the Joint Comments and SBC Comments complain the McCaw is not prohibited from providing interexchange routing from its cellular switches while the waiver that would permit the BOCs to provide interexchange services from wireless systems prohibits such a function. SBC maintains that because it would be limited under the wireless interexchange waiver to the resale of switched services, they would be effectively prohibited from obtaining the efficiencies from the implementation of MTSO to MTSO trunking of interexchange calls.³¹ Although the Department agreed to permit McCaw to provide interexchange routing, the proposed decree would only permit such a function if it could be offered to all interexchange carriers on a nondiscriminatory basis. It is our understanding that this function cannot presently be implemented so that it would be equally available to all interexchange carriers, and AT&T equal access plan for its wireless systems contains no indication that AT&T intends to provide interexchange routing. If McCaw, in the future, develops such a capability, the Department will determine in its review of changes to the equal access plan whether it will in fact be nondiscriminatory.

The Joint Comments and SBC also maintain that the AT&T-McCaw decree is inappropriate as it does not impose the same requirement for a separate sales force as is required under the BOCs' wireless interexchange waiver of the MFJ.³² The complaint seems to substantially misread the requirements of the proposed decree. The decree requires that AT&T maintain the McCaw cellular operations in a separate subsidiary, which will have responsibility for the marketing of cellular services. It does permit certain joint marketing of cellular and interexchange services, as long as the services are not offered as packages with interdependent pricing of the two services. Essentially the same approach was incorporated in the BOCs' wireless interexchange waiver, except that the BOCs were not required to put their interexchange operations in a separate subsidiary from their cellular businesses.

BellSouth argues that the proposed decree permits the provision of "local

cellular service in 19 areas that are larger than those available to the BOCs' cellular system under the MFJ.³³ The Joint Comments specifically complain that the AT&T McCaw decree permits a broader calling area in the Pittsburgh, PA-West Virginia region than Bell Atlantic is permitted to serve under the MFJ.³⁴ The BellSouth and Joint Comments also assert that while AT&T-McCaw is automatically given the benefit of any waiver expanding the calling areas under the MFJ, the BOCs have not been given equal treatment regard to the expanded calling areas provided for in the proposed AT&T-McCaw decree.³⁵ Finally, the Joint Comments complain that Section IV(G) of the AT&T-McCaw decree provides a procedure whereby AT&T can apply for relief from the Department if there is not sufficient demand for interexchange access from any of its cellular systems.³⁶ Under this procedure, the provision of access could be centralized to encompass more than a single LATA.

AT&T maintains that the BOCs are in a fundamentally different position than McCaw, in light of their control of the wireline bottleneck facilities that are used in connection with most cellular calls, and, therefore, terms of the AT&T/McCaw decree need not be the same as the MFJ.³⁷ Since the BOCs and AT&T submitted their comments, the Court has acted on the BOCs' request for an MFJ waiver to permit them to provide interexchange services from wireless exchange systems. In that proceeding the Court denied the broader relief sought by the BOCs which they had argued, in part, should be granted based on the impending competition they would be facing after the merger of AT&T and McCaw. In view of this development the BOCs' "disparity" complaints have already been addressed.

The purpose of this proceeding is to decide whether the proposed Final Judgment is in the public interest in alleviating concerns raised by the AT&T/McCaw transaction, not whether the MFJ places the BOCs at a competitive disadvantage vis-a-vis a non-BOC cellular provider. Therefore, the Department believes that the complaints raised by BellSouth and SBC are irrelevant. In any event, BellSouth and SBC remain free under the provisions of the MFJ to Request appropriate waivers modifying the cellular exchange areas.

²⁹ BellSouth Comments at 10.

³⁰ Joint Comments at 13.

³¹ BellSouth Comments at 11-12.

³² Joint Comments at 14-15.

³³ AT&T Response at 8-9.

²⁹ BellSouth Comments at 2.

³⁰ April 28 Order.

³¹ SBC Comments at 20-22.

³² Joint Comment at 13; SBC Comments at 23-25.

F. Concerns Raised by AD Hoc Interexchange Carriers.

The comments of the Ad Hoc IXC's relate to alleged past anticompetitive conduct at AT&T and, thus, do not raise any issues germane to the competitive effects of the transaction that was the subject of the government's complaint. Therefore, we will not respond to those comments here, although we will consider the statements contained therein in connection with our other responsibilities for enforcing the antitrust laws.

V. Conclusion

After careful consideration of the comments, the United States continues to believe that, for the reasons stated herein and in the Competitive Impact Statement, the proposed Final Judgment is adequate to remedy the antitrust violations alleged in the Complaint. There has been no showing that the proposed settlement constitutes an abuse of discretion by the United States or that it is not within the zone of settlements consistent with the public interest. Therefore, entry of the proposed Final Judgment should be found to be in the public interest and it should be entered.

Respectfully submitted,
Dated: July 25, 1995.

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Attachments

1. Defendants' Response to the Public Comments on the Proposed Final Judgment.
2. Comments of Bell Atlantic Corporation and NYNEX Corporation on Proposed Final Judgment in *United States v. AT&T Corp. and McCaw Cellular Communications, Inc.*
3. Comments of BellSouth Corporation on Proposed Final Judgment.
4. Comments of SBC Communications Inc. on Proposed Final Judgment.
5. Comments and Objections of the Ad Hoc IXC's to the Proposed Final Judgment Between the United States, AT&T Corp. and McCaw Cellular Communications, Inc.

United States District Court for the
District of Columbia

In the matter of: UNITED STATES OF
AMERICA, Plaintiff, v. AT&T CORP. and

McCaw CELLULAR COMMUNICATIONS,
INC., Defendants. Civil Action No. 94-01555
(HHG).

TO: THE JUSTICE DEPARTMENT

Defendants' Response to the Public Comments on the Proposed Final Judgment

At the Justice Department's request, defendants AT&T Corp. ("AT&T") and McCaw Cellular Communications, Inc. ("McCaw") respectfully submit their joint response to the public comments on the Proposed Final Judgment ("Proposed Decree")¹—for inclusion in the response that the United States files hereafter.

Introduction and Summary

This Tunney Act proceeding presents an antitrust issue that is both very narrow and very straightforward. The Proposed Decree settles the challenges to the AT&T-McCaw merger that are raised in the Complaint that the Justice Department simultaneously filed under Section 7 of the Clayton Act. In determining whether this Proposed Decree is in the "public interest," the question is whether the Proposed Decree is virtually certain to harm competition or whether the Justice Department otherwise acted irrationally, in bad faith, or contrary to its duties to the public in settling its claims on these terms. See *United States v. Western Electric Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993). As explained in detail below, it is patent that no such determinations could be made and that the Proposed Decree can now be approved summarily, especially given the extensive public records that already exist on the competitive effects of this merger.

The overriding fact is that the Department agreed to the Proposed Decree because the Department concluded that the AT&T-McCaw merger can produce substantial procompetitive benefits and that the provisions of the Proposed Decree are adequate to prevent each of the threats to competition that the Department believed might otherwise result from the merger. These conclusions are rational. Indeed, they are unassailable.

Foremost, the AT&T-McCaw merger will promote competition and benefit consumers in many significant respects. The Justice Department, the FCC, and the California and New York state utility commissions previously found—and no

¹ Pursuant to 15 U.S.C. § 16(d), comments have been filed by SBC Communication Corporation ("SBC"), by BellSouth Corporation ("BellSouth"), by Bell Atlantic Corporation and NYNEX Corporation ("Bell Atlantic/NYNEX"), and by the Ad Hoc Interexchange Carriers ("Ad Hoc IXC's").

commentor here disputes—that the merger will foster competition in cellular and other local telecommunications markets which the divested Regional Bell Operating Companies ("RBOCs") and other local exchange carriers ("LECs") "traditionally have provided on a monopoly basis."² For example, the merger will offset some of the RBOCs' immense advantages in providing cellular services and enable the debt-laden McCaw to "compete more vigorously with the BOCs" by strengthening McCaw financially, by giving it a strong brand name, by enhancing its customer support, technological, and marketing capabilities, and by enabling AT&T-McCaw efficiently to offer one-stop-shopping and engage in "cross-selling."³ As the Department stated, the merger, as conditioned by the Proposed Decree, will bring the "benefits of competition to millions of consumers of cellular telephone service" by leading to "lower prices" and "better service." DOJ Press Release, pp. 1-2 (July 15, 1994). In addition, the preservation of McCaw as an independent firm with no affiliation with landline monopolies will further foster the development of cellular alternatives to landline bottleneck monopolies if and when that becomes economically and technologically feasible.⁴

Those are all the reasons that the Department had argued in 1982, and Judge Greene then found, that it would be "antithetical to the purposes of the antitrust laws" and detrimental to the public interest to prohibit AT&T from participating in local cellular markets through alliances with firms like McCaw or otherwise.⁵ Conversely, as was also recognized in 1982, there is no realistic possibility that such a merger could otherwise harm competition. AT&T and McCaw do not directly compete in any market, and neither controls a bottleneck monopoly that

² *Applications of Craig O. McCaw and AT&T*, File No. ENF-93-44 ("AT&T-McCaw FCC Proceeding"), Memorandum Opinion and Order ("FCC Order"), ¶ 60, FCC 94-238 (Sept. 19, 1994), *appeals pending sub nom. Southwestern Bell Corp. v. FCC*, Nos. 94-1637, 94-1639 (D.C. Cir.); see *Joint Application of the American Telephone & Telegraph Company, et al.*, Decision 94-04-042, pp. 30-31 (Cal. Pub. Utils. Comm'n Apr. 6, 1994) ("California PUB Decision"); *Joint Petition of AT&T, Ridge Merger Corporation, and McCaw Cellular Communications, Inc.*, Case 93-C-0777, Order Asserting Jurisdiction and Approving Transaction, p. 6 (N.Y. Pub. Serv. Comm'n Dec. 31, 1993) ("N.Y.P.S.C. Order").

³ *FCC Order*, ¶¶ 57-60, see *California PUC Decision*, pp. 30-33.

⁴ *FCC Order*, ¶ 60; accord *N.Y.P.S.C. Order*, p. 6.

⁵ *United States v. AT&T*, 552 F. Supp. 131, 175-76 (D.D.C. 1982) ("MFJ Opinion"), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

could be leveraged into an adjacent market. To the contrary, AT&T's long distance and manufacturing businesses and McCaw's cellular business each depend on access to different sides (or aspects) of the LECs' local exchange monopolies.

In this regard, while the Department's Complaint raised two basic challenges to the merger, defendants believe—as Professors Lawrence Sullivan, Robert Willig, and Douglas Bernheim previously testified before the FCC—that each of these theories is unsound as a matter of law, fact, and economics, and that the merger could not be found to violate Section 7 of the Clayton Act if there were a trial in this case. In all events, because the provisions of the Proposed Decree enjoin even these theoretical threats to competition, it patently was reasonable for the Department to settle each of its challenges to the merger under the terms of the Proposed Decree.

First, the Department's complaint alleges that the merger could lead AT&T to use its position as a telecommunications equipment manufacturer to harm competition in those cellular services markets where McCaw's rival (an RBOC or GTE) uses AT&T cellular equipment. In particular, while the manufacture of telecommunications equipment is an intensely competitive business, the Department's Complaint alleges that the RBOCs and GTE will nonetheless be "locked-in" to AT&T for the purchase of certain types of cellular equipment during an interim period and that the merger would give AT&T an incentive to raise the costs, or degrade the services, of the RBOCs and GTE during this interim "lock-in" period.

However, there is substantial, indeed overwhelming, evidence that there in fact is no "lock-in." Further, even if there were, it would be suicidal for AT&T to engage in the hypothesized predatory conduct. That would cause the customers (GTE and the RBOCs) on whom AT&T's \$10 billion manufacturing business depends to, in the Second Circuit's words, "retaliat[e]" by "shifting" present and future purchases of cellular and landline equipment alike to AT&T's competitors—which is why courts have rejected indistinguishable "lock-in" claims when they were raised in prior case. See *Fruehauf Corp. v. FTC*, 603 F.2d 345, 355 (2d Cir. 1979).

In any case, the Proposed Decree removes any possible doubt on this issue and precludes any claim that it is likely, much less virtually certain, that the merger would lead AT&T's manufacturing unit to engage in the

predatory conduct that the Department had feared. The Proposed Decree not only expressly enjoins each type of predatory conduct that the Department has hypothesized, but also contains other provisions that both further reduce the alleged "lock-in" and otherwise dramatically reinforce AT&T's overwhelming incentives to treat all its equipment customers equally and to satisfy their needs.

Second, the Department's Complaint also alleges that the merger would cause McCaw to use market power over local cellular radio service to favor AT&T's putatively "dominant" long distance service and thereby reduce horizontal competition in a purported "market" for the provision of "cellular long distance service."⁶ However, there is overwhelming evidence that there is no such competition between AT&T and McCaw today and no such market. McCaw now provides all the long distance services that originate on its cellular systems (which represent less than 0.1% of national long distance usage), and it does so by reselling the same AT&T long distance services that are provided to landline customers. Because AT&T had further independently committed that McCaw will begin offering presubscription and other basic features of equal access to all long distance carriers following the merger, the merger would have promoted competition in long distance markets, and reduced AT&T's role, even if there had been no decree.

In any case, here, too, the Proposed Decree removes any doubt on this score. It imposes equal access obligations on McCaw cellular systems that go far beyond those to which AT&T had voluntarily committed, and assures that the merger will create competition for the first time in the provision of long distance services used by McCaw's customer.

Indeed, that the Department acted reasonably in settling its two challenges on these grounds is vividly confirmed by the conduct of the only two commentators who discuss the adequacy of the Proposed Decree to address the Department's concerns: Bell Atlantic and NYNEX. As their joint comments note, they had filed a private antitrust suit that sought to enjoin the merger on each of the two grounds alleged in the Department's Complaint. However, Bell

Atlantic and NYNEX thereafter abandoned their horizontal long distance claim, and then (on the eve of trial) they dismissed the vertical manufacturing claim with prejudice after AT&T and these RBOCs entered into a settlement agreement.

Finally, none of the other comments even challenge the sufficiency of the Proposed Decree to prevent either of the potential competitive harms addressed in the Department's Complaint. Rather, they seek to use this proceeding collaterally to attack the 1982 Decree that broke up the Bell System ("MFJ") and otherwise to challenge *Procompetitive* features of the AT&T-McCaw merger that the Department appropriately did not challenge.

Most prominently, three of the RBOCs (SBC, NYNEX, and Bell Atlantic) claim that the Decree will not be in the public interest unless a provision is added that bars AT&T-McCaw from directly marketing cellular service to AT&T long distance customers who are existing cellular customers of RBOCs. The RBOCs recognize that AT&T has many satisfied customers, and the RBOCs fear that the "power of the AT&T-McCaw brand" and the ability to offer attractive services may cause cellular customers who have presubscribed to AT&T's long distance service to choose to obtain cellular service from AT&T if it engages in this direct marketing.

However, extending these choices benefits consumers, and courts have thus uniformly held that it is procompetitive for integrated firms to be free to offer new services to customers of their existing offerings and that this is a legitimate efficiency that all multi-product firms enjoy. The RBOCs overlook that the antitrust laws protect competition, not the RBOC's selfish interests as competitors. Further, the RBOCs' claims are hypocritical because the ability of AT&T-McCaw to make such offers could only marginally offset some of the immense other advantages that the RBOCs enjoy by reason of their bottleneck monopolies and these RBOCs are seeking to preserve advantages for themselves, not create "parity."

In addition, despite Judge Greene's prior rejections of these claims, the RBOCs also continue to argue that the approval of the Proposed Decree should be conditioned on removal of the MFJ's ban on their provision of interexchange services to wireless customers, and they claim that a series of additional "equal access" restrictions should be imposed on AT&T-McCaw in the interest of "parity" unless the Court removes the MFJ's restriction. While some of the RBOCs' individual claims here rest on misunderstandings of the Proposed

⁶The Department similarly raised the concern that McCaw's market power as a cellular equipment buyer might enable it to impede "upstream" equipment manufacturing competition by sharing nonpublic information of AT&T's cellular equipment competitors with AT&T. The Proposed Decree contains structural and injunctive provisions to bar any such conduct as well.

Decree, the short answer to the RBOCs is that they are properly subject to different restrictions from AT&T-McCaw because the RBOCs have bottleneck landline monopolies and AT&T-McCaw to not—as Judge Greene and now the FCC have repeatedly held.

Background

This is an unusual Tunney Act proceeding in that the AT&T-McCaw merger has been the subject of extensive prior proceedings before the FCC, the New York Public Service Commission, the California Public Utilities Commission, Judge Greene (in the MFJ section I(D) waiver proceeding), and a federal court in Brooklyn. These proceedings created extensive records regarding the competitive effects of the merger, and it is thus possible to highlight the salient facts about the cellular service, equipment manufacturing, and long distance markets—with citations to affidavits and other filings from the prior proceedings.

1. McCaw's Cellular Service and the Reasons for the Merger

McCaw Cellular Communications, Inc., its wholly-owned subsidiaries, and its 52%-owned LIN Broadcasting subsidiary (collectively referred to as "McCaw") have interests in a number of cellular radio, paging, air-to-ground, and other mobile radio services. In particular, McCaw has interests in cellular systems that collectively serve about 17% of the nation's cellular subscribers. McCaw has small minority interests in a number of these systems (e.g., St. Louis), has what could loosely be referred to as joint control with an RBOC or successor to an RBOC in others (San Francisco Bay, Kansas City, Los Angeles, Houston, and Galveston), and has a majority and unilateral controlling interest in a number of others (e.g., Seattle, Portland, Denver, Las Vegas, Minneapolis, Miami, Tampa, Jacksonville, Dallas, Oklahoma City, Pittsburgh, and New York City). The systems in which McCaw has "unilateral" control serve about 13% of the nation's cellular subscribers.

All of McCaw's interests are in "A" Block cellular systems that were initially reserved for "nonwireline carriers." Each system further competes with the RBOC or other LEC with the local telephone monopoly in that area. As shown in the Appendix to this filing, the dispersed nature of McCaw's systems means that it competes with only a fraction of the systems of any one RBOC or LEC (and with an even smaller fraction of any one AT&T-equipped cellular system that individual RBOCs or LECs have).

Because McCaw entered this business as a start-up company, it inherently faced severe disadvantages in competing with the well-known, well-financed, and technologically adept affiliates of RBOCs and other LECs. In this regard, while the FCC imposed separate subsidiary requirements on RBOC cellular systems, the FCC's regulations place no significant restrictions on the RBOCs' financing of their cellular operations, and these regulations further allow the RBOCs to use their well-known trade names in marketing cellular services and jointly to advertise cellular and monopoly landline service. See *Cellular Communications Services*, 86 FCC 2d 469, 493-95 (1981); 47 C.F.R. § 22.901(d)(1).

One disadvantage arises because cellular systems require interconnections with landline exchange monopolies, and substantial portions of the revenues of cellular systems are remitted to local telephone monopolies to compensate them for terminating cellular-originated calls. RBOCs previously used this monopoly power to frustrate cellular competitors (see *United States v. Western Elec. Co.*, 673 F. Supp. 525, 551 (D.D.C. 1987)), and McCaw had to expend time and resources obtaining appropriate interconnections.⁷

These disadvantages, in turn, were radically compounded by the regulatory preferences that the RBOCs and other LECs received. Whereas McCaw generally had to pay fair market value for initial licenses in each licensing area, the FCC reserved one of the two cellular licenses (the "B" Block license) for an affiliate of the RBOC or other LEC that had the landline monopoly in the Metropolitan Statistical Area ("MSA") or Rural Service Area ("RSA") in question, such that the RBOCs generally acquired "B" Block cellular licenses at no cost.⁸ Second, because RBOCs provide landline exchange services in contiguous areas throughout their regions, the FCC's regulations also meant that RBOCs automatically received licenses in the contiguous MSAs and RSAs that comprise natural mobile markets. By contrast, McCaw

and other nonwireless carriers had to incur large amounts of debt to acquire their licenses and consolidate them in contiguous areas.⁹ Even today, there are many areas in which RBOCs have established cellular systems that serve areas that are larger than McCaw or their other "A" Block competitors.¹⁰

Third, the FCC gave the RBOCs and other "B" Block carriers substantial headstarts—of one to three years—over their "A" Block competitors. In particular, the FCC granted the RBOCs these headstarts in face of claims by "A" Block competitors that the RBOCs would thereby have an initial monopoly over the customers with the greatest demand for cellular service, thereby both allowing the RBOCs to earn monopoly profits during the headstart period and forcing their nonwireline competitors to seek to dislodge existing customers of an incumbent monopolist when the "A" Block systems became operational.¹¹

The net result of these disadvantages is that McCaw (as well as other nonwireline carriers) had to borrow heavily to acquire and consolidate its licenses, to construct its systems, and to finance each system's operations for a period of many years after it commenced operations. One reflection of the significance of these disadvantages is that every significant nonwireline carrier other than McCaw ended up selling its "A" Block licenses to RBOCs or other LECs, which eliminated the "independent" cellular systems that the FCC sought to create and meant that RBOCs and GTE control "A" Block systems serving some 60% of the nation's population.¹² In the case of McCaw, it became a highly-leveraged firm with some \$5.7 billion in debt and a debt ratio of over 70%.¹³ Further, McCaw is saddled with an additional, unique obligation. It cannot retain some of its most significant properties—the New York City, Houston, Los Angeles, and Dallas interests of McCaw's 52%-owned LIN subsidiary—unless McCaw can raise what is likely to be in excess of \$3 billion required to purchase the remaining 48% of LIN in 1995.¹⁴

⁹ See Barksdale FCC Aff., ¶¶ 16-17; Barksdale/Perry Section I(D) Aff., ¶ 17.

¹⁰ See Barksdale FCC Aff., ¶¶ 15-17; Barksdale/Perry Section I(D) Aff., ¶¶ 16-18.

¹¹ See Barksdale FCC Aff., ¶¶ 15, 17; Barksdale/Perry Section I(D) Aff., ¶¶ 16-18.

¹² See Barksdale FCC Aff., ¶ 17; Barksdale/Perry Section I(D) Aff., ¶ 18.

¹³ See Barksdale FCC Aff., ¶¶ 13, 19; Barksdale/Perry Section I(D) Aff., ¶ 14.

¹⁴ See *United States v. Western Elec. Co.*, Civ. No. 82-0192 (D.D.C.), AT&T's Reply in Support of Its Motion for a Waiver of Section I(D) of the Decree Insofar As It Bars the Proposed AT&T-McCaw

⁷ See *AT&T-McCaw FCC Proceeding*, AT&T's and McCaw's Opposition to Petitions to Deny and Reply to Comments ("AT&T-McCaw FCC Opp.") (Dec. 2, 1993), Affidavit of James L. Barksdale, ¶ 15 ("Barksdale FCC Aff."); *United States v. Western Elec. Co.*, Civ. No. 82-0192 (D.D.C.), Memorandum in Support of AT&T's Motion for a Waiver of Section I(D) of the Decree Insofar as It Bars the Proposed AT&T-McCaw Merger (May 31, 1994) ("AT&T's Section I(D) Mem."), Affidavit of James Barksdale and Wayne Perry, ¶ 7 ("Barksdale/Perry Section I(D) Aff.").

⁸ See Barksdale FCC Aff., ¶ 15; Barksdale/Perry Section I(D) Aff., ¶ 16.

Against this background, McCaw determined that just as other "A" Block nonwireline carriers had exited the business, it could not be an effective competitor with RBOCs, other LECs, and other participants in emerging wireless businesses unless it formed an alliance with a financially strong firm like AT&T.¹⁵ In particular, McCaw had concluded that it could not obtain the billions of dollars that it needed to maintain and enhance its cellular and other mobile systems at an acceptable cost in traditional debt and equity markets.¹⁶ McCaw further determined that an alliance with AT&T would otherwise strengthen McCaw. It would provide technological strengths that McCaw lacks, and McCaw identified a number of service improvements that an alliance with AT&T would permit. AT&T has a strong brand and relationships with satisfied customers of other AT&T offerings, Phone Stores, and other marketing resources that would enable McCaw to market its services more efficiently and effectively. AT&T further has unique customer care and support resources (and standards of quality)—as reflected in the Baldrige Award that AT&T's Universal Card received and its revolution of the credit card business.¹⁷

AT&T found the merger with McCaw attractive for these, and other, reasons.¹⁸ AT&T determined that the quality of the cellular service provided by McCaw and its competitors alike had been poor, and transmission quality (as well as blockage rates) is not what it could be.¹⁹ Customer education, care, and satisfaction had been low—as reflected in the higher industry churn rates. Fraud is such a serious problem that it absorbs some 8% of industry revenues. AT&T perceived an immense opportunity to improve the quality of McCaw's service and to offer cellular services that adhere to the high quality standards that the use of the AT&T name warrants. In this regard, AT&T believed that satisfied customers of other AT&T services (e.g., long distance, CPE, the Universal Card) would find an AT&T cellular service very attractive, and that AT&T's relationship with these customers would enable AT&T-McCaw

to market cellular service them at a lower cost. Further, while cellular today is not a substitute for the landline exchanges, it could conceivably develop into a substitute hereafter, and AT&T believed that an alliance with McCaw could cause that to happen more rapidly.²⁰

Entry in cellular was also attractive to AT&T in light of the unrelenting efforts of the RBOCs to obtain (through legislation or otherwise) premature removals of the MFJ's core long distance restriction: *i.e.*, before the RBOCs lose the ability to leverage local bottleneck monopolies. While premature removal of the restriction would allow RBOCs to use their local monopolies to capture large percentages of the long distance business, AT&T believed that these harms could be somewhat reduced if AT&T were providing cellular service.

While there are today only two cellular service licensees in each market, the FCC is now in the process of licensing an additional five carriers to provide "personal communications services" or PCS services.

2. Long Distance Service

Since it commenced its operations, McCaw has provided the "long distance" as well as the "local" services of its cellular subscribers. In particular, with the exception of the McCaw cellular systems that are "BOCs" within the meaning of the MFJ, no cellular system in which McCaw has an interest has provided equal access, and its customers generally have been unable to reach other interexchange carriers on 1+ or a 10XXX basis. Rather, subscribers have used a "McCaw" long distance service, which McCaw has offered by reselling long distance services obtained from AT&T under a long-term service contract.²¹ As RBOCs have correctly stated in proceedings under the MFJ, the long distance rates that McCaw has generally charged are the same "retail" MTS rates that AT&T charges.²²

The RBOCs have emphasized in their marketing literature and activities that they offer presubscription and the ability to presubscribe not only to the

interexchange carrier of the customers choice, but also to particular services (e.g., AT&T's SDN or MCI's VNET).²³ AT&T believes that McCaw's failure to offer presubscription makes McCaw's cellular services less attractive. Shortly after the August 16, 1993 announcement of the merger, AT&T committed to Congress and to the FCC that McCaw would offer presubscription after the merger is consummated.²⁴

There are several hundred firms that resell long distance services of AT&T, Sprint, MCI, WilTel, and other facilities-based interexchange carriers. There are numerous such firms whose long distance revenues from resale are substantially in excess of the approximately \$38 million in long distance revenues that McCaw had in 1993.²⁵

3. The Competitive Telecommunications and Wireless Equipment Manufacturing Markets

Following AT&T's January 1, 1984 divestiture of the RBOCs, competition in the manufacture of telecommunications equipment intensified, and the divested RBOCs established relationships with multiple suppliers and played them off against one another. AT&T's share of the RBOCs' purchases of "landline" switching products, transmission equipment, transmission media, and other telecommunications products thus has dropped from over 90% before divestiture to less than 40% today. AT&T competes for these sales in a global market with Northern Telecom (of Canada), Siemens (of Germany), Alcatel (of France), Ericsson (of Sweden), NEC (of Japan), and many other firms.

AT&T Network Systems, and each of its business units, critically depend on sales to the seven RBOCs and GTE. Of AT&T Network Systems' approximately \$10 billion in 1994 external sales, roughly \$6 billion were to the seven RBOCs and GTE and roughly \$5 billion were to the seven RBOCs. The seven RBOCs regularly use their leverage as purchasers of landline equipment to seek to affect AT&T's behavior in other areas.

Cellular and other wireless infrastructure equipment is a critical and rapidly growing segment of

Merger (July 18, 1994), Supplemental Affidavit of Wayne Perry, ¶¶ 2-4; AT&T Section I(D) Mem., Affidavit of Alex J. Mandl, ¶¶ 3, 25 ("Mandl Section I(D) Aff.").

¹⁵ See Mandl Section I(D) Aff., ¶¶ 17-21.

¹⁶ See Barksdale/Perry Section I(D) Aff., ¶¶ 19-20; Mandl Section I(D) Aff., ¶ 18.

¹⁷ See Barksdale FCC Aff., ¶¶ 12, 25; Barksdale/Perry Section I(D) Aff., ¶ 24; Mandl Section I(D) Aff., ¶ 20.

¹⁸ See Mandl Section I(D) Aff., ¶ 20.

¹⁹ See Mandl Section I(D) Aff., ¶¶ 20-24, 26.

²⁰ See Mandl Section I(D) Aff., ¶¶ 21-24.

²¹ McCaw owns private microwave facilities that are used for certain connections of cell sites and cellular switches ("MTSOs") or between MTSOs serving contiguous areas. These facilities are overwhelmingly intraLATA, and the few facilities that cross LATA boundaries provide connections within systems or between contiguous systems and generally serve the same functions as interLATA facilities that RBOC cellular systems are permitted to lease in areas where they are authorized to provide cellular services on a multiLATA basis pursuant to MFJ waivers.

²² See Barksdale/Perry Section I(D) Aff., ¶¶ 10-11.

²³ See AT&T's Further Opposition to RBOC's Motion to Exempt "Wireless" Services from Section II of the Decree, pp. 19-23 (May 3, 1993).

²⁴ See Transcript of Hearing of U.S. Senate Committee on Commerce and Transportation, p. 102 (Sept. 8, 1993) (testimony of AT&T Chairman Robert Allen) ("It would be our intent to give all of our cellular subscribers equal access to any interexchange carrier they wish"); AT&T McCaw FCC Opp., pp. 54-55; FCC Order, ¶ 64.

²⁵ See AT&T-McCaw FCC Opp., p. 52.

telecommunications equipment manufacturing. Of AT&T's approximately \$1.25 billion in anticipated 1994 sales, approximately \$650 million was to the seven RBOCs and GTE; nearly \$500 million was to the seven RBOCs, and over \$130 million was to Bell Atlantic and NYNEX.²⁶ In addition to cellular infrastructure equipment, AT&T's wireless

infrastructure unit is actively developing equipment for use in providing PCS. Total domestic PCS equipment sales are estimated to amount to billions of dollars by 1997.

Cellular infrastructure equipment (which includes cell sites and MTSOs) is manufactured and sold in a worldwide market in which AT&T competes with Ericsson, Motorola,

Northern Telecom (NTI), Nokia, Siemens, Hughes, and others. The competitiveness of the markets is reflected in shifts in market positions from year to year, with Motorola having lost share (until it rebounded in 1994), and AT&T and a recent new entrant (Nokia) having gained. AT&T has estimated worldwide shares of cellular infrastructure equipment sales between 1988 and 1993 as follows:

Year	Ericsson (percent)	Motorola (percent)	AT&T (percent)	NTI (percent)	Nokia (percent)	Other (percent)
1988	33.0	25.0	7.9	6.0	0.0	28.1
1989	33.0	25.0	9.9	6.0	0.0	26.1
1990	33.0	25.0	10.5	6.0	2.0	23.5
1991	33.0	25.0	17.1	6.0	5.0	13.9
1992	34.2	19.0	14.1	6.9	7.8	18.0
1993	34.7	18.5	14.3	6.1	8.6	17.8

Percentages of sales of the specific cellular equipment manufactured to the U.S. AMPS and related standards used in North America, South America, and certain Asian countries have been estimated by AT&T as follows:

Year	Ericsson (percent)	Motorola (percent)	AT&T (percent)	NTI (percent)	Other (percent)
1988	20.0	35.0	24.2	5.0	15.8
1989	21.0	33.0	26.1	5.0	14.9
1990	23.0	29.0	24.3	5.0	18.7
1991	25.0	26.0	35.0	5.0	9.0
1992	28.8	20.0	29.9	5.0	16.3
1993	28.2	19.5	34.3	5.0	13.0

Swap-Outs of Equipment. A cellular carrier typically will make procurement decisions in a cycle in which it requests bids and proposals to meet its needs over a period of years. A cellular carrier will issue a request for proposals and purchase an initial integrated system of MTSOs and associated cell sites from the successful vendor. Thereafter, the carrier buys new cell sites and upgrades and supplemental equipment from that vendor until (1) the vendor's equipment or support fails to be satisfactory to the cellular carrier, or (2) new technological developments provide a basis for a substantial overhaul of the existing network system. In either instance, a "swap-out" can result. In fact, there have been a large number of instances in which cellular carriers have replaced, in whole or in part, the cell sites and other cellular infrastructure equipment of their incumbent vendors with those of another manufacturer.

In particular, cellular carriers have "swapped out" one vendor's cell sites and MTSOs and replaced them with another's long before the equipment was obsolete when the carrier was not satisfied with the original vendor's performance. For example:

- In 1988, McCaw swapped out recently-installed AT&T cellular equipment in Florida. It relocated the AT&T cell sites and switches to other markets.
- U S West is in the process now of replacing AT&T Series II equipment in Phoenix and four other markets in Arizona with Motorola equipment.
- Ameritech recently swapped out a system in St. Louis.
- GTE has swapped out Motorola equipment and replace it with AT&T equipment in a number of markets.
- In 1993, McCaw swapped out Motorola equipment in Dallas and replaced it with Ericsson equipment.
- In 1994, McCaw swapped out Northern Telecom equipment in Minneapolis and replaced it with AT&T equipment.
- Southwestern Bell is in the process of swapping out Motorola equipment in Boston.
- BellSouth recently announced that Hughes will replace its existing vendors in many systems.

Notably, while the Department is correct (Competitive Impact Statement, p. 8) that the rapid growth in cellular services has meant that aggregate investment in

cellular equipment in each market is greater today than it was previously, the costs *per subscriber* of a swap-out have remained constant, or even declined. Moreover, carriers who "swap out" existing equipment can recover all or most of the current value of that equipment by relocating the equipment to other markets, by selling the equipment themselves, or, most frequently, by negotiating substantial buy-back or credit arrangements with the new supplier.

Further, in addition to these complete "swap-outs," a cellular carrier can replace an existing supplier's equipment in part by purchasing new equipment to serve part of an existing service area or certain customers in an area. These "partial" swap-outs are made increasingly possible by developments that have allowed calls to be handed off between switches of different manufacturers. In particular, a standard (IS-41) was developed for an interface between two different manufacturers' MTSOs. While initial versions of IS-41 (Rev. O and Rev. A) did not allow all calling features to follow the call, the current version of IS-41 (Rev. B) allows key features to do so, and the

²⁶ By contrast, McCaw's principal supplier of cellular infrastructure equipment is Ericsson.

subsequent version approved in 1994 (Rev. C) would allow for transfer of nearly all existing features.

Manufacturers are further constantly making proposals to replace incumbent vendors in whole or in part. Indeed, this is a significant aspect of ongoing competition between manufacturers in the equipment market. Consequently, even when swap-outs end up not occurring, carriers have used the threat of complete or partial swap-outs to obtain more favorable pricing and other commitments from AT&T and other suppliers. For example, in 1993 (after the AT&T-McCaw merger was announced), a large AT&T cellular infrastructure customer negotiated new contracts in which it would obtain additional price discounts and other valuable rights if it continued to purchase cell sites from AT&T in markets that already had AT&T MTSOs and cell sites. Similarly, other price protection clauses have been demanded by customers, and agreed to by AT&T, since the AT&T-McCaw merger was announced.

In this regard, one RBOC recently requested proposals that would cap its purchase of AT&T's equipment in a major market. It sought proposals from Motorola and others to provide cell sites and MTSOs that would be used to provide digital cellular service in portions of the cellular service area and that would rely on IS-41 connections for handoffs with AT&T MTSOs in that area. AT&T then made a counterproposal to provide the digital capability by upgrading the already-installed AT&T equipment to digital.

Other pending or impending developments will make swap-outs even easier for cellular carriers. The imminent improvements in IS-41 will make partial swap-outs easier, especially as more and more features are offered through centrally located advanced intelligent network ("AIN") computers, not MTSOs. Finally, because RBOCs and other AT&T equipment customers have increasingly requested an "open" interface between cell sites and MTSOs, AT&T is proposing an industry standard interface for these connections and will, once any such standard is adopted, manufacture equipment that will enable customers to mix and match different vendors' cell sites and MTSOs. While these efforts were underway previously, this undertaking was a publicly-announced feature of AT&T's settlement with Bell Atlantic and NYNEX.²⁷

²⁷ See Joint Press Release of AT&T, Bell Atlantic, and NYNEX (Nov. 7, 1994).

In AT&T's internal assessment of the merger with McCaw, AT&T recognized that the merger could have a severe negative effect on its manufacturing businesses unless AT&T demonstrated its continued reliability as a supplier. In particular, AT&T personnel believed that some RBOCs might have strong adverse reactions to an AT&T alliance with McCaw and retaliate by swapping out AT&T in some cellular markets and by buying less landline and wireless equipment. Accordingly, AT&T personnel launched elaborate programs both to bend over backwards to preclude any RBOC concerns about unfair treatment and to communicate the conviction and assurance that the McCaw alliance would not affect AT&T Network Systems' commitment to meet all its customers' needs.²⁸

4. The Prior Proceedings

The AT&T-McCaw merger could not be consummated until it received the prior approvals of the FCC and the state utility commissions in California, New York, and other states, and a waiver of Section I(D) of the MFJ. In these proceedings, RBOCs not only raised the same challenges to the merger that are resolved by the Proposed Decree, but also sought to use the proceedings to force modifications of the MFJ's restrictions on the RBOCs or to obtain conditions that would nullify procompetitive features of the merger in order to achieve "parity" for RBOCs. Each body rejected these claims.

Each regulatory body found that the merger would serve the public interest by *promoting* competition in wireless and other local telecommunications services that are offered by RBOCs and other local telephone monopolists (and Judge Greene granted the Section I(D) waiver because the *Rufo* standard for modifying consent decrees²⁹ was met). Each regulatory body further found that the merger, as conditioned, can realistically have no adverse effects on competition in any market, that the merger would otherwise benefit the public in a number of ways, and that there was no basis to impose conditions that nullify these benefits to create

²⁸ AT&T's manufacturing subsidiary strengthened AT&T's already rigorous existing procedures for safeguarding any information that cellular (and other) purchasers' equipment have designated as confidential or proprietary. When RBOCs responded adversely to the merger announcement by threatening to swap out AT&T's cellular infrastructure equipment, AT&T negotiated more favorable arrangements with them.

²⁹ See *Rufo v. Inmates of Suffolk County Jail*, 112 S. Ct. 748 (1992).

"parity for parity's sake."³⁰ Similarly, Judge Greene rejected RBOC efforts to consolidate the Section I(D) waiver and Proposed Decree with the RBOCs' pending request for MFJ relief.³¹

Argument

While four sets of comments have been filed on the Proposed Decree, only one (Bell Atlantic/NYNEX) even suggests that the Decree does not reasonably address the competitive concerns raised in the Department's Complaint. Otherwise, the commentators challenge the Decree because it does not address other concerns that they have. Part I will demonstrate that the Proposed Decree's provisions are palpably in the public interest. Part II will demonstrate that the extraneous other claims are out of order and challenge procompetitive features of the merger.

I. The Provisions of the Proposed Decree Are in the Public Interest

No commentator has claimed that the Proposed Decree is itself virtually certain to harm competition.³² Nor has any commentator claimed that the Proposed Decree is not a reasonable settlement of the two claims that the Department raised in its Complaint. Indeed, the only comments that even address these issues are those of Bell Atlantic/NYNEX. Yet they make no attempt to show that the Proposed Decree is outside "the reaches of the public interest." *United States v. Western Elec. Co.*, 900 F.2d 283, 306 (D.C. Cir. 1990) (quoting *United States v. Bechtel Corp.*, 648 F.2d 600, 666 (9th Cir. 1981)). Indeed, Bell Atlantic/NYNEX's comments here merely summarize the arguments that these commentators had intended to advance in a private antitrust suit that they brought against the AT&T-McCaw merger in federal court in Brooklyn. However, in

³⁰ See, e.g., *FCC Order*, ¶¶ 32, 57-61, 68-70, 90, 97-100, 104-05; *California PUC Decision*, pp. 12-16, 37; *N.Y.P.S.C. Decision*, pp. 6-7.

³¹ See *United States v. Western Elec. Co.*, Civ. No. 82-0192, Opinion, pp. 22-26 (D.D.C. Aug. 25, 1994) ("*Section I(D) Waiver Opinion*"), *aff'd*, No. 94-5252 (D.C. Cir. Feb. 17, 1995).

³² BellSouth has used its comments here to repeat its claims (from the Generic Wireless proceeding under the MFJ) that the imposition of equal access requirements on cellular systems is contrary to the public interest. Quite apart from the fact that these claims have been previously rejected by the Department, Judge Greene, and now also the FCC (*FCC Order*, ¶ 68), BellSouth ignores that the Proposed Decree would impose no such provisions or obligations in the unlikely event that BellSouth's claims were accepted in the pending MFJ proceeding. In that event, just as RBOCs could provide cellular-originated calls to anyone in the world with no equal access duty under the MFJ, McCaw cellular systems would have that same right under Section X(A) of the Proposed Decree.

that private suit, Bell Atlantic/NYNEX first abandoned their horizontal long distance claims (after the district court in Brooklyn criticized them)³³ and then (on the eve of trial) dismissed their manufacturing claims with prejudice after settling them with AT&T-McCaw—which vividly confirms that the Justice Department acted reasonably in settling its claims rather than litigating the lawfulness of the proposed merger.

However, because Bell Atlantic and NYNEX have not withdrawn these aspects of their comments, AT&T-McCaw will briefly reiterate why the Department's settlement is reasonable. In reality, each of the antitrust challenges to the merger rests on legal theories that are novel, that have been rejected in other indistinguishable contexts, and that would prevent procompetitive benefits of the merger—which is why the Department and Judge Greene previously stated that restriction on AT&T's entry into cellular radio would be detrimental to the public interest.³⁴ In any event, while the merger, in AT&T's view, could not have been found to violate Section 7 of the Clayton Act if there were a trial, the Proposed Decree specifically enjoins each of the hypothetical threats to competition raised in the Department's Complaint.

A. The Justice Department Reasonably Settled Its Challenges to the Putative "Horizontal" Combination of AT&T's and McCaw's Long Distance Businesses

One of the two claims raised in the complaint is that the merger would enable McCaw to use its alleged market power as one of two cellular carriers (and its undisputed ability to program its cellular switches to prevent long distance carriers from reaching McCaw's customers) to favor AT&T and reduce competition in competitive long distance markets. In this regard, the Department also alleged that the merger would eliminate competition between the two largest participants in various "cellular long distance markets" and that the merger would lead to increased long distance prices or reduced output.

However, while the provision of equal access by McCaw and other cellular carriers is indisputably in the public interest, AT&T submits that the

horizontal allegations in the Department's Complaint could not have been proven at trial and that it plainly was reasonable for the Department to settle these claims under the provisions of the Proposed Decree.

First, contrary to the Department's allegation, the merger does not eliminate long distance competition between AT&T and McCaw. There has never been any such competition. AT&T has been unable to offer interexchange services to McCaw cellular customers, for McCaw has not provided equal access, but has provided the interexchange services used by its customers (by reselling AT&T services). Conversely, McCaw has not offered long distance service to any other customers, for it has not competed with AT&T in providing interexchange service to any cellular customers (or landline customers) of RBOCs or any other carriers. In short, no cellular or other customers today can choose between AT&T and McCaw for their long distance service.³⁵

In this regard, rather than eliminate existing competition, it was clear long before this suit was filed that the AT&T-McCaw merger would *create* competition for McCaw cellular customers for the first time by enabling them to choose long distance services other than the AT&T long distance services that McCaw resold under its own name. In particular, shortly after the August 16, 1993 announcement of the merger, AT&T committed to Congress and to the FCC that McCaw cellular systems would offer each customer the ability to presubscribe to the interexchange carrier of his or her choice and that the McCaw cellular systems would be reconfigured so that local cellular service is provided, on an unbundled basis, in geographic areas that are always comparable, and generally identical, to those applicable to the RBOCs under the MFJ. See p. 17 & n.24, *supra*. In this regard, in approving the merger, the FCC stated that it expected AT&T to comply with these commitments,³⁶ and the FCC relied on the increased choices that McCaw cellular customers would

thereby receive in finding that the public interest would be "served" by the merger.³⁷

Second, even if AT&T and McCaw had previously competed, AT&T submits that the Department could not have proven at trial that the merger could lessen long distance competition in a "cellular long distance service market" or otherwise. The reality is that AT&T and other long distance carriers provide the *same* long distance services at the same price to landline and cellular long distance customers. Because McCaw provides less than 0.1% of long distance services nationally and does so by reselling AT&T service, there is no possibility that the AT&T-McCaw merger would increase the price or reduce the output of long distance services used by cellular or other customers. In particular, even if AT&T could attempt to increase long distance prices to cellular customers alone, those customers could readily turn to other long distance carriers, including carriers that today serve only landline customers. These facts both show that there is no "cellular long distance market" and establish, in all events, that there is no threat to competition.

The Department's suggestion that there is a separate "cellular long distance market" rests on the ground that cellular customers pay a premium for mobility—an airtime charge of up to 40 cents per minute for use of the cellular system, which is incurred whenever the customer places or receives any call, be it long distance or local. However, that is the charge imposed on the customer by the cellular system, and the long distance rates charged by long distance carriers for long distance service are the same, regardless of whether the customer accesses a long distance network from a cellular phone or from a landline phone. Thus, the Department's suggestion ultimately rests on the ground that the demand of cellular customers is less elastic than that of landline customers: *i.e.*, that even though cellular customers do *not* pay higher rates for long distance calls than do landline customers, cellular customers may well be willing to do so.

However, even if true, that does not establish that the cellular subclass of all long distance customers is a separate market. All services and products (be they corn flakes or long distance) are used by subclasses of customers who would be willing to pay more than the market rate, but these subclasses of customers do not constitute separate

³³ See *Bell Atlantic Corp. v. AT&T Corp.*, No. 94-CV-3682 (ERK), Transcript of Cause for Civil Hearing, pp. 27-28, 45-46 (Sept. 13, 1994).

³⁴ See *MFJ Opinion*, 552 F. Supp. at 175-76; *United States v. Western Elec. Co.*, Civ. No. 82-0192 (D.D.C.), Response of the United States to Public Comments on Proposed Modification of Final Judgment, pp. 72-73 (May 20, 1982); *id.*, Brief of the United States in Response to the Court's Memorandum of May 25, 1982, p. 49 (June 14, 1982).

³⁵ The Department and Bell Atlantic/NYNEX suggest that there is "indirect" competition between AT&T and McCaw long distance services in the sense that any cellular customer who subscribes to McCaw cannot obtain retail interexchange services from AT&T. But there is no evidence that the existence of this attenuated and indirect alleged "competition" had any effect on the price of long distance services offered by McCaw, and, by affording McCaw customers equal access to the carrier of their choice, the merger allows McCaw customers a choice of long distance carriers for the first time.

³⁶ See *FCC Order*, ¶ 70.

³⁷ See *FCC Order*, ¶ 57.

antitrust markets unless suppliers could in fact single them out to charge higher prices.³⁸ There has been no allegation that long distance carriers could charge higher prices for calls originating on cellular telephones, and the fact that none do (despite the less elastic demand of these customers) is potent evidence that charging them higher rates is infeasible for regulatory, practical, and other reasons.³⁹

More fundamentally, such price increases could not be maintained because cellular customers receive the same long distance services provided to landline customers. Even if AT&T had a monopoly on long distance calling by cellular customers, it could not impose even a "small but significant and nontransitory increase in price," for cellular customers (or carriers) could then subscribe to the long distance services used by landline customers. The reality is that because the same long distance services are used by landline and cellular carriers alike, any long distance carrier can easily supply interexchange services to cellular systems, and would do so if incumbent long distance providers sought to raise prices above competitive levels. In turn, because McCaw represents less than 0.1% of total long distance calling and was indistinguishable from hundreds of other resale long distance carriers,⁴⁰ the merger of AT&T and McCaw would not have any effect on competition in long distance markets or on the price or output of long distance services used by cellular or any other customers even if AT&T and McCaw had competed, as they had not. Indeed, in this circumstance, the Department's Merger Guidelines,⁴¹ the nation's antitrust

authorities,⁴² and judicial decisions⁴³ all agree that a merger threatens no harm to competition.

Finally, in all events, the provisions of the Proposed Decree constitute a palpably reasonable settlement of the Department's claims and are in the public interest. They impose equal access, nondiscrimination, and antibundling requirements that go considerably beyond the voluntary commitments that AT&T made. They require the balloting of all existing customers; they prohibit any wide area calling plans in which discounted rates are offered only when local and long distance services are "bundled" through wide area calling plans or otherwise; and they contain detailed other provisions designed to afford all interexchange carriers an equal opportunity to serve McCaw customers. These provisions reasonably assure that McCaw customers will hereafter have choices other than the AT&T long distance services that McCaw has resold these customers and that all interexchange carriers will have access to McCaw's cellular customers.

B. The Proposed Decree Represents a Reasonable Settlement of the Department's Vertical Manufacturing Allegations

The other allegation advanced in the Department's Complaint is that the merger could lead AT&T to use its position as a cellular equipment supplier to engage in predatory conduct that could impede competition in certain local cellular service markets: *i.e.*, those in which McCaw competes with a cellular carrier that uses AT&T cellular equipment. In advancing this claim, the Justice Department acknowledged that telecommunications manufacturing generally, and cellular equipment manufacturing in particular, are intensely competitive businesses in which AT&T and other manufacturers are dependent on the RBOCs, GTE, and other LECs, and in which a carrier has

a choice of multiple vendors when it is installing or replacing ("swapping out") a system. See pp. 17-23, *supra*.

However, the Department claims there is a short-term interim period in which individual LECs are nonetheless dependent on AT&T's manufacturing unit for certain essential inputs to their cellular service and that the merger would give AT&T-McCaw the ability and incentive to exploit this short term "monopoly power" to disadvantage these companies in those markets where they compete with McCaw. In particular, the Department alleged that (1) those RBOCs and GTE that purchased AT&T cellular systems (*i.e.*, MTSOs and cell sites) in fairly recent years would incur such substantial costs if they sought to replace this AT&T equipment in whole or in part that they are "locked-in" to AT&T for upgrades to these systems during an interim period, and (2) the merger would give AT&T the incentive to exploit this lock-in by charging RBOCs inflated prices for the new cell sites and switching software needed to expand or enhance their systems, by providing them inferior service, by sharing their confidential information with McCaw, or by discriminating in favor of McCaw.

It was patently reasonable for the Department to settle these claims under the provisions of the Proposed Decree. The competitive theories are exceedingly tenuous ones, and the Department, in AT&T's view, could not have proven a violation of Section 7 of the Clayton Act at trial. In all events, the Proposed Decree contains prophylactic injunctions—backed by unusual and severe sanctions—that would prohibit each of the kinds of predatory misconduct that the Department fears, that further would reduce the alleged lock-in, and that thus reduce even the tenuous risks of predatory conduct that harms competition.

The Risks of Competition Harm Were Virtually Nonexistent Even in the Absence of a Decree. Foremost, the Department's allegations represent an exceedingly novel theory for challenging a vertical merger. The theory is not supported by the Department's merger guidelines.⁴⁴

⁴⁴The Department's guidelines provide for challenges to vertical mergers in only three narrow circumstances, none of which is present here. The first is when the vertical merger would substantially raise entry barriers because two markets would (as a consequence of the merger) be so integrated that entrants to one market would also have to enter the other market simultaneously. See *U.S. Dept. of Justice 1984 Merger Guidelines* §4.21 (reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13,103 (1984)). The second is where the vertical merger would facilitate collusion in an upstream market either by permitting vertically integrated manufacturers more

³⁸ See Department of Justice Federal Trade Commission Horizontal Merger Guidelines, 4 Trade Reg. Rep. (CCH) ¶ 13,104, § 1.12 at 20,573 (1992) ("Merger Guidelines").

³⁹ See *AT&T-McCaw FCC Proceeding*, AT&T's and McCaw's Response to Comments on Hart-Scott-Rodino Materials (July 1, 1994), Affidavit of Robert D. Willig and B. Douglas Bernheim: An Analysis of the Alleged Anticompetitive Effects of the AT&T-McCaw Combination, pp. 12-13.

⁴⁰ Indeed, as the FCC found, McCaw was far less likely to develop into a major facilities-based long distance carrier than other resellers. McCaw's current debt of \$5.7 billion (and debt ratio of over 70%), its need to raise over \$3 billion in 1995 merely to *retain* some of its most important properties, and its need to raise additional untold billions to acquire PCS licenses all made it improbable in the extreme that McCaw "would be able to embark on any large-scale investment in interexchange facilities in the foreseeable future." *FCC Order*, ¶ 30 & n.73.

⁴¹ See Merger Guidelines, § 3.0 at 20,573 (where entry is easy, "the merger raises no antitrust concern and ordinarily requires no further analysis").

⁴² See, *e.g.*, Phillip E. Areeda, Herbert Hovenkamp & John L. Solow, *IIA Antitrust Law* 257 (1995) ("Of course, whichever market definition is employed, relative ease of entry by other firms should always be taken into account. The one course that would be clearly wrong would be to define the market as A alone while ignoring the ease of entry from B producers").

⁴³ See, *e.g.*, *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210, 218 (D.C. Cir. 1986) ("Because the ability of consumers to turn to other suppliers restrains a firm from raising prices above the competitive level, the definition of the 'relevant market' rests on a determination of available substitutes"); *Vollrath Co. v. Sammi Corp.*, 9 F.3d 1455, 1461-62 (9th Cir. 1993) ("No matter how the market is defined * * * the ease of entry into it and the number of potential participants on every level of it abundantly demonstrates that [market power] would never be possible").

Professors Lawrence Sullivan, Robert Willig, and Douglas Bernheim submitted testimony that rejected the hypothesized harms to competition.⁴⁵ Further, this basic theory was rejected as a matter of law in the only case in which it has been raised under Section 7 of the Clayton Act: *Fruehauf Corp. v. FTC*, 603 F.2d 345 (2d Cir. 1979).

Fruehauf concluded that even if a manufacturer in an otherwise competitive market will have market power over the supply of particular essential products during a short time period (there due to an assumed shortage), a vertical merger cannot be found to create a "reasonable probability" of harm to competition in violation of Section 7 of the Clayton Act⁴⁶ based merely on the theory that the merger gives the manufacturer an incentive to use that power to discriminate in favor of a merger partner and against its competitors. 603 F.2d at 355. To the contrary, the Second Circuit held that it was "highly unlikely" that the manufacturer would then engage in such opportunistic misconduct, for it would recognize that (1) The other customers could thereafter "retaliat[e]" and "could cause it greater economic harm" by "shifting to competing suppliers not only their [future] purchases of the [allegedly 'locked-in' product] but of other products presently bought from [the manufacturer]," and (2) such predatory conduct "would invite antitrust damage actions." *Id.* at 355. In this regard, AT&T is aware of no case that supports challenging a vertical merger on such grounds.⁴⁷

easily to monitor price in retail markets or by eliminating a particularly disruptive buyer in a downstream market. *See id.*, § 4.22. The third is where the vertical merger involves a regulated monopoly utility and would enable it to evade rate regulation. *See id.*, § 4.23.

⁴⁵ *See AT&T-McCaw FCC Proceeding*, AT&T-McCaw Opp., Affidavit of Lawrence A. Sullivan, pp. 2-3, 6-11, 17-19, 22-24; *id.*, Affidavit of Robert D. Willig & B. Douglas Bernheim: An Analysis of the Alleged Anticompetitive Effects of the AT&T-McCaw Combination, pp. 36-55.

⁴⁶ It is well settled that a merger cannot violate Section 7 unless there is a "reasonable probability" that it will "lessen competition" (*i.e.*, harm consumers) in a relevant market and that a "mere possibility" of these harms is insufficient. *See, e.g., Brown Shoe Co. v. United States*, 370 U.S. 294, 323 & n.39 (1962).

⁴⁷ In prior challenges to the merger, RBOCs have relied on the Supreme Court's decision in *Eastman Kodak Co. v. Image Technical Services, Inc.*, 112 S. Ct. 2072 (1992). But *Kodak* was not a case to enjoin a merger under Section 7 of the Clayton Act on the theory it was likely to lead to harm to competition. Rather, it was a case under Sections 1 and 2 of the Sherman Act in which an independent photocopy repair service firm challenged a tie-in in which *Kodak* had concededly *in fact* excluded independent firms from the equipment repair market by refusing to supply them spare parts for *Kodak* copying machines. The RBOCs ironically have relied on the Supreme Court's rejection (by a

In this case, AT&T's manufacturing subsidiary has far less ability to engage in the hypothesized misconduct than did the firm in *Fruehauf* and radically greater competitive economic and legal incentives not to do so. Indeed, this case is a much clearer one than *Fruehauf* in that the provisions of the Proposed Decree preclude any reasonable risk of the competitive harms that the Department initially feared and palpably are within the broad reaches of the public interest.

The Claimed "Lock-In" Is Tenuous, and, in AT&T's View, Nonexistent. First, while AT&T would have overwhelming economic and legal incentives not to engage in the hypothesized conduct even if it could, AT&T will not have anything remotely approaching "monopoly" power over "essential inputs" required by RBOCs or other LECs even in the immediate future. In this respect, RBOCs epitomize large sophisticated purchasers who can and do protect themselves against exploitative behavior in "aftermarket" transactions and who have done so since the merger. *Eastman Kodak*, 112 S. Ct. at 2086-87.

Further, the assertions that RBOCs and other cellular equipment customers are "locked-in" to AT&T is, in AT&T's view, unsustainable and could not have been proven at trial. It is true that some RBOCs (and GTE) acquired AT&T cellular equipment in the past and that they will need to purchase more cellular equipment to expand and improve their systems in the future. However, there is

vote of 6-3) of *Kodak's* attempt to defend against otherwise unlawful exclusionary conduct by arguing that, as a matter of law, no consumer could be harmed by *Kodak's* conduct. *Kodak* had contended that the market for original sales of photocopiers was competitive, and that interbrand competition in this market meant, as a matter of law, that *Kodak* could not have market power in a separate "aftermarket" for repair of machines and could thus not use that power to exploit consumers. The Supreme Court held that while this latter claim might be correct as a matter of fact, it could not be sustained purely as a matter of law "in the absence of any evidentiary support." *Id.* at 2087. The Supreme Court reasoned that while "large-volume, sophisticated purchasers" could be presumed to take steps to protect themselves from exploitative behavior in the "aftermarket," smaller, unsophisticated consumers might lack the necessary information and buying power to take protective steps before they need repairs and will "tolerate some level of service-price increases before changing equipment brands" "[i]f the cost of switching is high." *Id.* at 2086-87.

Here, the only relevance of *Kodak* is that it undercuts any "lock-in" claims. RBOCs epitomize the large sophisticated customers who can, under *Kodak*, be presumed to protect themselves from exercises of "market power" after initial purchases are made. Indeed, RBOCs vigorously negotiate supply contracts prior to large purchases and use threats of complete or partial swap-outs to renegotiate those supply contracts both before and after the AT&T-McCaw merger was announced.

no basis for any allegation that the costs of switching cellular infrastructure equipment suppliers are so prohibitive that these customers are absolutely locked-in to AT&T and have no choice except to buy new cell sites, MTSOs, and upgrades from it in existing markets.

The short answer to this allegation is that cellular carriers can, and regularly do, swap out an incumbent equipment supplier when they are dissatisfied with its performance, even when the equipment had been recently purchased. *See pp. 19-21, supra.* RBOCs and other LECs use threats of complete swap-outs or partial swap-outs (through use of IS-41 interface) to extract more favorable terms from AT&T and other independent suppliers. *See pp. 21-22, supra.* This practical experience refutes any theoretical claim that switching costs are "prohibitive" or that it is harmful to competition for cellular carriers to incur those costs. These are grounds on which the FCC rejected the RBOC's lock-in claims.⁴⁸

In addition, the facts on which a lock-in is claimed will themselves dissipate rapidly over time. Industry efforts are underway to establish an open and satisfactory cell-site-to-MTSO interface that will enable cellular customers to obtain cell sites and switches from different vendors (*see pp. 22-23, supra*), and the IS-41 interface (allowing incompatible switches in a single market) has recently been improved so that virtually all existing features can be handed off with calls. *See p. 21, supra.* Further, with each passing day, recently-purchased cellular systems are further depreciated, and the other

⁴⁸ The FCC stated as follows:

[W]e are unpersuaded by the BOCs' arguments about "lock-in", which occurs when a cellular service provider is unable to switch to the equipment of a different manufacturer for technical or financial reasons. As an initial matter, we find the argument unpersuasive because, at the same time the BOCs complain of the technical and financial impediments to switching equipment suppliers in their systems, they allege that AT&T/McCaw will replace McCaw's Ericsson equipment with AT&T equipment. If the difficulties of switching are so great, we doubt that AT&T/McCaw will be able to rush to switch equipment. On the other hand, if AT&T/McCaw could switch so readily, we find it difficult to believe that the BOCs would have much greater difficulty in switching their systems if AT&T/McCaw product or product servicing quality dropped. More importantly, the advent of the recently-adopted IS-41 standard of the Telecommunications Industry Association, which facilitates the use of different suppliers' equipment within the same cellular system, should reduce the cost of switching cellular equipment providers and, consequently, any potential "lock-in" effect. Finally, affiants on both sides of the debate agree that the merger of AT&T and McCaw will not enhance AT&T's ability to discriminate or exploit "lock-in."

FCC Order, ¶ 98 (footnotes omitted).

provisions of the Proposed Decree (facilitating re-location and sales of a carrier's cell site equipment and requiring AT&T's cooperation in a partial swap-out) will further reduce existing costs of switching suppliers. A procompetitive merger cannot be held unlawful and enjoined based on short term conditions that are dissipating.

Competition Otherwise Precludes the Hypothesized Predatory Conduct. Even if AT&T's manufacturing arm could have some degree of "market power" over certain customers in an interim period, it is even clearer here than it was in *Fruehauf* that it is "highly unlikely" that the merger will lead to predatory misconduct that harms competition in local wireless markets. The competition that AT&T's manufacturing unit faces in equipment manufacturing generally—and its dependence on RBOCs and GTE—creates a greater inhibition on discrimination against those firms than was present in *Fruehauf*.

Quite simply, competition means that AT&T's manufacturing arm has overwhelming incentives not to engage in any conduct that degrades any customer's service or that discriminates in favor of McCaw—or that even creates an appearance of such misconduct. The consequences of such conduct for AT&T's manufacturing arm would not merely be severe, but devastating. It would not merely assure AT&T's replacement with another cellular equipment vendor at the end of the claimed "lock-in" period. Cellular carriers can and do swap out a vendor whenever they are dissatisfied with its performance, regardless of whether the incumbent vendor is thought to have engaged in actionable or provable misconduct (see pp. 19–20, *supra*), so AT&T would then risk immediately being replaced in those markets.

Further, as in *Fruehauf*, the discriminatory misconduct would also lead RBOCs and other customers to "retaliat[e]" by refusing to purchase other products that they "presently" purchase from AT&T. Compare *Fruehauf v. FTC*, 603 F.2d at 355 (emphasis added). For example, if such discrimination by AT&T were even suspected, RBOC wireless subscribers would refuse to buy AT&T's PCS equipment (which they would use to compete with McCaw in many markets) and which should be a multibillion dollar market given the imminent issuance of PCS licenses. Even more significant, RBOCs and GTE could then also buy less *landline* equipment.

In this regard, in contrast to *Fruehauf*, moreover, McCaw's competitors are not "insubstantial" customers of AT&T

Network Systems. Compare *Fruehauf*, 603 F.2d at 354. To the contrary, McCaw's competitors (RBOCs and GTE) accounted for some \$6 billion of Network Systems' \$10 billion in 1994 revenues, and it would be devastating if any significant portion of these sales were lost to competitors.

That market forces preclude any substantial concerns was explained in detail by the FCC when it rejected the RBOCs' claims that the competitiveness of equipment manufacturing markets creates potent disincentives for any of the conduct that the RBOCs purport to fear:

We believe that market forces will largely eliminate AT&T's ability to discriminate unreasonably. AT&T/McCaw cellular affiliates by themselves are not a large enough consumer of AT&T products to make it profitable for AT&T/McCaw to provide poor products or service to other customers, especially customers with the market power and sophistication of the BOCs, who have the choice of buying from other cellular equipment suppliers. Moreover, if unhappy with AT&T/McCaw's cellular products or servicing of those products, the BOCs also could shift their purchases of wireline network equipment to other suppliers. These threats to AT&T/McCaw's equipment sales create a powerful incentive for AT&T/McCaw to offer all of its cellular equipment customers, not just its cellular affiliates, quality products and services. As we have previously stated, AT&T's sales could otherwise decline as the fact of discrimination became known.⁴⁹

On that basis, the FCC found that the "market forces combined with the threat of litigation [if administrative duties are breached] will adequately deter AT&T/McCaw from discriminating in favor of its cellular affiliate, even in the subtle ways described by [the RBOCs]," and that the merger, as conditioned by the FCC, cannot realistically have any adverse effect on competition.⁵⁰

The Proposed Decree's Provisions Enjoin the Hypothesized Misconduct. The provisions of the Proposed Decree reduce even the slight risks that exist. It requires that McCaw be maintained as a separate corporation with separate officers and personnel who cannot delegate responsibility for the operation of McCaw's cellular systems to AT&T and that McCaw obtain services and products from AT&T under filed tariffs or by contract. Further, the Proposed Decree contains detailed provisions enjoining each kind of predatory misconduct that RBOCs purport to fear.

⁴⁹ *FCC Order*, ¶ 97 (footnotes omitted). For the same reasons, the FCC found it unlikely that AT&T Network Systems would engage in the misuse of proprietary information. *Id.*, ¶ 112.

⁵⁰ *FCC Order*, ¶ 100.

First, the Proposed Decree requires AT&T's manufacturing subsidiary to treat its customers in the same way it would have if no merger had occurred. It requires AT&T to continue to provide each of its existing equipment customers with additional equipment, upgrades, technical support, maintenance, spare parts, and all other related products and services "in accordance with the *same pricing and other business practices* that prevailed prior to August 1, 1993" (a date before the merger was announced). § V(B)(1) (emphasis added).⁵¹ Any deviation from pre-merger practices in the timing of delivery of cell sites, in the provision of upgrades and support, and in the manner in which prices are determined would violate this prohibition.

Second, the Proposed Decree prohibits AT&T from discriminating against McCaw's competitors in the development of new features and functions. If AT&T develops new features or functions that are intended for more than one customer prior to the date the AT&T-McCaw Decree is entered, it must make them available to all affiliated customers at the same time as it does to McCaw. § V(C)(1). If AT&T develops features or functions for McCaw that are technologically applicable only to McCaw's network or proprietary to McCaw, it must provide all other carriers with the opportunity to contract for such features and functions on the same or more favorable terms. § V(C)(2–3).

Third, the Proposed Decree contains detailed protections against any misuse of competitive information that AT&T might obtain in the course of providing equipment to unaffiliated cellular carriers. It requires AT&T to establish separate sales and marketing teams to serve McCaw and unaffiliated cellular carriers and separate equipment development teams for proprietary equipment development work. § V(A)(4). It prohibits AT&T from disclosing "Nonpublic Information" of an unaffiliated equipment customer "for any reason" to McCaw (including any system in which McCaw has only a minority interest), to any McCaw personnel, to any person marketing any McCaw service or AT&T telecommunications service, or to any of the marketing, sales, or equipment

⁵¹ AT&T is further prohibited from "discriminat[ing] in favor of McCaw * * * in the way in which such services or products are made available" to other cellular carriers. § V(B)(1). And if AT&T discontinues the offering of any such product or service, it is required to seek to arrange an alternative source of supply or provide the carrier with whatever licenses and technical information are required to provide the product or service. § V(B)(2).

personnel that market to or perform development work for AT&T or McCaw. § V(A)(1).

Fourth, the Proposed Decree requires AT&T to facilitate the replacement of its equipment, in whole or in part, with integrated systems of switches and cell sites of competing manufacturers if AT&T's existing customers wish to do so. AT&T must waive any contractual provisions granting it rights of prior notice or consent if the customer chooses to redeploy AT&T equipment to a new location, and must provide all reasonably necessary technical assistance and cooperation to help the customer replace its equipment and operate AT&T's system in conjunction with systems of AT&T competitors in whole or in part. § V(D).

The AT&T-McCaw Decree contains elaborate compliance and enforcement provisions. For example, in addition to penalties for imprisonment or fines for contempt of court, the Proposed Decree provides that if the Department determines that AT&T has violated any of the Decree's requirements in its dealings with McCaw cellular competitors who purchased AT&T equipment prior to the Decree's entry, the Department will have the authority to require AT&T to "buy back" that equipment at the original purchase price, less depreciation calculated on the straight line basis with useful lives of ten years for switches and eight years for all other hardware—irrespective of any shorter depreciation schedule actively used by any carrier. § V(E). The Department would have "sole and unreviewable discretion" to make that determination, and AT&T "irrevocably waive[s] any right it may have to appeal, contest, or otherwise challenge any adverse determination." *Id.*

Bell Atlantic/NYNEX appear to concede that these provisions mean that it is improbable that AT&T's manufacturing or other personnel would engage in any misconduct that is detectable and provable. They are thus reduced to suggesting that AT&T's manufacturing arm could engage in subtle misconduct that would degrade their cellular service but that would not be "detectable." However, anything that degrades an RBOC's cellular service is by definition detectable by it (otherwise it could have no competitive consequences), and anything that is detectable in this way can be the subject of complaints and potentially of proof and adverse findings. Indeed, the only way that AT&T conceivably engage in misconduct that would degrade an RBOC's service in markets where it competes with McCaw, but that would not be provable, would be if AT&T

engaged in the identical misconduct in every market in the country in which AT&T supplies cellular equipment, including the vast majority of AT&T-equipped systems that do *not* compete with McCaw. See Appendix (attached hereto). Obviously, AT&T has powerful *disincentives* to engage in such conduct in these other areas for no benefits to McCaw could offset harm to AT&T.

Procompetitive Effects of the Merger. For all these reasons, the provisions of the Proposed Decree—and sanctions available—reduce the already tenuous risks that AT&T would engage in the hypothesized misconduct. See *Fruehauf*, 603 F. 2d at 355; *Emhart Corp. v. USM Corp.*, 527 F.2d 177 (1st Cir. 1975). Furthermore, the Department was also entitled (and required) to weigh the fact that, in addition to the remote threat that AT&T could use its manufacturing position to impede competition in local cellular markets, the merger would otherwise *promote* competition and benefit consumers in these same local cellular markets and potentially landline services as well. See pp. 2–3, 24, *supra*. In short, there is no question that the Department acted rationally in not seeking to enjoin an otherwise procompetitive merger and in instead settling its vertical manufacturing claim.

II. The Ad Hoc IXC's and RBOC's' Claims That the Proposed Decree Should Be Modified To Create "Parity" Are Outside the Scope of This Proceeding and Constitute Hypocritical Attempts To Nullify Procompetitive Features of the Merger

The foregoing discussion establishes that, if anything, the provisions of the Proposed Decree go far beyond what is reasonable to address the Department's concern that the combined AT&T-McCaw could use their positions in cellular services or in manufacturing to harm competition in adjacent markets. Nothing more need be said to establish that the Proposed Decree is in the public interest.

However, four of the RBOCs and a group of switchless resellers of interexchange services (the "Ad Hoc IXCs") claim that the Proposed Decree is contrary to the public interest because it does not contain other provisions that address a *different* set of purported competitive concerns that these commentators have, but that the Department does not. These RBOCs claim that AT&T-McCaw could enjoy "advantages" over their cellular businesses by reason of the MFJ's restriction on RBOCs and AT&T's putatively "dominant" position in interexchange services. On this basis,

the RBOCs contend that the Proposed Decree will not be in the public interest unless "parity" is achieved by (1) barring AT&T-McCaw from using names, addresses, and usage information of AT&T's long distance customers to market cellular services to any individuals who are cellular customers of RBOCs, and (2) granting the RBOCs' motion for "generic wireless" relief from the MFJ's long distance restriction and imposing the same equal access restrictions on AT&T-McCaw as apply to the RBOCs cellular systems under the MFJ. Similarly, the Ad Hoc IXCs appear to fear that the combined AT&T-McCaw could extend AT&T's long distance "dominance" by converting McCaw's cellular systems into alternatives to the landline exchange monopolies.

The short answer to these claims is that they go beyond the violations alleged in the Department's Complaint and they therefore cannot be raised in this Tunney Act proceeding. See 15 U.S.C. § 16(e). The Department's Complaint alleged *only* that the combined AT&T-McCaw could use power in manufacturing and cellular services to impede competition in adjacent markets. Although RBOCs have previously raised (and the FCC rejected) it, the Complaint does not make the allegation that the RBOCs and Ad Hoc IXCs make: that AT&T's putatively dominant position in long distance services could give it advantages in cellular markets. The Department's failure to pursue these claims is not reviewable in a Tunney Act proceeding.⁵²

Further, even if the Department's decision not to pursue these claims could be reviewed, there is not the slightest doubt that the Department's determination was reasonable and, indeed, was compelled by the antitrust laws. Because AT&T neither has a bottleneck over long distance services nor controls any facilities or information that is essential to cellular carriers or their customers, the four RBOC's and Ad Hoc IXCs' claim is *not* that AT&T has power over them or their customers that it could exercise to distort free choice in cellular markets. Rather, it is that AT&T's position in long distance RBOCs "[b]ecause of MFJ requirements" (Bell Atlantic/NYNEX, p. 10), that the RBOCs may lose certain customers and profits because of these AT&T advantages, and that the "public interest" therefore requires "parity."

⁵² See U.S.C. § 16(e); S. Rep. No. 298, 93d Cong., 1st Sess. 3 (1973); *In re IBM Corp.*, 687 F.2d 591 (2d Cir. 1981) (Justice Department's decision to dismiss competitive claims is not reviewable under the Tunney Act).

However, it is elementary that "the purpose of antitrust policy * * * is not to make competitors equal, or to avoid all forms of advantage; the antitrust laws are for the protection of competition, not competitors." *Environmental Action, Inc. v. FERC*, 939 F.2d 1057, 1061 (D.C. Cir. 1991). As Judge Greene has elsewhere held, the antitrust laws are not intended "to assure positive results for [individual] competitors" but to "protect the competitive process." *United States v. Western Electric*, 698 F. Supp. 348, 363 (D.D.C. 1988).

Further, it is sheer hypocrisy for the RBOCs to complain about a lack of parity and about the MFJ. The Department has previously found that the MFJ has not competitively disadvantaged the RBOCs in competing with McCaw.⁵³ To the contrary, the RBOCs' exchange monopolies have given their cellular businesses immense regulatory and other advantages over McCaw and other nonwireline carriers, and the RBOCs' newly-found interest in "parity" is simply an attempt to nullify legitimate efficiencies of the merger that could offset some of the advantages that the RBOCs have received from their bottleneck monopolies. In this regard, Judge Greene and now even the FCC have repeatedly rejected the RBOCs' claims that the MFJ's restrictions could either be removed from the RBOCs (or be imposed on firms that have no bottleneck monopolies) in the name of "parity."

In this regard, all of the specific claims that the RBOCs and Ad Hoc IXCs advance constitute challenges to procompetitive features of the merger.

A. The RBOCs' Proposal for a Marketing Restriction Is Both Antithetical to the Antitrust Laws and Hypocritical

The four RBOCs' principal claim is that the Proposed Decree would be anticompetitive and contrary to public interest unless a new marketing/solicitation restriction were added that barred AT&T-McCaw from using the names, addresses, and long distance usage information of AT&T's *long distance* customers to market cellular service to any individual who is also an existing cellular customer of an RBOC. *E.g.*, SBC, pp. 6-15; Bell Atlantic/NYNEX, pp. 10-12. The RBOCs assert that AT&T-McCaw would otherwise obtain "anticompetitive" advantages from its "dominance" in long distance service, that the customer information in question is the RBOCs' "property"

⁵³ See *United States v. Western Elec. Co.*, Civ. No. 82-0192 (D.D.C.), Memorandum of the United States in Response to the Bell Companies' Motions for Generic Wireless Waivers, pp. 18-19 (July 25, 1994) ("DOJ Generic Wireless Memorandum").

which the Proposed Decree (and the MFJ) elsewhere protect, and that it was thus "inexplicable" and "inconsistent" for the Department to allow AT&T-McCaw to use this information.

These claims are not merely baseless. They are transparent attempts to prevent competition for RBOC customers and to preserve advantages that the RBOCs derive from their control over bottleneck local telephone monopolies.

The Claims Are Antithetical to Antitrust. First, the marketing restrictions that the RBOCs seek are antithetical to the antitrust laws. As courts have uniformly held and as the RBOCs have elsewhere argued, the ability of a firm to offer new services (*e.g.*, cellular) to customers of its *own* services (*e.g.*, long distance) is procompetitive and beneficial to consumers. Here, moreover, the ability of AT&T-McCaw to engage in this "cross-selling" is one of the principal ways in which the merger would create genuine efficiencies and consumer benefits that would offset advantages the RBOCs derive from their local exchange monopolies.

In particular, AT&T provides an array of telecommunications services and products to actual or potential cellular customers—long distance services, cellular and other CPE, computers, and the AT&T Universal Card (a combined telephone calling/credit card). The relationships that AT&T has with these customers will enable the combined AT&T-McCaw both to identify actual or potential customers of cellular services and to inform them about AT&T cellular service at very low cost: *e.g.*, through inserts in billing envelopes, direct mailings, or the like.⁵⁴ In this regard, because AT&T has provided high quality services, superior customer support, and attractive prices, the AT&T brand is a strong warranty of quality, and there may be many existing AT&T customers who would value receiving an "AT&T cellular service" offering that same quality and who would choose to do so if AT&T engages in this direct marketing to its customers.

At the same time, contrary to the RBOCs' suggestions (*e.g.*, Bell Atlantic/NYNEX, pp. 10-11), such marketing efforts would not and could not themselves cause any customer to switch to AT&T. Rather, they would

⁵⁴ Contrary to the RBOCs' suggestions (see SBC, Affidavit of John T. Stupka, ¶ 7), the Proposed Decree prohibits AT&T from providing long distance services on more favorable terms to cellular customers of McCaw than to other cellular customers (see §IV(F)(1)), so AT&T could not make "targeted offers" for long distance services that would not be available to RBOCs' cellular customers.

merely be an efficient, low-cost way for AT&T to give its own long distance (and other) customers information about AT&T cellular service and the *choice* whether to use it or not. Those customers who are satisfied with the RBOC cellular service, who believe it will be improved, or who otherwise do not regard the AT&T-McCaw cellular offering as more attractive would say "no" to the AT&T offer. Conversely, those customers who value dealing with AT&T, who were dissatisfied with RBOCs, and who perhaps have dealt with them only because of doubts about McCaw, might say "yes" to the AT&T offer. In either event, consumers will benefit from the solicitation because additional choices will have been extended to them efficiently and because rivalry for their business will increase.

In this regard, these RBOCs have elsewhere admitted that they are seeking to block these AT&T marketing efforts in order to protect the RBOCs' customer bases and profit margins, not to benefit consumers and competition. In particular, when NYNEX and Bell Atlantic unsuccessfully sought this same restriction on AT&T-McCaw at the FCC, these RBOCs claimed that the "power of AT&T-McCaw brand" and the ability to offer cellular packages that contain this same warranty of quality could cause the RBOCs to lose significant percentages ("10% to 25%") of their existing customers "in the first year."⁵⁵ These assertions are likely hyperbole, for it is difficult to believe that even a slothful monopolist could have offered such poor service and so alienated its customers that so many would immediately switch to AT&T-McCaw. However, the RBOCs have one and only remedy under the antitrust laws if they have created such a situation. It is to compete on the merits and to seek to retain customers, and to win back any that are lost, by improving the quality of their cellular services, reducing their price, or otherwise making their own cellular offerings more attractive. That would benefit consumers, and it is extraordinary that RBOCs would suggest that an antitrust court should seek to protect an RBOC's customer base and profits from competition.

Similarly, SBC makes the anticompetitive and paternalistic assertion that many of its customers would be better off if they were protected from competition because they spend "as little [*sic*] as" \$100 a

⁵⁵ See *AT&T-McCaw FCC Proceeding*, Petition of NYNEX Corporation and Bell Atlantic Corporation for limited Reconsideration, p. 7 (Oct. 19, 1994).

month and are thus not "sophisticated." SBC, p. 13. In particular, SBC contends that these customers would not know to respond to AT&T's solicitations by seeking better "offers" from competitors.⁵⁶ Quite apart from the fact that the antitrust laws reject this paternalism, SBC ignores that the RBOCs are always free themselves to make these "better offers": e.g., by reducing the price or improving the value of their services, by making "counter offers" to any customers who seek to terminate cellular service to go elsewhere, or by making targeted offers to "win back" customers who leave. Again, that is the competition that the antitrust laws seek to foster, and SBC's argument is an admission that it is seeking restrictions that would harm consumers and diminish rivalry.

It is for these reasons that federal courts have uniformly held that restrictions on customer solicitations are alien to the antitrust laws. For example, courts of appeals have held that the antitrust laws cannot be used to enjoin or punish a firm's use of customer lists to market services even when the lists may have been *misappropriated* from a competitor in violation of state unfair competition laws⁵⁷—as AT&T's lists of its own long distance customers were not. These courts hold that the customer solicitation "enhance[s] rivalry rather than reducing it," that it benefits consumers to receive additional choices, and that while regulatory statutes and "unfair competition laws" may place some constraints on these activities, the antitrust laws cannot, for they are designed to protect competition, not competitors.⁵⁸

Indeed, courts have thus uniformly held that it raises no issue under the antitrust laws when, as here, a large integrated firm uses its own customer

lists to market new services (like cellular) to existing customers of its own services (like long distance). In particular, it is well-settled that when no essential facilities are involved, it is efficient and procompetitive for a large multi-product firm to take advantage of its integration in the same way a smaller multi-product firm would. See *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979). On this basis, courts have held that it is procompetitive and raises no issue under the antitrust laws when even a local gas monopoly uses lists of its own gas customers to advertise and market related products (there, gas vent dampers) because no essential facilities are involved and the conduct constitutes a legitimate and procompetitive efficiency of integration, not an abuse of monopoly. See *Catlin v. Washington Energy Co.*, 791 F.2d 1343, 1345-48 & n.1 (9th Cir. 1986) (rejecting claim of a group of suppliers of vent dampers that the gas company "should be barred from permitting its merchandising division to use the list [of gas company customers] to advertise vent dampers to the detriment of competit[ors] in the vent damper market") (internal quotation omitted).

In this regard, the RBOCs' contention that AT&T is a "dominant" long distance carrier with "market power" is both erroneous and irrelevant. The claims are erroneous because the RBOCs' claims rest on FCC findings that were made in 1982 and that have no current validity.⁵⁹ The reality is that AT&T faces up to 35 long distance competitors in each RBOC cellular

system. Whereas AT&T believes that its share of cellular-originated long distance calling is not materially different from its share of switched long distance calling (currently 57.8% of minutes),⁶⁰ the fact is that each AT&T long distance customer freely chose AT&T in a competitive market. In all events, the RBOCs' claims are irrelevant, for the foregoing cases squarely hold that it is procompetitive and beneficial to consumers for even "the dominant firm in any market * * * [to] create demand for [its] new products" by marketing new services to its existing customers.⁶¹

In this regard, whereas regulatory agencies have authority to adopt solicitation restrictions, the FCC has also concluded that it promotes competition and benefits consumers to allow AT&T to market other products or services to its long distance customers. For example, at a time in which AT&T's long distance market share was 90%, the FCC held that AT&T could use lists of its long distance customers and their usage information to market CPE and enhanced services to any customer who did not notify AT&T that it did not wish to receive such solicitations,⁶² and the FCC extended the same regulation to AT&T's marketing of cellular service in the order approving the AT&T-McCaw merger.⁶³ In this regard, the FCC found that the ability of AT&T-McCaw to engage in joint marketing and "cross-selling" is one of the principal ways in which the merged entity can compete more effectively with the local RBOC monopoly and that the RBOCs' "parity for parity's sake" arguments are contrary to the Communications Act as well as the antitrust laws.⁶⁴

The RBOCs' Claims Are Hypocritical. The RBOC pleas for "parity" are not only anticompetitive, but also hypocritical, for they are simply seeking to preserve (and extend) advantages that the RBOCs received because of their

⁵⁶ See *Southwestern Bell v. FCC*, Nos. 94-1637 & 94-1639 (D.C. Cir.), Brief for Appellant SBC Communications Inc., p. 29 (Dec. 28, 1994).

⁵⁷ See, e.g., *Northwest Power Products, Inc. v. Omark Industries, Inc.*, 576 F.2d 83 (5th Cir. 1978) (rejecting claim that it violated antitrust laws for dealer and new distributor to conspire to take away plaintiff old distributor's customers by hiring a contingent of its employees, together with a customer list); *accord Seaboard Supply Co. v. Congoleum Corp.*, 770 F.2d 367, 375 (3d Cir. 1985).

⁵⁸ See *Northwest Power Products*, 576 F.2d at 88-91 (noting that the challenged conduct, even if unfair, "enhanced rivalry rather than reducing it," and holding that "the purposes of antitrust law and unfair competition law generally conflict. The thrust of antitrust law is to prevent restraints on competition. Unfair competition is still competition and the purpose of the law of unfair competition is to impose restraints on that competition. The law of unfair competition tends to protect a business in the monopoly over the loyalty of its employees and its customer lists, while the general purpose of the antitrust laws is to promote competition") (emphasis added).

⁵⁹ The RBOCs rely on the fact that AT&T is classified as a "dominant" carrier because the FCC previously found AT&T to possess market power. However, AT&T was so classified in 1982. Since that time, the FCC has eliminated price cap and other economic regulations of AT&T's 800 and large business services (Baskets 2 and 3). See *Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, 5893-96, 5908 (1991) (Basket 3); *id.*, 8 FCC Rcd 3668, 3671 (1993) (Basket 2). In addition, based on its finding of "adequate competitive alternatives," the FCC recently announced its intention to remove all commercial long distance services from Basket 1. See *Revisions to Price Cap Rules for AT&T Corp.*, CC Docket No. 93-197, 1995 FCC LEXIS 250, ¶26 (Jan. 12, 1995). The FCC has retained price cap regulation of AT&T's residential services only because the FCC stated that it cannot determine (one way or another) whether AT&T has market power in these segments of the long distance market. See *Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd at 5908 ("there are unresolved issues and insufficient information in the record about the competitiveness of Basket 1 operator services"); *Price Cap Performance Review for AT&T*, 8 FCC Rcd 6968, 6970 (1993). Finally, AT&T has now shown that it has no such market power and should be classified as "nondominant." See Motion for Reclassification of American Telephone & Telegraph Company as a Nondominant Carrier, CC Docket No. 79-252 (FCC, filed September 22, 1993).

⁶⁰ The FCC has reported that, in the third quarter of 1994, some 71% of telephone lines were presubscribed to AT&T, but it has only 57.8% of total minutes. The discrepancy reflects that customers who make no, or few, long distance calls disproportionately select AT&T, which gives it a higher percentage of presubscribed lines than AT&T has of actual long distance calling. Similarly, whereas the Department has found that in excess of 70% of cellular customers select AT&T (Competitive Impact Statement, pp. 12-13), that figure does not reflect the percentage of cellular-originated calls or minutes that AT&T carries.

⁶¹ *Foremost Pro Color, Inc. v. Eastman Kodak Co.*, 703 F.2d 534, 546 (9th Cir. 1983). *accord Berkey Photo*, 603 F.2d at 273-76; *Catlin v. Washington Energy*, 791 F.2d at 1345-48.

⁶² See Amendment of Section 64.702 of the Commission's Rules and Regulations, 104 FCC 2d 958, 1089 (1986).

⁶³ See *FCC Order*, ¶ 83.

⁶⁴ See *FCC Order*, ¶¶ 32, 83.

local exchange monopolies. These monopolies meant that the RBOCs received "B" Block cellular licenses at no cost in their franchised monopoly territories, that they received one to three year headstart monopolies over nonwireline competitors which guaranteed the RBOCs the exclusive right initially to sign up the best cellular customers, and that the RBOCs are able to "piggy back" (SBC, p. 12) on the local exchange monopoly through use of common trade names and joint advertisements and the receipt of monopoly financing. See pp. 10-12, *supra*. These factors help explain why every significant nonwireline carrier (save McCaw) was forced to sell out to RBOCs, and why McCaw has the \$5.7 billion debt, and marketing weaknesses, that led to the merger. See pp. 12-13, *supra*. The RBOCs previously defended this lack of "parity." See pp. 10-13, *supra*.

In this regard, if there were any basis for Bell Atlantic/NYNEX's prediction that they could immediately lose significant numbers of customers to AT&T-McCaw, the only possible explanation would be that these RBOCs have acquired and retained many of their customers solely because of the foregoing advantages. In particular, that prediction could be accurate only if these RBOCs had obtained and retained these customers solely by exploiting fears about McCaw's weaknesses and competence and the benefits of dealing with large, experienced telecommunications carriers, *not* because these RBOCs in fact provided high quality and competitively-priced services.

Further, the RBOCs' proposal is hypocritical for the added reason that they have elsewhere argued the precise opposite of what they here urge. As noted above, there are conditions in which the FCC has the authority to impose the kinds of marketing/solicitation restrictions that RBOCs seek, and the RBOCs have opposed the adoption or continuation of these restrictions on the RBOCs' offerings. The RBOCs have argued to the FCC on the basis of *Catlin* and other authorities cited above that it is procompetitive for RBOCs to be free to use their *monopoly* local exchange customer lists and usage information to market competitive enhanced services and CPE to their customers.⁶⁵ Indeed, the RBOCs

succeeded, on that basis, in overturning FCC regulations that previously barred these direct solicitations.⁶⁶ In each instance, the RBOCs are able to market their CPE and enhance services to local exchange customers who currently use other vendors for those competitive offerings and who are, in the RBOCs' words, a "joint" customers of an RBOC and an independent CPE and enhanced services vendor.

Even more pertinently, the RBOCs seek the same rights in cellular. While FCC cellular regulations have barred RBOCs from using local exchange customers' information in marketing cellular service (47 CFR § 22.901(d)), the RBOCs are seeking to overturn these restrictions and obtain the same rights to use their customers' information in the marketing of cellular radio service that AT&T possesses.⁶⁷

The RBOCs also argue that AT&T would not have independent long distance customer relationships with RBOCs cellular subscribers if the MFJ did not bar RBOCs from providing interexchange services and require them to provide equal access. But that claim is irrelevant and erroneous. The plaintiffs in *Catlin* and the RBOCs' CPE and enhanced services competitors were legally barred from providing the monopoly gas and exchange services, but courts and the FCC nonetheless held that it was efficient and procompetitive for the monopolies in *Catlin* (and the RBOCs) to use their customer lists in marketing competitive products and services. Those principles apply *a fortiori* in the case of AT&T, for its long distance services are competitive.

More fundamentally, the RBOCs' arguments simply confirm the wisdom of the MFJ. The MFJ restrictions on the RBOCs have been upheld by Judge Greene, the Court of Appeals, and the

records and should therefore be permitted." *Computer III Remand Proceedings*, 6 FCC Rcd. 7571, 7608 (1991).

⁶⁶ See *Furnishing Customers Premises Equipment by the Bell Operating Telephone Companies*, 2 FCC Rcd 143, 152-53 (1987) (removing restrictions on RBOCs' use of local customer information in marketing CPE); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 104 FCC 2d 958, 1091 (1986) (removing restrictions on RBOCs' use of local exchange customer information to market enhanced services), *recon.*, 2 FCC Rcd 3072, 3094-95 (1987), *recon.*, 3 FCC Rcd 1150, 1162-63 (1988), *recon.*, 4 FCC Rcd 5927 (1989), *vacated and remanded*, *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990), *on remand*, 6 FCC Rcd 7571, 7609-14 (1991), *vacated and remanded in part and affirmed on this ground*, *California v. FCC*, 39 F.3d 919, 930-31 (9th Cir. 1994).

⁶⁷ See, e.g., *Petition of Bell Atlantic, NYNEX, and Southwestern Bell for Investigation and for Order to Show Cause* pp. 3, 12-14, FCC File No. MSD 93-13 (Jan. 27, 1993) (arguing that these and other Part 22 restrictions on RBOCs should be removed).

Supreme Court precisely because of the substantial likelihood that RBOCs would otherwise use their bottleneck monopolies to impede long distance competition, harm consumers, and thwart the objectives of the antitrust laws. The RBOCs are here seeking to prevent AT&T-McCaw from competing more effectively with the RBOCs' cellular services by claiming that they would now have long distance monopolies if the MFJ did not exist. That shows that the MFJ promotes competition in cellular as well as long distance services.

The Information at Issue Is the Customers' Property, Not the RBOCs'. The RBOCs also claim that information that AT&T possesses consists of "property" or "trade secrets" that the Proposed Decree (and the MFJ) elsewhere protect, and that the Department acted inconsistently by allowing AT&T-McCaw to use AT&T's long distance customer information in marketing cellular services. There is no basis for this claim. The information that AT&T has consists of the names, addresses, and long distance usage information of AT&T's own long distance customers who freely choose AT&T services and who allow AT&T to use the information to offer other products or services. In this regard, the pertinent FCC regulations recognize that this information is the *customer's* not any carrier's, and the customer controls how the information is to be used. By contrast, the only information that the Proposed Decree protects is the nonpublic information of cellular *carriers* in their capacity as *customers* of equipment manufacturers.

Preliminarily, there is no basis for the RBOCs' insinuations that AT&T's long distance arm has the lists and cellular usage information of the RBOCs' cellular customers. Lists of RBOC cellular customers and usage information are not provided to AT&T or any other long distance carrier when cellular systems "cut over" to equal access or otherwise. For example, to the extent that long distance carriers mail out marketing literature to cellular customers, they do so by providing the literature to independent agents who receive the customer lists from the RBOCs and who mail out the long distance carrier's literature. That has been the practice under the MFJ, and the Proposed AT&T-McCaw Decree similarly limits the use of McCaw's cellular lists to the marketing of long distance services. Proposed Decree, § IV(C).

Conversely, when a cellular customer selects an individual interexchange carrier, that customer's name, address,

⁶⁵ For example, in defending against "competitive equity" challenges to the Commission's regulations that allow RBOCs to use *their* customers' names and usage information ("CPNI") to market "enhanced services," the RBOCs, citing *Catlin*, "argue[d] that their access to CPNI is no different from an unregulated company's access to its customer

and long distance (but *not* local cellular) usage information is forwarded to the long distance carrier to whom the customer subscribes.⁶⁸ Long distance carriers, in turn, are free to use *that* information to offer their long distance customers any other products or services, be they CPE, enhanced service, or cellular service, subject only to FCC regulations. Notably, contrary to these RBOCs' assertions (e.g., SBC, p. 8), the same rule applies under the Proposed Decree. If a McCaw cellular customer subscribes to Sprint, MCI, or any other AT&T competitor, that firm obtains the foregoing information from its customers and is free to use that information in offering other products or services, including cellular service or substitutes for cellular service (e.g., PCS), subject only to FCC regulations.

Further, the FCC regulations reject these RBOCs' claims that any information about their cellular customers is the RBOCs' property and hold, to the contrary, that the uses of the information should be controlled by the *customer*, not by any carrier. In particular, the FCC regulations applicable to AT&T provide that, upon a customer's request, AT&T must (1) make that customer's usage and other information available to AT&T competitors, and (2) prohibit AT&T personnel involved in marketing cellular service (or CPE and enhanced services) from using the customer's name, address, and long distance usage information.⁶⁹

⁶⁸ SBC concedes the point, for it is reduced to making contrived arguments to the effect that AT&T could make *guesses* about whether a particular AT&T long distance customer is an "above-average" cellular customer of an RBOCs. See SBC, p. 9. For example, SBC states that many cellular customers (an alleged 75%) who make over 275 minutes of long distance calls a month are above average local cellular users—meaning that 25% of even the heaviest long distance users are below average cellular customers. Conversely, as SMC's charts show, there are a significant percentage of "above average" customers (50%) that make few long distance calls (120 minutes) and a significant percentage of "above average" cellular customers (10%) that make no long distance calls. See *id.*, Stupka Aff., Attach. A. That reflects the reality that long distance calling represents a small fraction (an average of 10% according to the RBOCs) of total cellular usage.

⁶⁹ See *Furnishing of Customer Promises Equipment and Enhanced Services by AT&T*, 102 FCC 2d 655 (1985); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 104 FCC 2d 958 (1986), *recon.*, 2 FCC Rcd 3072 (1987), *recon.*, 3 FCC Rcd 1150 (1988), *recon.*, 4 FCC Rcd. 5927 (1989), *vacated in part on other grounds, California v. FCC*, 905 F.2d 1217 (9th Cir. 1990). See also *FCC Order*, ¶ 83. Further, just as the FCC recognized that customers should control uses of information, the FCC stated that "[i]f a cellular carrier could prove that AT&T/McCaw misappropriated [customer information] or misused such information entrusted to it, that carrier would have a remedy through the

Against this background, there is no basis for the RBOCs' claims that the absence of a restriction on AT&T's solicitation of its own customers is inconsistent with other provisions of the Proposed Decree that protect cellular carriers' and cellular manufacturers' trade secrets and other nonpublic information. In particular, the RBOCs refer to the Proposed Decree's provisions that prohibit AT&T's manufacturing arm from disclosing to McCaw nonpublic information about its competitors' cellular systems (and that prohibit McCaw from giving AT&T's manufacturing arm nonpublic information of other cellular equipment manufacturers).

But there is no inconsistency. In each event, it is the *customer* who controls dissemination of information. An RBOC cellular carrier is the customer of AT&T's manufacturing arm, and the Proposed Decree prohibits AT&T from disclosing to McCaw nonpublic information about the RBOC cellular system which the RBOC owns and has a legal right to protect, which is provided to AT&T under contractual provisions requiring that it not be disclosed to competing cellular carriers, and which (in the Department's view) the RBOC is required to continue providing AT&T by virtue of the alleged "lock-in." AT&T and McCaw readily agreed to these provisions because each unit of AT&T will always safeguard nonpublic information that customers (or suppliers) provide AT&T in confidence.⁷⁰ Competition requires all suppliers to protect customers' proprietary information (and vice versa), so the Proposed Decree merely enjoins AT&T and McCaw to behave as all firms behave in competitive markets.

By contrast, the names, addresses, and long distance usage information of AT&T's long distance customers are not information from or about the RBOCs' cellular system. Rather, it is information about AT&T's customers which those individual long distance customers provide to AT&T by freely choosing AT&T's long distance service. Further, those customers can decide not to receive cellular or other solicitations from AT&T and are also free to reject any such solicitations from AT&T and are also free to reject any such

Commission complaint process or the courts." *FCC Order*, ¶ 83.

⁷⁰ Further, because it is the Department's view that some of the information in question could not directly be exchanged between competing cellular carriers without facilitating collusion between carriers (see *United States v. Container Corporation of America*, 393 U.S. 333 (1969)), the Proposed Decree provides that AT&T cannot pass such information on to McCaw even if the RBOCs consent.

solicitations (and to change long distance carriers). There is no competitive or other basis to prohibit AT&T from marketing cellular or other services to those customers who allow these solicitations. To the contrary, as explained above, that would be anticompetitive and harmful to consumers.

B. The RBOCs' Other Attempts to Obtain "Parity" Are Spurious Challenges to the MFJ

In addition to the foregoing claims, the four RBOCs also argue that the Proposed Decree is not in the "public interest" because it does not otherwise achieve strict "parity" between the RBOCs and AT&T-McCaw. In particular, while the Proposed Decree's equal access provision and interexchange services restriction on McCaw eliminate "disadvantages" of which the RBOCs formerly complained—e.g., McCaw's ability to offer the "City of Florida" and other such "bundled" wide area calling plans—the RBOCs object that there are a number of respects in which the Proposed Decree otherwise contains different provisions from the MFJ. On the basis, these RBOCs claim that the Proposed Decree will not be in the public interest unless the MFJ's interexchange services restriction on RBOC wireless services is first removed and the Court adopts *identical* equal access and long distance restrictions for AT&T-McCaw and for RBOCs.

These claims are baseless. While many of the RBOCs' claims are based on misinterpretations of the Proposed Decree, Judge Greene (and the FCC) have repeatedly held that the public interest patently does not require "parity" between AT&T-McCaw and the RBOCs and that the RBOCs are properly subjected to different restrictions under the MFJ because they alone have bottleneck monopolies.

Foremost, Judge Greene has so held in a number of decisions under the MFJ. In particular, the RBOCs have repeatedly sought to modify the MFJ's long distance and other restrictions by claiming that doing so was necessary to enable them to compete with AT&T and others on equal terms. In each case, Judge Greene flatly rejected these claims on the ground that the RBOCs have bottleneck monopolies that can be used to impede long distance competition and AT&T and others do not.⁷¹

Further, the FCC has now agreed with Judge Greene. In particular, the FCC

⁷¹ See, e.g., *United States v. Western Elec. Co.*, 627 F. Supp. 1090, 1098–1104 (D.D.C. 1986) (shared tenant services); *United States v. Western Elec. Co.*, 592 F. Supp. 846, 868 (D.D.C. 1984) (BellSouth NASA waiver).

rejected the same arguments that these RBOCs here press in its order that approved the AT&T-McCaw merger. The FCC held that "the rationale for the MFJ's limitations on the BOCs—the existence of a long-entrenched exchange service bottleneck encompassing virtually every home and business in the BOCs' territories—does not apply to AT&T/McCaw," that there is no competitive or other public interest reason for imposing additional restrictions on AT&T/McCaw, and that neither the antitrust laws nor the Communications Act permits the creation of "parity for parity's sake."⁷²

Nor is there any merit to the four RBOCs' startling claim that the Proposed Decree is "contingent" on removal of the MFJ's interexchange services restriction on RBOC cellular systems and the adoption of "parity." BellSouth, p. 4; see SBC, p. 19. The proposed Decree says no such thing. The reason is that while the Department has urged (erroneously in AT&T's view) this modification of the MFJ under certain conditions, the Department recognized that AT&T opposed this proposal and that it would not be granted unless the Court concluded the proposal satisfied the standard set forth in Section VIII(C) of the MFJ. Further AT&T is a party to the Proposed Decree, and it would not have agreed to it if it were conditioned on modification of the MFJ.

Indeed, in arguing otherwise, the four RBOCs rely on the Department's assertion in the Competitive Impact Statement that the equal access provisions in the Proposed Decree are "modeled on" the MFJ and "largely identical to the conditions recommended by the United States for provision of interexchange cellular service by the Bell Companies." Competitive Impact Statement, p. 15 (emphasis added). However, as the Department has made explicit, the two sets of conditions are identical only insofar as each is designed to prevent cellular carriers from using market power in cellular services to deny cellular customers the ability to select their interexchange services provider,⁷³ and it is also the Department's view that the RBOCs' control of landline exchange monopolies require additional restrictions that apply to the RBOCs alone.⁷⁴

The foregoing facts dispose of all the RBOCs' claims of lack of "parity."

However, many of the RBOCs' specific claims rest on misunderstandings of the AT&T-McCaw Decree, and each of them is otherwise meritless.

Interexchange Traffic Routing. First, three of the RBOCs (SBC and Bell Atlantic/NYNEX) object that the Proposed AT&T-McCaw Decree allows McCaw's switches to perform "interexchange traffic routing,"⁷⁵ but the Department has not proposed that the RBOCs be able to perform this function. This claim is baseless.

Preliminarily, it is not the case that the Proposed Decree unqualifiedly allows interexchange traffic routing by McCaw. To the contrary, it allows McCaw to perform this function for AT&T only if McCaw is able to offer to do so for other interexchange carriers on the same terms and conditions. Proposed Decree, § IV(D)(1). Further, while McCaw believes that it will perform these routing functions during the life of the Decree, it has no plans to engage in interexchange traffic routing in the immediate future or to do so on the scale hypothesized by the RBOCs. Compare SBC, pp. 20–21.

Further, the difference in treatment between AT&T-McCaw and the RBOCs is abundantly justified. Because McCaw does not own the bottleneck landline access facilities that connect its MTSOs to interexchange carrier networks, there is no risk that McCaw's provision of interexchange traffic routing functions could lead to discrimination against competing interexchange carriers in access to essential facilities or to cross-subsidization of competitive services with monopoly revenues. By contrast, if an RBOC cellular system were authorized to provide functions from its MTSOs, its control of local bottlenecks would enable it to discriminate at will in pricing and provisioning monopoly exchange facilities. In particular, because its MTSO would then become part of its interexchange network, it could then preferentially provide itself bottleneck facilities on the ground that those facilities are not performing access functions, but are part of its "competitive" long distance business.

In this regard, it is revealing that the only way the RBOCs can claim that they should be allowed to provide these interexchange traffic routing functions is by claiming, once again, that interexchange carriers are not dependent on RBOCs for the access facilities connecting interexchange carrier points of presence ("POPs") to MTSOs, but can obtain these access

facilities from their parties. See SBC, pp. 21–22. However, that assertion is false—as AT&T and MCI have elsewhere demonstrated.⁷⁶

Sales Agency. The RBOCs next object that, whereas the Department's generic wireless proposal requires RBOCs to have separate sales forces for cellular services, the Proposed AT&T-McCaw Decree (the RBOCs claim) allows AT&T's long distance arm "to perform all marketing of local and long-distance cellular services for McCaw." SBC, p. 25; see Bell Atlantic/NYNEX, p. 13. However, that claim is based on a misreading of the Proposed Decree.

The Proposed Decree requires that McCaw be maintained as a separate corporation that is responsible for "the operation * * * and the marketing" of its wireless systems, that McCaw cannot "delegate substantial responsibility for the performance of [these functions] to AT&T," and that McCaw cannot provide or market long distance service after a system converts to equal access. § III(C). Because the ability of AT&T to use its long distance and other personnel to market cellular service and to engage in joint marketing of local cellular and long distance services through these other channels is a major procompetitive efficiency of the merger (see pp. 51–58, *supra*), the Proposed Decree also provides that AT&T is allowed to act as McCaw's "agent" in marketing cellular service and in jointly marketing long distance and cellular service. However, this "agency" provision does not mean AT&T can perform all marketing for McCaw. The Decree requires McCaw to retain its own independent retail marketing outlets and sales channels.

Customer Location Databases. Bell Atlantic/NYNEX further claim that the Proposed Decree is unlike the MFJ in that it purportedly does not require McCaw to provide interexchange carriers with nondiscriminatory access to McCaw's customer location databases. However, this claim, too, rests on a misunderstanding of the Proposed Decree. Although the Proposed Decree's definition of MTSO may not include customer location databases (compare Bell Atlantic/NYNEX, p. 3 with Proposed Decree, § II(W)), the Proposed Decree requires that all interexchange carriers obtain "customer location information for use

⁷⁶ See *United States v. Western Elec. Co.*, Civ. No. 82–0192 (D.D.C.), AT&T's Reply to the Response of the Bell Companies to AT&T's Supplemental Comments on the Motion for a Generic "Wireless" Modification of the Decree's Interexchange Services Restriction, pp. 3–5 (Nov. 23, 1994); *id.*, Transcript of Oral Argument Concerning Generic Wireless Waiver Request, pp. 49–54 (Dec. 14, 1994).

⁷² FCC Order, ¶ 32 (footnote omitted).

⁷³ See *Competitive Impact Statement*, pp. 14, 16–17; DOJ Generic Wireless Memorandum, pp. 19–21.

⁷⁴ DOJ Generic Wireless Memorandum, pp. 40–42.

⁷⁵ I.e., sorting long distance calls by destination and routing them to different circuits depending on the destination of the call.

in routing calls" in the "same manner" and under the same "terms and conditions" as does AT&T. Proposed Decree, § IV(D)(1).

Boundaries After Equal Access Conversions. The Proposed Decree provides that after individual McCaw cellular systems convert to equal access, each system generally will be limited to the same local calling areas as apply to RBOCs under the MFJ. However, several RBOCs object that McCaw would be authorized to provide cellular service in 19 multiLATA areas in which RBOCs do not currently have MFJ waivers to provide cellular service. BellSouth, pp. 10–11; Bell Atlantic/NYNEX, pp. 13–14. The Decree contains this exception because McCaw has been licensed to serve the MSAs that comprise these areas and McCaw has established a single integrated cellular system that serves MSAs in the remote LATAs through one or more central switches that are located in a different LATA.

But there is no lack of "parity" in these areas, and no possible claim that this feature of the Proposed Decree is virtually certain to impede competition. Quite apart from the fact that there are many areas in which the RBOCs' cellular systems serve larger areas than do the competing McCaw systems, the overriding fact is the RBOCs are not licensed to serve the same MSAs that comprise any of these 19 multiLATA local cellular calling areas or otherwise have had no occasion to seek a comparable waiver under the MFJ for these areas. Further, each of these 19 areas is comparable in size and other characteristics to areas in which RBOCs have received MFJ waivers in the past, and the criteria that Judge Greene has applied under the MFJ would, in AT&T's view, support a waiver in each such area. For this reason, AT&T would not oppose an RBOC request for an identical MFJ waiver if an RBOC were to have reason to seek one. Finally, AT&T has also stipulated that the Justice Department can challenge any of these calling areas if it hereafter determines that they are too large.

Decree Duration. Next, BellSouth objects that whereas the MFJ has no fixed termination date, the Proposed Decree provides that it expires after ten years. However, these differences merely reflect the reality that no one can predict when the conditions that led to the MFJ—the RBOCs' control over bottleneck local exchange monopolies—will end. By contrast, the Proposed AT&T-McCaw Decree is premised on the alleged "lock in" of certain cellular carriers to AT&T equipment and the alleged absence of effective competition with today's cellular carriers. Given the

rapid rate at which cellular equipment becomes obsolete and the imminent licensing of PCS systems, it can confidently be predicted that the conditions that gave rise to the Proposed Decree cannot last another ten years (and will almost certainly disappear much earlier). Further, because there is no statute of limitations on challenges to mergers, the Department will have the authority at the end of ten years to seek other injunctive relief against the merger in the unlikely event that conditions could then so warrant.

The Proposed Decree's Inapplicability to PCS. Similarly, BellSouth complains that the MFJ restrictions apply to all RBOC services (including PCS), but that the Proposed Decree applies only to "McCaw Cellular Systems." But here, too, these differences merely reflect the different competitive reasons for the two decrees. The restrictions on AT&T-McCaw are predicated on the alleged lack of effective competition among today's cellular systems, and if and when PCS systems are implemented, they will compete with today's entrenched cellular systems and provide alternatives to them. By contrast, the MFJ restrictions on RBOCs rest on the RBOCs' control over bottleneck landline monopolies that connect interexchange carriers to end user customers, and just as cellular systems have not created alternatives to landline exchanges to date, there is no basis for predicting that PCS systems will do so. However, if they do, the RBOCs will be entitled to removal of the MFJ's restrictions.

Purportedly Different Modification Standards. BellSouth and Bell Atlantic/NYNEX also complain that the two decrees have different modification provisions. In particular, they state that the Proposed Decree allows McCaw to move for modifications that parallel any waivers that the RBOCs obtain under the MFJ by making a competitive and public interest showing (§ X), that McCaw can obtain rights to provide access to interexchange carriers at centralized points upon a similar showing (§ IV(G)), but that there is "no apparent way for McCaw's relief to inure to the benefit of its competing Bell cellular company" (Bell Atlantic/NYNEX, p. 15). However, just as AT&T-McCaw can seek modifications of the Proposed Decree that are parallel to any MFJ waivers, the RBOCs are free to seek modifications of the MFJ that parallel any modifications or waivers that are obtained under the AT&T-McCaw Decree. Whether modifications or waivers of either decree are granted depends on whether the necessary competitive and public interest showings are made.

BellSouth's Challenge to Definition of "Control". Finally, BellSouth challenges the Proposed Decree's definition of "control," apparently because BellSouth fears the provisions of the Proposed Decree that govern "McCaw Cellular Systems" could be held applicable to the Los Angeles and Houston systems in which BellSouth and McCaw have what could loosely be described as "joint control." However, this "joint control" was held sufficient to make these cellular systems "BOCs" under the MFJ, and it would be neither anomalous nor inappropriate if the systems were held to be "McCaw Cellular Systems" under the Proposed Decree. Further, the assertions that BellSouth and McCaw each have only "negative" control in these systems is not accurate. McCaw has the ability to cause management changes in these systems (over BellSouth's objection) if it can persuade the independent tie-breaking director to side with McCaw, and BellSouth has the same ability to impose changes over McCaw's objection if the independent director votes with BellSouth.

C. The Ad Hoc IXCs Are Challenging Procompetitive Features of the Merger

Finally, comments have been filed by the Ad Hoc IXCs, a group of switchless interexchange resellers who own and operate no facilities, but make money solely through arbitrage. They have used their comments here—as they did in prior filings before the FCC and before Judge Greene in the Section I(D) waiver proceeding—to repeat allegations that AT&T has violated regulatory or contractual commitments in its dealings with these resellers. AT&T believes that these allegations will be rejected in the pending cases and appeals that the Ad Hoc resellers cite, but the short answer to them is that they do not implicate the antitrust laws,⁷⁷ much less issues raised in the Department.

Stripped of its rhetoric, moreover, the comments of the Ad Hoc IXCs have only a single substantive objection to the Proposed Decree: that it does not prohibit the combined AT&T-McCaw from offering alternatives to today's landline exchange monopolies if and when it becomes economically and technologically possible for cellular systems to do so. However, as Judge Greene and the Department have previously concluded, that would be a procompetitive development and it would be antithetical to the antitrust laws to prevent AT&T from doing so.

⁷⁷ For example, in the case cited (*Central Office Telephone, Inc. v. AT&T*, No. 91-1236 (D. Or.)), the District Court dismissed the plaintiff's antitrust claims and allowed only breach of contract and tort claims.

Similarly, as the FCC and the New York PSC have found, the merger means that these procompetitive developments are more likely.

Conclusion

For the reasons stated, the Proposed Decree is in the public interest within the meaning of the Tunney Act.

Respectfully submitted,
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APPENDIX—EXTENT OF COMPETITION BETWEEN MCCAW AND INDIVIDUAL LECS

Majority owner*	Total number of majority-owned systems	Number of majority-owned systems that compete with McCaw majority-owned systems	Total number of AT&T-equipped majority-owned systems	Number of systems with AT&T equipment that compete with McCaw
Ameritech	24	0	22	0
Bell Atlantic	28	2	10	1
BellSouth	43	6	9	2
General Cellular Corporation	8	0	1	0
GTE (Contel & Mobilnet)	76	13	61	12
Independent Cellular	7	4	7	4
NYNEX	13	1	12	1
Pacific Northwest Cellular	5	0	5	0
PacTel Corporation	5	0	1	0
Southern New England Telecommunications	5	0	5	0
Southwestern Bell (SBMS)	30	4	13	3
United States Cellular	35	6	2	0
U S West	25	16	4	2
Vanguard	16	0	1	0
Total	320	52	153	25

*Majority ownership consists of a greater than 50% interest.

Comments of Bell Atlantic Corporation and NYNEX Corporation on Proposed Final Judgment in *United States v. AT&T Corp. and McCaw Cellular Communications, Inc.*

Bell Atlantic Corporation and NYNEX Corporation submit these comments in response to the Department of Justice's public notice and invitation for comments on the Proposed Final Judgment in *United States v. AT&T Corp. and McCaw Cellular Communications, Inc.*, Civil Action No. 94-01555 (HHG). 59 Fed. Reg. 44158 (Aug. 26, 1994).

Bell Atlantic and NYNEX have filed a private action pursuant to Section 7 of the Clayton Act challenging the lawfulness of the AT&T-McCaw merger. *Bell Atlantic Corp. et al. v. AT&T Corp. et al.*, No. CV 92-3682 (ERK) (E.D.N.Y.). Although we do not propose to present in this Tunney Act proceeding all the claims that we have raised in the private action, we summarize briefly below some of our concerns about the effectiveness of the proposed decree, concerns that we intend to develop fully in the upcoming trial in New York. Moreover, because the extensive pretrial and trial record of that case may inform

the Department's and the Court's consideration of the proposed decree, AT&T should be directed to make available to all interested parties in this proceeding the full record of the New York case, including the trial proceedings that are scheduled to begin on November 1, 1994.

I. The Proposed Decree Does Not Sufficiently Rectify the Antitrust Violation Caused by the AT&T-McCaw Merger

Bell Atlantic and NYNEX believe that the proposed decree is fundamentally inadequate to protect against the anticompetitive effects of the AT&T-McCaw merger alleged in the Department's Complaint and summarized in the Competitive Impact Statement.

A. The Vertical Effects

The antitrust violation that results from combining AT&T's cellular equipment business with McCaw's cellular service business can be cured only by a *structural* remedy—one that either eliminates AT&T's equipment lock-in power or uncouples that power from the economic incentive to exploit

it. An effective structural remedy would require the combined AT&T-McCaw (1) to divest McCaw (thereby removing AT&T's incentive to suppress competition in local cellular service markets); or (2) to divest AT&T's cellular equipment business (thereby removing the source of AT&T's lock-in power over its equipment customers); or (3) as one of several components of effective injunctive relief, to build switches and other cellular infrastructure equipment pursuant to publicly available standards, and to license the use of any necessary intellectual property, so that third parties can manufacture and sell equipment fully compatibly with AT&T equipment (thereby permitting meaningful competition in equipment markets and loosening AT&T's lock-in power).

Divestiture is the most straightforward structural solution. While AT&T's equipment customers would remain locked-in to their supplier, divestiture would ensure that their supplier does not also become their direct competitor. By keeping the power and the incentive to abuse it in separate hands, divestiture would best protect against the

anticompetitive harms threatened by the vertical aspects of the AT&T-McCaw merger.

Opening equipment interfaces would attempt to attack AT&T's lock-in power at its source. If effectively implemented, that solution might enable other manufacturers to build equipment that could operate compatibly with AT&T switches, thereby weakening AT&T-McCaw's power to restrain competition in cellular service markets. Evidence to be presented in the New York private action will demonstrate that AT&T has developed and successfully pursued a covert policy, revealed in its own documents, of thwarting industry-wide open interfaces as part of a strategy to deter competition. The evidence will also show that competing manufacturers of cellular network equipment—including Motorola, one of AT&T's largest equipment competitors, and ADC Kentrox, a small but ambitious new entrant—have a strong interest in uniform and open industry standards and are prepared to build to such standards in direct competition with AT&T as soon as the currently proprietary interfaces are opened up.¹

The Proposed Final Judgment does none of these things. Instead of devising an effective structural solution, the decree attempts to address the merger's serious anticompetitive problems exclusively through *conduct* restrictions. But the proposed decree's general provisions—prohibiting discrimination and requiring the merged entity to operate under the same pricing and other business practices in effect prior to the merger—do not address many of the key competitive concerns and, as to those that are addressed, are far too vague to be enforceable at any reasonable cost or to deter potentially injurious anticompetitive conduct.

Our evidence in the private action will demonstrate that AT&T-McCaw can inflict anticompetitive injury without engaging in detectable discrimination or otherwise violating the provisions of the

proposed decree. Among the problems are the following:

1. AT&T can raise equipment prices in a disparate fashion without an appearance of discrimination. AT&T does not publish fixed prices for its equipment; rather, its prices vary widely depending on a range of supposedly customized hardware and software features and capacities. AT&T will find it all too easy to justify higher prices to McCaw's competitors on the theory that they have "unique" equipment needs. Since the decree does not require AT&T to make public the terms of its equipment contracts—and since the contracts themselves forbid its customers from doing so—McCaw's competitors will have no basis for determining whether they are being discriminated against unreasonably. Moreover, AT&T can unfairly advantage McCaw by raising prices across the board to all its equipment customers. Because McCaw currently uses predominantly non-AT&T equipment, an increase in AT&T equipment prices will not hurt McCaw as much as its competitors. Any incidental impact on McCaw of an AT&T price increase is, in any event, merely an intracorporate accounting entry having no effect on the combined AT&T-McCaw's financial position. Only intrusive cost-based equipment price controls could effectively protect competitors and subscribers from unreasonable pricing by AT&T.

2. AT&T can restrict or delay its equipment customers' access to important new features or technologies without detection. Because its customers lack detailed information concerning the quality and quantity of resources that AT&T has devoted to meeting their equipment and software needs, they cannot hope to demonstrate that AT&T's refusal to supply equipment or software on a timely basis results from discrimination.

3. The decree nowhere prohibits AT&T from discriminating in favor of its non-McCaw allies in cellular service markets. The combined AT&T-McCaw plans to establish nationwide cellular alliances with other operators in markets not served by McCaw. In each such market, AT&T will be free under the decree to discriminate in pricing and service to favor the competitors of its locked-in customers.

4. The decree's terms cannot legislate the kind of cooperative behavior that lies within AT&T's broad commercial discretion. Going the extra mile is not an enforceable standard of conduct, and yet it is often critical to an equipment customer's competitive success. AT&T's economic interests no longer justify

taking the discretionary extra step to enhance the competitive position of McCaw's rivals, and nothing in the decree does or can require it to do so.

5. Although the proposed decree prohibits AT&T from disclosing the confidential information of its equipment customers directly to McCaw, Proposed Decree § V(A)(1)(a), it expressly *allows* senior officers of AT&T's manufacturing unit—the very employees with authority to allocate developmental resources and personnel—to receive precisely such confidential information, and it nowhere forbids them from using that information for the competitive benefit of McCaw. *Id.* § V(A)(1)(c). Moreover, even assuming that an effective Chinese Wall can be erected between AT&T and McCaw, a remedy of that sort can aspire only to prevent improper *dissemination* of information, not *misuse* of information in the hands of AT&T manufacturing employees who already have it. No regulation can effectively bar AT&T's employees from considering such information in promoting the overall economic interests of their own employer.

6. The proposed decree specifically permits AT&T to perform "proprietary development" for McCaw (§§ II(Y), V(A)(4)(b), V(C)(3)), and it affirmatively *prohibits* AT&T from disclosing to unaffiliated cellular operators the nature of any such proprietary work for McCaw (*id.* § V(A)(1)(b)). These provisions will enable AT&T to reserve exclusively for McCaw the most promising operating improvements and new features, thereby placing other operators at a critical technological disadvantage in local cellular service markets.

B. The Horizontal Effects

As the Department correctly observed in the Competitive Impact Statement, the AT&T-McCaw merger will "foreclose competition between the two largest providers of interexchange service in the highly concentrated markets in which McCaw currently provides interexchange service to its cellular customers." 59 Fed. Reg. at 44169. Before the merger, McCaw competed primarily by purchasing long-distance service in bulk at wholesale from a facilities-based carrier—predominantly AT&T—and reselling to its customers at a higher retail price. Apart from its role as a major reseller, however, McCaw also had been developing its own facilities-based long distance network in further competition with AT&T. In fact, before AT&T arrived as a suitor, McCaw had proclaimed its intention to construct a nationwide cellular network, consisting of both

¹ If the Department were prepared to consider a modification of the proposed decree designed to open equipment interfaces and alleviate AT&T's lock-in power, it should incorporate provisions specifically requiring AT&T to (1) support in industry standards bodies, and participate actively in the development of, industry-wide open equipment interfaces that would allow non-AT&T cellular network equipment to perform as well as equipment connected through AT&T's proprietary interfaces; (2) to publish and continue to support its proprietary interfaces; (3) to license on reasonable terms the patents and other intellectual property that a third party would need to build equipment fully compatible with AT&T equipment; and (4) to offer its customers equipment built either to industry-wide or AT&T open interfaces by a reasonable date certain.

owned and leased facilities, that would allow it to serve the whole country independent of other carriers. McCaw's long distance network was already significantly completed at the state and regional levels, with large regional clusters in some of the country's most active markets, particularly the Pacific Northwest and Florida. Its growth strategy mirrored the strategy that MCI and Sprint used to mount their challenge to AT&T.

The public record in the New York private action reveals that before the merger AT&T saw McCaw as a potentially powerful long distance competitor. For example, a May 1991 internal memorandum warned that McCaw's plans for "a nation wide network to link cellular systems * * * should strike terror into the heart of AT&T communications. What McCaw is planning is a separate national network that could as time goes by * * * siphon traffic from our long distance network." Similarly, an AT&T strategic study, also in May 1991, concluded that non-RBOC cellular providers like McCaw "have linked their own switches to bypass interexchange carriers and provide interlata service" and that such providers "could threaten AT&T's core long distance business.

AT&T's answer to this looming competitive threat was to eliminate it. The merger utterly destroys McCaw as AT&T's most significant cellular long distance competitor, enhancing AT&T's existing market power and intensifying concentration in markets already exceptionally concentrated. There can be no doubt that the merger substantially lessens competition in violation of Section 7 of the Clayton Act. It also nips in the bud McCaw's ambitious plan to establish a nationwide long distance network of its own in further competition with AT&T.

The antitrust violation that results from merging AT&T's and McCaw's directly competing cellular long-distance businesses is not cured by the proposed decree. On the contrary, a key provision of the decree actually *codifies* the violation. It specifically *requires* McCaw, "on a phased-in basis and no later than 21 months following the commencement of this action, [to] cease providing Interexchange Services." Proposed Decree § IV(B).

The Department may believe that its support of generic wireless relief will mitigate the merger's anticompetitive horizontal effects by allowing the entry of seven additional cellular long distance competitors. But AT&T seeks to frustrate even that objective by opposing the requested relief and subjecting it to a more rigorous standard of review.

AT&T should be required, as a condition for approval of a decree that eliminates an important long distance competitor, to support, or at least not to oppose, additional entry to the extent supported by the Department of Justice.

The proposed decree's "equal access" provisions (Proposed Decree §§ IV(B)–(D)) do not make up for the loss of McCaw itself as an independent long distance provider. McCaw currently offers consumers in its service areas an important *additional* choice. In New York, for example, cellular subscribers can choose from among AT&T, MCI, or Sprint if they select NYNEX/Bell Atlantic as their local cellular provider. Alternatively, subscribers can choose McCaw for cellular long-distance service by selecting McCaw as their local cellular provider. Because a subscriber drawn to McCaw is a retail long distance customer lost to AT&T, MCI, or Sprint, McCaw's presence as a long distance competitor exerted downward competitive pressure on retail cellular long distance rates. McCaw's disappearance as a long distance provider will deprive consumers of a potentially attractive alternative source of supply and will tend to increase cellular long distance prices.

II. The Proposed Decree Does Not Prevent AT&T From Abusing Competitively Sensitive Information Acquired in Its Capacity as the Dominant Cellular Long Distance Carrier

Aside from the proposed decree's fundamental inadequacies, we urge the Department to address a glaring but unexplained omission that threatens serious anticompetitive harm. As developed by SBC Communications, Inc., in its separate comments in this proceeding, the decree unjustifiably allows AT&T to exploit, to the competitive disadvantage of Bell company cellular providers in McCaw markets, the highly sensitive customer information that AT&T acquires as the dominant provider of cellular long distance service to the Bell companies' local cellular customers. We agree with SBC's comments on this issue.

Because of MFJ requirements, AT&T has access to detailed information concerning the cellular telephone usage patterns of each Bell Atlantic and NYNEX customer that selects AT&T as its long distance carrier. Armed with that valuable information, and in the absence of any decree provisions to the contrary, AT&T can concentrate its marketing of McCaw services on our best cellular customers, effectively appropriating without charge one of our

most valuable assets. We would never voluntarily turn over to our direct competitor our customer lists and usage information. It is simply indefensible to allow the combined AT&T-McCaw to target its local cellular service marketing at our best customers on the basis of information acquired solely in its capacity as the dominant cellular long distance carrier.

It is no answer to say that these are AT&T customers and that AT&T should be free to use its own customer information. These are *joint* customers. The only thing that AT&T provides is long distance service, but long distance usage is not the only information that AT&T would use to market McCaw's cellular service. The critical information is that these subscribers, *in addition* to being long distance customers of AT&T, are cellular customers of Bell Atlantic and NYNEX. Although we obviously cannot object to AT&T's use of information about our joint customers' long distance usage to market its long distance service, we can and do object to its opportunistic use of information about their cellular usage to market McCaw cellular service.

Allowing AT&T to exploit this information offers no public benefits. On the contrary, AT&T's ability to use our customer lists as a free-rider burdens competition in much the same way as patent infringement—one competitor's incentive to market its service aggressively will soon evaporate if another can gain the full advantage of those efforts without incurring any cost of its own. The proposed decree itself embraces that view. It specifically provides that McCaw shall provide customer lists to unaffiliated long distance carriers "for use solely in connection with marketing their Interexchange Services." Proposed Decree § IV(C). The absence of a comparable restriction on AT&T's use of equivalent information about Bell company customers is an anomaly that should be corrected.

We accordingly endorse SBC's proposed addition of a new § IV(J).

III. The Proposed Decree Embodies Other Unexplained Inequities That Should be Eliminated

A. Interexchange Routing

As SBC persuasively explains, the proposed decree would allow AT&T-McCaw to engage in interexchange routing, even though Bell cellular companies are barred by the MFJ from providing such service and the Department has opposed giving Bell companies relief from that restriction in the generic wireless proceeding. We

agree with SBC's analysis of this unexplained disparity and with the proposed alternative solutions.

We note in addition that permitting this inequity to persist would give AT&T an additional incentive to behave anticompetitively. For example, it could create new wireless long distance offerings that depend on the provision by local wireless carriers of access services that include interexchange routing. McCaw would be able to offer the new long distance service to its cellular customers because it has authority to provide interexchange routing; Bell company customers, by contrast, would be excluded because the Bell cellular companies lack such authority and therefore cannot participate in the new service. The disparity should be eliminated to prevent the inevitable competitive distortions that will otherwise result.

B. Sales Forces

We agree with SBC that there is no justification for requiring Bell companies to establish redundant sales forces for local services and wireless long distance services, while imposing no similar inefficiencies on AT&T-McCaw. If such a condition is upheld in the generic wireless proceeding, a similar requirement should be added to the AT&T-McCaw decree.

C. Other Disparities That Warrant Correction

The proposed decree would create several additional inconsistencies between AT&T-McCaw and its Bell company competitors. Each is unexplained, and each should be eliminated to avoid unwarranted competitive dislocations.

1. Under the proposed decree, McCaw is expressly permitted to aggregate its Pittsburgh system with its properties in

West Virginia to create a non-equal-access calling area. Proposed Decree §II(Q)(xix) (defining McCaw's Pittsburgh LATA to include the West Virginia MSAs). By contrast, Bell Atlantic whose Pittsburgh cellular system competes head-to-head with McCaw's, is barred from creating the same aggregated calling area. A disparity of this sort confers on McCaw an unwarranted, and presumably unintended, competitive advantage. It should be corrected, either by extending the same privilege to Bell Atlantic or by eliminating §II(Q)(xix) from the proposed decree.

2. Under the proposed decree, McCaw automatically benefits from any enlargements of the Bell company LATAs, which apply to McCaw "as if" it were a Bell operating company. Proposed Decree §II(Q). But the reverse is not true. The 19 geographic waivers provided to McCaw in §II(Q) do not extend to the Bell companies. If there is a cogent reason for this one-way ratchet, it is not set forth in the Competitive Impact Statement. To avoid causing needless competitive imbalances, similar waivers should be granted to the competing Bell wireless companies. At a minimum, the Department and AT&T-McCaw should state their commitment on the record of this proceeding to supporting parallel geographic waivers for the Bell companies.

3. The proposed decree does not require McCaw to open up its customer location databases. It defines McCaw's "MTSO" as the Mobile Telephone Switching Office "and the equipment used therein." Proposed Decree §II(W). The Department's proposed wireless waiver, by contrast, defines a Bell company MTSO to include customer location databases, "wherever located," that facilitate call completion services

(§VIII(L)(1)(a)), and it provides that "MTSO functions used to provide this service shall be available to other carriers, including interexchange carriers" (§VIII(L)(2)(e)). This disparity likewise is not explained. It too should be corrected, either by conforming the wireless waiver to the AT&T-McCaw decree or by conforming the AT&T-McCaw decree to the wireless waiver. There is no reason for differing treatment of direct wireless competitors.

4. Under the proposed decree, if there is insufficient demand for access to a McCaw cellular system within particular LATAs, McCaw may request from the Department a certification that would allow it to provide access to interexchange carriers at "centralized points" instead of providing equal access handoffs in each LATA. Proposed Decree §IV(G). No similar relief is available to Bell companies, and there is no apparent way for McCaw's relief to inure to the benefit of its competing Bell cellular company. The differing treatment is unjustified and unexplained. It should be eliminated.

Respectfully submitted,

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October 25, 1994.

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VIA HAND DELIVERY

October 25, 1994

Richard L. Liebeskind, Esq.
Assistant Chief
Communications & Finance Section
Antitrust Division, Rm. 8104
United States Department of Justice
555 Fourth Street, N.W.
Washington, D.C. 20001

Re: *United States v. AT&T Corp.*, Civ. No. 94-01555
(D.D.C. filed July 15, 1994)

Dear Mr. Liebeskind:

Enclosed are an original and five copies of the Comments of BellSouth Corporation on Proposed Final Judgment which we hereby submit pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h).

Very truly yours,



Michael P. Goggin

Enclosures

cc: Walter H. Alford, Esq.
John F. Beasley, Esq.
William B. Barfield, Esq.

In the United States District Court for the District of Columbia

In the matter of: United States of America, Plaintiff, v. Western Electric Co., Inc., et al., Defendants. Civil Action No. 82-0192 (HHG).

Comments of BellSouth Corporation on Proposed Final Judgment

Introduction

BellSouth Corporation ("BellSouth") submits these comments on the proposed Final Judgment, *United States v. AT&T Corp.*, Civ. No. 94-01555 (D.D.C. filed July 15, 1994) ("Proposed Final Judgment"), pursuant to the Tunney Act, 15 U.S.C. § 16(b)-(h). BellSouth believes that the Court cannot fully evaluate the competitive effects of the merger between AT&T Corporation ("AT&T") and McCaw Cellular Communications, Inc. ("McCaw") without first considering the motions of BellSouth and the other Bell Operating Companies ("BOCs") for generic wireless relief.¹ BellSouth further believes that the Court should decide that it is inappropriate to extend equal access obligations and interexchange restrictions to the BOCs' wireless services and, therefore, to AT&T/McCaw's wireless services. If the Court decides otherwise, it should, at a minimum, ensure that the BOCs and AT&T/McCaw are bound by identical restrictions and obligations. Finally, BellSouth believes that the term "McCaw Cellular Systems" should be clarified to specify that it does not include cellular franchises in which McCaw does not possess affirmative control.

Comments

1. The Court Should Decide the BOCs' Motion for Generic Wireless Relief Before Deciding Whether the Proposed Final Judgment is in the Public Interest

The Tunney Act requires the Court to "determine [whether] the entry of [the proposed final] judgment is in the public interest." 15 U.S.C. § 16(e). Central to this inquiry is the likely competitive impact of the Proposed Final Judgment. *Id.* In BellSouth's view, the Court cannot fully evaluate the

competitive impact of this Proposed Final Judgment without first considering the BOCs' motions for generic wireless relief. Only then will the Court have a clear view of the competitive landscape. In particular, the Court cannot determine whether the Proposed Final Judgment adequately protects competition without first deciding whether the wireless operations of the BOCs are subject to (and should remain subject to) the interexchange prohibition and equal access restrictions of Section II of the MFJ.

The local calling area restrictions and the equal access obligations of the Proposed Final Judgment are premised on the assumption that similar restrictions will apply to the BOCs' wireless franchises. According to the United States, "[t]he equal access arrangements prescribed by Section IV are modeled on the analogous provisions of the Modification of Final Judgment * * * [and] are [purportedly] largely identical to the conditions recommended by the United States for provision of interexchange cellular service by the Bell Companies." Competitive Impact Statement at 15, *United States of America v. AT&T Corp.*, (D.D.C. filed Aug. 5, 1994) ("CIS"). Indeed, the United States previously has acknowledged that "the BOCs' generic wireless waiver request * * * raises a number of issues in common with the AT&T-McCaw transaction." Memorandum of the United States in Support of AT&T's Motion for a Waiver of Section I(D) of the Decree at 3, *United States v. Western Elec. Co.*, Civ. No. 82-0192 (D.D.C. filed July 15, 1994). The United States considered the BOCs' motions for generic wireless relief together with the Proposed Final Judgment in order to reach a consistent result and encouraged the Court to decide the two issues consistently. Transcript of Hearing, July 21, 1994, at 50-51, *United States v. Western Elec. Co.*, Civ. No. 82-0192 (D.D.C. filed July 21, 1994).

The Proposed Final Judgment reflects the United States' view that the local calling area restrictions and the equal access obligations imposed on AT&T are contingent upon similar restrictions and obligations being applied to the BOCs' wireless services. Section X provides as follows:

If BOC Wireless Systems are relieved in whole or in part of any or all of the comparable equal access or nondiscrimination obligations of the MFJ as a result of legislation, judicial orders, or agency orders that vacate, modify, supersede, or interpret the provisions of the MFJ, the provisions of Article IV of this final judgment

shall be modified or vacated to provide the same relief to AT&T or McCaw upon their showing that competitive conditions do not require a different obligation for AT&T and McCaw and that this modification is equitable and in the public interest.

Proposed Final Judgment § X. Moreover, although the Department of Justice (the "Department") and AT&T have agreed to permit AT&T/McCaw to offer "Local Cellular Service" in many areas larger than those authorized for the BOCs, the definition of "Local Cellular Service Areas" will automatically change to conform to the size of any areas in which the BOCs are permitted "to provide cellular exchange services without any equal access obligation under the provisions of the MFJ." Proposed Final Judgment § 11(Q).

The appropriateness and scope of the BOCs' local calling area restrictions and equal access obligations are now squarely before the Court. All the BOCs have filed motions for generic wireless relief. BellSouth has asked the Court to declare that the equal access obligations and interexchange restrictions of the MFJ do not apply to wireless services; BellSouth and Southwestern Bell have asked the Court to waive those equal access obligations and interexchange restrictions to the extent they apply to wireless services; and all of the BOCs have requested narrower wireless relief. Given that the local calling area restrictions and equal access obligations of the Proposed Final Judgment are contingent upon the MFJ's similar restrictions, the Court should examine the MFJ's restrictions before examining the restrictions of the Proposed Final Judgment. The BOCs' motions some of which were first filed with the Department in 1991, are fully briefed and ripe for decision. Now that the AT&T/McCaw merger has been completed, there is no conceivable justification for considering the Proposed Final Judgment before deciding the BOCs' long pending motions.

Indeed, it is difficult to understand how the Court could appropriately review the Proposed Final Judgment without first considering the BOCs' generic wireless waiver motions. The Court, in essence, is reviewing the discretion of the Attorney General; "its task [is] to determine whether the Department of Justice's explanations [are] 'reasonable under the circumstances.'" *United States v. Western Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993). The Department, however, found it necessary to review the merger and the BOCs' generic wireless waiver motions together to reach a consistent result; and its

¹ BellSouth has filed a motion for an order declaring that the equal access and interexchange restrictions of Section II of the Decree entered in *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 226-34 (D.D.C. 1982), *aff'd mem. sub nom.*, *Maryland v. United States*, 460 U.S. 1001 (1983) ("MFJ"), do not apply to the BOCs' wireless facilities, or, in the alternative, for a waiver of those restrictions. Southwestern Bell also has sought a waiver of Section II's restrictions insofar as they may apply to the BOCs' wireless facilities. All of the BOCs have joined in a motion for narrower wireless relief. These motions re fully briefed and ripe for decision.

position on the Proposed Final Judgment assumes that the Court will order the relief the United States has proposed in response to the BOCs' generic wireless waiver motions. The proper scope of generic wireless relief for the BOCs is for the Court to decide, however, not for the Department of Justice. Accordingly, to evaluate whether the Department's explanations of its support for the Proposed Final Judgment are reasonable, the Court must at least ascertain whether it agrees with the wireless relief the Department has supported for the BOCs.

Moreover, this is the first time the Court has had to address squarely the question of whether it is the public interest to impose equal access in wireless markets. The Department maintains that the MFJ requires it, and the BOCs have always offered it, but the Court has never squarely held that the MFJ requires equal access in wireless markets. See *BellSouth Reply* at 3–8. More important, the Court has never decided whether the extension of equal access to wireless markets is in the public interest. Wireless services were not at issue in the MFJ case. Compare Complaint ¶ 29C, *United States v. AT&T*, No. 74–1698, with Plaintiff's Third Statement of Contentions and Proof (Jan. 10, 1980). Thus, in the Tunney Act proceedings in connection with the approval of the MFJ, the Court did not consider whether the public interest required the application of equal access to wireless facilities. In view of the Department's assumptions regarding the application of equal access to the BOCs' wireless facilities in its explanation of the Proposed Final Judgment, the Court should first decide the BOCs' motions for generic wireless relief and then determine whether the Department's position on the merger is reasonable in light of the relief ordered by the Court on the generic wireless waiver motions.

II. The Court Should not Impose an Equal Access Paradigm on the Wireless Market

The Proposed Final Judgment is premised on the notion that AT&T/McCaw and BOCs' cellular franchises should be governed by similar rules. While *BellSouth* believes that the Proposed Final Judgment would not achieve such a result, see *infra* pp. 10–12, it agrees with the notion that a single paradigm should govern wireless markets: there should not be one set of rules for BOCs and another for non-BOCs. *BellSouth*, however, disagrees with the proposition that wireless markets should be divided into limited local calling areas with each local

provider obligated to provide equal access to the entrenched interexchange providers.

The Department has taken the view that the equal access obligations of the BOCs under the MFJ should apply to their wireless operations. The Proposed Final Judgment would impose equal access on McCaw's cellular systems as well. As a result of the Department's regulatory initiatives under the MFJ and in the Proposed Final Judgment, a substantial portion of cellular subscribers would be forced to buy wireless services in separate "local" and "long distance" components. Unconstrained competitors would have little incentive not to charge their own subscribers a separate fee for the "long distance" component of their service because AT&T/McCaw and the BOCs would not be permitted to sell integrated service. As a result, customers would pay two per-minute charges on all but the shortest distance wireless calls. Thus, by adopting artificially narrow market definitions at the outset and crafting decree restrictions to fit them, the Department would create regulatory boundaries to constrain the market to fit its artificial definition.

Such a vertical division of wireless markets is unjustified. As AT&T's own consultants have noted, the local/long distance division is an artificial regulatory construct. Excerpt from Michael E. Porter, "Competition in the Long Distance Telecommunications Market: An Industry Structure Analysis" at 7 (Oct. 1987) (attached as Exhibit 13 to Affidavit of Donald G. Kempf, Jr., *Bell Atlantic Corp. v. AT&T Corp.*, Civ. No. 94–3682 (E.D.N.Y. filed Sept. 8, 1994)). The equal access requirements of the Federal Communications Commission (the "FCC") and the Decree were designed to permit the development of a competitive landline telephone system to the extent possible. Competition in local telephone service was not thought to be possible because it was thought to be a natural monopoly and was a legal monopoly by state law in many states.² To ensure that these "bottlenecks" were not used to prevent competition in the telephone service generally, providers of local monopoly telephone service were obligated to provide nondiscriminatory access to these "essential facilities."

² Experience has proven incorrect the assumption that local landline telephone service is a natural monopoly. See Memorandum of Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, and Southwestern Bell Corporation in Support of Their Motion to Vacate the Decree at 53–67, *United States v. Western Elec. Co.*, Civ. No. 82–0192 (D.D.C. filed July 6, 1994).

United States v. American Tel. & Tel. Co., 552 F. Supp. at 160–65, 188.

Wireless facilities, on the other hand, are not bottleneck or essential facilities. See, e.g., AT&T's Opposition to the Motions for "Generic" Wireless Waiver of the Decree's Core Provisions at 18 n.22, *United States v. Western Elec. Co.*, Civ. No. 82–0192 (filed Aug. 10, 1994). Competitive alternatives exist. In every area of the country, there are two facilities-based cellular providers. Consequently, there is no antitrust justification for requiring equal access in wireless markets. *BellSouth Reply* at 26–28. The empirical data show why: equal access already has cost wireless subscribers hundreds of millions of dollars. *BellSouth Reply* at 22. This is not surprising given the fact that the interexchange market, which is dominated by AT&T, is more concentrated, and less competitive, than wireless markets. *BellSouth Reply* at 17–21.

AT&T's motivation for accepting limited calling areas and equal access obligations is no mystery. Like MCI, AT&T support equal access because it allocates a portion of the wireless market to the entrenched interexchange carriers and confines wireless providers to small, inefficient local calling areas. AT&T provides over 70 percent of all "interexchange" service to wireless customers who are subject to equal access, CIS at 12–13, and controls over 80 percent of the business of *BellSouth's* subscribers. *BellSouth Reply* at 18. If equal access is imposed in wireless markets, AT&T is sure to dominate the resulting wireless long distance market just as it dominates the landline interexchange market.

If the Court determines that no equal access requirement should be imposed in wireless markets, AT&T/McCaw will have to compete on equal terms with other wireless providers who are not members of the interexchange oligopoly. The FCC has noted industry estimates that there likely will be more than 60 million wireless subscribers by the year 2002. Second Report and Order, In the Matter of the Commission's Rules to Establish New Personal Communications Services, 8 F.C.C. Rcd 7700, 7710 (1993), recon. Memorandum Opinion and Order, FCC 94–144 (June 13, 1994). The long distance traffic generated by wireless providers might, in time and absent equal access, eventually provide a challenge to the tripartite domestic long distance cartel. This is what AT&T hopes to prevent.

Thus, not surprisingly, AT&T has argued that its own acceptance of local calling areas and equal access obligations should lead the Court to

deny the BOCs' motions for generic wireless relief. Furthermore, AT&T has foreshadowed its ultimate gambit. It hopes that this Court will create momentum which will cause the FCC to impose a vertical market allocation on the wireless industry as a whole. Memorandum in Support of AT&T's Motion for a Waiver of Section I(D) of the Decree Insofar As It Bars the Proposed AT&T-McCaw Merger at 71, *United States v. Western Elec. Co.*, Civ. No. 82-0192 (D.D.C. filed May 31, 1994). Indeed, AT&T already is citing the Proposed Final Judgment to the FCC as a justification for saddling the entire industry with an equal access requirement. Comments of AT&T at 5, *In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, CC No. 94-54 RM-8012 (F.C.C. filed Sept. 12, 1994). Such a market paradigm will ensure that AT&T retains its dominant share of interexchange telecommunications services.

According to the Department, "the market power of each cellular duopolist" justifies an equal access requirement. Memorandum of the United States in Response to the Bell Companies' Motions for Generic Wireless Waivers at 3, *United States v. Western Elec. Co.*, Civ. No. 82-0192 (filed July 25, 1994) ("U.S. Response"). See also, *id.* at 19-20. This justification rings hollow. If any anticompetitive harm resulted from providing integrated wireless services, the Department, which, by its own account, has been closely investigating this market since 1991, surely would have sued McCaw and other non-BOC providers under the antitrust laws for refusing to permit interexchange carriers "equal access" to their wireless systems. The Department's reticence in this regard is understandable. The antitrust laws do not require that owners of non-essential facilities offer equal access. *BellSouth Reply* at 27-28. The unrefuted empirical data emphatically demonstrate why: in wireless markets, consumers are better off without equal access. *Id.* at 22.

In many areas of the country, moreover, cellular competitors have been joined by providers of Enhanced Specialized Mobile Radio ("ESMR") service, which competes directly with cellular service. *Id.* at 15. In addition, in six weeks the FCC will begin licensing several additional wireless competitors in each area in which cellular services are provided. On December 5, 1994, the FCC will auction spectrum for broadband Personal Communications Service ("PCS") providers. Experience with PCS demonstrates that it will compete directly with cellular. *Id.* The

fact that competing alternatives are available to wireless customers, and that many more soon will be, demonstrates that it is not in the public interest to extend equal access to the BOCs' wireless operations, and apart from correcting the competitive imbalance created by the MFJ, it is not in the public interest to impose equal access on AT&T/McCaw.

Deciding that there is no basis specific to the BOCs and AT&T/McCaw for imposing equal access on their wireless systems, moreover, would clear the slate for uniform action by the FCC. At the urging of MCI, the FCC has announced that it will consider adopting an equal access requirement for cellular services similar to that which applies to landline services. The FCC's broad public interest inquiry should not be fettered by the reality of existing (but unjustified) equal access obligations on some market participants.

III. The Court Should Ensure the Terms of Competition Between the BOCs and AT&T/McCaw are Equal

If the Court nonetheless artificially divides the wireless market into separate local and long distance components and requires equal access, it should, at a minimum, ensure that the conditions of competition for the BOCs and AT&T/McCaw are equal. The Proposed Final Judgment, however, would give AT&T/McCaw preferences over the BOCs, even if the Court ultimately adopted the Department's view of the proper scope of generic wireless relief for the BOCs.

For example, the Proposed Final Judgment would apply only to AT&T/McCaw's cellular systems (excluding cellular digital packet data services). Proposed Final Judgment at §IV. The Department, on the other hand, supports equal access and local calling areas for other wireless services which may be provided by the BOCs, such as broadband PCS. U.S. Response at 27-45. There is no conceivable justification for this disparity.

McCaw is also permitted to provide local cellular service in 9 areas larger than those available to the BOCs. Proposed Final Judgment § II(Q). Again, there is no conceivable justification for this discriminatory treatment. Nor does the Department offer one, noting only that the Department reserves the right to seek an order confining AT&T/McCaw to LATA boundaries in the future. CIS at 24. The Department supports equal access restrictions for AT&T/McCaw for the same reasons it recommends them for the BOCs. Thus, it makes little sense to restrict the BOCs to LATAs while permitting AT&T/McCaw to provide

service within multi-LATA clusters without equal access.

Furthermore, AT&T/McCaw will be permitted to provide facilities-based interexchange service to its wireless subscribers. The Department would permit the BOCs only to resell interexchange service and to purchase no more than 45 percent of such service from any one interexchange carrier. *Id.* at ¶ 2(1). These additional restrictions are flagrantly anticompetitive. They could prevent BOC cellular systems from purchasing a sufficient volume of service from a single provider to obtain the highest possible discounts; they ensure that AT&T will control a significant portion of the BOCs' wireless interexchange traffic; and they prevent full, facilities-based interexchange competition. Reply of the Bell Companies to Comments on Their Motion for a Modification of Section II of the Decree to Permit Them to Provide Cellular and Other Wireless Services Across LATA Boundaries at 36-40, *United States v. Western Elec. Co.*, Civ. No. 82-0192 (D.D.C. filed Sept. 2, 1994). One hardly needs to be an accomplished analyst to discern from AT&T's financial statements that it is not in need of a set aside.

AT&T/McCaw also enjoys the benefits of a "most-favored-nation" clause which will permit them to obtain relief from the Proposed Final Judgment in the event that the BOCs are permitted to offer wireless service in expanded calling areas or without an equal access requirement. Proposed Final Judgment §§ II(Q), X. The BOCs, quite inexplicably, would have no reciprocal right. This disparity is exacerbated by Section X of the Proposed Final Judgment, which is more lenient than either the standard announced in *Rufo v. Inmates of Suffolk County Jail*, 112 S. Ct. 748, 760 (1992), or Section VIII(C) of the MFJ. As a result, AT&T/McCaw is guaranteed any benefits of relief obtained by the BOCs, but the BOCs will be denied the benefits of relief obtained by AT&T/McCaw unless they can satisfy a more stringent standard for relief. If the Department views this as "equal treatment," then it obviously considers some participants to be "more equal" than others.

There also is no justification for including a 10 year expiration provision in the Proposed Final Judgment. Neither the MFJ, which is over 12 years old, nor the equal access requirements the Department proposes to apply to the BOCs' wireless services (see U.S. Response) include any expiration provision. Inasmuch as the Department has justified imposing equal access on the BOCs and AT&T for the same

reasons and intends that the obligations be equivalent, it would be illogical and unfair to include an expiration provision in the Proposed Final Judgment.

IV. The Term "McCaw Cellular System" Should Be Clarified

BellSouth also requests that the Proposed Final Judgment be clarified to specify that the term "McCaw Cellular System" includes only cellular franchises in which McCaw has affirmative control. Section II(T) defines "McCaw Cellular System" as any cellular system "in which McCaw controls, directly or through its affiliates, a direct or indirect voting interest of more than fifty percent (50%), or the right, power or ability to control, * * *" "Control" is defined in Section II(K) as "the power to direct or cause the direction of the management and policies of a corporation or a partnership, whether through ownership of voting securities, by contract, or otherwise."

Read together, these definitions appear to limit the requirements of Section IV to those cellular systems in which McCaw has affirmative control, or the power to direct the company to implement AT&T's obligations under the Proposed Final Judgment. A system in which AT&T/McCaw has the power to veto actions with which it disagrees (negative control), but lacks affirmative control, should not be subject to Section IV's requirements. For example, if AT&T/McCaw owned 50 percent of the voting interests in a cellular system and a second firm owned an identical interest in that system, that system should not be considered a "McCaw Cellular System" for purposes of the Proposed Final Judgment because McCaw would lack "the power to direct or to cause the direction of the management and policies" of the cellular system. In such a circumstance, McCaw could not unilaterally direct the partnership to take any actions, including to ensure compliance with the Proposed Final Judgment.

This issue is not one of theoretical interest. AT&T/McCaw is a partner of BellSouth's and owns negative control of cellular systems in Houston, Galveston, and Los Angeles. In each case, the system is governed by a partnership in which McCaw and BellSouth each own a 50 percent voting interest. BellSouth requests that the Court remove any lingering uncertainty over the proper construction of the Proposed Final Judgment by specifying that the term "Control" only describes affirmative control and that the term "McCaw Cellular Systems," therefore,

does not include cellular franchises in which McCaw possesses negative control.

Conclusion

The Court should decide the BOCs' motions for generic wireless relief before deciding whether the proposed consent decree is in the public interest. In that context, the Court should decide that the market for wireless services should not be burdened with equal access obligations and interexchange restrictions. If the Court nonetheless decides to the contrary, it should ensure that the terms of competition for the BOCs and AT&T/McCaw are equivalent. Finally, the Court should clarify that the term "McCaw Cellular Systems" does not include cellular systems in which McCaw does not possess affirmative control.

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Dated: October 25, 1994.

United States District Court for the
District of Columbia

In the matter of: United States of America,
Plaintiff, v. AT&T Corp. and McCaw Cellular
Communications, Inc., Defendants. Civil
Action No. 94-01555 (HHG).

To: The Department of Justice

Comments of SBC Communications Inc.
on Proposed Final Judgment

Pursuant to 15 U.S.C. § 16(d), SBC Communications Inc. ("SBC")¹ files these Comments in partial opposition to the proposed Final Judgment in this case. The proposed settlement addresses most of the competitive concerns raised by the merger of AT&T and McCaw Cellular Communications, Inc. ("McCaw"), and should be approved in substantial part. But the Final Judgment would not solve one aspect of a core problem the Department of Justice ("Department") has identified: AT&T's ability to favor McCaw by misusing

¹ SBC Communications Inc. was formerly known as Southwestern Bell Corporation.

confidential information acquired in AT&T's capacity as a supplier of services to cellular carriers and their customers. The Department has insisted on considerable safeguards against disclosure of confidential information AT&T/McCaw acquires as a supplier or buyer of network equipment. Yet the Final Judgment would do nothing to prevent AT&T from advantaging McCaw, and disadvantaging competition, by disclosing confidential information AT&T acquires as a long-distance carrier.

Moreover, the proposed settlement cannot be reconciled with statements the Department of Justice has made about Bell company (or "BOC") provision of interLATA wireless services SBC disagrees with the Department's suggested conditions on wireless relief for the Bell companies. But if the Court finds the Department's reasoning persuasive in that context, the very same reasoning requires imposition of additional conditions on the AT&T/McCaw merger. This Court should be unable to conclude that conditions like a ban on interexchange routing and sales force separation would promote competition if applied to BOC wireless systems, without finding that they would do the same if applied to AT&T/McCaw.

Introduction

While the McCaw acquisition marks a dramatic expansion of AT&T's wireless business, AT&T occupied a commanding position in wireless even before it decided to spend about \$12 billion to become the nation's largest cellular carrier. Indeed, one cannot understand the competitive risk presented by AT&T's entry into local cellular services without appreciating AT&T's central place in all other aspects of wireless communications.

1. Wireless Long Distance

The Department freely acknowledges that AT&T remains the nation's dominant long-distance carrier. See *Proposed Final Judgment and Competitive Impact Statement; United States of America v. AT&T Corp. and McCaw Cellular Communications, Inc.*, 59 FR 44,158, 44,166 (1994) [hereinafter *Competitive Impact Statement*]. AT&T's entrenched position is particularly evident in wireless. Due to the Modification of Final Judgment (MFJ), customers of BOC-affiliated cellular systems are required to buy their cellular long-distance service separately

from local service.² AT&T is the long-distance carrier for more than 70 percent of these customers. 59 Fed. Reg. at 44,169. Moreover, while McCaw and other non-Bell company cellular carriers can and do resell interexchange services to their customers, they buy their wholesale service from AT&T in the vast majority of cases. See *id.*

For Bell company cellular providers, a customer's selection of AT&T means that AT&T will obtain some of the BOC affiliate's most competitively sensitive confidential information. The MFJ prohibits BOC affiliates—including SBC's affiliate, Southwestern Bell Mobile Systems (SBMS)—from providing long-distance services. Largely as a result of this barrier to competition up to 90 percent of all SBMS customers choose AT&T. Stupka Aff. ¶ 4. SBMS must provide AT&T with these customers' names, addresses, and telephone numbers. In addition, once AT&T begins to carry an SBMS customer's calls, it can collect usage information (including the location and telephone number of the party called, the duration of the call, and personal calling patterns) for that customer.

All of this non-public information has tremendous potential value in marketing cellular services. As explained in the attached affidavit of John T. Stupka, the information AT&T gains as a long distance carrier allows it to identify the particular customers who are the highest-volume users of SBMS local cellular services. These customers could be targeted for direct solicitation, and those solicitations could be tailored to the customer's historic calling patterns with SBMS. See Stupka Aff. ¶¶ 5–8. In other words, MFJ constraints guarantee AT&T a window into SBMS's most sensitive customer information, and a unique ability to access and potentially steal away SBMS' most valued customers.

2. Equipment and Software

Cellular customers depend upon AT&T products and services even when they place local calls. AT&T is the nation's largest manufacturer of switches, cell site radios, and related network equipment used by cellular telephone systems. *Competitive Impact Statement*, 59 Fed. Reg. at 44,166–67. More important than AT&T's naked market share, however, is the so-called "lock-in" effect. See generally *Eastman Kodak Co. v. Image Technical Servs.*, 112 S.Ct. 2072, 2087 (1992). As the Department has found, cellular

providers that have purchased equipment from a particular manufacturer are locked into that manufacturer when they buy new equipment for the same service area. If they choose AT&T equipment for a particular system, cellular carriers either have to keep buying from AT&T or undertake a disruptive and expensive replacement of existing AT&T equipment with that of another manufacturer.³ The same is true for the complex and expensive computer software needed to operate this equipment, and for ongoing software upgrades that enhance performance and allow new services.

Moreover, as an equipment supplier, AT&T has access to the most sensitive proprietary information of its customers. The Department has explained that cellular equipment manufacturers, in performing routine maintenance, software upgrades, and other services, have access to system usage patterns and similar day-to-day operating information. Likewise, AT&T and other equipment suppliers are aware of plans for system expansions and new services and features, since their cooperation is essential to effect them. 59 Fed. Reg. at 44,168.

3. The McCaw Acquisition

On September 19, 1994, AT&T committed to paying \$12 billion for the nation's largest cellular provider. With its LIN Broadcasting subsidiary, McCaw serves roughly 3.4 million wireless callers. SBMS, by comparison, has about 2.6 million cellular customers. Stupka Aff. ¶ 1. McCaw has ownership interests in over 114 markets nationwide, and competes directly against SBMS in Dallas, San Antonio, Corpus Christi, Oklahoma City, Wichita, and Kansas City. *Id.*

Before the McCaw acquisition, AT&T was unable to use the sensitive information it gains as a long-distance carrier to take customers from SBMS and other cellular providers. AT&T likewise had no incentive to favor one equipment customer over another. But that is no longer the case. AT&T now has the "ability and incentive to use its position as equipment supplier to McCaw's wireless competitors to disadvantage those customers/competitors vis-a-vis McCaw." *Competitive Impact Statement*, 59 Fed. Reg. at 44,171. Similarly, AT&T now has the ability and incentive to use the information it obtains in providing long

distance to BOC cellular customers to capture those customers for McCaw. These critical facts should inform consideration of the proposed Final Judgment.

I. The Proposed Decree Would Allow AT&T To Use Confidential Information It Gathers as the Dominant Interexchange Carrier To Obtain a Competitive Advantage in Cellular Services

The Department correctly concluded that the AT&T/McCaw merger, by bringing together the dominant long-distance carrier and a major supplier of interLATA wireless services, would "[d]ecreas[e] actual and potential competition in the market for interexchange services to cellular subscribers." *Competitive Impact Statement* at 44,166. The Department therefore insisted on equal access obligations that, in its view, will cure this problem. See *id.* at 44 169–71.

The Department also properly found that preserving competition in the cellular services market requires restrictions on use of confidential and competitively sensitive information AT&T/McCaw acquires as a supplier of equipment and software to McCaw's rivals. Accordingly, the proposed Final Judgment would limit distribution of cellular carriers' confidential information within AT&T/McCaw, in an effort to ensure that this information is not used for the benefit of McCaw operations.

Specifically, the Final Judgment identifies particular categories of information—such as cellular customer names, system subscribership, and system usage—that "if inappropriately disclosed or used [by AT&T/McCaw], could cause competitive harm." *Id.* at 44,172 & n.10. AT&T's equipment personnel are absolutely prohibited from disclosing this information to persons who play a role in providing, marketing, or developing AT&T or McCaw communications services. *Id.* at 44,172. The Department considers information like customer lists and usage information so competitively sensitive that AT&T equipment personnel could not disclose it even if the affected AT&T customer were to consent. *Id.*

The Department further concluded that new restrictions on AT&T/McCaw are necessary to protect against misuse of information McCaw obtains either in the course of interconnecting with long-distance carriers or as a buyer of cellular equipment manufactured by AT&T's competitors. The proposed Final Judgment thus contains provisions forbidding McCaw from transferring this

² See *United States v. AT&T*, 552 F. Supp. 131, 227 (D.D.C. 1982) (MFJ § II(D)(1)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

³ With cell sites costing \$750,000, and switches approximately \$7 million, changing manufacturers is extremely expensive. SBMS estimates that it would cost over \$1.2 billion to replace all the AT&T equipment it currently uses. Stupka Aff. ¶¶ 16–18.

information to AT&T, so that AT&T cannot obtain an unfair competitive advantage as an equipment supplier or interexchange carrier. *Id.*

Finally, the Department concluded that allowing transfer of McCaw's presubscription and usage information to AT&T would deny other interexchange carriers "a meaningful opportunity to market their services to customers of McCaw Cellular Systems." *Id.* at 44,170. The suggested settlement therefore prohibits McCaw from giving AT&T any such information, except that McCaw can provide AT&T information about its own long-distance customers if it gives other interexchange carriers the same information about their customers. *Id.*

The Department's insistence on substantial safeguards to address each of these problems makes it inexplicable that the proposed Final Judgment would do nothing to address misuse of customer lists and other confidential information AT&T acquires as the dominant interexchange carrier. In each of the 58 markets where McCaw (including LIN) competes against a Bell company cellular affiliate, MFJ restrictions and AT&T's market dominance guarantee AT&T extensive access to much of the same information (such as customer lists and usage information) that the Department would unconditionally protect when AT&T acts as an equipment supplier. And no matter how that information is obtained, AT&T now has the incentive to use it in just the same way: to gain an anticompetitive advantage in cellular services.

Consider the Dallas market, which is served by SBMS and McCaw. Seventy-nine percent of SBMS customers in Dallas select AT&T as their long-distance carrier. Stupka Aff. ¶ 6. SBMS therefore must give the parent of its local competitor the names, telephone numbers, and addresses of four out of every five SBMS customers, with the knowledge that AT&T can estimate their local cellular usage and track their calling patterns. Using the information it obtains as a long-distance provider, AT&T can market McCaw services directly to the most valued SBMS customers, without spending a penny on consumers who do not use cellular telephones in Dallas, or even SBMS customers who use their phone infrequently.

A recent SBMS study illustrates the value of the information AT&T/McCaw acquires about SBMS's Dallas customers. The study showed that roughly three-quarters of those SBMS customers who use at least 275 minutes of AT&T cellular long distance each

month are above-average users of SBMS local service, whereas less than 20 percent of the lowest-volume AT&T users are above-average local cellular callers. *See id.* ¶ 6 & Attachment A at 1. Further, a marketing program that captured just 2,222 high-volume SBMS callers could win for AT&T/McCaw as much cellular revenue as a campaign that, lacking inside information, switched 40,000 low-volume SBMS customers. *Id.* ¶ 6 & Attachment A at 2. AT&T/McCaw's unique ability to identify the highest-volume cellular interexchange callers by name, address, and telephone number would thus convey a powerful advantage in local cellular marketing.

AT&T/McCaw also can use the SBMS customer lists and usage information it acquires as a supplier of long distance to estimate changes in the size and composition of SBMS's subscribership. It can determine, for example, if an SBMS system is attracting new subscribers relatively quickly, or losing existing subscribers. By noting the addresses and/or calling habits of new subscribers, AT&T/McCaw may even be able to figure out which SBMS service or marketing initiatives attract customers AT&T/McCaw would particularly like to claim for itself. With this unique insight into SBMS's most closely guarded proprietary information, AT&T/McCaw could respond to changes in SBMS services and promotions literally on a day-to-day basis, and counter those SBMS efforts. *Id.* ¶ 7.

SBMS and other Bell company cellular providers, by contrast, are barred by the MFJ from providing long distance and do not receive customer information from BOC local exchange operations. *See* 47 CFR § 22.901(d) (1994). BOC affiliates have ready means of identifying competitors' customers or discerning their calling patterns. They cannot instantly track their rivals' subscribership or target competitors' customers for solicitation. Similarly, cellular carriers that provide interexchange service only to their own customers have no ability to acquire such information. Even cellular carriers (such as Sprint/Centel) that are affiliated with an interexchange carrier will not be able to obtain meaningful access to McCaw's customer information, given that AT&T is certain to be the long-distance provider chosen by the overwhelming majority of McCaw cellular customers.⁴

⁴ Section IV.C of the proposed Final Judgment requires disclosure of McCaw customer lists to unaffiliated long-distance carriers, but those lists may be used only in marketing interexchange services. *See* 59 FR at 44,162.

The Department's failure to insist on safeguards against misuse of AT&T's unique information-gathering capability cannot be attributed to any confidence that competition will constrain AT&T from abusing its position in cellular long distance. The *Competitive Impact Statement* points out that AT&T is the "dominant supplier of interexchange telecommunications service," 59 Fed. Reg. at 44,166, indicating the Department's acceptance that AT&T has market power. *See, e.g., MCI Telecommunications Corp. v. AT&T*, 114 S. Ct. 2223, 2226-27 (1994) (noting longstanding regulatory distinction "between dominant carriers (those with market power) and nondominant carriers"). The Department further explains that the long-distance market is an oligopoly characterized by "imperfect competition," 59 Fed. Reg. at 44,182-83, and notes AT&T's extraordinarily high market share in the wireless interexchange market, *id.* at 44,169.⁵

The Department's views about competition in local cellular services also fail to explain the absence of protections in the Final Judgment. The public interest demands appropriate safeguards against AT&T/McCaw's misuse of a competitor's confidential information no matter what the state of competition in the affected market. The *Competitive Impact Statement*, for example, contains no discussion of competition in cellular equipment and software markets. Yet the Department has determined that competition and the public interest would be served by a prohibition on sharing information McCaw obtains from its Swedish equipment supplier with employees of AT&T's equipment business. *Id.* at 44,172. If the public interest is served by preventing anticompetitive exploitation of confidential information AT&T/McCaw acquires as a supplier of cellular equipment, as a supplier of local cellular services, or as a buyer of

⁵ The FCC similarly has determined that AT&T "may retain some ability to control its prices" for the residential and small-business services used by most cellular customers who presubscribe to a long-distance carrier, and has identified evidence that regulation, not competition, holds down rates. *Price Cap Performance Review for AT&T*, 8 FCC Rcd 5165, 5167 (1993). In addition, SBC and others have demonstrated the absence of genuine competition to serve wireless long-distance customers. *See* Motion of the Bell Companies for a Modification of Section II of the Decree to Permit Them to Provide Cellular and Other Wireless Service Across LATA Boundaries and supporting affidavits, as well as Reply of the Bell Companies to Comments on Their Motion for a Modification of Section II of the Decree to Permit Them to Provide Cellular and Other Wireless Service Across LATA Boundaries and supporting affidavits, filed in the case of *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C.) on June 20, 1994 and September 2, 1994, respectively.

cellular equipment, the public interest must also require protections against use of similar or even more sensitive information AT&T/McCaw acquires as a supplier of cellular long distance.

Prohibiting AT&T/McCaw from using customer information it obtains as a wireless long-distance carrier to market its own wireless services will not undermine any pro-competitive aspects of the merger. This leveraging of AT&T's dominant position in long distance would not enable McCaw to provide higher-quality or lower-cost service, or encourage investment in new technologies. Nor could it possibly assist in the development of wireless telephony by increasing overall cellular subscribership. Forbidding McCaw to piggy-back off AT&T's dominance in long distance would merely encourage McCaw to win new customers by offering higher-quality or lower-priced services, rather than barraging its competitors' best customers with personalized solicitations.

AT&T has elsewhere opposed a ban on using interexchange customer information to sell wireless services by arguing that the FCC has not flatly barred use of this information to market customer premises equipment (CPE) or enhanced services. See AT&T's and McCaw's Opposition to Petitions to Deny and Reply to Comments at 83-84, *AT&T Co. and McCaw Cellular Communications, Inc.*, File No. ENF-93-44 (FCC filed Dec. 2, 1993). But these analogies are misplaced. The Commission relied on customer-initiated restrictions in the CPE and enhanced services areas because it anticipated that valuable customer information would mostly relate to sophisticated businesses that can take care of themselves.⁶ The same cannot be said about cellular customer lists and usage information. In Dallas, for instance, an SBMS customer who spends as little as \$100 per month falls within the group of high-volume callers (25 percent of all callers) that accounts for the majority of cellular revenues. See Stupka Aff. Attachment A at 3.

The Commission also reasoned in the enhanced services context that use of confidential information would benefit all enhanced services providers by "mak[ing] consumers more aware of the

benefits of enhanced services."⁷ As already explained, this rationale has no application here because AT&T would be marketing its own wireless services to existing cellular customers.

AT&T has further claimed that it should not be restricted in using cellular interexchange customer information to market wireless services because "[t]he information is AT&T's." AT&T's and McCaw's Opposition to Petitions to Deny and Reply to Comments at 83-84. Insofar as customer lists are at issue, that assertion is wrong in the most basic sense: AT&T obtains those lists only because the MFJ requires SBMS and other BOC affiliates to turn them over. The Department, in fact, has long recognized that BOC affiliates' customer lists are just that—the property of BOC affiliates. In 1987, it rejected AT&T's claim of an entitlement to full lists of BOC cellular customers, saying that whether or not to grant such access is a matter within the discretion of each BOC. Response of the United States Concerning its Enforcement of the Modification of Final Judgment at 13-16, *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C. filed May 27, 1987).

With respect to information about long-distance and cellular usage that AT&T develops, AT&T's unrestricted ownership would extend no further than the long-distance "half." The MFJ may guarantee AT&T, as the dominant interexchange provider, a unique chance to spy on BOC cellular systems, but that cannot mean that AT&T/McCaw, as wireless provider, has an unbridled right to exploit whatever cellular calling information AT&T can acquire.

If accepted, moreover AT&T's argument would suggest an entitlement to use all confidential customer information however it pleases. The Department has clearly and correctly rejected that position with respect to customer information McCaw and AT&T acquire as providers of local wireless services and network equipment, and also with respect to information McCaw obtains about its equipment suppliers and connecting long-distance carriers. The rules governing use of non-public information AT&T collects as a wireless interexchange provider should be no different.

This Court need not be concerned that conditioning approval of the Final Judgment on a modification prohibiting use of cellular carriers' customer lists and similar information to sell McCaw services will put the merger at risk. In

connection with a suit by Bell Atlantic Corporation and NYNEX Corporation to undo the AT&T/McCaw merger, AT&T has already agreed to refrain temporarily from "furnish[ing] to McCaw, or us[ing] in marketing McCaw's services, lists of, or usage information concerning, cellular customers of [Bell Atlantic and NYNEX] who have presubscribed to AT&T's long distance service."⁸ The condition here proposed by SBC would simply extend this commitment to all McCaw competitors, and extend its duration to match comparable provisions of the Final Judgment.

SBC does not suggest that the Court should intervene to correct every perceived shortcoming of the proposed settlement. But the Tunney Act requires more than a simple "rubber stamp" of a proposed decree. *United States v. AT&T*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). Where, as here, the proposed decree and the Government's Competitive Impact Statement reflect a failure to consider significant competitive concerns and "inconsistent * * * interpretations of the public interest," the Court is obligated to step in. *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981), *cert. denied*, 454 U.S. 1083 (1981); *cf. Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413, 1424-26 (D.C. Cir. 1983) (rational decisionmaking requires reasoned analysis of departures from precedent and consideration of relevant factors and alternatives).

Accordingly, this Court should condition its approval of the proposed Final Judgment on the addition of a new Section IV.J, as follows:

J. AT&T shall not disclose to any person engaged in marketing any McCaw or AT&T Wireless Service names, addresses, or telephone numbers of, or usage information concerning, customers of a Wireless Carrier unaffiliated with AT&T or McCaw, if AT&T obtains that information in its capacity as a supplier of interexchange telecommunications services (as defined in the MFJ). Members of AT&T's management executive committee shall be permitted to receive such information in connection with their capacities as members of AT&T's management executive committee, but shall be bound by the nondisclosure obligation set forth in this Section IV.J.

⁸ *Bell Atlantic Co. v. AT&T Corp.*, No. CV 94-3682, Order at 2 (E.D.N.Y. Sept. 14, 1994). AT&T's agreement to this stipulation when under the eye of a court contrasts with AT&T's failure to sign a standard form contract governing access to SBMS systems, which requires interexchange carriers to keep customer lists provided by SBMS confidential. See Stupka Aff. ¶ 10.

⁶ *Furnishing of Customer Premises Equip. and Enhanced Servs. by AT&T*, 102 F.C.C.2d 627 693 (1985); *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 104 F.C.C.2d 958, 1089-90 & n.313 (1986), *reconsidered*, 2 FCC Rcd 3035, *further reconsidered*, 2 FCC Rcd 3072 (1987), *further reconsidered*, 3 FCC Rcd 1150 (1988), *further reconsidered*, 4 FCC Rcd 5927 (1989), *vacated in part on other grounds, California v. FCC*, 905 F.2d 1217 (9th Cir. 1990).

⁷ *Third Computer Inquiry*, 3 FCC Rcd at 1163.

II. If Imposed on BOC Wireless Providers, Certain Additional Conditions Should Be Imposed on AT&T/McCaw as Well

Whereas the above condition responds to AT&T/McCaw's unique position as the dominant interexchange carrier and leading cellular provider, two further conditions—tracking ones the Department of Justice seeks for Bell company provision of interLATA wireless services—may be necessary to promote fair competition between AT&T/McCaw and BOC providers of wireless services.

The conditions discussed below would, in SBC's view, be anticompetitive if imposed on the Bell companies or AT&T/McCaw. But the Department's logic requires that they be applied to AT&T/McCaw if they are imposed on the Bell companies. Indeed, the conditions would have to be incorporated in the Final Judgment for acceptance of the Department's position in pending MFJ proceeding to make sense.

A. The Sufficiency of the Recommended Conditions on the AT&T/McCaw Merger Cannot Be Determined Until the Rules Governing McCaw's Competitors Are Set

By urging equal access provisions that either reflect current MFJ requirements or "basically track those the United States has recommended for the Bell Companies if they should be permitted to provide wireless interexchange service," 59 FR at 44,170, the Department has broadly accepted that parity between AT&T/McCaw wireless systems and their BOC competitors will serve the public interest.⁹ Indeed, the Department attached its generic wireless filings to the *Competitive Impact Statement*, making clear its view that MFJ restrictions on the BOCs and the proposed conditions on AT&T/McCaw are intertwined. See *id.* at 44,176–91.

Yet, without any justification, the proposed settlement excuses AT&T/McCaw from requirements the Department seeks to impose on Bell company wireless operations. While this Court may not substitute its own judgment for the Department's, it nevertheless must assure itself that the Department has acted rationally in consenting to the proposed decree. See *United States v. Western Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993). Just as an agency must explain departures from prior policies in adjudications or rulemakings, the Department may not simply ignore in this proceeding its

inconsistent positions in the generic wireless matter. See *id.* (likening Tunney Act and APA review); *Atchison, T. & S.F.R.R. v. Wichita Bd. of Trade*, 412 U.S. 800 (1973) (agency must explain departure from position taken in prior cases). Moreover, the Department's reasons for changing course must be affirmatively stated, and cannot be inferred by the Court. See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Because the *Competitive Impact Statement* fails to knowledge, must less explain, departures from the Department's position in the generic wireless matter, this Court must itself determine whether the public interest requires the imposition here of conditions like those the Department seeks to place on the Bell companies.

There is an obvious corollary to this point. Because rejecting the Department's proposed conditions in the generic wireless proceeding would eliminate any cause to consider their analogues here, the Tunney Act public interest determination would best be made *after or together with* this Court's decision on wireless relief for the BOCs—and issue that was fully briefed weeks ago.

We recognize that the Court recently found disposition of the generic wireless waiver request unnecessary to address AT&T's motion for a waiver of the MFJ to acquire McCaw. But that determination rested on the reasoning that "the only systems implicated by the AT&T [waiver] request will remain subject to all of the restrictions which the Regional Companies would eliminate by way of their wireless motion." *United States v. Western Elec. Co.*, No. 82–0192, slip op. at 25 (Aug. 25, 1994). No similar finding can be made here. Just as the generic wireless proceeding will determine the rules under which all Bell company cellular affiliates will operate, this Tunney Act proceeding will set the rules for all but the few AT&T/McCaw systems that (due to partial ownership by BOC affiliates) are already subject to MFJ restrictions. It is appropriate to consider these parallel matters in tandem.

B. If the Court Agrees With the Department That BOC Affiliates Should Be Prohibited From Routing Calls Between MTSOs, the Final Judgment Should Include a Similar Condition

Sections II(D)(1) and IV(F) of the MFJ prohibit the Bell companies from directing long-distance calls to their destination. See *United States v. Western Elec. Co.*, 552 F. Supp. at 227, 228. If applied to the BOCs' cellular systems and not AT&T/McCaw's, this

prohibition will have serious anticompetitive consequences.

A cellular system consists of dispersed radio transceivers connected to one or more switching facilities known as mobile telephone switching offices (MTSOs).¹⁰ Adjacent systems with large traffic volumes between them are frequently joined by links from MTSO to MTSO, permitting the cellular carrier to hand-off calls from one system to the other as the caller crosses a service-area boundary. Such links also can allow efficient delivery of cellular-originated calls placed to a phone in a different area served by the same wireless provider. Once installed, the dedicated lines have large capacities and the marginal cost of carrying traffic over them is very low.

Under the proposed settlement, AT&T/McCaw could realize the efficiencies of inter-MTSO direct connections. McCaw would be free to provide the interexchange routing necessary to send cellular traffic over interLATA direct connections, as long as routing services are offered on a nondiscriminatory basis. 59 Fed. Reg. at 44,162 (Final Judgment § IV.D.1); see *id.* at 44,160 (Final Judgment § II.M, defining "exchange access" to include "the origination, routing, or termination of interexchange calls"). Yet the Department opposes giving the Bell companies similar relief from MFJ restrictions. The Department seeks in the generic wireless proceeding to limit the Bell companies to reselling the switched long-distance services of other carriers. See 59 Fed. Reg. at 44,186. This restriction, if adopted by the Court, would prohibit Bell company wireless providers from constructing or even leasing dedicated lines between MTSOs, and self-providing the necessary routing. AT&T/McCaw, in other words, would be legally guaranteed a continuing edge over SBMS and its other Bell company competitors.

That competitive advantage would be substantial. SBMS, for example, estimates that it could carry all SBMS-originated calls between its Dallas and Oklahoma City service areas over a single leased interexchange line at a cost of \$3200 per month, plus a one-time capital cost of \$2000. At retail rates, AT&T would charge more than \$30,000 per month to carry this same traffic between the two cities. See *Stupka Aff.* ¶¶ 19–20. Even considering volume discounts that SBMS might secure from AT&T, self-routing would still save

⁹ Congress also has determined that consistent regulatory treatment of cellular carriers serves the public interest. See 47 U.S.C. § 332(c).

¹⁰ The MTSO controls the transfer of calls between cell sites, between the cellular system and local telephone networks, and between the cellular system and interexchange carriers.

SBMS thousands of dollars each month, and those savings would be reflected in lower charges to SBMS customers.

The Department has offered no reasonable justification for imposing this extra expense of BOC affiliates and their customers. It defends the switched resale condition as necessary to protect against "discrimination aimed at favoring the BOC's service." 59 Fed. Reg. at 44,186. If the Department means discriminatory use of BOC local exchange facilities, this cannot explain prohibiting inter-MTSO routing. Sending calls from one MTSO to another does not involve any use of the switched local exchange, but only MTSO functions and a dedicated connection that typically can be acquired from any of several providers.

If, on the other hand, the Department means discrimination with respect to MTSO routing functions, there is no possible reason to treat the BOCs differently from AT&T/McCaw. McCaw and BOC cellular systems are physically alike in all relevant respects. Moreover, BOC affiliates (like AT&T/McCaw) would be bound to perform interexchange routing on a nondiscriminatory basis, if they could route calls at all. *Compare* 59 Fed. Reg. at 44,162 (Final Judgment § IV.D.1, requiring McCaw to provide routing for unaffiliated interexchange carriers on nondiscriminatory terms) *with id.* at 44,185 (noting BOC commitment to do same).

Imposing an inter-MTSO routing ban on Bell company wireless providers therefore constitutes an irrational departure from the Department's overall policy of establishing similar rules for AT&T/McCaw and the BOCs, where they are similarly situated. The *Competitive Impact Statement* offers no justification for treating AT&T/McCaw more favorably than the Bell companies, and none can fairly be deduced. Moreover, there appears to be no plausible rationale for denying Bell company cellular customers the savings that would result from dedicated connections between MTSOs.

Rejecting the Department's proposed limitation in the generic wireless proceeding thus seems necessary. But if the Court were to discern some overriding rationale that would support the Department's position there, that same rationale would necessarily apply here. In that case, the public interest would require that approval of the Final Judgment be conditioned on addition of a new section, as follows:

Notwithstanding any other provision of this Final Judgment, McCaw Cellular Systems shall not provide interexchange

traffic routing services in connection with the routing of traffic between MTSOs.

C. If the Court Agrees With the Department That the BOCs Should Be Required To Establish Redundant Sales Forces, the Final Judgment Should Include a Similar Condition

In the generic wireless proceeding, the Department also has urged the Court to require the Bell companies to maintain separate sales forces, with separate managers, for local services and wireless long-distance services. *See* 59 Fed. Reg. at 44,187; DOJ Proposed Generic Wireless Order §§ VIII(L)(3)(f), (g). If accepted, this proposal would burden BOC affiliates with the needless expense of redundant overhead, personnel, and administrative costs.

The Department suggests that this requirement is necessary to allow the BOCs' competitors "to compete on equal terms." *Id.* Competitors of BOC cellular affiliates, however, are not required to carry unnecessary marketing costs. Sprint/Centel, for example, can market its communications services through a single sales force, even though its operations (which include local and long-distance wireline service, as well as wireless) are broader than any BOC's. GTE (a landline and cellular carrier that does not offer wireless interexchange carriers equal access) likewise sells local airtime and long distance through the same sales force.

Further, if generic wireless relief is granted subject to an equal access obligation, BOC wireless long-distance sales personnel will comply with extensive non-discrimination requirements whether or not they are part of a unified sales force. BOC long-distance salespersons would inform customers of their right to choose an interexchange carrier, would be denied special access to local customer information, and (if the Court accepts the Department's proposed waiver in toto) would offer local and long-distance wireless services separately. *See id.* at 44,187.

It is impossible to see a rational reason for imposing mandatory inefficiencies on BOC affiliates. But if there were one, it would have to apply to AT&T/McCaw as well. AT&T/McCaw assuredly could realize whatever "unfair" efficiencies or advantages would be available to the BOCs through the maintenance of a unified sales force. The combined AT&T/McCaw is the largest wireless carrier in the country, as well as the largest interexchange provider. According to the Department, AT&T/McCaw has market power in cellular services and is dominant in landline and wireless long distance as

well. No other wireless carrier could employ joint marketing on a similar scale, and there is every reason to believe that this advantage would allow AT&T/McCaw to extend its current dominance even further.

Yet the proposed Final Judgment does not contain a sales force separation requirement like the one the Department recommends for the BOCs. Although A&T's and McCaw's operations must be separate, the Final Judgment seems to erect no barrier to the use of a single sales force within AT&T for local wireless, wireless long-distance, and land services. The Department may be confused on this point, for it stated in the generic wireless matter that AT&T/McCaw would be "subject to the same separation . . . restrictions" as the BOCs. *Id.* at 44,187. But in fact, the AT&T/McCaw settlement, on its face, would allow AT&T to perform all marketing of local and long-distance cellular services for McCaw, with the possible exception of administering some part of interexchange carrier presubscription. *See id.* at 44,162-63 (Final Judgment §§ IV.B.3, IV.F); *id.* at 44,170 (discussing § IV.F).

If imposing intentional inefficiencies on the BOCs somehow promotes competition, equivalent conditions on AT&T/McCaw would surely do the same. The Department evidently believes that this is so, given that the Final Judgment's joint marketing provisions were intended to "basically track [conditions] the United States has recommended for the Bell Companies." *Id.* at 44,170. Therefore, should the Court find the Department's proposed condition on the Bell companies appropriate in the generic wireless proceeding, that finding should compel a conclusion that the public interest requires equivalent separation of AT&T/McCaw sales forces. SBC suggests the following new section IV.F.1(f), modeled on the Department's generic wireless proposal:

f. Retail store agents of McCaw and other salespersons who receive inquiries by prospective customers of McCaw Local Cellular Services shall be a distinct group of individuals, with separate managers, from any sales force that sells AT&T Interexchange Services and from any sales force that sells AT&T landline interexchange products or services.

Conclusion

The Court should approve the proposed decree, subject to the modification recommended in Section I, above. The conditions on interexchange routing and sales force separation suggested in Section II of these Comments should be additional

prerequisites of approval if, but only if, the Court deems comparable conditions necessary in the context of the Bell companies' motion for generic wireless relief.

Respectfully submitted,

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Counsel for SBC Communications Inc.

October 25, 1994.

United States District Court for the District of Columbia

In the Matter of United States of America, Plaintiffs v. AT&T Corporation & McCaw Cellular Communications, Inc., Defendants. Civil Act No. 94-01555 (HHG).

Affidavit of John T. Stupka

John T. Stupka, being duly sworn, deposes and says:

1. My name is John T. Stupka. I am President and Chief Executive Officer of Southwestern Bell Mobile Systems, Inc. ("SBMS"), which is headquartered in Dallas, Texas. SBMS provides cellular telephone service as either the licensee or the general partner of the licensee in a number of markets, including such major markets as Chicago, Boston, Dallas, Washington, Baltimore, Kansas City and St. Louis. SBMS provides cellular service to over 2.6 million customers. SBMS competes directly with McCaw or Lin Broadcasting in Dallas, San Antonio, Corpus Christi, Oklahoma City, Wichita and Kansas City.

2. I began my career with Southwestern Bell Telephone Company in 1974. In 1983, I was appointed Vice-President—Network for AT&T Advanced Mobile Phone Service (AMPS). At divestiture, the southwest region of AMPS became a wholly-owned subsidiary of Southwestern Bell Corporation known as Southwestern Bell Mobile Systems. In December 1984, I became Executive Vice President—Network where I was responsible for all of SBMS's network and engineering activities. In November 1985, I became President and Chief Executive Office of SBMS where I am responsible for the operation of twenty-eight metropolitan cellular markets in addition to markets

in twenty-six rural service areas. In addition, since 1985, I have chaired the Technology Committee for the Cellular Telecommunications Industry Association (CTIA) which has been instrumental in fostering the development of intersystem standards. I am also the current Chairman of the Board of the CTIA. I have extensive knowledge and experience in operating cellular networks.

3. I am submitting this affidavit in support of the Comments of Southwestern Bell Corporation on the Proposed Final Judgment regarding the merger of AT&T and McCaw Cellular Communications, Inc. ("McCaw").

I. AT&T as a Provider of Cellular Long Distance Service

4. In addition to being a provider of network equipment, AT&T is the dominant provider of cellular long distance service. The equal access obligations in the MFJ require SBMS customers to choose a long distance carrier unaffiliated with SBMS to provide them long distance service. There are as many as 35 separate carriers in some of SBMS' markets. Nevertheless, between 70 and 90 percent of all SBMS customers have chosen AT&T as their cellular long distance carrier. Through its role as a provider of cellular long distance service, AT&T has access to a wealth of confidential information about SBMS' customers.

5. SBMS customers receive both a bill from SBMS for local cellular service and a bill from AT&T for their long distance usage. As a result, AT&T has the name, address and telephone number of between 70-90 percent of SBMS' cellular customers, including customers in those markets where SBMS' direct competitor for cellular service is McCaw. In addition, AT&T has the usage information (the number of the calling party, the number of the called party, the duration of the call and the usage patterns of each individual customer) on all long distance calls placed by SBMS' cellular customers. AT&T could use this information to identify SBMS' customers who use a large amount of long distance service. Long distance usage is an excellent predictor of high cellular usage.

6. SBMS has recently performed a study of the long distance usage of its cellular customers in Dallas for April 1994. In this study, SBMS determined that 79 percent of its Dallas customers have chosen AT&T as their long distance carrier. SBMS then identified those SBMS customers who have chosen AT&T as their long distance carrier and who were the highest

volume users of long distance service. Predictably, those same customers were extremely high users of local cellular service as well. In fact, as shown on Attachment A, the 2,222 highest users of AT&T long distance service generated as much local airtime revenue as 40,000 of the lowest long distance users.

7. With this information, McCaw could do a very targeted marketing program of those top 2,222 users and significantly diminish SBMS' revenue in Dallas. This marketing technique would be very strong. By targeting high users, the wireless subsidiary of AT&T would not have to offer special packages to the ubiquitous cellular customer. We estimate that such a campaign could result in a loss of \$1,000,000 a month in local airtime revenue to SBMS. (See Attachment A). Any such targeted marketing scheme would not be the result of superior management, but only the result of AT&T's ownership of McCaw, coupled with its unique position as a long distance provider to SBMS customers. AT&T can also use this information to estimate changes in the size and composition of SBMS' Dallas subscribership. With this unique insight into SBMS' most closely guarded proprietary information, AT&T/McCaw could gauge the effectiveness of changes in SBMS' services and marketing literally on a day-to-day basis and counter those SBMS efforts.

8. A recent conversation illustrates the seriousness of this problem. At a recent analysts' conference, I was approached by a representative of a major investor in SBC stock. This representative immediately commented that he was concerned that, once AT&T bought McCaw, AT&T would be in a unique position to determine the identity of its high long distance users and share that competitive information with McCaw. He indicated that such a situation could result in significant long term harm to SBMS and, therefore, SBC's stock value.

9. Prior to its acquisition of McCaw, AT&T had no incentive to share competitively sensitive information concerning its customers with any particular wireless company. The AT&T enterprise could not benefit from McCaw or another carrier obtaining a competitive advantage over SBMS. After the acquisition, AT&T will likely find itself better off financially by favoring McCaw over SBMS and other service competitors.

10. The ability to negotiate commercial agreements to protect this information is not to be presumed. When the Federal Communications Commission (FCC) detariffed cellular interconnection with interexchange

carriers, SBMS drafted contracts incorporating much of the same language from the tariffs into the agreements. (See Attachment B). These agreements were sent to all interexchange carriers participating in SBMS markets. The agreements incorporate language to protect the confidentiality of SBMS' proprietary customer information. To date, AT&T has not executed this agreement.

II. Equipment

11. In addition to the problems posed by the anti-competitive use of proprietary customer information, the merger raises severe competitive problems because AT&T is SBMS' supplier of cellular network equipment, including switches, cell site equipment and related software, and is the country's leading supplier of such equipment to cellular carriers. AT&T can use its position as equipment supplier to McCaw's competitors to create artificial competitive advantages for McCaw.

12. This problem arises because once a decision is made to purchase a particular supplier's system, all upgrades and other equipment must be purchased from that supplier, both to assure quality and because, as will be discussed below, the carrier is essentially "locked-in" to that supplier's equipment in that particular market. Thus, the carrier must rely upon the vendor for equipment to expand its system, for prompt service, for updates to software and for new service features, as well as new operating and maintenance capabilities.

13. AT&T could use its position as an equipment supplier to reduce the competitiveness of McCaw's rivals in a number of ways. For example, AT&T could increase the costs of software upgrades, delay delivery times, or decrease technological and development support to McCaw's rivals. In this business, a delay of even one week could be disastrous. SBMS would have no effective recourse against AT&T if it takes any of these actions. Suing AT&T would take years and could make things worse since we need AT&T for prompt service and upgrades.

14. Since AT&T has not previously been a competitor of the BOC's cellular affiliates, it had no incentive to delay service or upgrades or to favor one purchaser over another. With the completion of the merger, however, AT&T is now in direct competition with the BOC's cellular affiliates and has the incentive to slow service and upgrades, to the detriment of SBMS, and to the benefit of McCaw.

15. Even if SBMS was willing to forego the advantages of AT&T equipment, it could not avoid these problems by switching to another manufacturer's cellular equipment because it is effectively locked into using AT&T equipment. There are three principal reasons for this. First, the cost of installing a cellular system in a market of any size is enormous. Second, even if a carrier decides to incur that cost, making the change is very difficult and can create serious operational problems. Third, it is not possible to mix equipment from different manufacturers because of the "closed architecture" of equipment manufactured for the U.S. market.

16. A brief discussion of the current cost of AT&T switches and cell sites will demonstrate the enormous cost of changing equipment. A large capacity AT&T switch costs approximately \$7,000,000. We have more than one such switch in several of our major markets. Only about \$185,000 of the equipment contained in a switch can be bought from a vendor other than AT&T, and our engineers believe that for some items we get better performance from AT&T than from other vendors' goods.

17. An average Series II cell site using AT&T equipment costs about \$750,000. Only about \$29,000 of that could be purchased from other vendors. The number of cell sites can be quite large; for example, there are over 200 cell sites in Dallas and 20-30 new sites are being added each year.

18. As these figures demonstrate, the costs of switching to another equipment supplier would be enormous. To take SBMS' Dallas network as an example, it would cost about \$165,000,000 to change (assuming we could negotiate a contract similar to our AT&T contract with another vendor). Throughout all of our markets, it would cost approximately \$1,200,000,000 over the next 2-3 years to change equipment to a vendor other than AT&T.

III. Network Efficiencies

19. SBMS conducted a sample of mobile originated calls between its Dallas and Oklahoma City service areas during the month of September 1993. We then calculated the number of minutes of use during the busiest hour and determined that the total number of minutes of use in that hour could be carried over a single DSI facility leased from an interexchange carrier. SBMS could obtain this circuit for a one time capital cost of \$2,000 and a \$3,200 per month flat rate lease payment. In fact, SBMS already has a leased facility in place to handle the messaging necessary for intersystem handoff and IS-41 call

delivery. It might well be possible to carry all additional usage associated with this voice traffic over the already existing facility. The same would be true in many instances where the need for market-to-market connectivity already exists for intersystem operations.

20. SBMS also multiplied the total number of minutes of use in a month between these markets by AT&T's current retail rates. SBMS determined that the number of minutes of mobile originated long distance traffic between Dallas and Oklahoma City would, at AT&T retail rates, generate revenue of \$30,440.40. This is but one example of where SBMS could significantly reduce the cost of long distance service to its customers if SBMS were permitted to take advantage of the efficiencies available to non-RBOC affiliated providers.

John T. Stupka,

Subscribed and sworn to before me on this 24th day of October, 1994.

Ms. S.R. Drifton,

Notary Public.

Notes

1. Southwestern Bell Mobile Systems (AT&T Long Distance Usage) Chart was unable to be published in the Federal Register.

2. Southwestern Bell Mobile Systems (Customers Required To Generate \$1,000,000 of Revenue) Chart was unable to be published in the Federal Register.

3. Southwestern Bell Mobile Systems (cumulative Total Revenue and Customers Comparison) Chart was unable to be published in the Federal Register.

Southwestern Bell Mobile Systems
July 15, 1994.

Dear Carrier,

As you may know the Federal Communication Commission (FCC) has mandated that all Commercial Mobile Radio Service Providers cancel any tariffs on file with the FCC. In response to the FCC's mandate Southwestern Bell Mobile Systems, Inc. (SBMS) sought and received a waiver from Judge Harold Greene to provide exchange access on an untariffed basis "provided that such exchange access shall be provided to all interexchange carriers on the same terms and conditions (including price)". Thus, we will file to cancel Southwestern Bell Mobile Systems, Inc. Tariff F.C.C. No. 1 pursuant to which we provide cellular equal access service within our operating areas.

In order to fully comply with Judge Greene's "same terms and conditions" directive and to provide a smooth transition, SBMS has decided to offer exchange access service pursuant to contract based on the terms and conditions contained in our tariff. Thus, we have incorporated the applicable terms and conditions of the tariff into the attached "Contract for Equal Access Service". The terms and conditions of the "Contract for

Equal Access Service are identical for all interexchange carriers (IXC).

Please execute both copies of the contract and return one copy at your earliest convenience. To insure that there is no disruption of service during any interim period prior to receiving an executed copy of the "Contract for Equal Access Service", SBMS will continue to provide access service on the terms and conditions contained in the tariff, as incorporated into the "Contract for Equal Access Service", provided you are not in violation of any such term or condition—in which case SBMS will pursue appropriate remedies and take appropriate action. If you are no longer interested in receiving SBMS' exchange access service on these terms and conditions please notify us and we will cancel your service and reballoon any customers currently presubscribed to you.

PLEASE NOTE THAT WE ARE CONTINUING TO PROVIDE YOU SERVICE BASED ON THE TERMS OF THE TARIFF AS INCORPORATED IN THE ENCLOSED AGREEMENT INCLUDING, BUT NOT LIMITED TO, YOUR AGREEMENT TO KEEP INFORMATION CONFIDENTIAL AND TO USE IT ONLY IN THE PROVISION OF INTEREXCHANGE SERVICE AND NO OTHER PURPOSE (SEE SECTIONS 3.1.11 AND 10). FURTHER, THE CONFIDENTIALITY OBLIGATIONS UNDER THE TARIFF FOR INFORMATION PROVIDED THEREUNDER SURVIVES THE CANCELLATION OF THE TARIFF. IF YOU DO NOT AGREE WITH SUCH TERMS PLEASE NOTIFY US IMMEDIATELY ON 214-733-6100.

Lisa Guarnacci

Equal Access Agreement Between Southwestern Bell Mobile Systems, Inc. ("SBMS") and _____ ("Carrier")

WHEREAS, in the markets listed in Exhibit "A", SBMS is offering Equal Access capability so that each SBMS cellular customer in said markets may reach the presubscribed interexchange carrier ("Carrier") of their choice on a direct dialed basis (1+dialing may be necessary in some markets) if the Carrier has chosen to provide service in such markets; and

WHEREAS, Carrier has sufficient capacity to adequately serve the cellular traffic of pre-subscribed cellular customers of SBMS by providing interLATA telecommunications services and Carrier is providing such services to customers of SBMS in the markets in Exhibit "A".

WHEREAS, Carrier desires to participate in SBMS' Equal Access offering; and

WHEREAS, SBMS is incurring substantial recurring costs to provide Equal Access to Carrier.

NOW THEREFORE, in consideration of the mutual benefits accruing to each party, the parties hereto agree as follows:

1. **DEFINITIONS.** For the purpose of this Agreement the following definitions are applicable:

A. Casual calling—A subscriber not presubscribed to the interexchange carrier providing the service, but using the interexchange carrier's services on an occasional basis.

B. Company—Southwestern Bell Mobile Systems, Inc.

C. Customer—Customers which acquire cellular services from Company, including those who acquire service at wholesale rates such as resellers of the Company's cellular service.

D. InterLATA—Communications which traverse LATA boundaries.

E. Interexchange Service—the provision of voice or data traffic across LATA boundaries.

* * * * *

Company, after thirty (30) days written notice may disconnect Carrier from Company's Equal Access facilities and contact Carrier's Customers to obtain a new designated interLATA telecommunications service provider and/or withhold the provision of further Unsolicited or Solicited Care, and/or take any other action provided at law or in equity. Carrier is responsible for all reasonable and necessary collection costs and fees incurred by Company, including reasonable attorney's fees if Company must initiate legal proceedings to collect any sums due hereunder and if a final order directing Carrier to pay amounts is received by Company.

3.1.10 Carrier will follow and abide by all equal access service provisions as outlined in Federal Communications Commission *Memorandum Opinion and Order* in CC Docket No. 83-1145, released June 12, 1985, and *Memorandum Opinion and Order* in CC Docket 83-1145, released November 14, 1985, and any present or future Orders, Rules or Regulations of the Federal Communications Commission.

3.1.11 Company and Carrier recognize that any customer lists which may be provided from one to the other in connection with, or subsequent to, the balloting and allocation process is proprietary information. Each of Company and Carrier agrees to use any such customer list solely for the purpose of providing interexchange communication services to such customers and shall be disclosed only within Company and Carrier to those individuals with a need to know in order to provide such service. Each of Company and Carrier agrees to keep such customer list confidential and agrees not to sell, transfer, assign, or otherwise disseminate the customer list to anyone except for the purpose of providing such interexchange services.

4 INTERCONNECTION

4.1. GENERAL

4.1.1 Carrier may interconnect with Company for the purposes of serving Company's customers interLATA telecommunications services requirements either by (1) local exchange carrier access tandem connection or (b) direct connection.

4.2 LOCAL EXCHANGE CARRIER ACCESS TANDEM CONNECTION

4.2.1 Subject to the terms of this Agreement, Company will provide to Carrier industry standard FGD signalling, protocol, transmission, and testing.

4.2.2 Subject to the terms of this Agreement, Company will make arrangements with the local exchange carrier to provide the necessary Type II trunks to the local exchange carrier access tandem to serve Carrier's requirements and provide for

industry standard equal access grade of service.

* * * * *

number or mobile number and the date of the call. Further, IXC agrees not to solicit Customer account information for IXC Calls made before one (1) year prior to the date of the Solicited CARE request. IXC agrees to update its data base and populate its customer account field to identify the Customer by the Customer mobile number or account number to properly identify the Customer for that period of time. IXC shall update its data base upon receipt of the solicited CARE records so that subsequent requests for solicited CARE will, if possible, request Customer information using the correct account number or mobile number.

9.3 CARRIER DATABASE

9.3.1 IXC is solely responsible for updating its internal customer data bases with any an all information received from SBMS. SBMS assumes, and IXC acknowledges, that SBMS has no fiscal or financial responsibility or liability regarding any information contained on any Reconciliation Tape, or any form of Unsolicited and/or Solicited CARE response and IXC's ability to bill or collect for services reflected on the foregoing or for services rendered by IXC on its network.

9.4 COSTS

9.4.1 IXC shall pay SBMS \$.05 per message/record for each response to a Solicited CARE request and \$300.00 for each tape containing the Solicited CARE records, and in the case of paper transmittal, \$.05 per message/record for the Solicited CARE record.

10. CONFIDENTIALITY

10.1.1 Any information and data of any nature, including, but not limited to Customer name, PIC information, account information from Casual Calling, Customer address, cellular account information, SBMS data processing/billing information, technical, or other Customer account information furnished by one part to the other in connection with this Agreement or which is identified or labeled as confidential or proprietary ("INFORMATION"), an all copies of such INFORMATION shall be treated in confidence and protected and shall be used and copies only for the exercise by the Receiving Party on performing its obligations hereunder. Each party agrees to use any INFORMATION received from the other party solely for the purpose of providing interexchange service to the Customers and such INFORMATION shall be disclosed within the Receiving Party only to those with a need to know in order to provide interexchange service.

10.1.2 These restrictions on the use or disclosure of INFORMATION shall not apply to any INFORMATION:

a. that is independently developed by the Receiving Party to lawfully received free of restriction from another source having the right to so furnish such INFORMATION;

b. after it has become generally available to the public without breach of any obligation of confidentiality by the Receiving Party;

c. that at the time of disclosure was known to the Receiving Party free of restriction as evidenced by documentation in such Receiving Party's possession; or

d. that the Disclosing Party agrees in writing is free of such restrictions.

10.1.3 Both Parties shall retain copies of recorded information relating to its performance in the same manner, and for the same period, as it maintains such material for itself, subject to the rules, regulations and orders of applicable regulators or other lawful authority, and subject to such additional retention guidelines as the parties may mutually establish.

11. ERRORS

11.1 Each Party shall bear its own expense or any error, omission, mistake or failure to perform its respective duties hereunder.

12. LIABILITY

12.1 In no event will SBMS be liable or any matter relating to or arising out of this Agreement, whether based on an action or claim in contract, tort, or otherwise, for all events, acts or omissions which shall not exceed, in the aggregate, the actual costs and expenses to correct SBMS' data processing error, if any, or to provide additional solicited information. In no event will the measure of damages include, nor will SBMS be liable for any amounts for loss of income, profit or savings, or indirect, special, incidental, consequential, or punitive damages of any IXC, or any other party, including third parties.

13. AUDIT

A. Upon request, after adequate written notice, and during normal business hours, SBMS will allow IXC to audit the SBMS records which support the Market Share calculation for IXC and the cost figures used by SBMS in calculating its Recurring Costs, provided that IXC will not be entitled to see market share information or pro rata cost information pertinent to other Participating

* * * * *

Certificate of Service

I, Austin C. Schlick, hereby certify that copies of the foregoing Comments of SBC Communications Inc. on Proposed Final Judgment have been served by hand or *Federal Express* on this 25th day of October 1994 to the following:

Richard Liebeskind,

Assistant Chief, Communications and Finance Section, Room 8104, U.S.

Department of Justice, Antitrust Division, 555 4th Street, N.W., Washington, DC 20001, Attorney for the United States

John D. Zeglis,

Mark C. Rosenblum,

AT&T Corp., 295 North Maple Avenue, Basking Ridge, NJ 07920, Attorneys for AT&T Corp.

Douglas I. Brandon,

McCaw Cellular Communications, Inc., 1150 Connecticut Avenue, N.W., Washington, DC 20036, Attorneys for McCaw Cellular Communications, Inc.

United States District Court for the District of Columbia

In the Matter of United States of America, plaintiff, v. AT&T Corp. and McCaw Cellular Communications, Inc., Defendants. Civ. Action No. 1:94-01555 (HHG).

Comments and Objections of the Ad Hoc IXCs to the Proposed Final Judgment between the United States, AT&T Corp. and McCaw Cellular Communications, Inc.

The Ad Hoc IXCs, a group of non-dominant resale carriers, respectfully submits its comments on the Proposed Final Judgment ("Proposed Judgment") drafted between the parties to this action, in which the United States correctly raised antitrust concerns in connection with the proposed merger between AT&T Corp. ("AT&T") and McCaw Cellular Communications, Inc. ("McCaw").

I. Introduction

Through settlement of this action, the Justice Department hopes and believes it has adequately protected the public from the foreseeable anticompetitive effects of an AT&T-McCaw merger. However, when viewed in light of AT&T's abysmal record of antitrust violations, it becomes clear that neither the Proposed Judgment, nor any other arrangement sanctioning the AT&T-McCaw merger, can possibly protect the public from either the foreseeable or unforeseeable competitive abuses available to AT&T as a result of this merger. Accordingly, this and any other proposed AT&T-McCaw merger agreement should be rejected under the Tunney Act as against the public interest.

II. The Proposed Judgment Is Not in the Public Interest

A consent decree settling an antitrust complaint must be drafted to "preserv[e] free and unfettered competition as the rule of trade." *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 4 (1958). Unless a colorable claim can be made that this standard is met in the present case, the Proposed Judgment must be rejected as not "within the range of acceptability or . . . 'within the reaches of public interest.'" *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C.), *aff'd sub nom.*, *Maryland v. United States*, 460 U.S. 1001 (1982), *quoting United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975).

The Proposed Judgment fails to adequately protect the public interest primarily because it is based on the presumption that the parties to the Judgment, and particularly AT&T, will comply with its terms in good faith. The Justice Department is powerless to protect competition unless AT&T voluntarily follows both the letter and the spirit of the Proposed Judgment.

Had the complaint been issued against a corporation with little or no

history of antitrust abuses, the Justice Department's confidence in the protective provisions of the Proposed Judgment might be warranted. However, AT&T is no typical corporation. A brief review of AT&T's long history of anticompetitive practices, and an explanation of the more refined and clever tactics employed by the company today, demonstrate a deeply entrenched corporate hostility toward free competition. Unless and until AT&T reverses its unfairly competitive policies, the dominant carrier should not be entrusted with the power and potentially limitless opportunities for abuses that the AT&T-McCaw merger presents.

A. AT&T's Long History of Anticompetitive Practices

AT&T's history of antitrust problems dates back a century to 1878 when it litigated its first potential competitor out of business. The Congressional Committee considering telecommunications reform legislation during this past session (H.R. Report No. 103-559, Part 2, 103d Cong., 2d Sess. (1994)), points out that by as early as 1910, AT&T's monopolistic goals were openly touted in its annual report:

This process of combination will continue until all telephone exchanges and lines will be merged either into one company owning and operating the whole system, or until a number of companies with territories determined by political, business, or geographical conditions, each performing all functions pertaining to local management and operation will be closely associated under the control of one central organization exercising all the functions of centralized general administration.

Id. at 33.

By 1913, the Justice Department had to file its first Sherman Act claim against AT&T. The Department then charged AT&T with unlawfully combining to monopolize telephone message transmission in the Pacific Northwest United States, *Id.* at 34-35. The litigation ended in 1914 with the Kingsbury Commitment, in which AT&T agreed to avoid various anticompetitive act. Nevertheless and despite the Commitment, by 1925 AT&T was an entrenched nationwide monopoly. *Id.* at 33.

In 1949, The Department of Justice filed its second Sherman Act complaint against AT&T. The complaint alleged that AT&T purchased all its equipment needs from its subsidiary Western Electric, regardless of price or quality. *Id.* at 38-40. To remedy AT&T's continued pattern of anticompetitive conduct, DOJ sought to divest AT&T from its subsidiary. However, AT&T's

influence and a change in administrations resulted in the Department's enforcement of the law to be compromised.

DOJ backed off from its divestiture goal in the 1956 Consent Decree, and instead meekly required AT&T and the Bell operating companies to limit themselves to the offering of basic common carrier communications services under tariff. As the House Judiciary Committee Report recently noted:

[T]he 1956 consent decree had little relevance to the original premise of the 1949 case: that the exclusive purchasing arrangement between Western Electric and the rest of the Bell monopoly was inherently anticompetitive and inflationary. This disappointing and puzzling retreat of the Department from the original vigor of the case brought in 1949 did not go unnoticed by the House Judiciary Committee.

Id. at 40.¹

AT&T's commitment to the preservation of its monopoly dominance resulted in the necessity for DOJ to file yet another antitrust complaint against AT&T in 1974. This time, DOJ charged AT&T with leveraging its monopoly position in local telephone exchange services to unlawfully impede competition in the markets for interexchange services, customer equipment and telecommunications equipment. *Id.* at 47. DOJ defined 30 specific acts which AT&T had committed in violation of the antitrust laws. *Id.* at 48, in.18.

The 1974 action by the Department of Justice established an unprecedented third attempt by the United States Government to stop AT&T from continuing its unabated policy of anticompetitive conduct it had commenced 100 years earlier:

The Bell System's anticompetitive conduct and behavior was similar to actions attacked in the earlier Sherman Act suits. For example, the Bell System was alleged to have discriminated against its competitors in the quality of access it provided to its local telephone network, by giving competing interexchange carriers technically inferior connections and charging them greater access charges, or by denying equipment manufacturers essential information regarding the local exchange network. The Bell System was also engaging in predatory cross-subsidization by artificially depressing the prices it paid for Western Electric equipment and by allocating Western Electric's costs to the ratemaking base borne

¹ A subsequent investigation into the consent decree "uncovered an elaborate campaign to undermine the case, orchestrated and executed by AT&T, in which AT&T enlisted the aid of top officials in the FCC, the Defense Department, and the Justice Department itself." *Id.* at 40. The findings were published in a 1959 report. *Id.*

by telephone customers. The Department further asserted that the Bell System was engaging in monopolistic self-dealing—for example, by requiring affiliated local operating companies to acquire switching equipment from Western Electric rather than a lower-priced or higher-quality competitor.

Id. at 47–48.

The 1974 antitrust complaint ultimately led to the well-known 1982 Modification of Final Judgment ("MFJ"). The MFJ required AT&T, *inter alia*, to divest its 22 Bell operating companies, and was designed to put a final halt to AT&T's long history of anticompetitive acts. As the discussion, *infra*, demonstrates, the MFJ has not done so.

B. The Recent Increase in AT&T Anticompetitive Practices

AT&T's anticompetitive practices have only become more refined and sophisticated in recent years. Instead of openly repressing competition in the marketplace, AT&T now adopts the disingenuous policy of publicly supporting the notion of competition, but privately subverting its competitors through a variety of unlawful tactics. AT&T has shown that it will stop at nothing to suppress competition, including breaching contracts, interfering with third party contractual relations, and intentionally misrepresenting its intentions to customers and the Federal Communications Commission. Nowhere are these tactics more widely employed by AT&T than in its campaign to eliminate switchless resellers such as the Ad Hoc IXCs from the marketplace for long distance telecommunication services.

1. New Anticompetitive Tactics Employed Against Switchless Resellers

Each of the switchless resellers comprising the Ad Hoc IXCs started in the telecommunications business in late 1989 or early 1990. Each entered the industry after learning of the opportunity to resell AT&T's Software Defined Network (SDN) services. Each of the resellers invested substantial resources building customer bases. These customers were then committed to use AT&T's long distance network as part of the Ad Hoc IXCs' high dollar, high volume, long term contractual commitments required by AT&T's tariffs. As a result of the money and effort expended by the resellers, smaller end-users were able to earn larger discounts, and AT&T was able to garner substantial revenues that otherwise might have gone to competitor long distance carriers.

At first, AT&T recognized the value of resellers as a customer base. However,

AT&T reversed itself, and rather than viewing resellers as a welcome source of revenue, decided that resellers undermined its ability to offer higher tariffed long distance rates to small end-users. As a result, AT&T embarked on a concerted campaign, through a variety of means and tactics, to drive the Ad Hoc IXCs and other companies like them out of business.

For example, AT&T exploited their role in the provisioning process to the detriment of the resellers. AT&T refused to accept, lost, and delayed large numbers of service orders placed with AT&T by the resellers, which were to be used to hook up the resellers' own customers. AT&T refused to timely and accurately bill large numbers of their reseller customers, and in some cases engaged in double billing of such customers.

AT&T also disparaged the competency of the Ad Hoc IXCs in the marketplace. AT&T did this by attacking the customer base of the Ad Hoc IXCs, through the use of its small competitors' proprietary information databases to cross market reseller customers.

AT&T manipulated the tariffing processes, and attempted to create, before the staff at the FCC, the image of the Ad Hoc IXCs and companies like them as "deadbeats," *i.e.*, financially unsound entities, that are poorly managed. AT&T then attempted to use this inaccurate picture as justification for its use of its "tariffed authority" to terminate their resold networks.

AT&T also stonewalled requests by some of the Ad Hoc IXCs to resell AT&T's Tariff 12 services. AT&T's efforts to block the resale of Tariff 12 have been successful, as no Tariff 12 services were permitted to be resold by switchless resellers.²

Moreover, through these tactics, AT&T successfully divided the market for end-users such that resellers and the smaller switch-based carriers they resorted to for service, were excluded from the more lucrative market for larger direct access customers. Thus, AT&T ensured itself that it would dominate the large corporate customer market by forcing resellers off the AT&T network, and onto Spring, Wiltel, or other non-dominant carrier networks.

2. \$13 Million Jury Verdict Against AT&T

This corporate policy toward resellers was recently put on trial in the United States District Court for the District Of

² AT&T's tactics go well beyond the brief summary of actions described herein. For example, AT&T has gone so far as to use third party telemarketing companies to attack the customer base of small reseller competitors.

Oregon in *Central Office Telephone, Inc. v American Telephone and Telegraph Company*. Central Office Telephone, Inc. ("COT") a switchless reseller primarily active in the Pacific Northwest United States, alleged that AT&T intentionally interfered with COT's business by abusing its power as the dominant carrier in the telecommunications industry. The testimony and documents presented during this trial, some of which are summarized below and attached hereto, demonstrate extreme lengths to which AT&T will go in order to snuff out competition.

The plaintiff's first witness was the founder of COT, Gordon Rood.³ Mr. Rood testified at length about the numerous ways in which AT&T intentionally set out to disrupt his company's business, and undermine its ability to compete. AT&T exploited its role in the provisioning, billing and servicing process to create the appearance that COT was incompetent. When AT&T refused to clear up the problems it created for COT's end users, the end users inevitably had no choice but to switch to long distance carriers.

Mr. Rood first testified how AT&T ensured that COT's customers would not enjoy a smooth transition onto the SDN account. Tactics employed by AT&T in the provisioning process included:

- Failing to send carrier changes orders to the local exchange company (exh. A at 265);
- Doubling the time in which AT&T promised to provision new orders from 30 to 60 days (*id.* at 233-34);
- Randomly reducing the number of orders that COT could offer from 6,000 down to 400 per month (*id.* at 225-26); and
- Stalling the provisioning of COT customers to such an extent that, by the third quarter of 1990, COT customers had to wait an average of 6 months from the time SDN was ordered to the time it was turned up; (*id.* at 273-74).⁴

If and when COT's customers were eventually provisioned on SDN, their real problems began in the billing phase. AT&T created such extensive and tangled billing glitches (which to the end user appeared to be COT's fault) that COT was left with enraged customers who could not afford to spend valuable time sorting out billing errors. These billing tactics employed by AT&T included:

- Refusing to give COT multi-location billing as promised, such that COT could share a discount with a customer without costly and time-consuming adjustments after billing (*id.* at 374-75);
- Failing to provide call detail lists when billing COT's customers, or delaying call detail for months after bills were sent out (*id.* at 266-67);
- Incorrectly crediting or debiting the account of one end-user for amounts due from or to another end-user (*id.* at 298);
- Failing to bill customers for network usage until several months after the use, sometimes billing a customer for eight months of use in one bill (*id.* at 303);⁵
- Adjusting customer balances with unexplained credits and debits, causing major frustrations for customers (*id.* at 287-88);
- Double billing COT customers after COT assumed responsibility for billing its customers directly (*id.* at 298-99);
- Miscalculating the amount of volume discounts that a customer was owed (*id.* at 297);
- Refusing and/or failing to properly divide the SDN discount percentages between COT and the end-users, instead giving the entire discount to the end-user and thus cheating COT out of profits and cash flow (*id.* at 283-86);
- Refusing to correct erroneous bills brought to AT&T's attention (*id.* at 299, lines 11-13).

Finally, Mr. Rood testified to numerous ways in which AT&T undermined COT's competitive edge. These unfairly competitive tactics included:

- Breaking its promise to provide COT with calling cards containing the AT&T and COT logos, making it more difficult for COT's business end-users to get SDN rates for calls made from out of the office, and impossible to get SDN rates for calls made from out of the country (*id.* at 215-218, 559-561);
- Illegally "slamming" COT customers and converting them to the higher tariffed service of AT&T (*id.* at 557);
- Referring all resellers problems to one understaffed and untrained office in Piscataway, New Jersey, where the AT&T employees did not have the time, expertise, or customer familiarity to resolve the problems experienced by COT and its end-users (*id.* at 255-57, 299-300);⁶

⁵ In one case, Monarch Hotel received a \$36 bill one month, and the next bill received was for \$10,000. Exh. A at 303. As a result, Monarch Hotels refused to pay the bill, and cancelled its account with COT. *Id.*

⁶ AT&T told COT that their account was being transferred to Piscataway, New Jersey because "the

- Making a post-contract demand for a deposit from COT before provisioning customer (*id.* at 261-62);
- Refusing to join COT in explaining the provisioning and billing problems to endusers (*id.* at 267-68).

The cumulative result of all these AT&T tactics was that COT lost a large part of his customer base. Indeed, by the Fall of 1991, COT was losing tens of thousands of dollars worth of customers every month. *Id.* at 304-05.

After Mr. Rood explained the difficulties COT experienced, testimony from a former AT&T employee, Spencer Perry, established that COT's problems were all intentionally orchestrated by AT&T.⁷ Mr. Perry testified that resellers of SDN were first considered by AT&T to be a good source of revenue for the company,⁸ but that later they were regarded with hostility and even referred to as "cockroaches."⁹ This reversal in AT&T policy occurred after AT&T's Director of Distribution Strategy, Michael Keith, decided that SDN resellers might erode AT&T's PRO WATS customer base. *Id.* at 1009, line 18 through p. 1010, line 6.¹⁰ To prevent this, Mr. Keith formed an ad hoc committee on resellers in order to, in Mr. Perry's words, "work on ways . . . to change the SDN offer, so that the switchless resellers, or the cockroaches . . . would not . . . buy the product." Exh. B at 1038, at lines 20-23.¹¹

At Mr. Keith's behest, Mr. Perry and another AT&T employee prepared a memorandum outlining ways in which AT&T could erect roadblocks to SDN

SDN account was not for resellers," and even acknowledged that COT "wouldn't be getting the same level of service that [it] had previously." Exh. A at 256, line 24 to 257, line

⁷ Mr. Perry was an AT&T employee for 14 years, reaching the level of district manager for the account management district known originally as the Carrier Service Center and later as the Channel Development and Operations Center ("CDOC"). The relevant portions of the trial transcript containing Mr. Perry's testimony in *COT v. AT&T* are attached hereto as Exhibit B.

⁸ Specifically, Mr. Perry testified that AT&T was at first "overjoyed" by resellers (exh. B at 993), because customers "were walking in through the floor. It kind of reminded me of fish jumping out of the ocean into your boat. You don't even have to drop the line in." Exh. B at 994, lines 2-4.

⁹ Exh. B at 1038.

¹⁰ Mr. Perry explained the reasoning behind AT&T's sudden hostility toward resellers:

[Y]ou would take a PRO WATS base of customers, and essentially take those customers, and move them to a product SDN that was lower priced. And that's referred to as base cannibalization. You are sort of eating your own customers.

Exh. B at 1071, lines 7-11.

¹¹ Mr. Perry also was instructed to find ways "to kill the arbitrage" which Mr. Perry explained meant to eliminate the price gap between the SDN and PRO WATS tariff rates, the existence of which enabled resellers to make a profit by aggregating smaller end-user. See Exh. B at 1018, lines 9-19.

³ Relevant portions of the transcript of Mr. Rood's testimony are attached hereto as Exhibit A.

⁴ By comparison, Mr. Rood testified that COT could get an order provisioned by Spring within 10 days. Exh. A at 331, lines 12-16.

resale.¹² The ideas contained in the memorandum were then discussed at the first meeting of the ad hoc committee on resellers held on March 12, 1990. *Id.* at 1052–54. Seven AT&T officials attended the meeting, most of whom took notes. *Id.* at 1055, lines 14–15; 1056, line 20 through 1057, line 2. According to Mr. Perry, it was in this and other ad hoc committee meetings that AT&T formed its plans for destroying resale that were ultimately used against COT and the Ad Hoc IXCs:

[O]ne of the things we were trying to do, was while making it less attractive to resellers, we wanted to keep the viability to commercial customers. And so, what we did, was we just listed ideas on the board, and then later went back, and then segmented those ideas, and tried to put some order to them, in terms of, you know, basically categorize the ideas.

Exh. B at 1052, lines 4–10. Mr. Perry testified that after this first ad hoc committee meeting ended, he was directed to gather the notes taken by the participants to the meeting and destroy them, which he did. Exh. B at 1056, line 3 through 1059, line 18.

By the Fall of 1990, AT&T's anti-resale policies devised by the ad hoc committee were working very well. Indeed, Mr. Keith indicated his confidence in AT&T's ability to thwart resale in a candid moment upon Mr. Perry's departure from AT&T. Mr. Perry testified about the encounter at the trial:

Well [Mr. Keith] had mentioned that when . . . he asked what was I going to do . . . I sa[id] I wasn't sure. And he sa[id] well, I hope you are not going into SDN resale. And I said, oh, why is that? And he picked up a piece of paper, and he sa[id], with a one percent provisioning rate, they won't be around much longer.

Exh. B at 1084, lines 11–17.

Mr. Keith, in deposition testimony offered at the trial, essentially admitted that AT&T was working on ways of excluding resellers from the SDN

market.¹³ Mr. Keith confirmed that, when asked by an AT&T official how resale could be limited, Mr. Keith answered in writing:

I don't really know at the moment. We are meeting weekly with the SDN product team to find out. We want to make sure SDN serves the top end of the market. There will probably be modifications to the product that will insure this, but may not serve the resellers. But no one knows exactly what these steps will be . . .

Id. at 1201, lines 1–6.¹⁴

After a two week trial in which AT&T's anticompetitive tactics were explained at length, the jury concluded that AT&T had unfairly and intentionally excluded COT from reselling SDN as required by law and contract. The jury awarded COT \$13 million in damages.

3. Other Actions Pending Against AT&T

AT&T's anticompetitive vendetta against SDN and Tariff 12 resale generated numerous lawsuits and continue to do so. Exhibit D to this Opposition lists the known lawsuits that have been filed to date and are pending against AT&T for its activities against SDN resellers like the Ad Hoc IXCs. Exhibit E list the pending complaints against AT&T that have been filed with the Federal Communications by two of the Ad Hoc IXCs, with respect to AT&T's stonewalling of the resale of its Tariff 12 services.¹⁵

4. AT&T's Unfair Business Practices Demonstrate the Hypocrisy of its Present Endorsement of Free and Unfettered Competition

As part of the Proposed Judgment negotiated with the Department of Justice, AT&T has once again endorsed the notion of free and unfettered competition. This is not the first time AT&T has endorsed competition in order to expand its dominance in the telecommunications market. Indeed, the

first step in AT&T's campaign against resellers, described *supra*, was to win deregulation from the FCC. AT&T did so by expressly and repeatedly promising to the FCC and to the public, that AT&T would support competition, including long distance resale. Once it freed itself of regulatory constraints, AT&T reneged on these promises and initiated its efforts to put resellers out of business.¹⁶

AT&T's pattern of publicly subscribing to notions of free competition, but privately attempting to eradicate competitors through unfairly competitive practices, must be taken into account here. To justify its merger with McCaw, AT&T again has broadly supported free and unfettered competition, and even claimed that its control of additional communications facilities will increase access to the market. In light of AT&T's prior pattern of conduct toward resellers, these claims simply cannot be believed. AT&T is quick to embrace notions of free and unfettered competition in order to garner the very power that it needs to suppress small competitors, and expand its own dominance in the telecommunications industry. There is little reason to believe that AT&T's present promises to allow competition in the cellular market are any more genuine than any of AT&T's previous pro-competitive posturings.

C. Opportunities for Further Anticompetitive Practices Presented by an AT&T-McCaw Merger

The discussion, *supra*, of the relentless and creative ways in which AT&T pursued one segment of small long distance competitors, shows that it is impossible to predict how AT&T will pursue these same long distance competitors with its new found dominance of the existing cellular phone segment of the industry and the platform that dominance provides AT&T for future wireless telecommunications services of PCS (see *infra*). The anticompetitive opportunities this merger will create will be limited only by the collective

¹²The purpose of the memorandum was explained in its introduction:

The recent unprecedented demand for AT&T [SDN] service, for the sole purpose of resale, has caused confusion in the marketplace, and has resulted in a clogged provisioning system, thus denying service to commercial customers. AT&T's interests may be well served in delivering this service to established, switch-based inter-exchange carriers. However, the current ability for switchless resellers to arbitrage the service has significant negative consequences to AT&T. This paper identifies tariffed elements and operational practices that attract arbitrageurs. Revisions to these elements and practices are listed in descending order of impact that would decrease the attractiveness of the service to switchless resellers.

Exh. B at 1050, lines 8–12, and 1051, lines 6–16.

This document is currently unavailable due to a pending AT&T remittitur motion. When available, this and other relevant documents from the COT trial will be submitted in a supplemental appendix.

¹³Relevant portions of Mr. Keith's testimony are attached hereto as Exhibit C.

¹⁴Mr. Keith also confirmed the disparate treatment that resellers received vis-a-vis larger corporate SDN customers. For example, AT&T refused to give their salespersons any commissions for sales to resellers. *Id.* at 1197. Moreover, unlike resellers, some corporate customers were given permission to use the AT&T logo, including for purposes of resale. *Id.* at 1199, 1202–03. Ironically, Mr. Keith testified that it was his organization within AT&T that was given responsibility for assisting resellers. See Exh. C at 1189, lines 9–18.

¹⁵These complaints are pending, and discovery in these proceedings to date have produced documents which demonstrate AT&T's motivation and intent to stop the resale of its services. Those documents are subject to various protective orders, but two of the companies comprising the Ad Hoc IXCs have requested a waiver of the protective order for purposes of this submission. If that waiver is granted, a supplemental appendix documenting AT&T's tactics will be submitted.

¹⁶This is particularly true with respect to its Tariff 12 services. For example, AT&T specifically represented to the FCC and to Congress that its ability to provide customized services would not violate the anti-discrimination provisions of the Communications Act (47 U.S.C. § 202(a)) and would not be anticompetitive, because its Tariff 12 services could be *resold*. However, at the time these representations were made, AT&T's corporate policy impact was totally contrary to these representations, as AT&T's policy was that no Tariff 12 services would be permitted to be resold if AT&T could stop such resale. The documents discovered in the pending FCC complaint proceedings demonstrate the contradictions between AT&T's public representations and its internal anti-resale policies and practices.

imagination of more AT&T "ad hoc committees." There can be no doubt that the anticompetitive effects that will inevitably result from an AT&T-McCaw merger are clearly foreseeable and sharply defined against such entrenched anticompetitive behavior. The "protective" provisions of the Proposed Judgment will be powerless to prevent AT&T's unlawful restraints on competition.

1. Expansion of AT&T's Long Distance Domination

In filings with the Federal Communications Commission ("FCC"), AT&T has made no secret of the fact that it seeks to acquire the cellular facilities of McCaw for use as wireless local access in order to protect and expand its "core" long distance services business. The AT&T-McCaw merger will only provide AT&T with the tools necessary to protect its dominance and its ability to control and manipulate prices in the marketplace.

2. Creation of an AT&T End-to-End Network

Any Proposed Judgment in the public interest must be drafted with the recognition that AT&T's acquisition is designed to reintegrate its interexchange services with its control of local access, in order to create an end to end network in which AT&T will be able to bypass the local exchange carriers through the McCaw facilities. The creation of such a monolith was the very result that the MFJ was intended to prevent due to its anticompetitive nature.

The marketplace reality is that none of AT&T's larger competitors have the ability to compete with an AT&T that possesses the tools necessary to bypass present local exchange access networks. MCI may in six or more years have a wireless or wired presence in several major cities.¹⁷ Competitive access providers exist only in small islands in a few cities and have recently suffered a major setback in their ability to expand on a more rapid and cost effective basis.¹⁸

¹⁷ Exhibit F—MCI press announcement, Washington, D.C., February 28, 1994.

¹⁸ *Bell Atlantic Telephone Companies v. Federal Communications Commission*, Case No. 92-1619 Slip Op. (D.C. Cir. June 10, 1994), *vacated in part and remanded, Expanded Interconnection with Local Telephone Company Facilities* (FCC Docket No. 91-141), *Report and Order and Notice of Proposed Rulemaking* 7F.C.C.R. 7369 (1992); *Memorandum Opinion and Order*, 8F.C.C.R. 127 (1993).

Although the local exchange carriers one day likely will, under the proper combination of government regulation and technological advances, enter the interexchange market, as AT&T itself has consistently and vociferously argued, that day is far from being here. Hence, there is no need to

In short, while the rest of the industry inches toward increasing their competitive parity, AT&T is seeking to further entrench its dominance by securing the assets necessary to put it so far ahead of all other competitors as to make any effective future competitive challenge impossible. If permitted to do so, the "whale leading the pilot fish" symbolism used by Professor Huber soon will be enshrined.¹⁹

3. Domination of the PCS Market

Most industry experts agree that over the next ten years, personal communications services ("PCS") technology will transform the way in which the public communicates electronically. PCS will enable people to be reached anywhere in North America over wired and wireless networks with a single personal telephone number. PCS will also support two way data, radio location, and image transmission.

Dr. Jerry Lucas, a leading expert in the telecommunications industry, and publisher of *Telestrategies Insight*, predicts that, in the event that AT&T acquires McCaw, AT&T will be in a position to dominate the PCS market. In an article entitled "The PCS Revolution and Why AT&T Will Dominate It," *Telestrategies Insight*, July 1994, Dr. Lucas analyzes the competitive prospects of leading companies in the PCS market. Dr. Lucas concludes that AT&T *is positioning itself to dominate the PCS market through the AT&T-McCaw merger*, and predicts that *AT&T ultimately will choose to control 60% of the PCS market*. *Id.* at 4.

To give a company such as AT&T, with its history of anticompetitive abuses, the opportunity to dominate such an important emerging technology, would be reckless. The FCC will be selling PCS spectrum at the end of 1994, and AT&T-McCaw would be in the unique position of having the financial and capital resources to ensure its total domination of the PCS market before other companies have had an adequate opportunity to evaluate their prospects for entering the field. It is only by blocking the proposed merger that robust competition in this emerging industry can be salvaged.

accommodate AT&T's own attempts to get a head start on such entry by acquiring the local access facilities that will provide it with the capability to reestablish its monolithic end-to-end network reach. Clearly none of AT&T's competitors have a similar capability at this time, and will not have such a capability for the foreseeable future.

¹⁹ See Huber, Kellogg and Thorne. *The Geodesic Network II. 1993 Report on Competition in the Telephone Industry* (1992) at 3.52.

4. Inadequacy of the Proposed Final Judgment Protective Provisions

The Department of Justice undoubtedly believes the Proposed Judgment provisions adequately protect the public from the antitrust implications of an AT&T-McCaw merger. Unfortunately, the Proposed Judgment is entirely inadequate, as AT&T easily will be able to circumvent the anticompetitive spirit of the Judgment's protective provisions.

For example, the Proposed Judgment contains provisions regarding the "Separation of McCaw and AT&T" and "Equal Access" for other long distance carriers (including, presumably, resellers like the Ad Hoc IXCs). These provisions, which presumably were drafted with the good intention of preventing AT&T from monopolizing all the long distance needs of McCaw cellular telephone customers, will in no way prevent AT&T from continuing the anticompetitive practices discussed above.

Nor will these provisions fulfill the modest goals for which they were designed. The "Separation" provision, for example, presumably seeks to prevent AT&T from dictating how McCaw will operate its business. However, the Proposed Judgment does allow AT&T to funnel "general corporate overhead and administrative services to McCaw and McCaw affiliates." This is exactly the type of control that AT&T will seek to exploit, through liberal interpretations of corporate overhead and creative offers of administrative services which will subtly enable it through "carrot and stick" approach to get the operational control over McCaw that the Proposed Judgment seeks to prevent.

Nor will the Equal Access provisions protect long distance carriers. The Ad Hoc IXC and COT currently operate in an equal access environment, but that hardly has guaranteed them the access to which they were legally entitled. Indeed, AT&T successfully thwarted the efforts of resellers to compete for large segments of the long distance market through the covert tactics described above. There is no reason to believe they will not repeat these actions once it has a foothold in the cellular industry, despite the Equal Access provisions contained in the Proposed Judgment.

III. Conclusion

AT&T's historic practices have proven, if anything, that they have not earned the privilege of being entrusted with the means with which to further its anticompetitive attempts to dominate and restrain competition in the

telecommunication industry. AT&T must be required to first earn the public's trust as the dominant carrier before being permitted to expand its power and influence in the industry. As such, the AT&T-McCaw merger should be rejected.

Indeed, the actions thusfar taken endorsing the merger, if followed here, will be evidence of the Department's commitment to effectively enforcing the laws of this country. Approving the AT&T-McCaw merger will cheat the small businesses which have diligently fought to bring more effective competition to the telecommunications industry, and the small businesses and other small users who can only be properly served by the smaller carrier community of that industry. The Proposed Judgment cannot guarantee that these significant interests will be preserved. To the contrary, history has demonstrated, and history is repeating itself today, that AT&T will not allow the antitrust laws or government decree to sidetrack its continued and unabated efforts to remain dominant and controlling in its core line of business—long distance telecommunications.

For the foregoing reasons, the Proposed Final Judgment must be rejected as against the public interest.

Respectfully Submitted, The Ad Hoc IXC's

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Exhibit A—Excerpts of Trial Testimony of Gordon Rood, Central Office Telephone, Inc. v. AT&T, Civil Action No. 91-1236-JE, United States District Court, for the District of Oregon, June, 1994

A. Exhibit 5 is a photocopy of the information about the SDN calling card, and how it would be laid out with our logo. And in the lower left corner is an actual copy of the calling card that LaDonna brought out as a sample. She put it down there, and she said here is—and we made the copy together.

She said here are the instructions on how—what information we had to provide them to get our logo printed. And she said this will have the AT&T logo here, and we will have the Central Office Telephone logo up here, and they will print the cart out.

MR. HALL: Excuse me, your Honor. May I instruct the witness not to show the jury the exhibit until—

THE COURT: Okay.

BY MR. HALL:

Q. I didn't tell you. That is my fault, Mr. Rood. But don't show the jury things you are looking at until the court has to admit it into evidence.

We will offer that exhibit, your Honor.

THE COURT: What is the number?

MR. HALL: Exhibit 5.

MR. PETRANOVICH: No objection.

THE COURT: 5 is received.

(Exhibit 5 received.)

BY MR. HALL:

Q. I would like to ask if the blowup or the transparency can be put up. That may be a little easier for the jury to see than what you were showing them prematurely there.

Can you see that over there readily?

A. Yes, I think I can. It might be easier to look at this.

Q. Why don't you just describe for the jury quickly again what you said about where the calling card information was located?

A. Okay. The lower left, the white portion on there, it was the actual duplicate of the calling card sample that LaDonna brought out to us. The instructions above are—tell you the different options for—one says hot stamping. One was offset printing. One says exclusive customer design.

Q. Now, when you were negotiating with LaDonna Kisor about entering the AT&T agreement on SDN, what was the discussion with regard to calling cards?

A. Calling card was one of the most important things we saw. The SDN calling card was very similar to a standard AT&T calling card. You accessed it through a normal telephone, with what we call zero plus. You didn't have to dial an 800 number. One of the major benefits of it, it gave a 45 percent savings off of the AT&T card.

Actually, there was a little bit more than that. But we—the initial charge was 30 cents compared to about 75 cents. And the cost per minute was considerably less. And it was also billed in six second increments as opposed to full minute increments, so there was at least a 45 percent savings off an average call using the SDN card compared to a standard AT&T credit card.

Q. What did you consider the value of that calling card in relation to prospective customers?

A. Oh, boy. It was really important. A lot of the customers we dealt with had actually spent more money on calling cards, because they would have a lot of salespeople traveling. And the savings, because it was 45 percent, if a customer, for example, had a \$1,000 phone bill, and 500 of it was in calling cards, they could save 45 percent of the 500, where we might only save them 22 percent on the other 500 of their bill. So, it had a

significant impact on customers in reduction of their telephone expense.

Q. Okay. It's a little blurred there. There is the AT&T logo in the upper, left-hand corner. Was your logo going to be on there?

A. Yes, she showed us where the logo—I wrote—those are my actual numbers. I wrote—that's our logo with a globe, and Central Office Telephone, and that is where we anticipated we would put our logo.

Q. Okay. Was the—was having the AT&T logo along with your logo on your card of value to you?

A. Absolutely. It gave us what I considered almost instant credibility with our customers.

Q. Okay. Now, did you ever get the AT&T calling card?

A. No. We never got their AT&T calling card. We submitted the artwork to them. I took it—I hand-carried it down to one of the people in their office that was on the account team. I think LaDonna was out of town.

They called me up and said we need your artwork. I took it down to the AT&T office here, and we never heard anything more. And a couple months later, of course, our account—this was probably in December of 1989. And somewhere around January or February, since our account was not yet turned up until April, we couldn't issue it, because it wouldn't work.

And I asked LaDonna about the calling cards. And she says, well, she said, you can't have them. AT&T credit card manager, I think she said, had said the resellers weren't going to have use of the AT&T calling, the SDN calling card.

Q. Okay. Would you distinguish between the resellers with the term commercials?

A. Yes. A commercial account would be someone who purchased an SDN account or account for their own use or

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Q. Did you actually contemplate telemarketing at the time you were considering going into this SDN program?

A. Yes, we contemplated all different services. Telemarketing is one that we looked at. Actually, in 1990, in February of 1990, I met with a telemarketer, with Jerry Oren, who was our customer service manager. We talked about implementing—he was doing telemarketing already on SDN for another company, and said that he could bring four telemarketers over. But we were—we entered initial discussions about doing some telemarketing.

Q. Okay. Might as well jump ahead here. Why did you not follow through on that?

A. The reason we didn't follow through, was AT&T changed the number of orders that we could offer. When we first signed up in October, they told us that the—we could have up to 6,000 locations on a multiple location, or multiple location billing account. If we ever exceeded that, we could add another 6,000 by partitioning it, which was simply adding a one-time fee of \$10,000. We could actually have a second partition to do that.

In looking at 75 accounts a month, we didn't think that 6,000 was something that we would be reaching in the immediate future. But, there was no limit put on to us up to that 6,000, as far as the number of accounts that we could put up. But, in February, I believe, of 1990, they came out, and they said we are going to restrict you to a maximum of 400 accounts, orders per month. They—so, we abandoned our calls, at that point, to do telemarketing, because telemarketers generally target a lesser amount. We wanted to talk to customers doing \$100 a month and more.

Telemarketers would generally be talking to smaller businesses. I didn't want to fill up my account with 400 orders for \$40, when we had these salespeople, and these plans to expand, and we would much rather put on 400 orders of customers averaging five or \$600 a month.

Q. Okay. We were on—we were talking in terms of the EVP split here. Again, and that was a term related to MLB. Let me go back there and try to discuss this more completely in terms of MLB versus LABO through another chart. Can you look at Exhibit 250?

THE COURT. Excuse me. Before you go on, what does BSD stand for on the chart up here?

THE WITNESS. BSD?

THE COURT: Up in the upper right.

THE WITNESS: Business service—

MR. HALL: Your Honor, I can ask some questions there.

Q. Would you please explain to the jury what business services division customers means?

A. Business service division customers would be those

* * * * *

Mr. Petranovich. No objection.

The Court. 39 is received.

(Exhibit 39 received)

By Mr. Hall.

Q. Anyway, looking at Exhibit 68, will you tell us how it came about that having started out to do this SDN part two program you just told the jury about on October 30, 1989, you ended up in this March 8, 1990, agreement on something called MLCP?

A. Yes. In February of 1990, LaDonna Kisor came and told us that they were having some difficulty in implementing some of the orders, our initial contract, because it wasn't due to go in, had not been—our initial contract has not been installed.

As I told you, that she told us originally, that it would take, for subsequent orders, when we added customers to our network, it would take about 30 days, but she said—

Q. Excuse me. When you say originally, are you referring back to October 30?

A. I am referring to the original October '89. We were told that we would have subsequent locations added in 30 days. She came out and told us, in February, that they were having—they had a lot of orders from other sources, other resellers. They were having some difficulty in implementing the orders, and that actually, the implementation date, phase would change from 45 to 60 days, which is a fairly long time. When you go out and sell a customer service, and he said, yeah, gee, that sounds good. I want it. And you say, I can't get you up for two months or whatever.

Actually, in some cases, with this, she also told us that we would now submit orders by a certain date each month. And she called them windows. She gave us a schedule, and said that if you give us all your orders by March 23, for example, then those orders—would now be implemented on the second following month from about the 11th to the 15th of the month. So, it was anywhere from 45 to 60 days. But, it also meant that if we—if the window date was March 23, and we signed up a new customer on March 25, two days later, we couldn't submit that customer until the next month. And the next month the window might be April 21, or April 19.

So, we would have to hold that customer's order for almost a month, and then an additional time. It would take another 45 to 60 days. So, in some cases, it could be almost 75 to 90 days before that customer service was installed.

Q. How does that relate to MLCP?

A. Well, then that is why she came out, and she proposed

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was interested in continuing to work on a full-time basis.

Q. Okay. Following your April 9, 1990, agreement, for the MLB EVP six program there, what, what was your relationship to the business services division in the Portland branch?

A. All right. LaDonna Kisor, at that point, continued and was still our

account team manager. She was the sales rep. And we had the account team that we had, which consisted of Jan Bramlett and Lynn Rosen. They had a technical person assigned, Ken Merlot. So, they had a whole account team right here in Portland that we dealt with, that smoothed out any technical difficulties that came out.

At that point, in earlier 1990, we were meeting on a weekly basis. We actually, I think, every Wednesday afternoon at 2:00 o'clock, LaDonna would come out, and we would give her orders. We would talk about anything, so we had a very close relationship with our account team at that point.

Q. Okay. Did that change?

A. Yes, it changed in May of 1990.

Q. Okay. And will you just tell the jury what happened?

A. AT&T decide that they were going to transfer all of the resellers to Piscataway, New Jersey, for processing orders. And the account representation, instead of being in Portland, would be in Pleasanton, California, the western sales group there.

Q. How did you come to learn this?

A. LaDonna told us that this was going to happen, and she asked the new sales executive, Trish North and her supervisor, who was Bob Alpert, to come to Portland and do a transition. To have them explain to us the new structure, the new method for in how our account was going to be handled at AT&T. That was the 25th of May.

Q. Would you describe that meeting, who attended it, and what occurred there?

A. Jerry Oren and I attended for our company. Trish North and Bob Alpert, LaDonna Kisor was there, and they came into,—and they had an agenda set for the meeting, a printed agenda, telling the things that they were going to talk about in the meeting. And they discussed the transition of our account to their new representation.

Q. Okay. What, what were you told, with regard to how AT&T would be handling you from that point on? What were you told as to the support?

A. We were told we would process our orders through the office in New Jersey. We were told that we would not be getting the same level of service that we had been getting in the past. Bob Alpert told us that the SDN account was not meant for resellers, and that we wouldn't be getting the same level of service that we had previously.

Q. Okay. Was there, were there—were any names of any people mentioned at that time at CDOC for you to contact?

A. Yes, they gave us the telephone numbers of several people. I don't recall. I think Tony Parisi's name was

on that as a person that we would contact regarding processing the orders. And there was also someone in the—Cynthia Alexander's group, I believe. And you will have to—Jerry Oren, probably, since he was dealing with those people, on a daily basis, he probably has those names down. I don't recall them.

But we were given, actually given the telephone numbers of the people that we would be talking to in Piscataway and in Pleasanton.

Q. You mentioned CDOC, and talking about Piscataway, and what did you then know about what CDOC is or was?

A. I didn't know a heck of a lot. It was a channel development operations group. And all I understood was that instead of being in the business services division, we would be dealing with the people back there. And that we would not have the account team that we had had at that point. That it was going to be basically our responsibility to process all of the paperwork, as opposed to some of the functions that had been performed by the Portland account team.

* * * * *

A. This is a letter on July the 3rd of 1990 from Trish North as a followup to their meeting, saying that AT&T had completed a credit review, and based on that, they asked us for a \$375,000 deposit.

Q. You'd indicated you'd worked with MCI earlier on before you got into this SDN program in October. Had you had any troubles with credit with them?

A. No, we had not.

Q. Okay. And you had worked, at the time this letter came to you, with AT&T already under two different contracts?

A. Right. We'd already had—we already had three accounts. We had the original SDN option 2, we had the multiple location calling plan, which they came out and sold to us, and we'd already signed up and had working the SDN option 6.

Q. I didn't ask you this before, but when you did the option 6 back in April 9, 1990, was there any specific discussions with LaDonna Kisor about whether there would be a deposit?

A. Yes. I had a credit background. We had been asked for a deposit with MCI. I was—and I brought it up. I said, "You know, LaDonna, I've got to ask you this. I'm a little bit surprised that you haven't asked us for a deposit." Her reply was that, well, she had written up a good story about our company based on our history, and we had an account with MCI. And with our vast experience in telecommunications industry, she said a deposit wouldn't be required.

Q. But, in any event, you did get this letter in July, and did you ultimately come down to a particular deposit figure for Trish North?

A. Yes. I had a telephone conversation. I was pretty upset at the 385,000 deposit, but I had a telephone conversation with an Alex Aja, A-J-A, I believe. And I said—in fact, Trish North told me if there was any questions regarding this, I should talk—gave me the telephone number.

And I said, "You know, I'm surprised that you are asking for a deposit." I had given them a bank record showing our bank balances. I gave them MCI as a reference. I actually had made out a—had a completed financial statement. At the time they gave me the credit applications, I said, "Well, you know, let me give you a current financial statement." And that was at the—our accountant's at that point. So I wanted to give them current information. So I asked—I asked him, I said, "Well, what did you find out when you talked to our banker or MCI?" He says, "We didn't talk to anyone."

Q. In any event, did you come down to a number?

A. Yes. They agreed to talk to MCI, which they did. I

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the problems is some of our customers may have 15 lines, and they would have five lines up on the SDN and the other 10 aren't working. Some of them would not have anything.

So our salespeople had to go back out to the customers, tell them that we were having some problems, and we'd have to go to the terminal block and actually physically make calls from each line to do the verification to find out which numbers were actually up on SDN, if any of them. It was very time consuming. The customers were peeved, if not outright mad, because they had signed up for a service maybe four or five months before and still weren't on it. They may be getting some billing from us and some billing from someone else.

And it was—the orders weren't working. We found out that the orders that we submitted in May that were supposed to be turned up in July—and I forget. There was something like 40 of them or whatever—that not one of those orders were turned up, not a one. And we called Trish North and said, "What happened? None of our July window went out or what was the orders that we had submitted in May."

She came back with a reply, someone forgot to send the orders to the LEC, which is L-E-C. It stands for local exchange company. It's an industry

termination. So if we talk about LEC, we're talking about local exchange company, L-E-C.

Q. Would that be like U.S. West?

A. U.S. West, GTE, Continental Telephone, whoever happens to be the local serving telephone for that particular customer. So we were—we were really concerned. We were concerned that our account was not billing. Here we had given them enough orders to where we were expecting, by the May or June time frame, that our account would be billing \$50,000 a month. And here on the July bill we only billed \$13,000.

We don't know what is happening. We know the orders aren't getting up. So we were terribly sensitive about it. And we said, well, you know, let's make sure we don't have any problems in August. This is really getting terrible.

Q. Can I stop you here for a second? Before you go on to the next month, did you ask AT&T to join with you or itself make some explanation to your customers of why these problems were occurring?

A. Not in July, no.

Q. Okay. When was that?

A. Actually, in September we made an original request that we—and the other thing that was happening, the accounts that were getting billed weren't getting call detail, and they were getting a bill for \$200 or \$1000 or \$500, and there was no record of where they made their calls. Well—

Q. Excuse me. Can you explain to the jury, especially in the business setting now, because these customers are all business customers, right?

A. Right.

Q. Can you explain in that setting what the value of the call detail was to a business customer?

A. A business customer who doesn't know who in their organization makes calls—you get a bill for \$1,000 for telephone calls, you sort of want to know where those calls went to and if the billing is correct. They're dealing with a reseller, and this may be the first bill. So all of a sudden they're getting a bill.

The call detail we knew—we had ordered the call detail, and actually we didn't know and it wasn't explained to us, that the call detail actually came under separate cover. And if it came within a week or even—

Q. Excuse me.

A. —two weeks, that was probably timely. But by August and September, we were told that the call detail wasn't going to be coming out for several months yet for July and for August.

And we asked AT&T to—well, you know our customers aren't going to

believe us on this. So we asked—asked them if they would write a letter with us explaining, you know, and they said no. So we wrote a letter in September explaining that AT&T had—was going through a new billing system on this and that the July and August call detail wouldn't be out for several months yet and asked—now, we did have a bill detail which came—was available to our office, but it showed most of the same information, but it did not show the destination city. It would say one—a call was made from this telephone number to 1-206. It wouldn't tell you if it was Vancouver or Chehallis or Seattle.

And we would get copies of that and send that out, and that satisfied some of our customers. But we did the best—we were in constant daily communication with the billing office in Seattle getting copies of this, trying to satisfy our customers, because the customers simply won't pay their bill unless they know—most of them wouldn't. Some of them were very good and paid it and relied on us, and in a couple months the call detail came out maybe two weeks late, and that was acceptable to the customer. But we were getting a lot of complaints about the bill detail or call detail not coming with the account. When it was two and three months, it was outrageous.

Q. Would you look at Exhibit 115, 115?

A. All right.

* * * * *

this point unless you're prepared to make a firm representation that this will be connected up specifically with AT&T and somebody who can explain it in more detail. I don't know whether you want this witness to explain certain things that were going on that might relate to this or just that you want the document in. But if you just want the document in now, it's not sufficient. There's not a sufficient foundation.

MR. HALL: All right, your Honor, we'll hold that back for a while, then.

DIRECT EXAMINATION (continued)

BY MR. HALL:

Q. What was the provisioning rate for your company during the fall of 19—well, let's start—let's say what was the provisioning rate, to your recollection, for your company in the second quarter of 1990?

A. I—I don't have any statistics. What I can tell you is that our entire July window didn't go up, our entire August window didn't go up. We continued to have problems. Our analysis told us that during this period that—we did an analysis of the dates that the orders went in. And during 1990, the second and third quarter, or this period, that the

average installation on all of our accounts was over—was about six months from the time that we submitted the order to the time it was turned up.

Q. So, in other words, it would be 180 days from the time the customer would order to when the customer actually got on line?

A. Yes. It's about 180 days. I would—we have some supporting someplace.

Q. And what was the promise that was made at the time that you entered the contract of April 9, 1990?

A. We had been told at that time that from the time we gave AT&T the order, it would be 45 to 60 days.

Q. Okay. Can you look at Exhibit 139?

A. 139. All right.

Q. Okay. Is—can you identify this?

A. Yes. This is a document that we received from AT&T in the discovery process.

Q. Okay. Can you—is that—can you identify that?

A. It says, at the top, the—

Q. Well, no. I'm not wanting you to read things. Do you know what it is?

A. Yes. It's an alternate channel support group report on resellers and implementation of orders.

Q. Okay. And is your company included in this listing?

A. Yes, we are.

Q. Okay. Can you—

A. On page 21.

Q. All right. And can you just summarize your understanding of what this chart's about or this tabulation?

A. All right.

MR. PETRANOVICH: Your Honor—

MR. HALL: Just summarize—

THE WITNESS: Yes.

MR. PETRANOVICH: Your Honor, objection. We don't have this exhibit entered into evidence yet. And we've got a question asking the witness, as I understand it, to read from it.

THE COURT: Well, without reading from it, what does it purport to be?

THE WITNESS: It—it's a document showing, in this case, Central Office Telephone orders received by month and implementation.

BY MR. HALL:

Q. Okay. In connection with—does that include Central Office Telephone Company's own orders, as well as other—

A. Yes. Page 21 specifically refers to Central Office Telephone.

MR. HALL: We'll offer that, Your Honor.

MR. PETRANOVICH: Your Honor, a few questions in aid of objection?

THE COURT: You may.

* * * * *

And she came back with an answer. I don't know if it one day or two hours

or two days. She said, "The SAGE test failed." Quote. And this is evidently—I don't know. It's a test that they say they have to perform to make sure that your data's entered correctly. And if it—I'm not an expert on the SAGE test, but that was the reason given to us for our August window not turning up.

Q. Okay. Now, going on here, did you have any discussions during this time fram—we're in the fall of 1990 now—with Trish North with regard to the—the allocation of the discount under MLB that you'd asked for?

A. Yes. Starting in August when the first billing went out, actually under the 15 million minute commitment, we noticed that there was no discounts allocated to headquarters except for a very small amount, which would have represented only those calls that our company made on our own account.

Q. When you say, "headquarters," are you referring in this instance to Central Office Telephone?

A. To Central Office Telephone's own physical operation in Milwaukee, yes.

Q. All right. Okay. And so, having notice that there was no discount allocations at headquarters, what did you do?

A. We called Trish. And she came back, and we determined that all of the discounts were being given out to our end user customers, and the 50 percent that our headquarters was supposed to get was not on the bill.

Q. All right. Did she indicate she would make any steps—take any steps with regard to this?

A. Well, she sent us—one of the things—we had several discussions about the discounts—and there had been an error made where, we—we were told that 50 percent of the expanded volume plan could be allocated. Trish North informed us at this point that if we allocate 50 percent of the URP, the usage reduction plan. That was a 5 percent discount.

Well, we explained before, we had very carefully calculated those percentages that we could afford to allocate to our customers and still be profitable. So it turned out that the 50–50 allocation would not have been a correct allocation, simply because we were giving them not only half of the 12 percent, but we were giving them half of our 5 percent, too, or 14 and a half percent. At the level we were at in volume discounts, it wouldn't allow us to be profitable.

So we had a discussion about reallocating those discounts. And Trish told us that we—you know, any change in that allocation had to go in 10 days before the billing period. And we had our first discussion, I think on August

29th. So we had first talked about changing that. And we asked her, "Can you make an allocation other than a full percentage allocation?" And we used an example. We're talking about a 47 and a half and 52 and a half percent discount. And it took about a week, five or six days, before Trish got back and said, "No, if you're going to make any allocation, it has to be in full percentage amounts. If you want something, you're either going to have to go 47 or 53."

Well, we had done some computing by this time. We had promised our customers a 12 percent volume discount. And during—one of the incentives of going to the option 6 was that during the first year, regardless of where we were in the contract, we would get, for the first year, a 24 percent expanded volume plan discount. So we promised our customers 12 percent. We'll give you half of our expanded volume plan, which is 24.

So we tried to come up—in addition to that we had a 5 percent discount, so our total discounts were 29 percent. We had promised our customers 12 percent. So we came up, and on about the 8th of September, which was still in the period to get it on the next billing, we asked to allocate 42 percent to our customers and 58 percent to headquarters. And 42 percent of 29 percent total comes out to 12.19 percent. So we actually had to give them a slightly higher percentage than we had promised, but that's the closest we could come to 12 percent and meet our commitment to our customers the give them the 12 percent discount.

So we ordered a change in the discount allocation, from what was in the computer of 50 percent, to 42 and 58.

Q. Okay. Now, did that change in allocation that you ordered at that time—as I understand it, prior to this time, there had been no allocation made whatsoever, is that correct?

A. All of the discounts were going to the end user customer, yes.

Q. Right. And what happened after this discussion?

A. Trish told us—reported that she had turned in the order to change it and that it—the change would appear on the October 11th bill for September usage.

Q. And did it?

A. No, it did not.

Q. Did it ever?

A. No, it never did.

Q. Okay. Did it ever appear to the day you left in September 30, 1992?

A. Well, we changed—because of all the billing problems, we had to change our billing option. So—

Q. Excuse me.

A. They reported to us that in March of 1991, which was two months after we

changed to a different billing option as a matter of survival—they told us, "The compute took your changes," but they were no longer doing our billing, so it didn't make any difference.

Q. Let's go—

A. I don't know that for a fact. they just told us that.

Q. Let's go briefly forward to that point. You say that you changed finally to another form of billing. When was that?

A. We actually ordered, initially, the change at the end of October when we again had a failure in getting the allocations out. Our customers started leaving us. We'd had a—we'd had problems with the implementation, we had problems with credit cards, we had problems with the substitute on the credit card.

Now the billings were going out. And when AT&T had given all the billings out, they were now sending adjustments on the bill without any explanation to the customer. Because they had given the customer all of our discounts, now they decided they had to make an adjustment on the bill debiting the customer for an amount of money, which would get our discounts back, and the adjustments they sent out were wrong.

So our customers were just getting tired of it, and they started cancelling their accounts. Our salespeople were getting irate. They were losing their customers. They were spending all their time resolving problems and not going out and selling new accounts. And so we just said we've—the billing is just impossible. We can't do it. And we said, "We've got to go to network billing," which was a sort of a traumatic thing, because it cost a lot of money to get it set up, and it was going to take several months to get it done.

Q. I'd like to ask you if you'd tell the jury what the difference is—just so they know. They're trying to follow this along here. We've got this MLB and how it's supposed to operate and then MLCP as a temporary parking place. Now we're up to—back to MLB efforts again with Trish North. And I'm trying to get the distinction between the network billing, which you're now going to talk about, and the prior billing?

A. Okay. Network billing, AT&T would continue to carry the service, but they would send us a magnetic tape. We signed up with a billing company, computer company who was in the business of doing telephone billing, and we signed up with them to transfer over other billings and have them do our billings for us. But what it did is it increased

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a major problem. All of our discounts had been allocated back to the end user customer.

AT&T decided that they had to go back and do a debit on their accounts. We'd asked them to just simply credit our account for what should have been on there, but they said, "No, we've got to bill the customer." So they would issue a debit. They may issue a debit in October for two previous months. There would be two debits to a customer's account without explanation. These debits were computed wrong.

In other words, let me give you an example. If our customer, say, got—had \$1,000, a bill, and they got, say, \$290 in volume discounts, actually the customer should have only had 120. Well, so AT&T would say, okay. We have to issue a debit to that account for the difference between the 290 we gave them and the 120. That, obviously, should be \$170. Well, they would issue a debit maybe for \$138. It has no rhyme or reason to be a correct amount to get our money back.

And almost none, that I know of, of the debits that they made were computed correctly. Simply—they gave them all—they should have simply multiplied 58 percent times the amount of the volume discount the customer got. It was a pretty simple mathematical calculation. They never—they never got it correct. So they kept doing that.

Some of our customers didn't understand them. They didn't call us. They wouldn't pay them. Some of them said, no, you gave me a discount. I'm not going to get it. They didn't understand it. And these bills were just fouled with incorrect balances every month. It was taking—customers quit. They'd say, "You know, I like your service. I simply can't spend four hours every month reconciling my AT&T phone bill or my Central Office Telephone phone bill."

So the balances were incorrect. Then we have some evidence that Customer A would pay his bill, and it would be credited incorrectly to Customer C's account. It was just a tangled web of incorrect billings that went out. Those bills were fouled.

Well, when we went to network billing, we made one very good decision. We decided not to try and bring forward the balance the AT&T showed on these accounts, because there was no way—AT&T couldn't explain it to us. There's no way we could explain it to our customers. So when we started billing in February, we started and out as if the customer owed no previous balance. We started out with zero. So we didn't know where they really stood. There's no way of our

telling without some—and we're still dealing with the Seattle office.

And so there was an ongoing problem now, that we're—our customers are still getting billed. We didn't want any more incorrect bills to go out, so we tried to resolve the issue with AT&T to get them to correct the bills so they would be to our customer—customer deserves a correct billing. So we didn't bring back the fouled balances, so now we have all those bills out there with balances on them as a result of all of the incorrect billings from AT&T. So we just started out clean with our network billing and started collecting that.

But now we have a problem that went on for months and months and months of trying to get AT&T to correct these bills. They absolutely refused to correct the bills. We had conversations. We started withholding our payments to them. We said, "We are not going to pay any money until you get those bills corrected, because, you know, it's jeopardizing our business and our customers."

So we withheld—we withheld funds, and we had—we had conference calls a month down the line in 1991. They—our billing—billing responsibilities that I told you about that was handled in Seattle, that got moved back to another department in New Jersey. These people had no idea—the people that we dealt with in Seattle, Myrna Pharr and Becky Zeller, were completely familiar with our account, all the problems. Myrna Pharr was a supervisor. And she told us, she said, "I won't let them transfer this account til we get this cleared up." Well, that didn't happen. They transferred the accounts.

There was another problem that—

MR. PETRANOVICH: Your Honor, if I could just ask for maybe for Mr. Hall to interpose a question every now and then. We're just getting a narrative here that's sort of hard to follow. And if we could do this on a question and answer basis, I think that would help everybody.

MR. HALL: I agree with that, Your Honor.

BY MR. HALL:

Q. Did you get to the point where you hired an outside person to help you unscramble this?

A. Yes. AT&T wouldn't do it. We told them that we would do it. We hired a person by the name of Griff Griffith, who had some computer knowledge and expertise. We installed a special—we asked him what we should install. We told him what the problem was, that we had all of these bills that are incorrect. We want to get them and resolve the balances. So we hired Griff Griffith to

come up with a way of identifying all of these bills.

Q. Okay. And did you get any satisfaction out of that arrangement in terms of your AT&T negotiations?

A. No, we didn't. It took several months. We had to go back to every single bill that had been sent to every

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the SDN program?

A. Well, as I indicated, we had continued to have the problems of getting the billings corrected. AT&T was refusing to do it. And we went to network billing, but there was a new billing problem cropping up that was destroying us. And that's called unbilled toll, or—we'd get a report.

And what happened, our customers would be on the SDN network, but for some reason their calls wouldn't be billed. And even though we were doing a network billing, we were not getting identification of the calls from our customers. Some customers were billing nothing, even though they said they weren't getting a bill from anyone else. And so, all of a sudden, a customer would get a bill, and it would be for eight months of long distance service.

In September, particularly, Sam Allen, at the Monarch Hotel, called me, and he got a bill for that month for the Monarch Hotel of nine- or \$10,000. The previous bill was \$36. It had calls on it for eight months. And he ordered all of his service canceled. Sam Allen owns the Monarch Motor Hotel, the Sunnyside Inn, Days Inn, and the—he owns half of the Best Western at the Meadows. He canceled all those services, and said he would never do business with us again, and he wouldn't pay the \$12,000 or \$10,000 that we showed owing on the bill even though some of it was a current portion.

Mr. PETRANOVICH: Objection. Hearsay as to what Mr. Allen told Mr. Rood.

The COURT: I didn't hear the very last part. The objection's overruled as to the first part. He can testify he wouldn't do business with you again, but I don't want you to go on beyond that as to what he said.

THE WITNESS: All right.

BY MR. HALL:

Q. Mr. Rood, I think you, just at the end there during the objection, were talking about the amount of the unbilled—the outstanding billing with your—what you had. You can testify as to what that was. What was the outstanding billing that Monarch had with you?

A. The outstanding bill on the—

Q. Yes.

A. On that one account?

Q. What they would have owed you, yes.

A. About \$10,000.

Q. Okay. That was never paid to you?

A. There were a number of other accounts at the same time. World One and Mark Gould in Florida. We also couldn't pay his account and canceled. We had pretty close to 25- to \$30,000 a month in cancellations in the September time frame, because at this point we'd had so many customers drop off, that our AT&T account was down in the area of \$100,000.

The way the discounts were set up, we were only—we weren't getting enough money for it to be profitable. And with the cancellations, now, we were getting on that, there was no way that we could salvage it and make it profitably. And our salespeople, who were on commission, who waited months and months and months after they made a sale to get a commission, wouldn't sell AT&T. They absolutely—unless a customer begged to go on AT&T, they wouldn't turn in an order for AT&T. They absolutely—because their lives depended on it, and some of these people were making only half of what they should have made as far as their sales.

So they—at that time we had another account with U.S. Sprint, and so they would sign them up on Sprint, but they wouldn't put anyone on AT&T. So there's no way to sustain our AT&T program. And I just decided that if I left AT&T build long enough, that eventually they would drive away every customer that I had on it. So we made a decision to cancel the account.

Q. After you canceled the account did AT&T demand of you close to a million dollars?

A. Well, not—not right away. We had—we received a

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AT&T people, for the termination notice that you just read to us, would you describe the internal effect upon your company of the position that you were in at this time?

A. Yes. This, we had—we were in total frustration with the entire AT&T SDN problem. We had ongoing problems that weren't solved, and no attempt was being made to solve them.

In spite of what they say, we did not see any real improvement in the provisioning process. Part of that may have been due to the fact that our salespeople would no longer sell it, because they couldn't get their commissions. They could sell on our Sprint account and get the account up and working in 10 days and start getting commissions. And they would put them

on SDN, and they would have to wait six months before they started making any money, and that wasn't fair to them.

We had the substantial billing problem with the multiple location billing, which was never solved, and couldn't be resolved. We, we had gone through this expensive thing of providing them with our database, providing them with a complete analysis. We went down and broke every single bill down, and showed them what our figures were, as far as why we thought their bills were wrong, and they never would correct them. They wouldn't look at it.

* * * * *

Q. Now, I think your testimony was, just after lunch, that there came a time that you were told, in March of 1992, you were told by AT&T, that they had got your system working, so that the allocations, percentage allocations could be made as you directed, correct?

A. No, I didn't say that. I said that on April 9 of 1990, they told us that our first customer had been installed on the network.

Q. Go back—

A. No one said to me, at that time, that your percentages are going to be allocated correctly. That wasn't part of any discussion we had on April—

Q. Is it your testimony today, that AT&T was never able to offer you multi-location billing, such that you could share a discount with your customer, 50/50, 48/50, 58/42, any way; is that your testimony today?

A. It's my testimony today, that AT&T could have done it. That it was in their option. It is my testimony that AT&T did not do it.

Q. Right.

A. Ever.

Q. But it's your testimony today, that as of the date of this letter, AT&T could have delivered multi-location billing?

A. We were told they could.

Q. All right. And you believe that they could?

A. I certainly did.

Q. All right.

A. I probably would not have signed the contract, had we known that they couldn't or wouldn't.

Q. Okay. Fair enough. Fair enough. That is one. You wouldn't have signed the contract, if you had known that they could not deliver it?

A. Oh, absolutely.

Q. All right. Now, let's talk about some things that you were not told that you think you should have been. How about the discount? Excuse me. Not the discount, the deposit. You were eventually required to place a deposit with AT&T, correct?

A. Yes, in July 3rd of 1990.

Q. All right. And is it your case here today, that you weren't told that in October of '89?

A. We definitely were not told that in October of 1989.

Q. Now, are you telling me you weren't told, or it just wasn't mentioned?

A. It wasn't—we weren't—

Q. No one mentioned it?

A. In October of '89, it wasn't mentioned.

Q. All right. No one mentioned it in October of 1989?

A. No, they did not.

Q. Okay. Let's spend some time on this deposit. Let's stop right here. MCI required you to place a deposit?

A. Yes, they did.

Q. You, yourself, COT, required its customers, in appropriate cases, to place a deposit?

A. In very few, but, yes, there were times that we had customers place a deposit with us.

Q. You knew, from your years with AT&T, that occasionally AT&T required its customers to place a deposit?

A. If you want to include Pacific Northwest Bell being AT&T at the time, yes, that's fine, yes.

Q. Yes, Pacific Northwest Bell.

A. I knew occasionally Pacific Northwest Bell or AT&T required deposits, yes.

Q. And it wouldn't have surprised you, on October 30, 1989, to be told that you would have to place a deposit, correct?

A. No, it wouldn't have surprised me a bit.

Q. And if you had been told, you would have signed that contract anyway, correct?

A. Providing I could have met the deposit requirements, yes.

Q. Okay. Well, we will get into the deposit requirements—well, let's get to that right now.

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asked about three separate increases that occurred?

A. Yes.

Q. Okay. I would like you to look at paragraph 22. Earlier, in your cross-examination testimony, you mentioned the term slamming. Do you see that in there?

A. Yes, that's the bottom sentence there.

Q. Okay. Was that one of your problems?

A. It was a problem. While it wasn't as significant as the other, it did create a problem with our customers. Slamming is a process of illegally converting a customer from one service

to another. G.I. Joe's, which was a large customer at the time, multiple location, significant billing, and they were contacted by a telemarketer, employed by AT&T, and without authority, slammed all locations.

All the time it took us to get them up on SDN, and whamo, overnight, they were switched back to 1-288, and we lost the billing. It was a nightmare. It took about four months. We lost the revenues. We ended up losing the customers. The customer, of course, blames us for a lot of things that happened, even though we are not involved.

But it took some time, two or three months, I think, to get the customer converted back, and up on our service again. And so anytime something changes, and a problem occurs, they have a tendency to relate it to us. I—but this is one of the, one of the incidents. There is at least half a dozen more, and there is slamming done by other carriers, too, other than AT&T.

Q. Okay. Now, did this contribute, this slamming to your statement, on cross-examination, about a total lack of trust?

A. That is another factor, yes. That is definitely a factor.

Q. And talking about that slamming, is this part of the types of problems that you attempted to have AT&T write to your customers about?

A. I don't, I don't specifically recall. We, we had asked them—most of these slamming incidents were coming in, say, 1991 or 1992, or most—you know, that is when they became a problem. And we—it was in 1990 that they were denying to write letters. We didn't go back to them. We knew what the answer would be.

Q. Okay. Let me ask you to look at paragraph 17. Okay. There's talk in there, is there not, in paragraph 17, about the calling card again, an NRA I?

A. Yes.

Q. Okay. Now, you have already testified that you had never got that AT&T calling card. Tell us, if you will, about what—about the NRA I. We have never gotten fully into that.

A. Well, I have got to relate the NRA I to the SDN calling card.

Q. Okay.

A. The whole thing is—the SDN calling card, I told you how attractive it was. And you can make calls in the normal way that you could with any AT&T calling card, and you would save at least an average of about 45 percent per call. Had our logo.

And once we were told we had it, we went out and told our customers, that we were signing up, it was going to be, you know, five months before we were

on the network, but we told them about this calling card. And they are going to have the SDN calling card and save this money. And it was good for making international calls. It was also good from any U.S. direct country. If you were in Germany, and that was a U.S.—you could actually access that calling card from—I think there were 32 different foreign countries that were on the USA direct list.

That was important to our customers. They had people out there that traveled internationally and made calls to international locations. And they came back, and they said that we were going to be denied use of that calling card. Well, that was—the bad part about that, is the fact that it caused us to have made a misrepresentation to our customer, unintentional, but it was a misrepresentation. Because we told them, in good faith, based on what we had, that we were going to have this card.

So, Donna suggested that we get an alternate card, under the tariff called NRA I, Network Remote Access I. In this case, we would print the cards up. It was not going to be good from any U.S. direct country, because the only way you could access this card was an 800 number. So, our—made it more difficult for our customers to use, because, number one, they had to dial an 800 number, and then they had to put in their identification, and they had to put in the number they were dialing, and things like that.

But, they—we were also told that it would be good for making international calls. So, it's a more difficult card to use. It's not good from the foreign countries, and that probably didn't affect more than five percent of our credit card users. But they—we had considerably more than that that made international calls. And, it was, again, reaffirmed, in the April 9 billing, that NRA I would be good for making international calls.

So, we had these cards printed up. I think we printed up an initial 5,000 of them. Our logo on, numbers, signed them out to our customers, and they weren't good until the network turned up. But when the network was turned up, we gave them to our customers. And they went out, and they immediately got calls. And the international calls were blocked. The customers that we had issued the cards to, they never could make calls, international calls.

And most of them—you just don't do that, because people don't want—if they are going to have a service, they don't want to have to carry two calling cards. So, we virtually were denied—those people that wanted to make

international calls, we were denied any income or revenue from those people.

And, of course, if a company had 20 people and 10 of them made international calls, they don't want to issue AT&T cards or MCI cards to half their people, and give half to another. So, it virtually destroyed our credit card program.

Q. Mr. Rood, I would like to ask you to take a quick squint at this one chart that you were shown. I think there was one over here. Yes. You were examined a little bit about this particular chart. And can you see it?

A. I can see it, yes.

Q. I will stay out of your way here. On that particular chart, a comparison is being made here between network billing and multi-location billing. Is that a correct comparison, in your view, to have the comparison between

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Exhibit B—Excerpts of Trial Testimony of Spencer Perry, Central Office Telephone, Inc. v. AT&T, Civil Action No. 91-1236-JE, United States District Court, for the District of Oregon, June, 1994

* * * * *

were people that were going literally through the door requesting SDN service, he was pretty happy, and so was I. We had made some significant revenue commitments to AT&T marketing, meaning that we—we said that we were going to bring in quite a bit more revenue than we had the previous year, and, so—

Q. Just so the jury knows and we know, the previous year is 1988; is that correct?

A. That's correct.

Q. Or are we talking—previously, we were talking about 1989?

A. That's correct. From 1985 up until 1989, the revenue for that organization had been steadily decreasing. I believe in '85, it was somewhere a little over a billion dollars, and by 1988, it had gone down to less than half of that amount. So, it was a significant revenue decrease that was happening over time, and it was about that time that AT&T's corporate marketing department was looking for new revenues from all of its sales folks and so forth, and, so, Walt, like I said, performed the study over a period of time and essentially convinced his management that we ought to go after the resell market, an when switchless resellers came and wanted to buy the service, we were overjoyed that there were people that wanted to buy the service and we didn't have to go out and beat the bushes, so to speak, looking for customers.

They were walking in through the door. It kind of reminded me of fish jumping out of the ocean into your boat. You don't even have to drop the line in.

Q. Well, were you given a revenue goal that you were to accomplish based on this advent of the switchless resellers?

A. Yes, sir.

Q. What was that?

A. I believe the total revenue goal, and this is increased revenue, not the total revenue, but increased revenue, I think we had to provide somewhere in the neighborhood of 115-million dollars of new revenue to the company, and I think about 90-some of it was targeted towards the software defined network product.

Q. At that point, did you view the switchless resellers as customers?

A. Absolutely.

Q. Now, you indicated that the switchless resellers were jumping into the boat like fish a minute ago.

Tell me a time when your ability to handle this group of people coming in was taxed.

A. Yes.

Q. Explain that.

A. Well, our organization—Wait Murphy's organization

* * * * *

was the operations center of this entire group. John Greco came out of the staff group that was doing the channel development work. Channel development was simply a term that was used by marketing to look at alternate distribution channels to sell AT&T services.

Traditionally, AT&T sold its services via its own sales forces. It peppered the television, media with ads. It was kind of hard to turn on the television and not see an ad for AT&T with a telephone number. What they were looking at was things like sales agents and non-traditional ways of selling those services.

Anyway, those two groups merged. John Greco came from that Channel Development Group, and when Michael came on board, where before I reported as a third level directly to Walt Murphy who was a fifth level, and we did not have a fourth level manager in that group. When Keith came in, he was, of course, the fifth level, and John Greco then stepped—sort of stepped in, and I wound up reporting to John so that I no longer reported directly to the fifth level manager.

Q. Now, I am getting myself into another one here. You better explain to the jury what these levels are.

A. All right. AT&T has—has a hierarchy of management that I think ranges from, say, the first level, which

is the lowest level of management which might be considered like I guess in the Army you might call it second lieutenant or something like that, I suppose, all the way up to the chairman of the company who I guess would be a ninth level or maybe tenth level. I don't know.

Q. Just to get it down to where you were, you were at what level at this point?

A. I was at the third level.

Q. Mr. Greco at fourth?

A. Yes.

Q. And Mr. Keith was fifth?

A. Right, the level right below officer level.

Q. When you did this study—by the way, do you have that study that you just talked about that you and Mr. Gengenback made?

A. No. I recreated it, but I don't have the actual study that we did.

Q. How did you come about to recreate it?

A. I recreated it later on when I was executive director for the Interchange Reseller Association. That chart—if you just, you know, look at that chart, you can very quickly understand or you can explain if you were explaining where the price difference between, say, SDN and WATS, and you can look at that price gap, and you can very quickly understand where the market opportunity for resellers existed.

* * * * *

Q. Did you show this chart to Mr. Keith?

A. Yes, I did.

Q. What was his reaction to the chart?

A. Well, when he looked at the—at the percentage difference, he said that the AT&T's WATS base could be—could be eroded in no time.

Q. And did he give you any instructions when he made that remark as to any further assignments for you?

A. Yes. Yes, he did. Later on, and I don't know if it was the same day or perhaps a day later, but he essentially asked me to get with Glenn Starr's people. Glenn was the product management—product manager for SDN. He was the person in marketing responsible for the service—you know, the service and its features and its profitability and all of that. He was the top dog of SDN.

Q. Could you please look at Exhibit 243? I better give you—pardon me. I'm sorry. I made a mistake, your Honor.

It's 248 A. I'm sorry.

A. Okay.

Q. Can you take a look at that for me and give me an idea as to what that represents?

A. This is a organization chart, first quarter, 1990, of AT&T

Communications—of the AT&T Communications organization or a partial organization chart.

Q. Does this describe the various groups that you have been talking about today, such as product management, Mr. Starr's organization?

A. Pretty much so. It is a little bit off, but for the most part, it does.

Q. Does it describe Mr. Keith's organization?

A. Yes, it does.

Q. Now, you mentioned that AT&T traditionally does direct selling.

Is the direct selling organization in there correctly—

A. Well, it shows up here, but it shows up at a level—the head of the group shows up a level where—lower than what it really should be.

Q. Do you have a pen with you?

A. Yes.

Q. Okay. Could you angle the direct sales organization and start it at a box higher or however you want to do it so that it is corrected.

A. (Complying).

Q. Okay. Why don't you initial that with "S.P.", your initials?

A. (Complying). Done.

Q. Okay. Now, Michael Keith: Is he the Director of Distribution Strategies or was he at that time?

A. Yes, he was.

Q. That was Director of Distribution; correct?

A. Yes.

Q. Would you kindly write in "strategy" there?

A. (Complying). Okay. Initial that as well?

Q. Yeah. Thank you.

A. (Complying).

Q. Do you recognize all of the names on that document and the positions in which they are indicated to occupy?

A. Yes, I do.

Q. All right. There is also a box in there about the so-called ad hoc committee on resellers.

Can you tell me what the ad hoc committee on resellers.

Can you tell me what the ad hoc committee on resellers is or was, just briefly?

A. Yes. You asked me what Michael Keith's reaction to that chart that I showed him was, and indicated that—well, I guess I didn't indicate, but he asked later on—

MR. PETRANOVICH: Objection, your Honor. We have a question, and maybe we can get an answer to the question and then go on.

The COURT. Okay. Could you restate question?

Mr. HALL: Yes. I asked him to identify or just give me a brief description on what this ad hoc committee on resellers was.

The WITNESS: It was an ad hoc group of people that was comprised of people within Michael Keith's organization and Frank Ianna's organization that got together on a couple of occasions to change the SDN offer.

MR. HALL. All right. Your Honor, we will offer 243 A—248 A, I'm sorry.

MR. PETRANOVICH: Few questions in aid of an objection, your Honor?

The COURT. You may.

MR. PETRANOVICH: On this chart that is 248 A, let's just look at Michael Keith. You told us that his real title was Director of Distribution Strategies; right?

The WITNESS: That's right.

MR. PETRANOVICH: Those people aren't on this chart?

The WITNESS: That's correct. It says it is a partial organization chart.

MR. PETRANOVICH: It's a partial organizational chart?

The WITNESS: Correct.

MR. PETRANOVICH: Similarly, there are folks who reports to Mr. Frank Ianna who are not on this chart?

The WITNESS: That's right.

MR. PETRANOVICH: And I suppose there are others who report to Mr. Blanchard; is that correct?

The WITNESS: That's true.

MR. PETRANOVICH: This chart is as of what?

The WITNESS: It says first quarter, 1990.

MR. PETRANOVICH: And that would be the end of March of 1990?

The WITNESS: I suppose it would be as of the end of March.

MR. PETRANOVICH: Okay. Now, you have got or—I guess I don't want to burden you with this, but this committee you just talked about, the ad hoc committee on resellers—do you see that?

The WITNESS: Um-hum (affirmative).

MR. PETRANOVICH: That ad hoc committee is your term; isn't it?

The WITNESS: That's correct.

MR. PETRANOVICH: I have no other questions, your Honor, and with notations that this doesn't describe the chart, I have no objections.

The COURT: 248 is received, but I'm not clear: Is ad hoc—are you the only one that uses that term or was that a term—let me ask it this way: Was that a term that was used within AT&T at the time? Mr. Petranovich asked you if that was your term.

The WITNESS: I heard Mr. Petranovich use it this morning. So, he has used it before.

The COURT: We have heard it used here. When people say "ad hoc committee", are we all going to be talking about the same thing?

The WITNESS: I suppose. It never had a formal name because it wasn't a

formal organization. It was a group of people that met, to my knowledge, twice—only twice. So, that for that reason, I refer to it as an ad hoc committee.

THE COURT: Okay.

THE WITNESS: We can call it anything that you like.

THE CLERK: Your Honor, just for clarification, they offered 248 A. You said 248 is received.

THE COURT: 248 A is received.

THE CLERK: They already offered and received 248 D.

THE WITNESS: Your Honors, could I have some more water?

MR. HALL: Your Honor, we have a problem here because he has now made some changes on that. If I can show it—I would like to project it, but he has made a couple of changes on there, and the lady operating the transparencies—if he would put it on for her some way.

THE WITNESS: If you have a grease pencil—

MR. URRUTIA: There should be a grease pencil there, your Honor. Perhaps, Mr. Perry could make the same changes on the transparency.

THE COURT: That would be fine. Go ahead and put it on, and he can come down.

Q. (by Mr. Hall) Go ahead and make the changes right on that transparency.

THE WITNESS: (Approaching the projector). (Complying).

Q. (by Mr. Hall) I think the first one was Mr. Keith's title. That is the easiest one.

A. (Complying).

Q. And then you said that that direct sales organization—we had that one wrong.

Can you put a box to show it independently or whatever you want to do?

A. First, his title wasn't director.

Q. Then strike that, if you don't mind.

A. (Complying).

Q. So, you are showing organization as being at a higher level, then, than Michael Keith's; correct?

A. That's correct, and it was the business sales division is I believe what it was called, the BSD.

Q. Then, that line between Mr. Nacchio and Gus Blanchard shouldn't be there?

A. That's correct.

Q. Now, you mentioned product management.

Would you just tell the jury where those two organizations, CDOC and product management, sit in this chart?

A. This is product management here.

Q. Mr. Starr's organization?

A. Well, actually, Frank Ianna had product management, and Glenn Starr was fourth level who was the product manager for the SDN product.

Q. Okay. Then, what about CDOC?

A. CDOC was right here under Michael Keith, and as the counsel said, there should be another box here that has some other staff organization.

Remember that I showed you there was the channel development piece of this?

Q. Show yours there, please. You mentioned several names.

A. I am Spencer Perry.

A. Yeah. May I—well, I will just wait.

Q. Now, on this ad hoc committee, let's—why don't you resume the stand there. Thank you.

A. Go back up here? Turn this off?

Q. No. Just resume the stand. We will take care of that part.

A. (Returning to the witness stand).

Q. You were starting to testify, I believe, that Mr. Keith had asked you to take some further steps after you gave him this report indicating what I think was price point comparisons for PRO WATS and SDN and so forth.

What were the assignments that you were given?

A. Well, he asked me to get with Glenn Starr's people to change the SDN offer to kill the arbitrage.

Q. Want to tell the jury what the arbitrage is?

A. "Arbitrage" is basically an economic term that explains a situation where you can go into one market, let's say, and buy a product or service or commodity at one price and, then, go into another market and buy the same or similar commodity or service at a lower—typically, a lower price and, then, go back up into the first market and sell the commodity with a price spread and make some money doing it, and, you know, there is—and that's classical arbitrage, as I understand it.

MR. HALL: Your Honor, may I pick up an exhibit over here?

THE COURT: Yes.

Q. (by Mr. Hall) I'm showing you Exhibit 243 which has already been in evidence. I will put it over here. I don't know if you can see it at this angle or not.

* * * * *

A. Correct.

Q. Okay.

A. And that would roll up to me.

Q. Okay. What is the next one?

A. Develop plans for SDN targeting and strategy to traditional resellers and deflect cockroaches.

Q. Okay. Explain what that means?

A. Like I said earlier, we had a significant commitment to raise our revenues selling SDN to traditional or switch based resellers. What we were doing here—well, what, what this represents is really like a parallel track of, of work that had to be done.

One was go out and sell SDN, and measure it with your folks, and create a sales organization to go out to the traditional people. And, at the same time, cockroaches was a term that a lot of people within AT&T, basically smaller, lower level people, used to referred to switchless resellers.

Q. Who specifically can you recall besides yourself there?

A. I used it. People in my organization. I think Ed may have used it. John Greco used it. Several people. Marty Gitter used it. A lot of people.

Q. Is Ed, Ed Gegenbach to whom you earlier referred?

A. Yes.

Q. I can't—what is the last line there? Actually, it's—

A. It's cut off. It may be on the—

Q. Okay. Account plans?

A. Account plans, yeah. It says account plans by segment. And hold on just a second. Account plans by segment.

Q. Okay. Thank you very much. Can you resume the stand? Thanks.

A. Sure.

Q. Now, when you were talking to Mr. Greco, after you talked to Mr. Keith, did you then make plans to call this meeting of this ad hoc committee?

A. Well, shortly, shortly after the meeting with, with Keith, I got more specific instructions. And I think it was shortly, like a day or two later. I got specific instructions to, to organize a group to get with, with Glenn Starr's people. Glenn again being the SDN product manager. To, to get some of our people together, and his people together in a meeting. And, and work on ways to, to change the SDN offer, so that the switchless resellers, or the cockroaches, or whatever, would not, would not buy the product.

Q. All right. Now, how did you go about meeting with Glenn Starr's group?

* * * * *

you look down at—in this document—let's just read. If you please, do for us the first line, and I will ask some questions.

A. The first line of the document?

Q. Yes, please.

A. Not the title, but the line of text?

Q. Yeah.

A. Okay. The recent unprecedented demand for AT&T software defined network service, for the sole purpose of resale, has caused confusion in the marketplace, and has resulted in a clogged provisioning system, thus denying service to commercial customers.

Q. Okay. Now, you said that you and Mr. Gitter wrote this memo. Where did you get your information about denying service to commercial customers?

A. There was, there was a lot of talk, if you will, a lot of discussion among the various managers involved in this. And you know, we—I got both—well, I am going to speak for myself.

I got a general sense of what was going on, you know, the global picture of what was going on, and—from various people. I hadn't attended any meetings, or actually had seen any, any data, but there was just a lot of what I would call scuttlebutt going on about, about a lot of problems that were happening out across the country.

Q. Now, the commercial customers were under the—Mr. Blanchard's group, were they not?

A. That's correct.

Q. Okay. Would you read on then the rest of that paragraph?

A. AT&T's interests may be well served in delivering this service to established, switch-based inter-exchange carriers. However, the current ability for switchless resellers to arbitrage the service has significant negative consequences to AT&T.

This paper identifies tariffed elements and operational practices that attract arbitrageurs. Revisions to these elements and practices are listed in descending order of impact that would decrease the attractiveness of the service to switchless resellers.

Q. Did you actually look at the SDN tariff to see areas where this could be accomplished?

A. That wasn't the process that we used. I—as you described it.

Q. Okay.

A. I mean, if you like, I can describe the process Marty and I used that culminated in this paper.

Q. All right.

A. What, what we did, was I believe it was in my office, where Marty and I—we hashed out, in my office, and put—made notes on a—on the white board there, of different, different things that could be done to make the service less attractive to resellers.

And one of the things that we were trying to do, was while making it less attractive to resellers, we wanted to keep the viability to commercial customers. And so, what we did, was we just listed ideas on the board, and then later went back, and then segmented those ideas, and tried to put some order to them, in terms of, you know, basically categorize the ideas.

And then further, we then listed, listed those, those ideas, in what we thought were, was a, sort of rank order of effectiveness.

Q. Okay.

A. And then—just let me finish. And then I went back, and took those things, and wrote, and created the paper.

Q. Okay. Did you take this paper with you to the meeting that you—the policy group meeting?

A. I don't recall that I did or didn't. I, I believe I, I—we handed it to John and perhaps Michael, but I don't recall taking it to the meeting.

Q. All right. When you were at the meeting, did you do what you said you just did with Marty Gitter, which is have a blackboard to put down ideas?

A. Yes, sir. Well, it was a white board.

Q. Excuse me. Looking at the next page, there's this talk up in there about the AT&T logo. So perhaps if you would read the first item under billing. Not the first item, excuse me, the first paragraph.

A. Okay, yeah. When AT&T provides billing to the SDN end user, switchless reselling is encouraged. The reseller is given additional credibility when the AT&T logo appears on the end users bill. Potential corrections include, and then there is a list of corrections.

Q. Okay. The very bottom bullet there, what does that say?

A. AT&T logo on end user bill for resellers.

Q. Are you acquainted with multiple location billing?

A. Yes, I am.

Q. Okay. Did multiple location billing, as an option under SDN, result in these end users getting this very logo?

A. Yes, it did.

Q. Okay. Was that discussed?

A. At, at the meeting?

Q. Or at any time.

A. Obviously, Marty and I discussed it.

Q. Okay.

A. That was—the whole billing, the whole billing issue, I think, was more—was, Marty was more expert on that than I was. So, I mean, I think that, that these—most of the billing ideas here were Marty's.

Q. Okay. You can put the last one on to show signatures. I am not going to ask any questions. That was signed by yourself and Marty?

A. It wasn't signed. It was just our names. We put our names down there. It was a draft.

Q. All right. Would you turn to Exhibit 70, please.

A. Okay.

Q. That's what? Will you describe that document, please?

A. This is a summary of the items that, that this, the group, what I call the ad hoc group, came up with, as a result of that meeting.

Q. Okay.

A. Of action items.

Q. Okay. When did you do this summary?

A. At the meeting.

Q. All right. Is this all in your own handwriting?

A. Yes, it is.

Mr. HALL: Okay. We will offer Exhibit 70, your Honor.

Mr. PETRANOVICH: No objection, your Honor.

The COURT: 70 is received.

(Exhibit 70 received)

By Mr. HALL:

Q. Can you put up the transparency on that one? Can you move it over slightly there? Oh, that's a good idea. Thank you.

All right. If you will look at that document, up at the top, it's got a whole bunch of names. Are these people that attended the meeting?

A. Yes, sir.

Q. All right. And at the right, you have got product management, and it's bracketing Ianna, Starr and Brittele. Are these the gentleman from that organization?

A. Correct.

Q. And the CDOC ones, I think you have got Keith, Greco, Gitter, and yourself. So, seven of you at this meeting?

A. That's correct.

Q. And then on the left-hand side, you have got some descriptions, tariff, policy, tariff. Can you explain the differences, why they are there?

A. Yeah. All that does is just explain what kind of modification it is, whether it's a tariff, a change—a change to the tariff, or a change in AT&T operational policy. Some of the things, many of the things that associate—are associated with delivering of product aren't in the tariff. They are just policy. And so—

Q. Can you give us examples of those?

A. Sure. In most instances, billing, and how billing is accomplished and so forth is not specified in the tariff.

Q. Is that — does that include MLB?

A. Well, yes. That's correct. There is only one mention, that I recall, of billing in the tariff with regard to SDN, and MLB wasn't one of them. Wasn't it.

Q. All right. Then, when the meeting was completed, were you given any instructions as to the notes? Let me ask you, first of all, were any notes taken by others than yourself at the meeting?

A. Yes, sir, there were.

Q. Okay. and what instructions, if any, were given with regard to those notes?

Mr. PETRANOVICH: Objection, your Honor. I would like a side bar.

THE COURT: Okay. You may step up. THE CLERK: Jury need a stretch?

(Unreported discussion held at side bar)

By Mr. HALL:

Q. Mr. Perry, were there, at this meeting on March 12, 1990, were—with

the people that you have noted up there, were there notes taken by various people?

A. Yes, sir.

Q. Do you have any recollection of who was taking notes and who wasn't?

A. Not exactly. I mean, I think probably most people were.

Q. All right. And when the meeting ended, were you asked to gather the notes and to destroy them?

A. Correct, yes, sir.

Q. Okay. And who asked you?

A. I, I really don't recall. I mean, there was a meeting. A lot of people were talking. A suggestion was made. I was sort of the de facto secretary of the meeting, and I did.

Q. All right. Now, who was, who was—who presided at the meeting?

A. I can't say that anyone really presided over it. I think Michael probably was, if—Michael Keith was the guy that was probably really directing the meeting, so to speak. But, after the meeting got going, it was just sort of kind of free form of ideas and so forth.

Q. All right. Now, did you immediately, meaning at the very minute, destroy those documents?

A. No, sir.

Q. Okay. Now long was that meeting?

A. Oh, it, it—I think it went well into the late afternoon and early evening.

Q. Okay. How do you know that?

A. I was starving by the time it was—
(Laughter)

The Witness. It was past my dinner time. I normally eat dinner around 6:00 o'clock.

By Mr. Hall:

Q. Did you have any discussion with any people after the meeting?

A. Yeah, yes, I did. Marty and I, at the end of this meeting, talked about it, about the meeting in the parking lot. And, and we were, we were sort of—again, both working in Michael Keith's organization, him being a new guy on the block, we were—we had sort of talked about what we were doing, and, and how this guy probably, of all the managers that we had ever come in contact with, was probably the most gung-ho kind of guy to actually make things happen, to make them happen very quickly.

Q. Okay. And at that time, did you—when did you destroy these documents? I don't think you told us.

A. The next day.

Q. The next day. Did either you or Mr. Gitter express any concerns about the consequences of what you were doing?

A. Well, yes. We both had come out of the AT&T external affairs organization, that was before that, the state regulatory organization. And we both had—

Mr. Petranovich. Objection, your Honor. If we could go one by one. Mr. Gitter and Mr. Keith, or Mr. Perry, instead of both. I don't know who is saying what.

The Witness. I am sorry. Mr. Gitter and I had both come from the external affairs organization.

The Court. Okay.

The Witness. And, and during our tenure there, when the carrier service center, later the CDOC, was part of that organization, we, we both understood that the reason why that group wasn't part of marketing, was because there were some, some potential—if this group ever became part of marketing, that, that some things could happen that weren't too kosher, that sort of went against the Federal Communications Act.

And we discussed, and I think it was in his car or my car, that this is some pretty serious business that we are doing, that we are involved in. We had never, neither one of us had ever been involved in this kind of activity in our careers.

By Mr. Hall:

Q. Let me go back to that meeting. One of the names you have got up there—let's see. Where is that? Did you have any dealings with a Mr. Joe Brittele from product management during the course of these discussions?

A. Yes, Joe was, was a participant in the meetings.

Q. But he wasn't—he's now shown. Oh, yes. There he is. Okay. What did Mr. Brittele have to say, with regard to these problems? Are there any particular areas that he focused on?

A. Well, during the discussion, I think Joe was probably the most animated of the people from product management at the meeting. And the one thing that, that stood out, in my mind, was Joe is a character. Let me say this. So that's how come I can kind of recall this.

But, when we were talking about deposits, you know, Joe made the comment that, hey, these guys don't even have any skin in the game, so that they should be made to put some money up front in the form of deposits. And, you know, I recall Marty and Joe basically had most of the discussion about the, the issue of instituting deposit requirements.

Q. Okay. Now that you mentioned that last comment, were assignments given to the various people that were at that meeting, to, to go out and accomplish?

A. Yes, sir. What we did, was after we had come up with a list of things, we then went back, as you asked, you know, you said, well, what are the designations there, tariff and policy and

so forth. And for the most part, they were all product management issues to go off and chase, so to speak.

Q. Okay. At this time, had there been some—were there * * *

* * * * *

A. Yes, I, I know what that meant.

Q. What did it mean?

A. Base cannibalization is the term you are referring to?

Q. Yes.

A. That was my understanding of what the main issue always was with the switchless resale. And that was that you would take a PRO WATS base of customers, and essentially take those customers, and move them to a product SDN that was lower priced. And that's referred to as base cannibalization. You are sort of eating your own customers.

Q. If you look at the second page there—excuse me—the name of Central Office Telephone appears thereupon. Did you know—did you even know Central Office Telephone at that time?

A. No, sir.

Q. Would you look at Exhibit 11, please.

A. Okay.

Q. Can you identify that document for us?

A. This appears to be a package that was put together by Susan Early, that was a comprehensive communications package to the BSD sales force.

Q. That is the direct sales force?

A. Correct.

Q. And was it—

* * * * *

A. I had just talked to my supervisor, Mary Upchurch, and she said I better go tell Michael. And we went down the hall. And there were some folks in his office. They left. I had a seat outside. The folks in the office left. I went in, and, apparently, she had told him that I was leaving. And we had a conversation. And he asked, he asked why I was leaving, and I told him that I wasn't happy there. And we chatted about that.

Q. Did you have any discussions as to the status of SDN resellers?

A. Well, he, he had mentioned that when, when he asked what was I going to do, and I says I wasn't sure. And he says, well, I hope you are not going into SDN resale. And I said, oh, why is that? And he picked up a piece of paper, and he says, with an one percent provisioning rate, they won't be around much longer.

Q. Could you identify that piece of paper?

A. No, sir.

Q. Then after that, I think you have already testified, you took this job as the executive director of the inter-exchange Reseller's Association?

A. Yes, sir, that day.
Mr. HALL: Okay. That's all I have, your Honor.

The COURT: It's time for lunch. Since we lost a little time getting started this morning, I would like to

* * * * *

Exhibit C—Excerpts of Trial Testimony of Michael Keith, Central Office Telephone, Inc., v. AT&T, Civil Action No. 91-1236-JE, United States District Court, for the District of Oregon, June, 1994

Mr. URRUTIA: Your honor, we would offer 87 at this time.

Mr. PETRANOVICH: No objection, your Honor.

The COURT: 87 is received.

(Exhibit 87 received)

By MR. URRUTIA:

Q. Do you help your customers by giving their competitors hints on how to stick it to them in the marketplace?

A. No, I don't see that as helping them. But I had a role to service and help the resellers.

Q. That was your responsibility?

A. Yes.

Q. Other people in the company had other roles, perhaps, which might include competing against them?

A. That's correct.

Q. But you, Michael Keith, or Mike Keith, and your organization were supposed to help them?

A. That was one of my responsibilities, yes.

Q. And one of the men that worked for you is a guy named Jim Murphy, right?

A. Yes.

Q. And Mr. Murphy wrote an article in this paper, that you reviewed before it was published, called, quote, selling against a reseller, unquote?

A. That's correct.

* * * * *

that has the interview with Mr. Barillari? I will spell it, B-A-R-I-L-L-A-R-I?

A. No, I have not seen the tape.

Q. Are you aware of the fact that a videotape was done? You do know who Mr. Barillari is, right?

A. Yes.

Q. He is one of your in-house lawyers?

A. That's correct.

Q. At least the one with authority on SDN reseller issues, right?

A. He would be one of the lawyers. I am not sure if that's his only responsibility, yes.

Q. As far as those sales people were going, what you were telling them, in this magazine that was especially for them, is that their compensation was going to be affected by resellers, right?

A. What do you mean by that? I don't understand.

Q. Weren't you telling the folks in the field that if they sold to resellers, that they were not going to get any commissions?

A. Oh, yes. That's correct.

Q. Mr. Perry testified yesterday, that part of his job was to go out there in the branches and make the branches turn over resale accounts to CDOC; is that right?

A. I asked John Greco to identify SDN resellers, because the decision is that we will meet the needs of those customers through the CDOC organization. So, working with the branches, both terms would get together, and identify those people that are resellers, and that should be serviced out of the CDOC branch.

Q. So, you would have given that responsibility to Mr. Greco?

A. Yes.

Q. And would you assume, in the ordinary course of business, he would use those people who worked for him?

A. Yes.

Q. Like Spencer Perry and Marty Gitter to do that job?

A. That's correct.

Q. You formulated the corporate agenda for SDN resellers and had it published in this, in this magazine, so the sales force would know about it, right?

A. That's correct.

Q. Did you give an interview that was published in the June 11, 1990, edition of Network World?

A. Yes.

Q. And that document has been marked for identification as Plaintiff's Trial Exhibit 93. Many say that AT&T was generally surprised—excuse me—quote, many say that AT&T was generally surprised—genuinely surprised at the quick expansion of aggregation—aggregation. Has AT&T decided to take action against aggregation, unquote?

Would you read your answer, please, Mr. Keith?

A. Quote, I don't feel there's been a radical change in our attitude. However, we are starting to evaluate how we can realign our strategies to make our products better suited for the marketplace. Our principal theme is that we believe our sales force is the way we want to reach our customers, not through service aggregators, end quote.

Mr. URRUTIA: Mr. Petranovich, we are going to skip to page 107, Line 12.

Mr. McDERMOTT: We have got some on 98, don't we?

Mr. URRUTIA: Did I miss some on 98?

Mr. McDERMOTT: Lines four to 14. By Mr. URRUTIA:

Q. Okay, Thank you. We are going to go back to 98, and then we will move forward.

Did you ever allow the commercial users of SDN to use the AT&T globe?

A. There may be examples of that, yes.

Q. I mean, you have seen it right there on their newsletter, haven't you?

A. I wouldn't doubt that I have seen it on customer newsletters, yes.

Q. And if we see that globe on a newsletter, then we know that that is an authentic document, as far as AT&T is concerned, right?

A. Yes.

Q. We will start on page 107, line 12.

Plaintiff's Exhibit 77, have you turned to it, Mr. Keith?

A. Yes.

Q. Now, this is a letter that you wrote to Gail McGovern, right?

A. That's correct.

Mr. URRUTIA: Your Honor, four our record, Plaintiff's Exhibit 77 has been received into evidence by Mr. Perry. It was the April 3, 1990, memo.

Q. And it has all of the—or various recommendations, right, six recommendations?

A. That's correct.

Q. Plaintiff's Trial Exhibit 93—

A. This is the second time he's asking?

Q. The second time Mr. Briere asked you.

A. Yes.

Q. On page five of the article.

A. Right, yes.

Q. Question, quote, what means can AT&T use to limit SDN reselling, unquote?

A. Answer, quote, I don't really know at the moment. We are meeting weekly with the SDN product team to find out. We want to make sure SDN serves the top end of the market. There will probably be modifications to the product that will insure this, but may not serve the resellers. But no one knows exactly what these steps will be, end quote.

Q. Skip to page 128. Line 10.

Q. Do you recall the day that Spencer Perry left the employment of AT&T?

A. It was in the fall of 1990.

Q. Did he come to see you?

A. Yes, he did.

Q. Mr. Keith, tell us what your bottom line assessment of provisioning was, at the time you began working in CDOC?

A. It was a disaster. That is, the provisioning problem is the fundamental problem that caused all the action in the case here. And at this time, and it wasn't directed towards any class of customers. Anyone asking for provisioning of switched access had a terrible time, during this period, of

getting it in. And it took us a long period of time.

It was getting better by the time I was leaving in 1991. By better, I mean with a set of predictability you could say that this order you gave me will be completed in 45 days plus or minus 10 days. And that was a better condition at the end of my tenure. At the beginning of my tenure, I didn't even understand how bad it could be.

Q. Plaintiff's Exhibit 91 is in front of you. It's easier to read out of the book.

A. That's fine.

Q. I think you said that this was a letter that you had written to Gail McGovern?

A. That is correct.

Mr. URRUTIA: And your Honor, this is already in our record as 91. It's been received, and it's the April 21 letter—excuse me. May 21, 1990, letter.

Q. Who is Gail McGovern?

A. Gail McGovern was my counterpart in the business unit that owned the product SDN. So, her product chose the one that makes changes to it.

Q. All right. And what does this letter consist of?

A. It consists of a series of recommendations and modifications to the process of provisioning and the underlying service itself.

Q. Now, are you aware of whether commercial users of SDN were using the AT&T globe to sell long distance services to third parties?

A. To third parties?

Q. Right.

A. They could. But if they were using it inside their own company, they would use their own logo.

Mr. URRUTIA: And that concludes the designated depositions for Mr. Keith.

Mr. URRUTIA: Do you have Mr. Greco's?

Mr. PETRANOVICH: Yes.

The COURT: Would you sell Greco for us, please?

Mr. URRUTIA: Sure. Spelled G-R-E-C-O. The deposition of Mr. John A. Greco, Junior, was taken on February 26 of 1993. It was taken in the offices of AT&T at 295 North Maple Avenue in Baking Ridge, New Jersey, starting at 1:00 p.m. Mr. Hall was present for the Central Office Telephone and took the deposition for Central Office Telephone, and I believe Mr. Petranovich was present for AT&T.

Direct Examination

BY MR. URRUTIA:

Q. And it starts on page five. I want to go back to when you first came into the SDN program and get the time frames established for your involvement. When did you first become involved with SDN?

A. I guess when you are saying involved with SDN, it's parts of the AT&T's offer, so my involvement, specifically, my job responsibility, it's—

Exhibit D—Pending Federal Court Litigation Instituted by Resale Carriers Against AT&T

1. AT&T v. NOS Communications, Inc. (counterclaim), Civil Action 92-4172 (MTB) D.C.D.NJ
2. Target Telecom, Inc. v. AT&T, Civil Action No. 93-1851 (MTB) D.C.D.NJ
3. Group Long Distance, U.S.A. v. AT&T, Civil Action No. 93-1851 (MTB) D.C.D.NJ
4. Communications Services of America v. AT&T, Civil Action No. 93-1851 (MTB) D.C.D.NJ
5. Telecomp Technologies Network, Inc. v. AT&T, Civil Action No. 93-1851 (MTB) D.C.D.NJ
6. Business Choice Network v. AT&T, Civil Action No. 93-1851 (MTB) D.C.D.NJ
7. Telcom United North v. AT&T, Civil Action No. 93-2625 (HAA) D.C.D.NJ
8. National Communications Association v. AT&T, Case No. 92 Civ. 1735 (LAP) D.C.S.D.NY
9. Envoy Communications, Inc. v. AT&T, Case No. 91-1333 (JE) D.C.D.OR
10. Central Office Telephone, Inc. v. AT&T, Case No. 91-1236 (JE) D.C.D.OR
11. Affinity Network, Inc. v. AT&T, Case No. 92-2836 (JSL) D.C.C.D.CA
12. AT&T v. The People's Network, Inc. (counterclaim), Case No. 92-3100 (AJL) D.C.D.NJ
13. Teledesign v. AT&T, Susan Robinson & Toby Ragsdale, Case No. H-92-1414 D.C.S.D.TX Houston Div.
14. US Wats, Inc. v. AT&T, Case No. 93-CV-1038 D.C.E.D.PA—Philadelphia Div.
15. Telexpress, Inc. v. AT&T, Case No. 93-0256 (AWT) D.C.C.D.CA
16. Paragon v. AT&T, Case No. 91-5057 (JSL) D.C.C.D.CA
17. SCG Financial Corporation, Inc. v. AT&T, Case No. CV-91-5057 (JSL) D.C.C.D.CA
18. Association of Long Distance Users, Ltd. v. AT&T, Case No. 4-93-283 (D.C.D. Minn.—4th Division) (Stayed by Federal Court pending outcome of FCC action.)
19. Cunningham Enterprises, Inc. v. AT&T (counterclaim), Case No. 90-4111 (TJM) (D.C.C.D.CA)
20. AT&T v. Equal Access Corp., Case No. CV-92 (WDK) (D.C.C.D.CA)
21. MJM Communications, Inc. v. AT&T, Case No. CV-92-1951 (JSL) (D.C.C.D.CA)
22. National Communications Ass'n, Inc. v. AT&T, 93 CIV 3707 (D.C.S.D.NY)
23. Retco Enterprises, Inc. v. AT&T, Case No. H-91-2221 (D.C.S.D. Tex.—Houston Div.) (Case settled July 1993)
24. Triad Communications Group v. AT&T, Case No. SACV-93-529 AHS (D.C.C.D.CA)
25. Uni-Tel of Farmington, Inc. v. AT&T, Case No. 92-0963SC/AY (D.C.D.NM) (Not active at this time)

26. Telegroup, Inc. v. AT&T, Case No. 94 CIV 4123 (D.C.S.D.NY)

27. ProGroup, Inc. v. AT&T, Case No. 94 CIV 4123 (D.C.S.D.NY)

Exhibit E—List of Pending Complaints Against AT&T That Have Been Filed With the Federal Communications Commission by Two of the Ad Hoc IXCS With Respect to AT&T's Stonewalling of the Resale of Its Tariff 12 Services

List of pending complaints against AT&T that have been filed with the Federal Communications Commission by two of the Ad Hoc IXCs with respect to AT&T's stonewalling of the resale of its Tariff 12 services.

1. Affinity Network, Inc. v. AT&T, Case No. E-92-96 (FCC, June 26, 1992)
2. NOS Communications, Inc. v. AT&T, Case No. E-92-101 (FCC, July 27, 1992)

Exhibit F—MCI Press Announcement, Washington, DC February 28, 1994

CONTACT:
CORPORATE NEWS BUREAU
1-800-289-0073
202-887-3000
SUSAN SUSS
NEXTEL COMMUNICATIONS
212-536-8770
BILL DORBELMAN
COMCAST CORPORATION
215-981-7550

MCI Will Invest \$1.3 billion in Nextel to Offer Nationally Branded Wireless Services

Network MCI Strategic Alliance With Nextel and Comcast Will Provide First Digital Personal Communications Services

WASHINGTON, D.C., February 28, 1994—A strategic alliance formed today by MCI, Nextel Communications, Comcast Corporation and Motorola will begin offering MCI wireless personal communications services this year. A \$1.3 billion MCI investment in Nextel will accelerate this first nationwide offering of advanced wireless voice and data communications, featuring digital clarity and reliability, a single telephone number that will work anywhere, and availability throughout the country.

The companies said that their alliance will bring these enhanced flexible services to consumers, business and government customers far sooner than generally had been expected. The services will be marketed jointly by MCI, Nextel and Comcast under the MCI brand name.

Nextel's license coverage and planned interoperability agreements give the alliance the potential to reach 95 percent of the U.S. population. Its first

digital network is already serving customers in the Los Angeles area and will stretch across California within the next few months. With the investment by MCI, plans are underway to accelerate construction in most major cities.

"Wireless communication is becoming an integral part of our daily lives, and demand is growing rapidly," said Bert C. Roberts, Jr., MCI chairman and CEO, at a press conference in Washington, D.C. "Customers have been asking us to provide a totally portable communications service that meets their needs any time, anywhere. This alliance means that Nextel is the platform on which we will build an integrated wireless strategy, and that we will be able to reach virtually every American who wants wireless service."

The strategic agreement will capitalize on the strengths of four dynamic companies, each a leader in its field. MCI brings world-class marketing assets—name recognition, customer base and distribution channels—as well as the company's intelligent network. Nextel adds licenses with extensive geographical coverage, planned interoperability agreements and proven wireless products and services. Comcast contributes its experience and know-how in operating cable and cellular systems and will support the build-out and operation of Nextel systems. And Motorola will provide its Integrated Radio Service (MIRS) technology platform, as well as subscriber equipment. These combined strengths will enable the companies to provide a wide array of advanced wireless services to consumers, business and government customers over a larger area than any other wireless service competitor.

"This alliance means that everyone else will be playing catch up," said Morgan E. O'Brien, Nextel chairman. "MCI's enormously successful marketing and branding, and large customer base give us the ability to extend beyond our core of business customers to serve virtually anyone who could benefit from wireless communications. We are delivering the first of these advanced wireless services on our all-digital network in L.A., including wireless telephone, two-way paging and dispatch radio."

Under terms of the agreement, MCI will purchase approximately 17 percent of Nextel's stock, which will match Comcast's ownership. The initial purchase, expected to occur in a few months, will consist of 22 million shares of Nextel stock at \$36 per share. MCI has also committed to purchase an additional 15 million shares at an

average cost of \$38 per share over the next three years, for a total investment of more than \$1.3 billion.

The announcement adds one more key component to networkMCI, the company's strategic vision announced in January. When networkMCI was unveiled, MCI highlighted its intent to form alliances with communications and information industry leaders to provide innovative new communications services. It identified wireless personal communications services as an integral part of the networkMCI vision.

Roberts pointed out that the demand for wireless voice communications is expected to grow from 15 million users today to 80–90 million users in the next 10 years. Data, paging and messaging applications will further expand the total wireless market.

The companies said they will provide consumers, business and government customers with MCI-branded services such as mobile calling services, alphanumeric messaging, dispatching and data transmission, all integrated in a single digital phone. The same telephone number will work from anywhere in the United States.

Comcast has been increasing its presence in the telephony business in recent years through its ownership and operation of cellular properties in the Northeastern U.S. and cable/telephone operations in the United Kingdom. As part of the alliance, MCI and Comcast have entered into a shareholders' agreement with equal representation, and together they will own approximately 35 percent of Nextel.

Comcast is proud to have been a catalyst for bringing this alliance together," Brian L. Roberts, president of Comcast, said. "We are delighted that MCI will be joining us as both an operating partner and an investor in Nextel. From the time of our original investment in Nextel just 18 months ago, management's efforts have resulted in a near tripling of the reach of its operations. In addition to marketing under the MCI name, Comcast may market Nextel's under our own brand as well."

Handsets and infrastructure for the new system, both produced by Motorola, provide improved functionality over earlier mobile services, including digital voice, message and data services. Messages can be displayed on phone screens. The phones also can be used as mobile data receivers. Because it will be fully digital, the wireless services will provide crisper voice and data quality than current analog systems.

The new system will use Motorola's powerful new digital communications technology, Motorola Integrated Radio System (MIRS). Motorola Chief Executive Officer Gary L. Tooker said, "The versatility and spectrum efficiency of MIRS will open the door to a whole new world of digital, personal communications services. As it will on other MIRS systems around the world, this technology adds the power of messaging, dispatch and data, to the same handset."

The agreement is subject to appropriate regulatory review.

Certificate of Service

I, Charles H. Helein, attorney at Helein & Waysdorf, P.C. hereby certify that I have this 25th day of October, 1994 caused the foregoing document to be served by hand delivery upon:

Richard Liebeskind, Assistant Chief, Communications and Finance Section, Room 8104, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Washington, D.C. 20001;

and by overnight mail upon the following:

John D. Zeglis, AT&T Corp., 295 North Maple Avenue, Basking Ridge, New Jersey 07920

Douglas I. Brandon, McCaw Cellular Communications, Inc., 1150 Connecticut Avenue, N.W. Washington, D.C. 20036

Charles H. Helein

Certificate of Service

I, Kathy L. Cuff, hereby certify under penalty of perjury that I am not a party to this action, that I am not less than 18 years of age, and that I have on this day caused the Response to Public Comments to the Proposed Final Judgment to be served by mailing a copy, postage prepaid, to:

John D. Zeglis, Mark C. Rosenblum, AT&T Corp., 295 North Maple Avenue, Basking Ridge, NJ 07920

Douglas I. Brandon, McCaw Cellular Communications, Inc., 1150 Connecticut Avenue, N.W., Washington, D.C. 20036

Kathy L. Cuff

July 25, 1995

[FR Doc. 95–23636 Filed 9–26–95; 8:45 am]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

[INS No. 1740-95]

RIN 1115-AC30

Extension of Work Authorization for Salvadorans Under Deferred Enforced Departure (DED); Asylum Application Filing Deadline for Salvadorans Under the American Baptist Churches (ABC) Settlement Agreement

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service ("the Service") is granting an automatic extension until January 31, 1996, of the validity of any Employment Authorization Document (EAD or work permit) bearing an expiration date of December 31, 1994, and previously issued to a Salvadoran on the basis of Deferred Enforced Departure (DED). The Service is taking this action in order to ensure an ample opportunity for Salvadoran beneficiaries of DED to apply for a new EAD based on a pending asylum application.

Salvadoran nationals currently eligible for benefits under the American Baptist Churches (ABC) settlement agreement must file an asylum application by January 31, 1996, if they do not already have one on file, in order to remain eligible for settlement benefits.

EFFECTIVE DATE: September 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Adjudications Officer, Immigration and Naturalization Service, Examinations Division, 425 I Street, NW., Room 3214, Washington, DC 20536, Telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION:**Background**

The Service announced on December 6, 1994, that it was automatically extending work authorization until September 30, 1995, for Salvadorans covered by the DED program. 59 FR 62751. This extension allowed Salvadorans covered by DED a transitional period to apply for work authorization under other immigration law provisions. Almost all Salvadorans covered by DED are class members of the "ABC" lawsuit, which was settled in 1991. *American Baptist Churches v. Thornburgh*, 760 F.Supp. 796 (N.D. Cal. 1991). Under the ABC settlement, Salvadoran class members are entitled to apply for asylum under the old asylum regulations (promulgated in 1990) and may apply for work authorization based upon a previously

or concurrently filed asylum application.

On July 7, 1995, the Service published Special Filing Instructions for ABC Class Members (Special Filing Instructions), which instruct class members regarding the filing of asylum and employment authorization applications. 60 FR 35424. This Notice clarifies the Special Filing Instruction in two important respects. First, the Special Filing Instructions advised Salvadorans with DED work authorization valid until September 30, 1995, to file a work authorization application as soon as possible in order to receive a new work permit before the old one expires. This Notice extends the validity of work permits issued to Salvadorans under DED to January 31, 1996, and similarly advises Salvadorans with DED work authorization to file their requests for a new work permit as soon as possible.

Second, the Special Filing Instructions urged Salvadoran class members who do not have an asylum application on file to file one as soon as possible to maintain their eligibility for ABC benefits. This Notice advises that the asylum application filing deadline for Salvadoran class members has been set at January 31, 1996. Salvadorans who already have an asylum application on file do not have to file a new one to maintain their ABC eligibility. Salvadorans may file an initial asylum application after this date, but they will not be eligible for ABC benefits.

Automatic Extension of Employment Authorization

In order to ensure an ample opportunity for Salvadorans covered by DED to apply for a new employment authorization document (EAD), the Service is granting an automatic extension until January 31, 1996, of the validity of their EADs. This automatic extension is limited to EAD cards which expire on December 31, 1994, and were previously issued to DED Salvadorans pursuant to 8 CFR 274a.12(a)(11). Affected Salvadorans who need work authorization after January 31, 1996, should file applications for their new EADs as soon as possible in order to ensure continuous employment authorization.

Employers of DED Salvadorans

Employers of DED Salvadorans whose employment authorization is automatically extended may not refuse to accept, for purposes of verifying or reverifying employment eligibility until January 31, 1996, an EAD card, Form I-688B, which:

(1) Bears and expiration date of December 31, 1994, (or bears on its reverse an extension sticker punched for December 1994), and

(2) Contains the notation "274A.12(A)(11)" or "274A.12(A)(12)" on the face of the card under "Provision of Law."

EAD cards or extension stickers showing the automatic January 1996 expiration date will not be issued. Employers should *not* request proof of Salvadoran citizenship or any other document, if an automatically extended EAD card appears genuine and relates to the individual. Employers are reminded that this action does not affect the right of a worker to present any other legally acceptable document as proof of eligibility for employment. Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force.

To complete or update the Form I-9, Employment Eligibility Verification, for an employee who presents an automatically extended EAD card, the employer should include or add the following information under Section 2 (List A) or Section 3C, as appropriate:

- (1) The expiration date of "12/31/94" from the EAD card;
- (2) The last part of the provision of law, "(A)(11)" or "(A)(12)", from the face of the EAD card; and
- (3) "Automatic expiration date 1/31/96".

Obtaining Subsequent Employment Authorization

As previously indicated, almost all Salvadorans covered by DED are class members under the ABC settlement. In order to be eligible for asylum-based work authorization under the settlement, Salvadoran class members must have an asylum application on file or must file a complete Form I-589, Request for Asylum in the United States, with the Form I-765, Application for Employment Authorization. Class members have no waiting period before filing a request for work authorization. ABC class members should refer to the Form M-426, Special Filing Instructions for ABC Class Members, for important information on the procedures for filing their asylum and work authorization applications. The Special Filing Instructions and the Form I-855, ABC Change of Address Form, can be obtained at local district offices or by calling 1-800-755-0777 or 1-800-870-3676 and requesting an "ABC packet." They were also reproduced in the Federal Register on July 7, 1995, at 60 FR 35424.

Salvadorans are not under a deadline to file an application for a new work

permit. However, the Service emphasizes that the adjudication of an employment authorization application and issuance of an EAD may take 60 to 90 days not including the round-trip mailing time. Incomplete applications will be returned causing additional delay. Therefore, Salvadoran class members should file their work authorization applications as soon as possible in order to receive their new work permits before their old ones expire.

ABC Notice 5 and the Asylum Application Filing Deadline for Salvadoran Class Members

On July 31, 1995, the Service mailed an official letter, called ABC Notice 5, to Salvadoran class members who registered for Temporary Protected Status (TPS). ABC Notice 5 establishes an asylum filing deadline. (Notice 5, without the legal services list without the attachments which it references, is reproduced at the end of this Federal Register notice.) Salvadoran ABC class members who have never filed an asylum application, including those who do not receive Notice 5, must do so by January 31, 1996, in order to remain eligible for ABC benefits. Salvadorans who already have an asylum application on file do not have to file a new one to maintain their ABC eligibility. Salvadorans may file an initial asylum application after January 31, 1996, but they will not be eligible for ABC benefits.

As previously indicated, Salvadorans with DED work authorization should not wait until January 31, 1996, to file their applications. In order to avoid a lapse in employment authorization, all necessary applications should be filed with the Service as soon as possible.

Change of Address Reporting Requirement for ABC Class Members

Salvadorans who applied for Temporary Protected Status (TPS) in 1991, but who have not received ABC Notice 5 in the mail, may not have their current address properly on file with the Service. ABC class members must notify the Service of any change of address by filing the Form I-855, ABC Change of Address Form. Class members must mail the ABC Change of Address Form, but no other materials, to the Washington, DC, address shown on the form. Class members who have filed an asylum application with the Service are encouraged to also send a copy of the ABC Change of Address Form to their local asylum office.

Dated: September 21, 1995.

Doris Meissner,
Commissioner, Immigration and Naturalization Service.

Note: The ABC Notice 5 will not appear in the Code of Federal Regulations.

Notice 5

Mailed Notice to Salvadorans Granted TPS When TPS is Over

Date: July 31, 1995.

This Letter Has Important Information About Your Legal Rights. Read It Carefully. Show It to Your Lawyer. If You Have Questions or Need Free Advice, Call an Organization on the Attached List.

The TPS/DED period has ended. Work authorization for Salvadorans under DED is scheduled to expire on September 30, 1995. *If you have never applied for asylum, you must act or the INS can subject you to deportation proceedings.*

Because of the ABC (American Baptist Church) against Thornburgh lawsuit, you can receive a new asylum interview and asylum determination. The ABC case allows you to submit a new asylum application. Asylum is generally for persons who fear returning to their home country because they are afraid of being persecuted in the future, or because they were persecuted in the past.

If you do not have an asylum application on file with the INS or the immigration court, *You Must Send an Asylum Application by January 31, 1996 To Remain Eligible for ABC Benefits.* Mail your asylum application to the appropriate INS Service Center as indicated in the attached Special Filing Instructions For ABC Class Members.

- If you have asylum application on file with the INS or the immigration court, you are NOT required to send a new application, but you can file a new application if you want to.
- If you applied for asylum in the past and your application was denied, you are entitled to a new interview and decision. You have the right to send a new application, but you are not required to.
- You can apply for work authorization if you already have an asylum application on file or if you file a complete asylum application.

What To Do TO Fill Out an Asylum Application (Form I-589)

- You may wish to speak to a lawyer you know or to a legal services agency you trust so that you get it done properly. If you do not have a lawyer, you may call one of the organizations listed on the attached sheet for help.
- For further instructions on how and where to file your asylum application, read the instructions to the asylum application, Form I-589 (Rev. 11-16-94), and the Special Filing Instructions for ABC Class Members (attached).
- An asylum application is not attached. You can obtain a copy of this form at your local INS office, or you can order one by mail by calling 1-800-870-3676 and requesting a Form I-589. The message will ask you to provide your telephone number, but you are not required to do so.

Work Authorization

• You will receive a work permit if you file a complete asylum application or have an application on file, *and*

- Submit the Form I-765 (attached) to the INS, *and*
- Follow the instructions on the forms and the Special Filing Instructions for ABC Class Members (attached).

If You Have Questions or Need FREE Advice, Call an Organization on the Attached List.

[FR Doc. 95-23919 Filed 9-26-95; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Information Collection Request

Submitted for Public Comment and Recommendations; (1) Report of Ventilatory Study; Roentgenographic Interpretation; Medical History and Examination for Coal Mine Workers' Pneumoconiosis; Report of Arterial Blood Gas Study.

(2) Survivors Claim for Benefits Under the Black Lung Benefits Act.

(3) Black Lung Provider Enrollment Form.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of several information collections, as listed above, under the Office of Workers' Compensation Programs (OWCP), Division of Coal Mine Workers' Compensation (DCMWC). A copy of the proposed information collection requests can be obtained by contacting the employee listed below in the **ADDRESSEE** section of this notice.

DATES: Written comments must be submitted on or before November 28, 1995. Written comments should address the accuracy of the burden estimates

and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as, other relevant aspects of the information collection request.

ADDRESSES: Ms. Patricia Forkel, Office of Management, Administration and Planning, U.S. Department of Labor, 200 Constitution Ave., NW., S-3201, Washington, D.C. 20210, (202) 219-7601 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

(A) Report of Ventilatory Study; Roentgenographic Interpretation; Medical History and Examination for Coal Mine Workers' Pneumoconiosis; Report of Arterial Blood Gas Study: The Office of Workers' Compensation Programs, which administers the Black Lung Benefits Act, use these forms to

gather information relative to the medical condition of a claimant who is alleging the presence of pneumoconiosis as a routine function of the claim adjudication process.

(B) Survivor's Claim for Benefits Under the Black Lung Benefits Act: A survivor of a coal miner must file a claim for benefits under the Black Lung Benefits Act, as amended, in order to receive benefits. The claim and supporting documentation submitted under this information collection are reviewed by DCMWC claims examiners to determine the survivor's eligibility for benefits.

(C) Black Lung Provider Enrollment Form: Specific requirements for the Federal Black Lung Program to provide medical services by authorized medical providers to black lung beneficiaries are set forth in statute. This form is designed to facilitate the collection of information about medical providers

and the payment of bills for the medical services they perform.

II. Continuation of These Information Collections Is Necessary for the Agency To Determine the Proper Status of a Claimant and His/Her Entitlement to Benefits, and To Ensure That Medical Providers Are Paid for the Medical Services They Perform for the Black Lung Program

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Report of Ventilatory Study; Roentgenographic Interpretation; Medical History and Examination for Coal Mine Workers' Pneumoconiosis; Report of Arterial Blood Gas Study.

OMB Number: 1215-0090.

Affected public: Businesses or other for-profit; non-for-profit institutions.

Frequency: One time.

Agency No.	No. of respondents	Est. time per response	Subtotal hours
CM-907	7,425	20 min.	2,475
CM-933	14,850	5 min.	1,238
CM-933b	675	5 min.	56
CM-988	7,425	30 min.	3,712
CM-1159	7,425	15 min.	1,856
Total Burden Hours: 9,338			

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Survivor's Claim for Benefits Under the Black Lung Benefits Act.
OMB Number: 1215-0069.
Agency Number: CM-912.
Frequency: One time.
Affected Public: Individuals or households.

Number of Respondents: 1,200.
Hours per Response: 25 minutes.
Total Burden Hours: 500.
Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Black Lung Provider Enrollment Form.
OMB Number: 1215-0137.
Agency Number: CM-1168.
Frequency: One time.
Affected Public: Businesses or other for-profit.
Number of Respondents: 6,500.
Estimated time per respondent: 3 to 7 minutes.
Total Burden Hours: 525.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 22, 1995.
 Cecily A. Rayburn,
 Director, Division of Financial Management,
 Office of Management, Administration and Planning, Employment Standards Administration.
 [FR Doc. 95-23976 Filed 9-26-95; 8:45 am]
BILLING CODE 4510-27-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Literature Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Fellowships for Creative Writers: Poetry Section) to the National Council on the Arts will be held on October 10-12, 1995. The panel will meet from 9:00 a.m. to 5:30 p.m. on October 10; from 9:00 a.m. to 6:30 p.m. on October 11; and from 9:00 a.m. to 5:00 p.m. on October 12, in Room M-07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506.

A portion of this meeting will be open to the public from 3:00 p.m. to 5:00 p.m. on October 12, for a policy discussion.

The remaining portions of this meeting from 9:00 a.m. to 5:30 p.m. on October 10; from 9:00 a.m. to 6:30 p.m. on October 11; and from 9:00 a.m. to 3:00 p.m. on October 12, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682-5532,

TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682-5433.

Dated: September 20, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 95-23948 Filed 9-26-95; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chamber Music Ensemble Section) to the National Council on the Arts will be held on October 11-13, 1995. The panel will meet from 9:00 a.m. to 5:30 p.m. on October 11-12 and from 9:00 a.m. to 4:00 p.m. on October 13 in Room M-14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 2:00 p.m. to 4:00 p.m. on October 13, for a policy and guidelines discussion.

The remaining portions of this meeting from 9:00 a.m. to 5:30 p.m. on October 11 and 12 and from 9:00 a.m. to 2:00 p.m. on October 13, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682-5433.

Dated: September 20, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 95-23949 Filed 9-26-95; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts

Partnership Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Partnership Advisory Panel (State and Regional Arts Agencies Section) to the National Council on the Arts will be held on October 24-25, 1995. The panel will meet from 9:30 a.m. to 5:00 p.m. on October 24 and from 9:00 a.m. to 3:00 p.m. on October 25 in Room M-07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis for the purpose of discussing program and policy changes as they affect the federal/state/regional partnership.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682-5532, TYY/TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682-5433.

Dated: September 20, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 95-23947 Filed 9-26-95; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Procedures for Meetings

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Nuclear Waste (ACNW) are described in this notice. These procedures are set forth in order that they may be incorporated by reference in future individual meeting notices.

The ACNW advises the Nuclear Regulatory Commission on nuclear waste disposal facilities. This includes facilities covered under 10 CFR parts 60 and 61 and other applicable regulations and legislative mandates such as the Nuclear Waste Policy Act, the Low-Level Radioactive Waste Policy Act, and the Uranium Mill Tailings Radiation Control Act, as amended. The Committee's reports become a part of the public record. The ACNW meetings are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering procedure. The meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process. ACNW full Committee meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACNW Meetings

An agenda is published in the Federal Register for each full Committee meeting. Practical considerations may dictate some changes to the agenda. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including making provisions to continue discussions of matters not completed on the scheduled day to the next day.

The following requirements shall apply to public participation in ACNW meetings:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. Comments should be limited to matters under consideration by the Committee.

Persons desiring to mail written comments may do so by sending a

readily reproducible copy addressed to the Designated Federal Official specified in the Federal Register notice for the individual meeting in care of the Advisory Committee on Nuclear Waste, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be in the possession of the Designated Federal Official no later than five days prior to a meeting to allow time for reproduction, distribution, and consideration at the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official prior to the beginning of the meeting and summarize the content of the oral statements for the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation, so that appropriate arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting scheduled by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting, at least two days prior to the meeting, Chief of the Nuclear Waste Branch, ACNW (telephone: 301/415-7366) between 7:30 a.m. and 4:15 p.m., Eastern Time.

(d) During the ACNW meeting presentations and discussions, questions may be asked by ACNW members, Committee consultants, the NRC staff, and the ACNW staff.

(e) The use of still, motion picture, and television cameras will be permitted both before and after the meeting and during any recess, subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. Approval from the Designated Federal Official will have to be obtained prior to the installation or use of such equipment. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that it is not disruptive. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information that may be in documents, folders, etc., being used during the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(f) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555, for use within one week following the meeting. A copy of the certified minutes of the meeting will be available at the same location one or before three months following the meeting. Copies may be obtained at the Public Document Room upon payment of appropriate charges.

(g) When ACNW meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussion matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of the material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: September 21, 1995.

Andrew L. Bates,
Advisory Committee Management Officer.
[FR Doc. 95-23926 Filed 9-26-95; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act

by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) are described in this notice. These procedures are set forth in order that they may be incorporated by reference in future individual meeting notices.

The ACRS is a statutory group established by Congress to review and report on applications for the licensing of nuclear power reactor facilities and on certain other nuclear safety matters. The Committee's reports become a part of the public record. The ACRS meetings are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering procedure. The meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety. ACRS full Committee meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACRS Meetings

An Agenda is published in the Federal Register for each full Committee meeting. Practical considerations may dictate some changes to the agenda. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including making provisions to continue discussions of matters not completed on the scheduled day to the next day.

The following requirements shall apply to public participation in ACRS meetings:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. Comments should be limited to areas related to nuclear safety within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the Federal Register notice for the individual meeting in care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be in the possession of the Designated Federal Official at least five days prior to a meeting to allow time for reproduction,

distribution, and consideration at the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official prior to the beginning of the meeting and summarize the content of the oral statements for the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation, so that appropriate arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting scheduled by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been cancelled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting, at least two days prior to the meeting, Chief of the Nuclear Reactors Branch, ACRS (telephone: 301/415-7364) between 7:30 a.m. and 4:15 p.m., Eastern Time.

(d) During the ACRS meeting presentations and discussions, questions may be asked by ACRS members, Committee consultants, the NRC staff, and the ACRS staff.

(e) The use of still, motion picture, and television cameras will be permitted both before the meeting and during any recess, subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The Designated Federal Official will have to be informed prior to the installation or use of such equipment. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that it is not disruptive. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information that may be in documents, folders, etc., being used during the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(f) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555, for use within one week following the meeting. A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

ACRS Subcommittee meetings will also be conducted in accordance with these procedures, as appropriate. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities are usually not available. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: September 21, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95-23925 Filed 9-26-95; 8:45 am]

BILLING CODE 7590-01-M

Docket No. 50-251

Florida Power and Light Company, Turkey Point Unit 4; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. DPR-41, issued to Florida Power and Light Company (the licensee), for operation of Turkey Point Unit 4 located in Dade County, Florida.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of August 8, 1995, and revised by letter dated September 6, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time interval extension for the Type A test (containment integrated leak rate test) by one refueling outage from the March 1996 refueling outage to the October 1997 refueling outage would be granted.

The Need for the Proposed Action

The proposed action is needed to permit the licensee to defer the Type A test from the March 1996 refueling outage to the October 1997 refueling outage. The exemption would permit a more flexible schedule for containment leak rate testing than provided for under the current regulations and result in significant cost savings.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. The licensee will continue to be required to conduct the Type B and C local leak rate tests which historically have been shown to be the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. It is also noted that the licensee, as a condition of the proposed exemption, will perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated July 1972 for Turkey Point Unit 4.

Agencies and Persons Consulted

In accordance with its stated policy, on May 16, 1995 the NRC staff consulted with the Florida State official, Dr. Lyle Jerrett of the State Office of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated August 8, 1995, and September 6, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Florida International University, University Park, Miami, Florida 33199.

Dated at Rockville, Maryland, this 19th day of September 1995.

For the Nuclear Regulatory Commission.
David B. Matthews,
Director, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 95-23930 Filed 9-26-95; 8:45 am]
BILLING CODE 7590-01-P

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Company, Turkey Point Units 3 and 4; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-31 and DPR-41, issued to Florida Power and Light Company (the licensee), for operation of Turkey Point Unit 3 and 4, respectively, located in Dade County, Florida.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of July 26, 1995. The proposed action consists of administrative corrections and clarifications.

The Need for the Proposed Action

The proposed action is needed to achieve consistency throughout the Technical Specifications (TS) by (a) removing outdated material, (b) incorporating administrative clarifications and corrections, and (c) correcting typographical errors. These changes represent an administrative update to the Turkey Point Units 3 and 4 TS.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed changes would not increase the probability or consequences of accidents previously analyzed and the proposed changes would not affect facility radiation levels or facility radiological effluents. The proposed TS changes are administrative, more conservative than existing specifications, or do not require NRC approval (Bases changes). The changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated July 1972 for Turkey Point Units 3 and 4.

Agencies and Persons Consulted

In accordance with its stated policy, on May 16, 1995 the NRC staff consulted with the Florida State official, Dr. Lyle Jerrett of the *State Office of Radiation Control*, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 26, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Florida International University, University Park, Miami, Florida 33199.

Dated at Rockville, Maryland, this 14th day of September 1995.

For the Nuclear Regulatory Commission.
David B. Matthews,
*Director, Project Directorate II-1, Division of
Reactor Projects—I/II Office of Nuclear
Reactor Regulation.*
[FR Doc. 95-23931 Filed 9-26-95; 8:45 am]
BILLING CODE 7590-01-P

Conversion to the Metric System

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; request for public comment.

SUMMARY: On October 7, 1992, the U.S. Nuclear Regulatory Commission (NRC) published its policy statement on Conversion to the Metric System in the Federal Register. The policy called for the Commission to assess the state of metric use by the licensed nuclear industry in the United States after 3 years to determine whether the policy should be modified. The purpose of this notice is to gain additional information on the state of metric use by NRC licensees so that the Commission may determine whether the NRC's metrication policy should be modified.

DATES: The comment period expires on December 11, 1995. Comments received after this time will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Comments may also be delivered to the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC, between 7:45 a.m. and 4:15 p.m. Copies of comments received may be examined at the NRC Public Document Room. For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.
FOR FURTHER INFORMATION CONTACT: Dr. Frank A. Costanzi, Chairman, NRC Metrication Oversight Committee, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 415-6250; e-mail FAC@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1992 (57 FR 46202), the U.S. Nuclear Regulatory Commission (NRC) published its policy statement on

Conversion to the Metric System¹ in the Federal Register. The statement was in response to the Omnibus Trade and Competitiveness Act of 1988 (the Act) and Executive Order 12770. The policy supports and encourages the use of the metric system of measurement and requires the NRC to follow the Federal Acquisition Regulation and the General Services Administration metrication program in executing procurements. It further requires the NRC to publish essentially all documents which are not specific to a given licensee in dual units, i.e., International System of Units first with the English unit in brackets. A key component of the policy requires that "should the NRC conclude that the use of any particular system of measurement be detrimental to the public health and safety, the Commission will proscribe, by regulation, order, or other appropriate means, the use of that system." As a result, the policy requires that all event reporting and emergency response communications between licensees and any Government authorities will be in the English system of measurement. Finally, the policy calls for the Commission to assess the state of metric use by the licensed nuclear industry in the United States after three years to determine whether the policy should be modified.

In order to implement this last portion of the policy, the NRC staff has undertaken several actions. First, the NRC's Metrication Oversight Committee met to discuss both agency and licensee experiences with the Commission's metrication policy. Next, representatives of various industrial and standards groups were contacted to determine their association's view of the policy. The associations contacted included the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), the American Society of Mechanical Engineers (ASME), the Institute of Electrical and Electronics Engineers, Inc. (IEEE), the Nuclear Energy Institute (NEI), the Nuclear Utility Backfitting and Reform Group (NUBARG), the United States Pharmacopeial Convention, Inc. (USP), the Society of Nuclear Medicine, and the Organization of Agreement States (OAS). The Committee's findings follow.

¹The metric system refers to units belonging to the Internationale System of Units, which is abbreviated SI (from the French Le Systeme Internationale d'Units), as interpreted or modified for use in the United States by the Secretary of Commerce.

Comments Received

With few exceptions, these various organizations stated their support for the current NRC policy. The nuclear power industry position seems to be exemplified by the NEI comments in which they continue to support the current NRC Metrication Policy and "a transition to the metric system that is market-driven and avoids a sudden or precipitous move to conduct licensing and regulatory matters in metric units." Similarly, although NUBARG did not respond in writing, a phone conversation with a representative indicated that NUBARG was "very comfortable" with the NRC's metrication policy.

As for the standards-setting groups, ASME strongly supports the Omnibus Trade and Competitiveness Act and believes that the NRC policy is in accordance with those requirements. IEEE related that its "standards are to be primarily metric beginning in 1998 and, with minor exceptions, *exclusively* metric beginning in 2000." Also, IEEE believes that the United States Government "can and should do more than it has done to further the metrication process in this country." In response to the NRC's request, IEEE provided the following three comments relating directly to the NRC's position: (1) The NRC should drop the use of dual units in its publications and to use "metric units exclusively except where doing so would clearly be detrimental to public health and safety."

(2) The NRC policy of using the English system for all event reporting and emergency response communications, although prudent in 1992, may now cause confusion and have a negative impact after various relevant standards have been converted.

(3) The NRC should include the following statement in its policy: "Nothing in this statement of policy should be interpreted to require the use of the English system of measurement, or to forbid the use of consensus based standards that are exclusively metric." This was proposed so elements of the private sector that wish to move faster than the Government may be protected.

The USP pointed out that the use of dual units by NRC is in line with USP's position and practice. However, the OAS position is that "to be truly responsive to Congress the Commission now should go on record as requiring the use of SI units in *all* its communication and documentation." OAS recommended that the NRC "support the dual citation standard with the SI unit appearing first and the English or special units following in

brackets or parentheses . . .” to accommodate the editing style of the various States.

Comments have not been received from the remaining groups.

Status of Licensee Metrication Efforts

Reactors

Although there are no power reactor licensees operating in the metric system, some of the advanced reactors have vendor-generated licensing documents that use the metric system of measurement. For example, both of General Electric's applications for the ABWR and SBWR designs have their Standard Safety Analysis Reports (SSAR) in the SI system of measurement. However, both the Westinghouse AP600 and the ABB-CE System 80+ have their SSARs in the traditional inch-pound system. The NRC's completed Final Safety Evaluation Reports (FSER) for the System 80+ and the ABWR are in dual units as prescribed by the Commission's policy statement. When the FSERs for the AP600 and the SBWR are published, they also will be in dual units.

Selected Examples of Metric Usage

There are varying degrees of use of the metric system of measurement by the non-power reactor nuclear industries. Also, within a particular profession or industry, there are varying degrees of metric use. For example, in the field of radiation oncology, the centigray (an SI unit) has been the meter of therapy doses, while the millicurie and curie (traditional units) are used as the measure expressing quantity or dosages.

Health Physics

It is also the case that most of the operational health physics community still uses the traditional system of measurement because of the use of instrumentation that is calibrated or expressed in that system. Some newer instrumentation that offers dual-unit options will assist in metric conversion, as the new instruments are being integrated into existing stock.

Public Comment

The NRC staff, through this request, is inviting comment from interested individuals on the NRC's metrication efforts to learn if there is a need for the Commission to revise its metrication policy.

Electronic Access

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The

bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1-800-303-9672. Communication software parameters should be set as follows: Parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystems can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703-321-8020; Telnet via Internet: fedworld.gov (192.239.93.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)). If using a method other than the toll free number to contact FedWorld, then the NRC subsystem will be accessed from the main FedWorld menu by selecting the "F—Regulatory, Government Administration and State Systems", then selecting "A—Regulatory Information Mall". At that point, a menu will be displayed that has an option "A—U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. You can also go directly to the NRC Online area by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, then you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

Lastly, the Act has a reporting requirement for Federal agencies to include an annual metric report as part

of their annual budget submission to the Congress. The reporting requirement expires in the fiscal year after an agency has fully implemented metric usage. Unless the Commission receives comment which would require it to revise its policy, it will consider its policy final and its conversion to the metric system complete.

Dated at Rockville, Maryland this 14th day of September 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95-23932 Filed 9-26-95; 8:45 am]

BILLING CODE 7590-01-P

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 30, 1995, through September 15, 1995. The last biweekly notice was published on Wednesday, September 13, 1995 (60 FR 47613).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an

accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the 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 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 27, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be

filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also

provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition

should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: August 4, 1995

Description of amendment request: The proposed amendment will allow the loading and use of GE13 fuel assemblies in the Brunswick Steam Electric Plant (BSEP), Unit 2, during Cycle 12 operation. The use of GE13 fuel assemblies requires that the safety limit value for minimum critical power ratio be revised. This safety limit is established to maintain fuel cladding integrity. Use of GE13 fuel also requires an increase in the concentration of sodium pentaborate solution required by the Technical Specifications (TS) for the standby liquid control system. This change provides the additional shutdown reactivity necessary to permit use of this fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proposed Change 1:

The proposed amendment will allow the loading and use of GE13 fuel assemblies in the Brunswick Unit 2 reactor core. The use of GE13 fuel assemblies requires that the safety limit minimum critical power ratio value also be revised. The safety limit minimum critical power ratio is established to maintain fuel cladding integrity. The GE13

fuel assembly design has been analyzed using methods that have been previously approved by the Nuclear Regulatory Commission and documented in General Electric Nuclear Energy's reload licensing methodology Topical Report (NEDE-24011-P-A-10, "General Electric Standard Application for Reactor Fuel (GESTAR II)" dated February 1991).

The proposed revision of the safety limit minimum critical power ratio does not alter any plant safety-related equipment, safety function, or plant operations that could change the probability of an accident. The change does not affect the design, materials, or construction standards applicable to the fuel bundles in a manner that could change the probability of an accident.

A methodology that has been previously reviewed and accepted by the Nuclear Regulatory Commission was used to derive the both existing and updated safety limit minimum critical power ratio value. The same methodology criteria have been applied to derive the existing safety limit minimum critical power ratio of 1.07 as that used to derive the updated safety limit minimum critical power ratio value of 1.09. The updated safety limit minimum critical power ratio assures that fuel cladding protection equivalent to that provided with the existing safety limit minimum critical power ratio value is maintained. This ensures that the consequences of previously evaluated accidents are not significantly increased.

Proposed Change 2:

The standby liquid control system provides a means of reactivity control that is independent of the normal reactivity control system. The standby liquid control system must be capable of assuring that the reactor core can be placed in a subcritical condition at any time during reactor core life. Technical Specification Figure 3.1.5-1 specifies the acceptable range of concentrations and volumes for sodium pentaborate solution used as a neutron absorber (i.e., for reactivity control). The portion of the sodium pentaborate concentration range shown in Technical Specification Figure 3.1.5-1 applicable to the lower range of tank volumes is being revised to increase the required concentration of sodium pentaborate solution. This change is needed to account for the additional shutdown reactivity needed based on the planned use of GE13 fuel assemblies as reload fuel for the Unit 2 reactor core. Since the standby liquid control system is independent from the normal means of controlling reactor core reactivity and not used to control core reactivity during normal plant operations, the proposed revision to the sodium pentaborate concentration curve for the standby liquid control system does not alter any plant safety-related equipment, safety function, or plant operations that could change the probability of an accident.

The current volume-concentration range of sodium pentaborate used in the standby liquid control system will achieve a sufficient concentration of boron in the reactor vessel to ensure reactor shutdown. Based on the increased reactivity of the new GE13 reload fuel assemblies, the required sodium pentaborate volume-concentration

range is being revised to ensure sufficient neutron absorbing solution is available to achieve reactor shutdown; therefore, the consequences of an accident previously evaluated are not significantly increased.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Proposed Change 1:

The GE13 fuel assembly has been designed and complies with the acceptance criteria contained in General Electric Nuclear Energy's standard application for reactor fuel (GESTAR-II), which provides the latest acceptance criteria for new General Electric fuel designs. The GE13 fuel assembly complies with GESTAR-II acceptance criteria that have been previously reviewed and accepted by the Nuclear Regulatory Commission. The similarity of the GE13 fuel design to the previously accepted GE11 fuel design, in conjunction with the increased critical power capability of the GE13 fuel design, ensure that no new mode or condition of plant operation is being authorized by the loading and use of the GE13 fuel type. The proposed revision of the safety limit minimum critical power ratio from 1.07 to 1.09 does not modify any plant controls or equipment that will change the plant's responses to any accident or transient as given in any current analysis. Therefore, the proposed change to allow the loading and use of the GE13 fuel type and the revision of the safety limit minimum critical power ratio value from 1.07 to 1.09 will not create the possibility for a new or different kind of accident from any accident previously evaluated.

Proposed Change 2:

As discussed above, the standby liquid control system provides a means of reactivity control that is independent of the normal reactivity control system and is capable of assuring that the reactor core can be placed in a subcritical condition at any time during reactor core life. The proposed revision to the sodium pentaborate concentration range does not modify the standby liquid control system or its controls, does not modify other plant systems and equipment, and does not permit a new or different mode of plant operation. As such, the proposed revision to the minimum pentaborate concentration value does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

Proposed Change 1:

As previously discussed, the GE13 fuel assembly design has been analyzed using methods that have been previously approved by the Nuclear Regulatory Commission and documented in General Electric Nuclear Energy's reload licensing methodology Topical Report (NEDE-24011-P-A-10, "General Electric Standard Application for Reactor Fuel (GESTAR II)" dated February 1991). The safety limit minimum critical power ratio value is selected to maintain the fuel cladding integrity safety limit (i.e., that 99.9 percent of all fuel rods in the core be expected to avoid boiling transition).

Appropriate operating limit minimum critical power ratio values are established, based on the safety limit minimum critical power ratio value, to ensure that the fuel cladding fuel integrity safety limit is maintained. The operating limit minimum critical power ratio values are incorporated in the Core Operating Limits Report as required by Technical Specification 6.9.3.1. The new GE13 safety limit minimum critical power ratio value of 1.09 is based on the same fuel cladding integrity safety limit criteria as that for the GE11 safety limit minimum critical power ratio value of 1.07 (i.e., that 99.9 percent of all fuel rods in the core be expected to avoid boiling transition); therefore, the proposed change does not result in a significant reduction in the margin of safety.

Proposed Change 2:

As previously stated, the purpose of the standby liquid control is to inject a neutron absorbing solution into the reactor in the event that a sufficient number of control rods cannot be manually inserted to maintain subcriticality. Sufficient solution is to be injected such that the reactor will be brought from maximum rated power conditions to subcritical over the entire reactor temperature range from maximum operating to cold shutdown conditions. General Electric reactor fuel methodology establishes a fuel type dependent standby liquid control system shutdown margin to account for calculational uncertainties. General Electric calculations show that an in-vessel concentration of 660 ppm will provide an estimated standby liquid control system minimum shutdown margin of 4.1% delta k. To achieve an in-vessel concentration of 660 ppm, the acceptable range of standby liquid control system tank concentrations is being revised for the lower range of tank volumes. Thus, proposed revision of the standby liquid control system sodium pentaborate volume-concentration range ensures that there will not be a significant reduction in the amount of available shutdown margin and, therefore, not a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room

location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 10, 1995

Description of amendment request: The requested amendment would modify Technical Specification 4.6.4.3 to allow a reduction in the number of hydrogen mitigation system igniters that must be maintained Operable. This would allow removal of the hydrogen igniters in the incore instrument tunnel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. No impact upon accident probabilities will be created, since the EHM System is not an accident initiating system. In addition, it has been demonstrated that based on the results of computer analysis, and the review of results of an external study performed for a similar type containment, that hydrogen concentrations in the cavity during degraded core accidents will remain within acceptable limits. No impact on the plant response to any accident will be created (either design basis or beyond-design basis).

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated previously, the EHM System is not an accident initiating system. No new accident causal mechanisms will be created as a result of deleting the affected igniters. Plant operation will not be affected by the proposed amendments and no new failure modes will be created.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. No adverse impact upon any plant safety margins will be created. As shown previously, applicable computer analysis has successfully demonstrated that the affected igniters could be removed with no adverse consequences. No fission product barriers are being degraded. No change to the manner in which the units are operated is being made.

Based upon the preceding analyses, Duke Power Company concludes that the requested amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room

location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: September 1, 1995

Description of amendment request: Generic Letter 88-16 provided guidance on removing cycle-specific parameters which are calculated using NRC approved methodologies from Technical Specifications (TS). The parameters are replaced in TS with a reference to a named report which contains the parameters, and a requirement that the parameters remain within the limits specified in the report. The proposed changes incorporate NRC approved methodologies, approved revisions to previously approved methodologies, or republished versions of previously approved methodologies into Section 6.9 of the Catawba TS. For Catawba, the limits to which these methodologies are applied are explicitly listed in the TS. Since the proposed changes only incorporate NRC approved methodologies into the TS the licensee proposed that the changes are administrative in nature and can be assumed to have no impact, or potential impact, on the health and safety of the public.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes will not create a significant hazards consideration, as defined by 10 CFR 50.92, because:

1) The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature, and do not affect any system, procedure, or manipulation of any equipment which could affect the probability or consequences of any accident.

2) The proposed changes will not create the possibility of any new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature, and cannot introduce any new failure mode or transient which could create any accident.

3) The proposed changes will not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature, and will not affect any operating parameters or limits which could result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room

location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: September 13, 1995

Description of amendment request: The proposed amendments modify the notation for the overpower delta-temperature (OPDT) reactor trip heatup setpoint penalty coefficient to be consistent with NUREG-0452, Revision 4, "Standard Technical Specifications for Westinghouse Pressurized Water Reactors" (STS). This change is necessary in order to allow implementation of the modification to reduce the reactor coolant system hot leg temperature as planned during the Unit 2 end-of-cycle 7 refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

As required by 10CFR50.91, this analysis is provided concerning whether the requested amendments involve significant hazards considerations, as defined by 10CFR50.92. Standards for determination that an amendment request involves no significant hazards considerations are if operation of the facility in accordance with the requested 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.

Criterion 1

The proposed amendments will not involve a significant increase in the probability or consequences of an accident

previously evaluated. The amendments will have no impact whatsoever upon the probability of any accident being initiated, since the reactor trip system is an accident mitigating system. The amendments will have no adverse impact upon any accident consequences or upon the function of the OPDT setpoint. The reactor trip heatup setpoint penalty will continue to be applied anytime T-avg is greater than T [double prime] and will not be applied when T-avg is less than or equal to T [double prime]. This is consistent with the intent of this function.

Criterion 2

The proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. The function of the OPDT setpoint will not be altered by the proposed changes. As stated previously, the reactor trip system is an accident mitigating system, so no new failure modes can be created. No change to any aspect of plant operation will result from NRC approval of the proposed amendments.

Criterion 3

The proposed amendments will not involve a significant reduction in a margin of safety. The changes are necessary to allow full implementation of the T-hot reduction modification on Catawba Unit 2. The proposed changes are consistent with the terminology of both NUREG-0452, Revision 4 and NUREG-1431, Revision 1. OPDT setpoint behavior will not be adversely impacted by the proposed changes; therefore, no impact upon any plant safety margins will result.

Based upon the preceding analyses, Duke Power Company concludes that the requested amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room

location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: March 29, 1995

Description of amendment request: The amendments would revise the Technical Specification 3.4.9.3 requirements for the Low Temperature Overpressure Protection (LTOP) system and update the heatup and cooldown curves. The intent of the proposed amendments is to enhance overpressure

protection during low temperature operations. These enhancements can be fully implemented, improving startup and shutdown operation of McGuire Units 1 and 2.

Specifically, these changes are categorized into five groups identified as follows:

1) Revisions to the LCO requirements, the Action Statements and the SR for the Reactor Coolant System Overpressure Protection System during low temperature conditions,

2) A reduction in the Reactor Coolant System (RCS) vent requirement from 4.5 square inches to 2.75 square inches,

3) The use of the Residual Heat Removal suction relief valve (1ND3 and 2ND3) for overpressure protection under restricted conditions. (RCS greater than 107°F and cooldown rate less than 20°F/hr; or RCS greater than 167°F),

4) Revisions of the Pressure/Temperature curves to 16 EFPY, including the incorporation of the latest radiation surveillance capsule results and removal of instrumentation margins from the Technical Specification figures, and

5) Changes to format and consistency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for each of the five groups listed above.

FIRST STANDARD

(Amendment would not) involve a significant increase in the probability or consequences of an accident previously evaluated.

1) Revised LCO [limiting conditions for operation] and SR [surveillance requirements] for LTOP:

The reduced maximum setpoint will prevent the violation of the 10 CFR 50 Appendix G pressure/temperature curves (as modified by the provisions of ASME Code Case N-514) during overpressure transients at low temperatures. Since the maximum setpoint is reduced, the peak pressure for LTOP [low-temperature overpressure protection] events will be reduced as well. Accordingly, the consequences of an LTOP event would not change as result of the proposed changes.

The analysis performed to determine the setpoint is, in accordance with the methods used in previous evaluations, found acceptable by the NRC. The three possible transients evaluated are: 1) a mass input from an operable safety injection pump; 2) a mass input from an operable centrifugal charging pump; and 3) a heat input from a 50°F temperature difference between the steam generators and the NC system. The LTOP setpoint of the PORV [power-operated relief valve] proposed by this technical specification change is not considered to be an initiator of any of these three transients. As such, the probability of an accident

previously evaluated would not be increased as a result of the proposed changes.

Two additional conditions for operability of the LTOP system are defined (accumulator isolation and only one NV or NI pump operable) and new surveillance requirements are specified as well. They provide additional limitations, requirements and restrictions that currently do not exist within the technical specifications for McGuire. The incorporation of these proposed changes are consistent with what is specified within NUREG-1341. Therefore, these changes do not increase the probability of consequences of an accident previously evaluated.

2) Reduction in NC vent opening:

The bases for the size of the vent to be established per the technical specifications is to ensure that the 10 CFR 50, Appendix G pressure/temperature limits are not exceeded during an LTOP event. The determination of the size of the opening continues to preserve the above design basis. The evaluation performed demonstrated that a 2.75 square inch opening would provide adequate overpressure protection for the combined capacity of a centrifugal charging pump and a safety injection pump.

The only time that the vent path is to be established is when the PORVs may not be available. Defining the size of the vent is not considered to be an initiator of any LTOP events that have been previously evaluated. As such, this change in the size of the vent opening does not increase the probability of an overpressure event during low temperature conditions. The analysis performed verifies that the size opening specified is sufficient to mitigate the consequences of an LTOP event. Accordingly, the change in the size of the opening for the vent will not impact the consequences of LTOP events.

3) Use of RHR [residual heat removal] suction relief valves:

By letter dated September 11, 1990, the NRC authorized the deletion of the RHR autoclosure interlock circuitry. A modification which removed the RHR system suction isolation valve autoclosure interlocks has been completed. As such, the RHR suction relief valve can be exposed to NC system pressure and would be available to mitigate LTOP events.

The proposed amendments specify the necessary requirements and controls to ensure proper ND system alignments and conditions will exist to protect the pressure/temperature limits. This added relieving capacity will enhance the current LTOP system at McGuire in mitigating overpressure events at low temperatures. As such, the mitigation of previously evaluated LTOP events would be improved by the proposed technical specification changes. Further, the proposed changes would not result in the initiation of an LTOP event or cause an overpressure transient. Accordingly, the proposed amendment would not involve an increase in the consequences or the probability of an accident previously evaluated.

4) Revised pressure/temperature curves to 16 EFPY [effective full-power year]:

The proposed pressure/temperature curves, provided by this amendment request, satisfy

all regulatory required material embrittlement considerations including: ASME Section XI Appendix G, 10 CFR 50 Appendix G, and Regulatory Guide 1.99, Revision 2. In addition, the margins for instrument error have been removed from the curves. Instrument error will be administratively handled by incorporating them into the LTOP system setpoint selection calculations and into appropriate controlling procedures for unit operations.

The proposed changes to the pressure/temperature curves are not considered to be an initiator of LTOP events. The changes to the curves proposed by this amendment request will not cause an LTOP event. The curves define the new limits that have been defined in accordance with regulatory requirements by which both units are to be operated within. Accordingly, the proposed amendment will not increase the probability or the consequences of previously evaluated accidents.

5) Format and consistency:

The changes associated within this group are considered to be administrative in nature. They do not affect station operability or require any modifications to the facility. Accordingly, the proposed amendment request does not increase the probability or consequences of any previously evaluated accident.

SECOND STANDARD

(Amendment would not) create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

1) Revised LCO and SR for LTOP:

The only potential impact to plant systems, structures and components, as a result of the proposed changes associated with this group, would be the setting of the PORV low pressure setpoint. No other changes to plant systems, structures or components would occur. The proposed amendments, also, would not impact the plant operation. Although the value for the PORV pressure setting specified within the technical specification would be reduced per the proposed amendment, the actual settings of the PORV are now currently set low enough to comply with the proposed lower setpoint value. As such, the proposed lower setpoint would not require any changes to the plant nor how the plant is operated.

The additional requirements for LTOP operability will not require any modifications to the plant nor how the plant is operated. Currently, when entering LTOP conditions, the accumulators are isolated and only one NV or NI pump is capable of injecting into the reactor vessel. These actions are currently controlled and are specified within the operating procedures for heatup and cooldown of the respective units. The proposed changes will now specify these current operating requirements within the technical specifications as well.

Accordingly, the proposed revisions will not create a new or different kind of accident than what has already been previously evaluated.

2) Reduction in NC vent opening:

The proposed changes to the technical specifications associated with this group involves the size of the vent opening. The

proposed amendment reduces the size of the vent opening from 4.5 square inches to 2.75 square inches. The analysis that was performed has determined that the proposed size for the vent opening is adequate for overpressure events. Therefore, this proposed revision to the technical specifications will not result in a new or different kind of accident from any kind of accident previously evaluated.

3) Use of RHR suction relief valves:

The proposed amendment associated with this group will specify the necessary requirements and controls to ensure the appropriate use of the RHR suction relief valve for overpressure protection. This added relieving capacity will enhance the current LTOP system in mitigating overpressure events during low temperature conditions. The analysis that has been performed demonstrates the adequacy of the RHR suction relief valve, in conjunction with a PORV, in mitigating overpressure events at low temperatures, assuming a worst case single failure as well. As such, the use of the RHR suction relief valve in the manner prescribed by the proposed technical specification amendment will not create a new or different kind of accident from those accidents that have been previously evaluated.

4) Revised pressure/temperature curves to 16 EFPY:

The changes associated with this group, provide new heatup and cooldown curves for both Units 1 and 2, which will extend the service period from 10 EFPY to 16 EFPY and will remove the instrument error as well. The proposed [heatup] and cooldown curves were developed in accordance with all regulatory required material embrittlement criteria. Thus, operation of the units in accordance with the proposed new pressure/temperature curves will not create the possibility of a new or different kind of accident from those accident[s] that have been previously evaluated.

5) Format and consistency:

The changes associated within this group are considered to be administrative in nature. They do not affect station operability or require any modifications to the facility. Accordingly, the proposed amendment will create the possibility of a new or different kind of accident from that previously evaluated.

THIRD STANDARD

(Amendment would not) involve a significant reduction in a margin of safety.

1) Revised LCO and SR for LTOP:

This proposed change will reduce the maximum PORV setpoint such that, for LTOP events, the maximum pressure in the vessel would not exceed 110% of the pressure/temperature limits that have been established in accordance with ASME Appendix G. This is congruous with the provisions of ASME Code Case N-514. Currently, the maximum PORV setpoint for LTOP events ensure that the maximum pressure would not exceed 100% of the pressure/temperature curves. As such, the proposed change appears to involve a slight reduction in a margin of safety.

Although the proposed change may involve a slight reduction in a margin of safety, the proposed change will provide an

equivalent margins of safety to the reactor vessel during LTOP transients and will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements. By letter dated June 28, 1994, an exemption request and authorization to use ASME Code Case N-514 at McGuire was submitted to the NRC for review and approval. Approval for the use of the code case was granted on September 30, 1994. The proposed change to reduce the maximum PORV setpoint, coupled with the September 30, 1994 NRC approval for the use of Code Case N-514 satisfies current regulatory acceptance criteria. Therefore, the proposed change would not involve a significant reduction in a margin of safety.

This change group, also, defines two additional conditions for the operability of the LTOP system (accumulator isolation and only one NV or NI pump operable) and proposes new surveillance requirements and restrictions that currently do not exist within the technical specifications for McGuire. The incorporation of these proposed changes are consistent with what is specified within NUREG-1341. Therefore, these changes do not involve a significant reduction in a margin of safety.

2) Reduction in NC vent opening:

The proposed changes to the technical specifications associated with this group involves the size of the vent opening. The proposed amendment reduces the size of the vent opening from 4.5 square inches to 2.75 square inches. The basis for the size of the vent to be established per the technical specifications is to ensure that the 10 CFR 50, Appendix G pressure/temperature limits are not exceeded during an LTOP event. The determination of the size of the opening continues to preserve the above design basis. The evaluation performed demonstrated that a 2.75 square inch opening would provide adequate overpressure protection for the combined capacity of a centrifugal charging pump and a safety injection pump. Accordingly, the proposed changes would not involve a significant reduction in a margin of safety.

3) Use of RHR suction relief valves:

The proposed amendment associated with this group will specify the necessary requirements and controls to ensure the appropriate use of the RHR suction relief valves for overpressure protection. This added relieving capacity will enhance the current LTOP system in mitigating overpressure events during low temperature conditions. The analysis that has been performed demonstrates the adequacy of the RHR suction relief valve, in conjunction with a PORV, in mitigating overpressure events at low temperatures.

Further, by letter dated September 11, 1990, the NRC approved amendments to delete a portion of the surveillance requirements regarding periodic verification that the RHR suction isolation valves automatically close on a RCS [reactor coolant system] signal less than or equal to 560 psig. This action, in effect, authorizes the removal of the RHR autoclosure interlock circuitry. As discussed within the NRC Safety evaluation for the amendment, the Commission and industry have recognized the safety benefits

of removing the ACI [automatic closure and interlock] circuitry from the RHR system to minimize, and thus reduce the risk associated with loss of decay heat removal events.

Therefore, the proposed amendments associated with this change group will not involve a significant reduction in a margin of safety.

4) Revised pressure/temperature curves to 16 EFPY:

The changes associated with this group provide new heatup and cooldown curves for both Units 1 and 2, which will extend the service period from 10 EFPY to 16 EFPY and will relocate the instrument error as well. The proposed pressure/temperature curves provided by this amendment request satisfy all regulatory required material embrittlement considerations including: ASME Section XI Appendix G, 10 CFR 50 Appendix G, and Regulatory Guide 1.99, Revision 2. The instrument error will be administratively handled by incorporating them into the LTOP system setpoint selection calculations and into the controlling procedures for unit operations.

The relocation of the instrument error to licensee controlled documents is consistent with the NRC actions proposed within NUREG-1431, new standard technical specifications for Westinghouse plants. As prescribed within NUREG-1431, the pressure/temperature limit curves are to be relocated to a licensee controlled document entitled "Pressure Temperature Limit Report (PTLR)". Changes to the heatup and cooldown curves would then be performed in accordance with 10 CFR 50.59 criteria. For the situation proposed by this amendment, updates and revisions of the instrument error associated with the pressure/temperature limit curves will be processed in a similar fashion. Thus, the proposed change to relocate the instrument error to licensee controlled documents is analogous with NRC acceptable practices.

Accordingly, the proposed changes will not reduce a margin of safety.

5) Format and consistency:

The changes associated within this group are considered to be administrative in nature. They do not affect station operability or require any modifications to the facility. Accordingly, there is no reduction in the margin of safety of the LTOP system due to the incorporation of these editorial/administrative changes.

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.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: June 21, 1995

Description of amendment request: The proposed amendments will revise the action statements for a single inoperable Emergency Diesel Generator (EDG), TS 3.8.1.1.b, to extend the allowed outage time (AOT) from 72 hours to 7 days, and permit a 10 day AOT to be used once per refueling cycle. This proposal is a result of a cooperative study by participating Combustion Engineering Owners Group members which concluded that the proposed AOT extension improves plant operational flexibility while adequately controlling overall plant risk.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments for St. Lucie Unit 1 and Unit 2 will extend the action completion/allowed outage time (AOT) for a single inoperable Emergency Diesel Generator (EDG) from 72 hours to 7 days, with provisions for a 10 day AOT once per refueling cycle. The EDGs are designed as backup AC power sources for essential safety systems in the event of a loss of offsite power. As such, the EDGs are not accident initiators, and an extended AOT to restore operability of an inoperable diesel generator would not increase the probability of occurrence of accidents previously analyzed.

The proposed technical specification revisions involve the AOT for a single inoperable EDG, and do not change the conditions, operating configuration, or minimum amount of operating equipment assumed in the plant safety analyses for accident mitigation. In addition, a Probability Safety Assessment (PSA) was performed to quantitatively assess the risk impact of the proposed amendment. The impact on the early radiological release probability for design basis events was also evaluated. It was concluded that the risk contribution from this proposed AOT is very small, and that the impact will be negligible.

Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not

create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments will not change the physical plant or the modes of plant operation defined in either Facility License. The changes do not involve the addition or modification of equipment, nor do they alter the design of plant systems. Therefore, operation of either facility in accordance with its proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendments are designed to improve EDG reliability by providing flexibility in the scheduling and performance of preventive and corrective maintenance activities. The surveillance intervals or the operability requirements are not changed by the proposal; only the AOT for a single inoperable EDG will be extended. The proposed changes do not alter the basis for any technical specification that is related to the establishment of, or the maintenance of, a nuclear safety margin. Moreover, an integrated assessment of the risk impact of extending the AOT for a single inoperable EDG has determined that the risk contribution is very small and can be offset by improvements in EDG reliability. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: J. R. Newman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036
NRC Project Director: David B. Matthews

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: June 21, 1995

Description of amendment request: The proposed amendments will revise TS 3.5.2 to allow up to 7 days to restore an inoperable Low Pressure Safety Injection train to operable status. This proposal is a result of a cooperative study by participating Combustion Engineering Owners Group members which concluded that an extension of the allowed outage time (AOT) from 72

hours to 7 days can improve plant operational flexibility and is risk beneficial.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments for St. Lucie Unit 1 and Unit 2 will extend the action completion/allowed outage time (AOT) for a single inoperable Low Pressure Safety Injection (LPSI) train from 72 hours to 7 days. A LPSI train is designed as a part of each Emergency Core Cooling System (ECCS) subsystem to supplement Safety Injection Tank (SIT) inventory during the early stages of mitigating a Design Basis Accident. As such, components of the LPSI system are not accident initiators, and an extended AOT to restore operability of an inoperable LPSI train would not increase the probability of occurrence of accidents previously analyzed.

The safety analyses for both St. Lucie Units demonstrate that ECCS performance acceptance criteria are satisfied with only one of the two redundant ECCS subsystems operating during the postulated Design Basis Accident. The proposed technical specification revisions involve the AOT for a single inoperable LPSI train, and do not change the conditions assumed for the minimum amount of operating equipment needed for accident mitigation. Therefore, the consequences of an accident previously evaluated will not be significantly increased.

In addition to the preceding evaluation, a Probabilistic Safety Analysis (PSA) was performed to quantitatively assess the risk impact of the proposed amendments. It was concluded from the results of that assessment that the risk contribution of the AOT extension is very small, and that the net impact of the proposed amendment can be risk beneficial.

Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments will not change the physical plant or the modes of plant operation defined in either Facility License. The changes do not involve the addition or modification of equipment nor do they alter the design of plant systems. Therefore, operation of either facility in accordance with its proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not

involve a significant reduction in a margin of safety.

The margin of safety associated with the ECCS system is established by acceptance criteria for system performance defined in 10 CFR 50.46. The proposed amendments will not change this acceptance criteria nor the operability requirements for equipment that is used to achieve such performance as demonstrated in the plant safety analyses. Moreover, an integrated assessment of the risk impact of extending the AOT for a single inoperable LPSI train has concluded that the risk contribution is very small. LPSI system reliability can potentially be improved, and the net impact of the proposed change can be risk beneficial. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: J. R. Newman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036
NRC Project Director: David B. Matthews

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: June 21, 1995

Description of amendment request: The proposed amendments will revise the action statements and certain surveillances of TS 3/4.5.1, Safety Injection Tanks (SIT). This proposal is based on the results of a cooperative study performed by participating Combustion Engineering Owners Group members which investigated the impact of a risk-based allowed outage time (AOT) extension, and also included recommendations for line-item TS improvements from NUREG-1366 and Generic Letter 93-05.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The licensee amendments proposed for St. Lucie Units 1 and 2 incorporate certain line-

item Technical Specifications (TS) improvements for the Safety Injection Tanks (SIT), and include an extension of the required action completion/allowed outage time (AOT) from one hour to 72 hours to restore an inoperable SIT (that is still able to perform its safety function) to operable status. In addition, an AOT of 24 hours, based on risk assessment techniques, is proposed for an SIT that may be unable to perform its design function.

The SITs are passive components of the Emergency Core Cooling System (ECCS). As such, they are not accident initiators for any transient evaluated in the plant safety analyses, and an extension of the AOTs for restoring an inoperable SIT to operable status would not increase the probability of occurrence of accidents previously analyzed.

The SITs, in combination with other ECCS components, are used to mitigate the consequences of a loss of coolant accident. The TS revisions will provide a longer AOT for a single inoperable SIT, but do not involve a change to the ECCS configuration or method of operation. The proposed amendments will not change the conditions assumed for the minimum amount of operating equipment needed for accident mitigation. Therefore, the consequences of an accident previously evaluated will not be significantly increased.

In addition to the preceding evaluation, a Probability Safety Assessment (PSA) was performed to quantitatively assess the risk impact of the 24 hour AOT proposal. The impact on the early radiological release probability for design basis events was also evaluated. It was concluded that the risk contribution from this AOT is very small, and that the impact is negligible.

Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments will not change the physical plant or the modes of plant operation defined in either Facility License. The changes do not involve the addition or modification of equipment, nor do they alter the design of plant systems. Therefore, operation of either facility in accordance with its proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The margin of safety associated with the ECCS system is established by acceptance criteria for system performance defined in 10 CFR 50.46. The proposed amendments will not change this criteria nor the operability requirements for equipment that is used to achieve such performance as demonstrated by the plant safety analyses. Moreover, an integrated assessment of the risk impact of allowing 24 hours to restore an inoperable

SIT to operable status has concluded that this impact is very small, and can be offset by averting an unnecessary transition to the shutdown modes. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: J. R. Newman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036
NRC Project Director: David B. Matthews

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: August 16, 1995

Description of amendment request: The revisions will modify Technical Specification 3.6.6.1, Shield Building Ventilation System (SBVS), to more effectively address the design functions performed by the SBVS for both the Shield Building (secondary containment) and the Fuel Handling Building.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment for St. Lucie Unit 2 will clarify the Applicability and the Actions required by Technical Specification (TS) 3.6.6.1, and explicitly account for the dual purpose of the Shield Building Ventilation System (SBVS) to perform design functions for both the Shield Building (secondary containment) and the Fuel Handling Building. The proposed amendment is administrative in nature.

The SBVS only operates when actuated by automatic control signals generated by systems detecting postulated accident conditions. The SBVS is not an accident initiator, the proposed TS changes do not involve any assumptions relative to accident initiators used in the plant safety analyses, and the amendment, therefore, will not impact the probability of occurrence for accidents previously analyzed. Relative to

accident consequences, at least one train of the SBVS must operate to fulfill the design function of evacuating filtered air from the Shield Building during the postulated Loss of Coolant Accident; and likewise assumed in the analysis for the Fuel Handling Building during a fuel handling accident. The proposed changes simply remove elements of ambiguity from TS 3.6.6.1; do not reduce the existing operability requirements for the system; and provide further assurance that proper compensatory measures will be taken in the event one or both SBVS trains become inoperable.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment is administrative in nature and will not change the physical plant or the modes of plant operation defined in the facility license. The changes do not involve the addition or modification of equipment, nor do they alter the design or methods of operation of plant systems. Plant configurations that are prohibited by TS will not be created by this amendment. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment will not change the SBVS operability requirements nor otherwise alter the basis for any technical specification that is related to the establishment of, or the maintenance of, a nuclear safety margin. The proposed changes are administrative in nature, and are designed to provide assurance that the SBVS capability to perform design functions assumed available in the safety analyses will remain available during the various plant operating modes. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: J. R. Newman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036
NRC Project Director: David B. Matthews

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: August 16, 1995

Description of amendment request: The proposed amendments revise St. Lucie Units 1 and 2 Technical Specifications to relocate selected Technical Specification Monitoring Instrumentation utilizing the Final Policy Statement on Technical Specification Improvement for Nuclear Power Reactors, 58 FR 39132, July 22, 1993. The proposed amendments also include relocation of Technical Specifications related to the Emergency and Security Plan review process utilizing the guidance contained in NRC Generic Letter 93-07, "Modification of the Technical Specification Administrative Requirements for Emergency and Security Plans."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Selected Technical Specification Requirements Related to Instrumentation are administrative in nature in that the specifications for operation and surveillance of the selected Technical Specification instrumentation will be relocated from Appendix A of the facility operating license to the Updated Final Safety Analysis Report (UFSAR) for each unit. Once relocated, future changes will be controlled by 10 CFR 50.59 and the UFSARs updated pursuant to 10 CFR 50.71(e). Relocation of these requirements to the UFSAR is consistent with the NRC "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors" published in the Federal Register (58 FR 39132) dated July 22, 1993.

The selected Technical Specification instruments are not accident initiators nor a part of the success path(s) which function to mitigate accidents evaluated in the plant safety analyses. The proposed Technical Specification change does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor do the changes alter any assumptions or conditions in any of the plant accident analyses. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Technical Specifications changes associated with Emergency Plan and Security

Plan requirements are proposed in accordance with Generic Letter 93 07. The changes being proposed are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, operation of the facility in accordance with the proposed amendments would not affect the probability or consequences of an accident previously analyzed.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment to relocate the existing Technical Specification requirements for selected Technical Specification instrumentation to the UFSAR will not change the physical plant or the modes of plant operation defined in the Facility License. The change does not involve the addition or modification of equipment nor does it alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments, in accordance with Generic Letter 93-07, change the Technical Specifications to remove the audit of the emergency and security plans and implementing procedures from the list of responsibilities of the Facility Review Group. The changes being proposed are administrative in nature and will not change the physical plant or the modes of operation defined in the Facility License. The change does not involve the addition or modification of equipment nor does it alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature in that operating and surveillance requirements for the selected Technical Specification instrumentation will be relocated from Appendix A of the facility license to the appropriate Updated Final Safety Analysis Report for each unit. These selected instruments are not used to actuate safety-related equipment, provide interlocks, or otherwise perform plant control functions. Conditions evaluated in plant accident and transient analyses do not involve these selected instruments. The proposed changes do not alter the basis for any technical specification that is related to the establishment of, or the maintenance of, a nuclear safety margin. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendments, in accordance with Generic Letter 93-07, change the Technical Specifications to remove the audit of the emergency and security plans and

implementing procedures from the list of responsibilities of the Facility Review Group. The changes being proposed are administrative in nature and do not alter the bases for assurance that safety-related activities are performed correctly or the basis for any Technical Specification that is related to the establishment of or maintenance of a safety margin. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: J. R. Newman, Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036

NRC Project Director: David B. Matthews

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: July 21, 1995

Description of amendment request: The proposed amendment would make administrative changes to various sections of the Duane Arnold Energy Center (DAEC) Technical Specifications (TS). These changes replace a conditional surveillance if one emergency service water (ESW) pump or loop is determined to be inoperable (TS 4.8.E.2); credit successful emergency diesel generator (EDG) tests performed in the previous 24 hours (TS 4.8.E.2); clarify the requirements governing spent and new fuel storage in Section 5.5 of the DAEC TS; and eliminate the Operations Committee reviews of procedures in support of the DAEC Emergency Plan and Security Plan, as specified in Sections 6.5 and 6.8 of the TS. DAEC TS Section 4.8.E.2 states the surveillance requirement applicable when one ESW pump or loop is determined to be inoperable. This amendment request deletes the surveillance requirement to physically test the opposite train's EDG and replaces it with a requirement to verify OPERABILITY of the opposite train low pressure core and containment cooling systems and EDG.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes are administrative in nature and are consistent with previously-published NRC guidance. The proposed revision does not change any accident analysis, plant safety analysis or calculations; degrade existing plant programs; or modify any functions of safety related systems or accident mitigation functions for which the DAEC has previously been credited. The proposed revision to the Surveillance Requirements will continue to assure OPERABILITY as required, but eliminate unnecessary operation of an EDG.

2. The proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed revision does not alter any plant parameters, revise any safety limit setpoint, or provide any new release pathways. In addition, the proposed revision does not modify the operation or function of any safety-related equipment, nor introduce any new modes of operation, failure modes, or physical changes to the plant.

3. The proposed revision does not involve a significant reduction in a margin of safety. The proposed revision does not alter any plant parameters, revise any safety limit setpoint, or provide any new release pathways. In addition, the proposed revision does not modify the operation or function of any safety-related equipment, nor introduce any new modes of operation, failure modes, or physical changes to the plant.

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.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Kathleen H. Shea, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036-5869

NRC Project Director: Gail H. Marcus
Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 5, 1995, as revised by letter dated July 14, 1995

Description of amendment request: The proposed changes would amend the Cooper Nuclear Station (CNS) Technical Specifications (TS) sections 3/4.5.F.1, 3.5.F.2, 3.9.B.1, 3.9.B.2, 4.9.A.2, and the associated bases. These changes would revise the TS to: 1) verify that the

redundant diesel generator is operable upon the loss of one diesel generator, and implement provisions to verify that the operable diesel generator does not have a common cause failure; 2) incorporate provisions to allow a modified start for the diesel generators; and 3) remove the requirement that the reactor power level be reduced to 25% of rated power upon loss of both diesel generator units or both incoming power sources (start-up and emergency transformers). In addition, the period of time allowed for continued reactor operation with both diesels inoperable would be reduced from 24 to two hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

10 CFR 50.91(a)(1), requires that licensee requests for operating license amendments be accompanied by an evaluation of significant hazards posed by the issuance of the amendment. NPPD has reviewed the proposed changes in accordance with 10CFR50.92 and concludes that the changes do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve a SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

Proposed Revision 1:

This proposed revision serves to ensure that an emergency diesel generator is always available to perform on demand and that lowering the number of demands to demonstrate operability reduces the probability of equipment failure. The required action no longer requires the redundant emergency diesel generator to be demonstrated operable immediately. Therefore, this requirement has been deleted from TS 4.5.F.1.

The proposed change includes provisions to determine if the redundant diesel generator has been made inoperable by a common cause failure or perform a demonstration test. The redundant emergency diesel generator will remain in service during the entire period of inoperability of the out of service emergency diesel generator. If a common cause failure cannot be ruled out, the redundant diesel generator will be tested in accordance with the surveillance requirements of TS section 4.9.A.2.a.1 to assure operability.

Since this proposed revision does not affect the design or negatively affect the performance of the diesel generators, the change will not result in an increase in the consequences or probability of an accident previously analyzed. This proposed revision will increase diesel generator reliability and availability, thereby increasing overall plant safety.

Proposed Revision 2:

This proposed revision only affects emergency diesel generator periodic testing. The diesel generators are not accident initiators and the method of testing the diesel generators cannot initiate an accident and therefore will not increase the probability of an accident. This change to the diesel generator testing method does not impact any Updated Safety Analysis Report (USAR) safety analysis. The proposed surveillances will still provide assurance that the diesel generators are available to mitigate the consequences of accidents previously evaluated. Thus the consequences of an accident previously evaluated are not increased.

The revised periodic testing will still demonstrate that the emergency diesel generators are ready to perform their safety function. An overall improvement in diesel engine reliability and availability can be gained by performing diesel generator starts for surveillance testing using engine prelubes, warmups and other manufacturer recommended practices to reduce engine stress and wear. Since this proposed revision does not affect the design or negatively affect the performance of the diesel generators, the change will not result in an increase in the consequences or probability of an accident previously analyzed. This proposed revision will increase diesel generator reliability, thereby increasing overall plant safety.

Proposed Revision 3:

This proposed revision does not affect the operation of the emergency diesel generators or the incoming power sources (start-up and emergency transformers). Both the diesel generators and the incoming power sources function to mitigate the consequences of postulated accidents. As such, removing the requirement to reduce power level upon the loss of both redundant components in either of these systems does not create an increase in the probability of an accident. By eliminating this requirement, the potential for plant transients during power reduction to 25% are also eliminated. Eliminating this requirement will not increase the consequences of a postulated accident because the redundant components will remain available. Additionally, the loss of both offsite power sources condition becomes more restrictive by requiring a plant shutdown instead of notification within 24 hours.

The proposed changes do not alter the conditions or assumptions in any of the Updated Safety Analysis Report (USAR) accident analyses. Since the USAR accident analyses remains bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes. Therefore, no significant increase in the probability or consequences of an accident previously analyzed would occur.

The proposed rearrangement of information, and rewording of some of the TS requirements are included to enhance usability and alleviate any possible confusion. These changes are strictly editorial have no impact, and do not alter technical content or meaning of the specifications. These editorial changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Proposed Revision 1:

Accidents involving loss of off-site power and single failure have been previously evaluated, and this proposed change does not impact any of those assumptions. This proposed revision does not introduce any new mode of plant operation or new accident precursors, involve any physical alterations to plant configurations, or make changes to system setpoints which could initiate a new or different kind of accident. Operation of the facility in accordance with the proposed revised changes does not create the possibility of a new or different kind of accident from any previously evaluated.

Proposed Revision 2:

This proposed revision only affects emergency diesel generator periodic testing. The diesel generators are not accident initiators and the method of testing the diesel generators cannot initiate an accident. This revision does not relieve the operation of the diesel generator from existing requirements and the diesel generators remain bounded by the assumptions in the USAR accident analysis. The method of testing provides assurance that the diesel generators are available when needed. The proposed revision does not involve any changes in setpoints, plant equipment, plant operation, protective functions, or the design basis of the plant. Therefore, a change in the method of starting the diesel generators during periodic testing would not create a different kind of accident than previously evaluated.

Proposed Revision 3:

This proposed revision does not add or change any equipment or logic, nor do the changes associated with this revision alter any system operability requirements. The proposed changes for this revision do not introduce any new failure modes for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed revision. Since there are no changes to the function, or operation of any system, equipment, or component, the possibility of a new or different kind of accident is not created.

The proposed rearrangement of information, and rewording of some [of] the TS requirements are included to enhance usability and alleviate any possible confusion. These changes are strictly editorial have no impact, and do not alter technical content or meaning of the specifications. These editorial changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

Proposed Revision 1:

This proposed revision does not result in an overall reduction in the margin of safety. The reduction in margin going from "immediately" testing an operable diesel generator to 24 hours to determine no common cause, is offset by the increase in margin resulting from increased diesel

generator reliability and availability associated with implementing the vendor recommendations for testing and not exposing the diesel generator to potential grid disturbances when a diesel generator is found to be inoperable. No physical modification to the plant or change in the procedurally prescribed operator actions result from the proposed changes associated with this revision. Operation of the facility in accordance with the proposed revision does not involve a significant reduction in a margin of safety.

Proposed Revision 2:

This proposed revision is made to increase the reliability and availability of the emergency diesel generators thus enhancing the safety of the plant. Changing the way periodic testing of the diesel generators is conducted does not involve a reduction in safety. The test still demonstrates the ability of the diesel generator to start within the time required, and reach rated voltage and frequency as required in the accident analysis. The test also demonstrates the ability of the diesel generator to start reliably, carry the required load, and ensures the capabilities of the cooling system and other support systems are operable. Therefore, assurance that the diesel generators operate within the limits determined to be acceptable continues to be provided. Implementing manufacturer's recommendations to minimize stress and wear of the diesel engine does not involve a significant reduction in the margin of safety, but rather enhances safety.

Proposed Revision 3:

This proposed revision deletes the requirement to reduce reactor power level to 25% of rated power upon the loss of either both diesel generators or both incoming power sources. The elimination of this requirement will allow the plant to maintain the existing power level rather than subject the plant to an unnecessary transient. Maintaining the plant at the existing power level provides a more stable operating environment. The equipment and components of the diesel generators or the incoming power sources are not impacted in any way as a result of the proposed revisions. The margin of safety for the diesel generators and the incoming power sources are not significantly reduced since these systems are not altered in any way, and will continue to be surveillance tested as required. Assurance of operability is provided by the normal, scheduled surveillances which have been established at a sufficient interval to provide reasonable assurance of operability. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The proposed rearrangement of information, and rewording of some [of] the TS requirements are included to enhance usability and alleviate any possible confusion. These changes are strictly editorial have no impact, and do not alter technical content or meaning of the specifications. These editorial changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. The licensee's July 14, 1995, letter revised the proposed changes in their letter of May 5, 1995, to further limit the period of time that continued reactor operation would be allowed with both emergency diesel generators inoperable from 24 to two hours. This revision to the proposed changes is more restrictive and does not impact the licensee's analysis of the criteria of 10 CFR 50.92(c). Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: William D. Beckner

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: August 31, 1995

Description of amendment request: The proposed amendment modifies the definition of HOT SHUTDOWN and COLD SHUTDOWN to specify that the definitions are not applicable during the performance of an inservice hydrostatic and leak test (IHLT). Technical Specification Section 3.6.B and 4.6.B would be modified by adding Section 3.6.B.1.b and 4.6.B.1.b to identify the requirements that must be satisfied to consider the reactor in COLD SHUTDOWN during the performance of an IHLT. In addition, the proposed amendment will change temperature specific requirements on several pages to mode or condition specific requirements; make several editorial changes; and change the associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed changes in accordance with 10CFR50.92 and concluded that the changes do not involve a significant hazards consideration (SHC). The bases for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes will allow the reactor to be considered in COLD SHUTDOWN during an IHLT with the average reactor coolant temperature greater than 212°F but less than 280°F. The change to allow the reactor to be in COLD SHUTDOWN during the performance of IHLT will not increase the probability or consequences of an accident. The probability of a leak in the reactor pressure boundary during this testing is not increased by considering the reactor to be in COLD SHUTDOWN. The IHLT is performed near water solid, all control rods inserted, and with an appropriate availability of engineering safety features. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in coolant activity are minimal. In addition, secondary containment will be operable and capable of handling airborne radioactivity from leaks that could occur during the performance of an IHLT. Requiring secondary containment to be operable will further ensure that potential airborne radiation from leaks will be filtered by one or both trains of SBTG [standby gas treatment], thereby limiting releases to the environment. Therefore, the changes will not significantly increase the consequences of an accident.

In the unlikely event of a large pressure boundary leak, the reactor vessel would rapidly depressurize, allowing one or both of the operable core spray systems to operate. Small system leaks would be detected by leakage inspections before significant inventory loss occurred, since leakage inspections are an integral part of the IHLT program.

Based upon the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The IHLT conditions remain unchanged. The potential for a system leak remains unchanged since the reactor coolant system is designed for temperatures exceeding 500°F with similar pressures. The change in operable engineered safety features available to mitigate a postulated accident does not reduce the ability to

safely mitigate a postulated accident. Adequate ECCS [emergency core cooling system] equipment will be available to mitigate a LOCA [loss of coolant accident] with an assumed single failure. Therefore, this will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes will not have any significant impact on any design basis accident or safety limit. The various engineered safety features which are required by the proposed change will ensure appropriate mitigation of postulated events. Since the test is performed at a near water solid condition and at low decay heat values,

no fuel damage is expected in case of an accident such as a LOCA. Nevertheless, secondary containment and the SBTG system will be maintained operable to process airborne radioactivity from a steam leak that could occur during the performance of the IHLT. Therefore, the proposed change does not constitute a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room

location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: August 31, 1995

Description of amendment request: The proposed change to the Millstone 2 Technical Specifications would remove the phrase "other than Millstone Unit No. 2" from Section 6.3.1 on page 6-2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed change in accordance with 10CFR50.92 and concluded that the change does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change does not affect any system or equipment of Millstone Unit No. 2. The proposed change does not affect the qualification of any of the licensed individuals involved in the day-to-day operation of Millstone Unit No. 2. The proposed change corrects a statement which could be interpreted such that an individual who once held a Millstone Unit No. 2 SRO [Senior Reactor Operator] license would not be eligible to be Operations Manager. Since this change does not affect any equipment or operating procedures, does not affect the level of expertise and

training required for on-shift personnel, and does not reduce the level of expertise required of operations management, this change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

This change does not affect any equipment or operating procedures, does not affect the level of expertise and training required for on-shift personnel, and does not reduce the level of expertise required of operations management. Therefore, this change does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

This change eliminates a phrase which could be interpreted to prevent an individual who had possessed a Millstone Unit No. 2 SRO license from becoming the Operations Manager. The training and experience necessary to possess a Millstone Unit No. 2 SRO license is equivalent to that of other PWRs. Therefore, this proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room

location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: July 28, 1995

Description of amendment request: The proposed amendment would eliminate the Technical Specifications requirements to perform 10 CFR 50, Appendix J, Type C hydrostatic testing on certain valves that are within closed systems and are assured a water seal following a Design Basis Accident.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *The proposed TS changes do not involve a significant increase in the probability or*

consequences of an accident previously evaluated.

The primary containment (drywell and suppression pool) and the affected closed systems are accident mitigators not accident initiators. The proposed change to the scope of Appendix J, Type C testing does not affect the probability of the DBA [Design Basis Accident]. The valves will continue to be maintained in an operable state, and in their current design configuration. There is no correlation between the scope of Appendix J, Type C testing and accident probability. There are no physical or operational changes to the containment structure, system or components being made as a result of the proposed changes. Therefore, the consequences of a malfunction of equipment important to safety is not increased from those previously evaluated.

The consequences of loss-of-coolant accidents (LOCAs) under the proposed change were considered where a single active failure of a containment isolation valve (CIV) or a passive failure of the closed system were reviewed, within the limits of the existing licensing basis. Under the existing licensing basis, a pipe rupture of the seismically qualified ECCS piping does not have to be assumed concurrent with the LOCA, except if it is a consequence of the LOCA. Consideration of consequential failures can be eliminated, since a LOCA inside containment is separated from the affected piping by the containment structure. Consideration of consequential failures of the ECCS piping from LOCAs outside containment are outside the Appendix J design considerations. A single active failure of the CIV, under the LOCA condition, can be accommodated since the closed and water sealed system piping remains as the leakage barrier. The ECCS passive failure criterion does require consideration of system leaks, but not pipe breaks, beyond the initiating LOCA. The capability to make-up water inventory to the suppression pool is adequate to ensure that postulated seat leakage and pipe leakage does not result in a condition that jeopardizes pool level. Make-up capability exists for the suppression pool via the Condensate Storage Tank and Ultimate Heat Sink Spray Pond. Operator actions to make-up the suppression pool are delineated in existing Operating Procedures.

The subject valves are single isolation valves associated with lines that penetrate the primary containment, but are not connected directly to the primary containment atmosphere or the reactor coolant pressure boundary. This configuration is described in the LGS UFSAR, Section 6.2.4.3.1.3.1, which states "the systems which the lines from the suppression pool connect to outside containment are closed systems meeting the appropriate requirements of closed systems." The integrity of these closed systems are also monitored and controlled in accordance with TS Section 6.8.4.a. Any leakage that may escape the confines of the closed system will be contained within the Reactor Building, treated by standby gas and radwaste systems, and, therefore, are within the existing LGS licensing bases.

Finally, the affected penetrations will continue to be subjected to the periodic 10

CFR 50, Appendix J, Type A test (Integrated Containment Leakage Rate Test).

The suppression pool level is designed and operated so that water level is maintained in accordance with current TS, and the associated bases. The supply of water in the suppression pool is assured for 30 days during all DBA, post-accident modes of operation. The lowest water level which the suppression pool will reach was analyzed, and it was determined that the affected lines will remain below this minimum level, thereby assuring a water seal. The valves will continue to be tested and maintained to ensure their operability, and the closed systems' integrity will continue to be monitored and controlled in accordance with TS 6.8.4.a and the performance of the periodic 10 CFR 50, Appendix J, Type A test.

Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. *The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.*

The proposed changes do not change the plant response to accident scenarios, and do not introduce new or different scenarios. The primary containment (drywell and suppression pool) and the affected closed systems are accident mitigators not accident initiators. The proposed change to the scope of Appendix J, Type C hydrostatic testing maintains the existing barriers to primary containment bypass leakage by the assurance that a water seal will be maintained for 30 days during all DBA, post-accident modes of operation. The valves will continue to be tested and maintained to ensure their operability, and the closed systems' integrity will continue to be monitored and controlled in accordance with TS 6.8.4.a. Therefore, the proposed changes cannot cause an accident, and the plant response to the design basis events is unchanged, whereby the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *The proposed TS changes do not involve a significant reduction in a margin of safety.*

The water seal provided by the assurance of a minimum suppression pool level will prevent post-accident containment bypass leakage. Appendix J does not require air leak testing of the valves since the 30 day post-accident supply of water is maintained. In addition, the closed systems' integrity is monitored and controlled in accordance with TS 6.8.4.a. Any leakage that may escape the confines of the closed system will be contained within the Reactor Building, and is within the existing LGS licensing bases. Therefore, the proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500

High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101
NRC Project Director: John F. Stolz

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: July 28, 1995

Description of amendment request: The proposed amendments, which are consistent with the Improved Standard Technical Specifications (NUREG-1433), delete the operability and surveillance requirements involving secondary containment differential pressure instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.*

Deleting the operability and surveillance requirements for the secondary containment differential pressure instrumentation does not involve any changes to the design, function, or operation of any plant components or safety-related systems. There are no changes to the separation, redundancy, qualification, quality assurance or fire protection requirements for the associated components and systems, nor are there any new failure modes created. This activity only removes operability and surveillance requirements from the Technical Specifications for selected plant components associated with the secondary containment differential pressure trip functions. No credit for operation of these trip functions is taken in any design basis accidents valued in the SAR [Safety Analysis Report]. These components will be maintained in accordance with the plant preventive maintenance program. The failure of any of these components does not result in the occurrence of an accident. Consequently, there is no increase in the probability of occurrence of an accident previously evaluated in the SAR.

The Outside Atmosphere to Reactor Enclosure Delta Pressure-Low and Outside Atmosphere To Refueling Area Delta Pressure-Low trip functions are not symptomatic of a design basis accident. No credit for operation of the trip functions is taken in any design basis accidents evaluated in the SAR. Neither failure of the differential pressure components nor failure to generate the associated trip functions affects the consequences of an accident previously evaluated in the SAR. The appropriate

accident prevention and mitigation actions are generated from other plant parameters symptomatic of an accident. Sufficient plant parameters symptomatic of a design basis accident are monitored to initiate the appropriate actions as evaluated in the SAR. Furthermore, all safety-related systems will still be able to perform all of their design basis safety-related functions. Consequently, there is no increase in the consequences of an accident previously evaluated in the SAR.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The failure of the differential pressure automatic isolation instrumentation components does not result in the occurrence of an accident. The failure to generate the associated trip functions does not result in the occurrence of an accident. This activity does not involve any changes to the design, function, or operation of any plant components or safety-related systems. There are no changes to the separation, redundancy, qualification, quality assurance or fire protection requirements for the associated components and systems. These components will be maintained in accordance with the plant preventative maintenance program. Consequently, there is no possibility of an accident of a different type than previously evaluated in the SAR.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The ability of secondary containment to minimize any ground level release of radioactive material which may result from any accident is not affected. Surveillance and operability requirements for secondary containment SGTS [Standby Gas Treatment System] and RERS [Reactor Enclosure Recirculation System] are not changed by this activity. Draw down time, leakage factors, secondary containment system ratings, and secondary containment system response to a LOCA [Loss of Coolant Accident] or refueling accident are not affected by this activity. SGTS and RERS initiation will continue to occur when plant parameters symptomatic of a LOCA or refueling accident exceed predetermined values. There are no changes to the inputs for the post-LOCA offsite dose analysis.

Therefore, the proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500

High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101
NRC Project Director: John F. Stolz

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: July 28, 1995

Description of amendment request: The proposed amendment would modify Technical Specifications (TS) Surveillance Requirements 4.9.1.1, 4.9.1.2, 4.9.3, 4.9.5, and 4.9.8 to delete specific requirements to perform surveillances just prior to beginning or resuming core alterations or control rod withdrawal associated with refueling activities. This proposed TS change would delete the phrase "incore instrumentation" from the footnote in TS Section 3/4.9.5, "Communications."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes do not involve any physical changes to plant systems or equipment. The proposed TS changes only delete those Surveillance Requirements (SRs) pertaining to the performance of tests just prior to beginning or resuming core alterations or control rod withdrawal, and revises a footnote description to be consistent with the current TS definition of "Core Alteration." The proposed TS changes do not revise any of the other applicable periodic SRs, or modify any procedural controls currently in place governing fuel handling operations. The periodic surveillance test frequencies provide adequate assurance that the equipment will remain in an operable condition. The normal periodic surveillance intervals bound those surveillance intervals for the tests that are being altered by this proposed TS change. In the event that one of the periodic surveillances has not been performed within the specified time interval, entry into the specified condition (i.e., performance of core alterations, control rod withdrawal, or handling of fuel or control rods) is not permitted as required by TS 4.0.4 until the surveillance has been satisfactorily completed.

The consequences of an accident are not increased by the proposed TS changes, since the changes only involve revising the frequency of conducting surveillance tests. The method of operation or performance of

plant structures, systems, or plant components are not affected by the proposed TS changes. The proposed TS changes will not impact the operation of any fuel handling equipment, and therefore, the potential for a Fuel Handling Accident as described in Section 15.7.4 of the LGS [Limerick Generating Station] Updated Final Safety Analysis Report (UFSAR) is not increased.

In addition, any unexpected reduction of water level in the reactor cavity or fuel pool at the start of fuel handling or control rod handling will be immediately apparent to operators by direct observation. Plant procedures utilized by the refueling personnel require the suspension of core component transfers in the event of loss of water inventory.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes only involve changes to the frequency in which the specified surveillance tests are performed. The proposed TS changes do not revise any of the other applicable periodic SRs, or modify any procedural controls currently in place governing fuel handling operations. The periodic surveillance test frequencies provide adequate assurance that the equipment will remain in operable condition. The periodic surveillance intervals bound those surveillance intervals for the tests that are being altered by this proposed TS change. The refueling interlock system combined with strict procedural controls provide multiple barriers to preclude an inadvertent criticality.

The proposed TS changes do not involve any physical changes to plant systems or equipment. The proposed TS changes do not alter the configuration of the plant or the way that the plant is operated. The associated plant equipment will continue to function as designed. This equipment is not designed to perform any other function than it is presently capable of, and therefore, will not affect the operation of any other plant equipment.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes do not involve any physical changes to plant systems or equipment. The reactor will continue to be maintained subcritical during refueling operations and reactor water level will be maintained at the required level (i.e., above the vessel flange). The proposed TS changes do not affect the operation of other plant systems and equipment essential in maintaining reactor water temperature during refueling operations, or the capability in responding to a postulated Fuel Handling Accident.

The proposed changes do not adversely affect reliability of the refueling interlocks or refuel platform communications equipment.

Since the proposed changes only impact the frequency in which certain surveillance tests are performed, and do not change the plant configuration or setpoints, there is substantial assurance that the reactor will be maintained subcritical during refueling.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: John F. Stolz

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: July 28, 1995

Description of amendment request: The proposed amendment would revise Technical Specifications Table 4.3.1.1-1, "Reactor Protection System Instrumentation Surveillance Requirements", to reflect changes to the surveillance test frequency requirements for various Reactor Protection System [RPS] instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.*

In all of the applicable SAR [Safety Analysis Report] evaluated events, the IRM [Intermediate Range Monitor] and APRM [Average Range Power Monitor] instrumentation is credited for performing a mitigating function (i.e., initiating a scram), to terminate the transient prior to a safety limit being exceeded. The proposed TS changes do not alter the RPS configuration, or RPS instrumentation setpoints, nor do they change the manner in which the IRM and APRM instrumentation carry out the scram functions. Therefore the consequences of any potential malfunction of equipment important to safety will remain unchanged.

In each case where a startup surveillance test requirement is proposed to be deleted, (i.e., IRM and APRM), the normal surveillance test frequency specified for the

required Operational Condition remains unchanged (except for the APRM Upscale Setdown functional test). The startup surveillance requirement is conservatively bounded by the normal surveillance test interval which is greater than or equal to any interval associated with the startup surveillance requirement and ensures that the IRM and APRM instrumentation reliability is unchanged. This is in accordance with the Improved Standard Technical Specifications, NUREG-1433, issued September 28, 1992.

The reliability of the APRM Upscale Setdown scram function will not be decreased due to changing the functional test frequency from Weekly (W), to Quarterly (Q), in Operational Conditions 2, 3, and 5 (Startup, Hot Shutdown and Refueling, respectively). Plant operational data taken from each of the APRM calibration/functional tests performed since August 1992 until present at LGS Units 1 and 2, shows that setpoint reliability will be maintained if the functional test frequency is increased to quarterly, as proposed. Presently, each time an APRM calibration/functional test is performed, both the Upscale Setdown and the Flow Reference scram circuits are tested. The results of the quarterly tests confirm that the APRM Upscale Setdown function already has over 2.5 years of performance without failure in Operational Condition 1, thus being extremely reliable.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes affect only the required surveillance test intervals, not the RPS configuration or RPS instrumentation setpoints. The proposed TS changes do not introduce a new failure mode for the IRM or APRM instrumentation. Plant operating experience data confirms that at LGS Units 1 and 2, the IRM and APRM instrumentation will continue to perform their safety function as currently designed, with the same degree of reliability.

The proposed TS changes do not alter the configuration of the plant, nor the way the plant is operated.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3. *The proposed TS changes do not involve a significant reduction in a margin of safety.*

The following TS Bases were reviewed for potential reduction in the margin of safety:

B 2.2.1 Reactor Protection System Instrumentation Setpoints

B 3/4.1.4 Control Rod Program Controls

B 3/4.2 Power Distribution Limits

B 3/4.3.1 Reactor Protection System Instrumentation

B 3/4.3.6 Control Rod Block Instrumentation

The surveillance test frequency changes proposed for the RPS instrumentation section of TS do not adversely affect the IRM or APRM instrumentation, which will continue

to perform the RPS functions required to maintain the present margin of safety. Changes to the IRM instrumentation startup surveillance intervals are already bounded by the existing surveillance requirements, and are in accordance with the Improved Standard Technical Specifications, NUREG-1433, issued September 28, 1992. The same statement applies to the APRM instrumentation, with respect to deletion of the startup surveillance requirement. The change of the APRM Upscale Setdown Channel functional test surveillance interval from Weekly to Quarterly was evaluated to ensure that the APRM instrumentation would perform that function, with the same degree of reliability as presently experienced. A review of the plant operating experience data at LGS Units 1 and 2 shows that APRM instrumentation is extremely reliable for a quarterly surveillance test interval. The proposed TS changes do not modify plant configuration, RPS instrumentation setpoints, or RPS operation. The margin of safety remains unchanged.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: John F. Stolz

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: August 1, 1995

Description of amendment request: The proposed amendment would modify Technical Specifications Section 3/4.9.1, "Reactor Mode Switch," in order to provide alternate actions to allow the continuation of core alterations in the event certain Reactor Manual Control System (RMCS) and refueling interlocks are inoperable, while preserving the intended function of the inoperable interlocks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant

increase in the probability or consequences of an accident previously evaluated.

The refueling and one-rod-out interlocks impose barriers to preclude an inadvertent criticality during refueling operations. Section 7.7.2.15.1 of the LGS Updated Final Safety Analysis Report (UFSAR) clearly delineates the functions of the interlocks and the criteria used in assessing correct refueling and one-rod-out interlock operation in the following statement.

In all cases, correct operation of the refueling interlock prevents either the operation of loaded refueling equipment over the core when any control rod is withdrawn, or the withdrawal of any control rod when fuel-loaded refueling equipment is operating over the core. In addition, when the reactor mode switch is in REFUEL position, only one rod can be withdrawn, and selection of a second control rod initiates a rod block.

The proposed TS changes provide operational flexibility while strictly conforming to, and preserving, the intended function of the refueling and one-rod-out interlocks. The proposed TS changes that could affect interlock capabilities are identified below, along with the appropriate justification to substantiate that the proposed TS changes will not result in an increase in the probability or consequences of an accident previously evaluated.

a. TS Section 3.9.1, ACTION Statement b. The proposed change to this existing TS ACTION will add a verification that all control rods are fully inserted, and then disabled from being withdrawn as a suitable alternative to placing the reactor mode switch in the SHUTDOWN position when the one-rod-out interlock is not operable. In addition, the proposed change to this TS section includes a caveat of non-applicability for those control rods already removed in accordance with requirements stipulated in TS Sections 3.9.10.1 and 3.9.10.2. As indicated in LGS UFSAR which is described in the statement above, it is expected that the refuel and one-rod-out interlocks will permit the withdrawal of only one (1) control rod at a time with the reactor mode switch in the REFUEL position, and no control rods can be moved when fuel-loaded refueling equipment is operating over the core. By verifying all control rods are inserted, then disabling withdraw capabilities of all rods, as requested, the most limiting requirements for control rod motion will be met. The potential for having more than one (1) control rod out at a time, or having any control rod not fully inserted while fuel-loaded refueling equipment is operating over the core, does not exist when applying the alternative. Therefore, the intended functions of the refuel and one-rod-out interlocks are operationally preserved. Since TS Sections 3.9.10.1 and 3.9.10.2 have specific requirements for removing surrounding fuel prior to control rod blade removal, the control rods already removed are no longer required to carry out a safety function in the defueled cell, and as a result would not apply for this specific proposed TS change. From a control rod withdrawal perspective, there is no functional difference between the proposed TS change and the existing, and still remaining, TS ACTION of locking the

reactor mode switch in SHUTDOWN position.

b. TS Section 3.9.1, ACTION Statement c. This existing TS ACTION requires that core alterations be suspended in the event that a refueling interlock is not operable. The proposed TS change to this TS ACTION leaves this requirement in place, but makes this ACTION specifically applicable to the refueling platform, and adds three (3) new additional ACTION alternatives. The wording for changes to this TS section are such that implementation of any one of the three (3) new alternatives can be substituted for suspending core alterations. The proposed wording for these three (3) new alternatives and justification is provided below.

1) Verify all control rods are fully inserted and disable withdraw capabilities of all control rods***.

Since this alternative ensures all control rods are, and will remain fully inserted, all required conditions of the associated refueling and one-rod-out interlocks are met. The refueling interlock is satisfied since a fuel-loaded refueling platform operating over the core would be assured that all control rods are fully inserted and prevented from being withdrawn. The one-rod-out interlock is satisfied since control rod withdrawal is disabled for all control rods, which is an even more conservative requirement than the one-rod-out interlock itself. While operating in this configuration, there will be no associated travel or hoist restrictions for the refueling platform over the core, which is normal for the current refuel interlock design. The potential for having any control rod not fully inserted while a fuel-loaded refueling platform is operating over the core, does not exist when applying this proposed alternative. Therefore, the intended function of the refueling platform refuel interlocks are operationally preserved with the implementation of this proposed alternative, and there will be no increase in the probability of occurrence of an accident. This proposed alternative also maintains an exclusion (via a reference to the proposed *** footnote) for control rods removed in accordance [with] TS Sections 3.9.10.1 and 3.9.10.2. This exclusion does not apply to inadvertent criticality concerns, as previously discussed in Item 1.a above.

2) Verify Refuel Platform is not over core (limit switches not reached) and disable refuel platform travel over core.

As previously stated above, LGS UFSAR Section 7.7.2.15.1 stipulates that the refueling platform position interlocks initiate a control rod block whenever a fuel-loaded refueling platform is over the core, and stop a fuel-loaded refueling platform from moving over the core if a control rod is already withdrawn. This specific proposed TS change satisfies both these requirements by precluding the possibility of the platform from being over the core. If a control rod is being withdrawn, the platform will not be over the core, and the withdrawal will be in accordance with the current design. If a control rod is already withdrawn, disabling platform travel over the core, before reaching the over-core limit switches, is performing the same function as the existing refueling

platform reverse and forward motion blocks. Therefore, the potential for having any control rod not fully inserted while a fuel-loaded refueling platform is operating over the core, does not exist when applying this proposed alternative. The intended refueling interlock functions are operationally preserved with the implementation of this proposed alternative.

3) Verify that no Refuel Platform hoist is loaded and disable all Refuel Platform hoists from picking up (grappling) a load.

As previously stated above, UFSAR Section 7.7.2.15.1 stipulates that blocking control rod withdrawal with a refueling platform over the core, and restricting refueling platform travel from going over the core with a control rod already withdrawn, are based on the refueling platform hoist being fuel-loaded. An unloaded platform without grappling capabilities poses no threat to erroneous fuel bundle or control rod removal, and eliminates the potential for having any control rod not fully inserted while a fuel-loaded refueling platform is operating over the core. Therefore, implementing this proposed alternative operationally preserves the intended interlock functions.

c. TS Section 3.9.1, ACTION Statement d. The proposed TS change adds this new TS ACTION section to specify the refueling interlock requirements for the service platform, since the applicability of ACTION Statement c above is being revised to specifically address refueling interlocks associated with the refueling platform. The proposed TS changes for new this TS section retain the existing requirement to suspend core alterations if the service platform associated refueling interlock is not operable, unless the service platform is not installed over vessel. The specific proposed TS changes add two (2) new additional ACTION alternatives. The proposed wording for these two (2) new ACTION statements are such that implementation of any one of the two (2) new alternatives can be substituted for suspending core alterations. Not enforcing operability requirements on the service platform refueling interlocks when the service platform is not over the vessel does not pose an inadvertent criticality concern since there is no associated hoist to manipulate fuel bundles or control rods. These two (2) new alternatives are not applicable unless the service platform is installed over the vessel, and are described below.

1) Verify all control rods are fully inserted and disable withdraw capabilities of all control rods***.

This alternative ensures that all control rods are, and will remain, fully inserted which meets the required conditions for proper refueling and one-rod-out interlock operation. The refueling interlock is satisfied since a fuel-loaded service platform hoist operating over-core is assured that all control rods are fully inserted and prevented from being withdrawn. The one-rod-out interlock is satisfied since all control rods are disabled, an even more conservative requirement than the one-rod-out interlock itself. While operating in this configuration, there will be no associated hoist restrictions for the service

platform, which is normal for the current refuel interlock design. The potential for having any control rod not fully inserted while a service platform hoist is fuel-loaded over the core, does not exist when utilizing this proposed alternative. Therefore, the intended function of the service platform refuel interlocks are operationally preserved with the implementation of this proposed alternative. This proposed alternative also maintains an exclusion (via a reference to the proposed *** footnote) for control rods removed in accordance with the requirements of TS Sections 3.9.10.1 and 3.9.10.2. This exclusion is not applicable to inadvertent criticality concerns as discussed in Item 1.a above.

2) Verify Service Platform hoist is not loaded and disable Service Platform hoist from picking up (grappling) a load.

As previously described above, UFSAR Section 7.7.2.15.1 stipulates that blocking control rod withdrawal with the service platform over the core is based on the service platform hoist being fuel-loaded. An unloaded hoist without grappling capabilities poses no threat to erroneous fuel bundle or control rod removal and eliminates the potential for having any control rod not fully inserted while a fuel-loaded service platform is operating over the core. Therefore, implementing this proposed alternative operationally preserves the intended refueling interlock functions.

As discussed in the LGS UFSAR, the use of the refueling and one-rod-out interlocks are evaluated from a prevention, not a mitigation, perspective. A Rod Withdrawal Error (RWE) transient event during refueling is concerned with an inadvertent criticality, and assumes the reactor vessel head is off, and the plant is shutdown (i.e., Operating State A). As described in the LGS UFSAR under Nuclear Safety Operational Analysis (NSOA) Event 16, it is assumed that the Reactor Protection System (RPS) terminates the event should the reactor actually reach Operating State B (i.e., head off and not shut down), which is conditional on the reactor mode switch being in the STARTUP position. The proposed TS changes only pertain to the refueling and one-rod-out interlocks. Since these interlocks act only in a preventative mode, the consequences of an inadvertent criticality accident during refueling remain unchanged.

Since the proposed TS changes are limited to the one-rod-out and refueling interlocks, they do not affect the reliability of the associated equipment. The proposed TS changes specify alternative actions that can be taken in the event that an interlock is inoperable. These alternative actions serve to ensure the failed interlock function is preserved, and do not affect the probability of malfunction of the interlocks.

The one-rod-out and refueling interlocks, as evaluated in the LGS UFSAR, are designed to preclude an inadvertent criticality during refueling operations by placing strict controls on fuel bundle and control rod manipulations, using the following methods.

a. Preventing operation of a fuel-loaded refueling platform or service platform hoist while over the core if a control rod is already withdrawn.

b. Preventing a fuel-loaded refueling platform from traveling over the core if a control rod is already withdrawn.

c. Preventing any control rod from being withdrawn if a fuel-loaded refueling platform or service platform is already operating over the core.

d. Preventing the withdrawal of more than one control rod at a time with the reactor mode switch in the REFUEL position.

The LGS UFSAR indicates that a single component failure does not cause an interlock failure and that a single interlock failure does not cause an accident. The proposed TS changes provide alternative actions that can be taken in the event of an associated component or interlock malfunction. Implementing the proposed TS changes will continue to ensure that the intended interlock functions are maintained and operationally preserved, as described in the LGS UFSAR.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes only pertain to the refueling and one-rod-out interlocks. The refueling and one-rod-out interlocks impose barriers to preclude an inadvertent criticality during refueling operations. The proposed TS changes provide operational flexibility, while strictly conforming to, and preserving, the intended function of the refueling and one-rod-out interlocks. There is no other potential failure mode for these interlocks than has already been evaluated and described in the LGS UFSAR. Implementation of these proposed changes will maintain and operationally preserve the intended interlock functions. Therefore, the malfunction of any associated component or interlock will not adversely impact the plant and any other equipment important to safety, directly or indirectly.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes only affect the TS associated with the one-rod-out and refueling interlocks. The associated TS Bases Section 3/4.9, "Refueling Operations," states that the one-rod-out and refueling interlocks maintain conditions during refueling activities that reinforce refueling procedures and reduce the potential for the probability of occurrence of each of the following conditions:

- Inadvertent criticality,
- Damage to reactor internals or fuel assemblies, and
- Exposure of personnel to excessive radioactivity.

The proposed TS changes do not adversely affect the one-rod-out or refueling interlocks. The associated interlocks will continue to perform the refueling functions required to maintain the present margin of safety. The proposed TS changes only contain alternative

actions that can be taken in the event an interlock is inoperable. These proposed alternative actions ensure that the intent of the interlocks is preserved, and that there is no reduction in the ability of the interlocks to maintain adequate refueling conditions.

The proposed TS changes will preserve the intended interlock functions, and maintain the existing level of protection against refueling errors that could lead to an inadvertent criticality, damage to reactor internals or fuel assemblies, or excessive personnel radiation exposure. The one-rod-out and refueling interlocks will continue to function with their present degree of reliability. The proposed TS changes will continue to maintain strict controls on fuel bundle and control rod manipulations to avoid inadvertent criticality. The proposed TS changes provide the same level of assurance regarding the manipulation of control rods during refueling operations as that currently described in the LGS UFSAR, and as discussed below.

a. Preventing operation of a fuel-loaded refueling platform or service platform hoist while over the core if a control rod is already withdrawn.

b. Preventing a fuel-loaded refueling platform from traveling over the core if a control rod is already withdrawn.

c. Preventing any control rod from being withdrawn if fuel-loaded refueling platform or service platform is already operating over the core.

d. Preventing the withdrawal of more than one control rod at a time with the reactor mode switch in the REFUEL position.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101
NRC Project Director: John F. Stolz

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 21, 1995, as revised on August 31, 1995

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to reflect changes to 10 CFR Part 20 (including Appendix B, Table 2 concentrations) and provide additional administrative corrections.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability or consequences of an accident previously evaluated does not involve a significant increase.

The proposed TS changes showing the relocation of the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302, the old 10 CFR 20.203(c)(2) requirements to the new 10 CFR 20.1601(a), and the old 10 CFR 20.407 requirements to the new 10 CFR 20.2206(b) will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures.

The proposed revision to the liquid and gaseous release rate limits will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures. This is only a change to the method of (algorithm) determining release rate limits and will not change net limits or change the more restrictive 10 CFR 50 Appendix I dose limits.

The proposed revision to the radioactive material quantity in the settling pond and its associated TS Bases will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures. This is only a change to the quantity of radioactive material in the settling pond and will conservatively lower net limits.

The proposed revision to the TS bases for the liquid holdup tank activity limit will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures. The curie limit is not affected, therefore, the change does not represent a decrease in the level of control previously evaluated.

The proposed revision to the distance at which dose rates are measured from the radiation source or surface will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no increase in the individual or cumulative occupational radiation exposures. The change in distance is conservative in its effect on worker protection and is in conformance with 10 CFR 20.1601 requirements.

2. The possibility of a new or different kind of accident from any previously evaluated is not created.

The proposed TS changes showing the relocation of the old 10 CFR 20.106

requirements to the new 10 CFR 20.1302, relocation of the old 10 CFR 20.203(c)(2) requirements to the new 10 CFR 20.1601(a), and relocation of the old 10 CFR 20.407 requirements to the new 10 CFR 20.2206(b) will not create the possibility of a new or different kind of accident from any previously evaluated because the revisions are administrative and will not change the types and amounts of effluents that will be released.

The proposed revision to the liquid and gaseous release rate limits will not create the possibility of a new or different kind of accident from any previously evaluated because the revision is administrative and will not change the types and amounts of effluents that will be released.

The proposed revision to the quantity of radioactive material in the settling pond and its associated TS Bases will not create the possibility of a new or different kind of accident from any previously evaluated because the revision will not change the types of effluents that will be released. This is only a change to the quantity of radioactive material in the settling pond and will conservatively lower net limits.

The proposed revision to the TS bases for the liquid holdup tank activity limit will not create the possibility of a new or different kind of accident from any previously evaluated because the revision is administrative and will not change the types and amounts of effluents that will be released.

Implementation of the more conservative distance at which dose rates are measured will not create the possibility of a new or different kind of accident from any previously evaluated.

3. A significant reduction in a margin of safety is not involved.

The proposed revisions due to the location of requirements will not reduce a margin of safety because they are administrative in nature. No equipment or procedural changes are postulated. There is no impact on any margin of safety.

The proposed revision to liquid and gaseous release rate limits will not reduce a margin of safety because it is administrative in nature. These revisions preserve the existing level of effluent control. No changes to the more restrictive 10 CFR 50 Appendix I dose limits are made. There are no equipment or operational procedure changes, therefore, no accidents of any kind will be created by this change.

The proposed revision to the quantity of radioactive material in the settling pond and its associated TS Bases will not reduce a margin of safety because it is conservative in nature and preserves the existing level of effluent control. There are no equipment or operational procedure changes required, therefore, no accidents of any kind will be created by this change.

The proposed revision to the TS bases for the liquid holdup tank activity limit will not reduce a margin of safety because it is administrative in nature and preserve[s] the existing level of effluent control. No equipment or procedural changes are postulated. There is no impact on any margin of safety.

The change in distance for a High Radiation Area classification from 18 in. (45 cm) to (30 cm)12 in. from the radiation source or surface will not reduce the margin of safety because this change will reduce the worker's stay time in the area and therefore minimize exposure.

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.

Local Public Document Room

location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218
NRC Project Director: Frederick J. Hebdon

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: July 19, 1995

Description of amendment requests:

The licensee proposes to revise technical specifications (TSs) to (1) support modifications to the containment area radiation monitors, to either upgrade or replace existing equipment with state-of-the-art equipment, (2) relocate the setpoint and allowable values for the control room airborne radiation monitors to be consistent with the containment airborne radiation monitors TS, and (3) make minor editorial changes to the TS pertaining to the control room airborne radiation monitors and the containment airborne radiation monitors. The proposed changes affect TS Tables 3.3-3, 3.3-4, 3.3-5, 3.3-6, 4.3-2, and 4.3-3.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Control Room Airborne Radiation Monitors
The proposed change would permit relocation of the setpoint and allowable values for the monitors from the Technical Specifications (TSs) to the administrative control procedures. This change is consistent with the existing Containment Airborne Radiation Monitor TSs. This change will not prevent the radiation monitors from

performing their intended function following a design basis accident. Therefore, operation of the facility in accordance with this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Containment Area Radiation Monitors

The proposed change deletes the existing Containment Area Radiation Monitors RE-7856-1 and RE-7857-2 and their Engineered Safety Feature Actuation System (ESFAS) function to initiate containment purge isolation on high radiation in containment. The deletion of this ESFAS function does not create a precursor to any analyzed accident since these monitors are for accident mitigation only.

Currently, no release of radioactivity is assumed during a Fuel Handling Accident in containment since the Containment Area Radiation Monitors detect and isolate containment purge prior to release. The proposed deletion will cause some release prior to detection and isolation of purge by the remaining noble gas containment monitors. The consequences of a Fuel Handling Accident inside containment were previously re-evaluated, assuming no containment purge isolation, to resolve inconsistencies in the original analysis assumptions and methodology. The results of the calculation indicated off-site doses well within the limits of 10 CFR 100 and Control Room doses that met the limits of 10 CFR 50 Appendix A General Design Criterion 19. Containment purge isolation on high gaseous activity during a Fuel Handling Accident will still be available with this proposed change but is not required for the dose consequences to remain within the dose criteria. Therefore, the proposed change will not significantly increase the consequences of a Fuel Handling Accident inside containment.

The Loss of Coolant Accident (LOCA) function of the Containment Purge Isolation System (CPIS) signal will be essentially unaffected by this proposed change. Currently, containment purge isolation (containment minipurge) on high radiation signals is a diverse signal with Safety Injection Actuation System (SIAS) and Containment Isolation Actuation System (CIAS). In a LOCA event, containment purge isolation is expected to occur on either SIAS or CIAS prior to a CPIS signal on high radiation in containment. While this proposed change reduces the diversity of radiation monitoring inputs, the diversity of parameters measured (pressure and radiation) is still preserved. Therefore, the proposed change will not increase the consequences of a LOCA.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Control Room Airborne Radiation Monitors

Relocating the monitor setpoint and allowable values from the TSs to the administrative procedures would not alter the design and operational interface between the Control Room Isolation System instrumentation and existing plant equipment. As such, the monitors would continue to operate and perform their intended safety function to isolate the control

room following a design basis accident as before. Therefore, operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Containment Area Radiation Monitors

The deletion of the Containment Area Radiation Monitors will not alter the operation of CPIS. The remaining interface between CPIS and existing plant equipment will continue to perform their intended safety function to isolate containment purge by closing the containment purge valves. This function will continue to be performed by Containment Airborne Radiation Monitors 2(3) RT-7804-1 and 2(3) RT-7807-2.

Therefore, operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Control Room Airborne Radiation Monitors

Relocating the monitor setpoint and allowable values to the administrative procedures would not alter the existing margin of safety. The relocation would only relinquish control of the setpoint and allowable values from the TSs to quality-affecting (changes will require a 10 CFR 50.59 evaluation) procedures. Therefore, operation of the facility will not involve a significant reduction in a margin of safety.

Containment Area Radiation Monitors

The proposed change does not affect the margin of safety in Modes 1 through 4 since the diversity of the parameters measured is maintained for minipurge isolation. Either SIAS, CIAS, CPIS, or manual operation will close the containment mini purge valves. The main purge is sealed closed during Modes 1 through 4 with the purge valves closed and deactivated.

The diversity of the parameters measured is not maintained for the containment main purge isolation. The main purge is only applicable during Modes 5 and 6 and main purge isolation is initiated only by either CPIS or manual operation. This proposed change along with the previously submitted PCN-299 reduces the diversity of radiation sensing in containment for CPIS generation from four types (gaseous, iodine, particulate, and gamma) to one type (gaseous activity). Since the consequences of a Fuel Handling Accident inside containment without purge isolation have been calculated to be well within 10 CFR 100 dose limits, the loss of diversity for this accident does not result in a significant reduction in a margin of safety. Therefore, this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of

California, P. O. Box 19557, Irvine, California 92713

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: William H. Bateman

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: May 19, 1995; revised September 11, 1995 (TS 95-13)

Description of amendment request: The proposed change would revise License Condition 2.C.(17) to extend the required surveillance interval to May 18, 1996, for Surveillance Requirement 4.3.2.1.3. The proposed change would extend the Engineered Safety Features Response Time instrument tests required at 36-month intervals shown in Table 3.3-3 associated with safety injection, feedwater isolation, containment isolation Phase A, auxiliary feedwater pump, essential raw cooling water system, emergency gas treatment system, containment spray, containment isolation Phase B, turbine trip, 6.9-kilovolt shutdown board-degraded voltage or loss of voltage, and automatic switchover to containment sump actuations. The proposed extension will limit the interval past the allowable extension provided by TS 4.0.2 to 5 months.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is temporary and allows a one-time extension of Surveillance Requirement 4.3.2.1.3 for Cycle 7 to allow surveillance testing to coincide with the seventh refueling outage. The proposed surveillance interval extension will not cause a significant reduction in system reliability nor affect the ability of the systems to perform their design function. Current monitoring of plant conditions and continuation of the surveillance testing required during normal plant operation will continue to be performed to ensure conformance with TS operability requirements. Therefore, this change does not involve a significant increase in the

probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Extending the surveillance interval for the performance of specific testing will not create the possibility of a new or different kind of accidents. No changes are required to any system configurations, plant equipment, or analyses. Therefore, this change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

Surveillance interval extensions will not impact any plant safety analyses since the assumptions used will remain unchanged. The safety limits assumed in the accident analyses and the design function of the equipment required to mitigate the consequences of any postulated accidents will not be changed since only the surveillance test interval is being extended. Historical performance generally indicates a high degree of reliability, and surveillance testing performed during normal plant operation will continue to be performed to verify proper performance. Therefore, the plant will be maintained within the analyzed limits, and the proposed extension will not significantly reduce the margin of safety.

The NRC 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.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 1, 1995

Description of amendment request: The proposed changes to the Technical Specifications (TS) for the North Anna Power Station, Units 1&2 (NA-1&2) would allow a single outage of up to 14 days for each emergency diesel generator (EDG) once every 18 months. The purpose of the outage is the performance of a preventive maintenance inspection, appropriate for diesels used for this class of standby service, which requires disassembly of the EDG. Currently this maintenance inspection is performed during refueling outages. The proposed changes would

permit this maintenance inspection to be performed during Modes 1 to 4 in addition to the current allowance during Modes 5 or 6.

A probabilistic safety analysis (PSA) has been performed which demonstrates that a fourteen (14) day maintenance inspection outage, once every eighteen (18) months for each EDG, results in no significant change in core damage frequency assuming adequate compensatory measures are in place. The compensatory measures include requirements that the other EDGs, off-site power supply, and the alternate A.C. diesel (AAC DG) be operable during the preventive maintenance inspection outage.

The effect of the proposed change has been calculated to be an increase in core damage frequency of approximately $1E-6$ per year, which is not considered to be a significant change (i.e., an acceptable change in risk, or a non-risk significant change) from the baseline core damage frequency of $4.1E-5$.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of North Anna Power Station in accordance with the [proposed] Technical Specifications changes will not:

a. involve a significant increase in the probability or consequences of an accident previously evaluated. The probabilistic safety analysis (PSA) demonstrates that the increase in core damage frequency due to performing the EDG maintenance inspection over a fourteen day period once every 18 months is not significant as long as the AAC DG is operable to act as a source of emergency power to replace the EDG. The period of time during which the EDG is unavailable is short enough to limit the impact of using the manually operated AAC DG as a replacement for the automatically operated EDG.

b. create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed Technical Specifications changes only modify the operability of an EDG for a limited and defined period of time. The UFSAR [Updated Final Safety Analysis Report] accidents are analyzed assuming that the EDG is the worst single failure. This assumption is more severe than the proposed Technical Specifications changes which replaces the EDG with the AAC DG. Similarly, the PSA performed to evaluate the proposed Technical Specifications changes considered all of the initiating events defined for the PSA performed for the Individual Plant Examination. No new initiators were defined as a result of a review of the PSA model. Therefore, it is concluded that no new or different kind of accident from any previously evaluated has been created.

c. The proposed Technical Specifications changes do not result in a reduction in margin of safety as defined in the basis for any Technical Specifications. The PSA was performed to evaluate the concept of a one time outage. The results of the analyses show no significant change in the core damage frequency. As described above the proposed Technical Specifications changes only modify the operability of an EDG for a limited and defined period of time. Thus, operation with slightly increased EDG unavailability due to maintenance, and the AAC DG operable is acceptable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: David B. Matthews

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 24, 1995, as supplemented by letter dated August 16, 1995.

Description of amendment request: This request proposes to revise Technical Specification 1.7, "Containment Integrity," Technical Specification 3/4.6.1, "Containment Integrity," Technical Specification 3/4.6.3, "Containment Isolation Valves," and their associated Bases. These proposed changes will remove Technical Specification Table 3.6-1 "Containment Isolation Valves," to Wolf Creek Generating Station (WCGS) procedures. This proposed change is in accordance with the guidance provided in Generic Letter 91-08, "Removal of Component Lists from Technical Specifications," dated May 6, 1991. In addition, this request proposes to add a footnote to Technical Specification 3.6.3 extending the allowed outage time for the component cooling water (CCW) system reactor coolant pump seal water supply and return valves. This determination supersedes the staff's proposed no significant hazards consideration determination evaluation for the requested changes that was published on April 26, 1995 (60 FR 20532).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes simplify the technical specifications, meet the regulatory requirements for control of containment isolation, and are consistent with the guidelines of GL 91-08. The procedural details of Technical Specification Table 3.6-1 have not been changed, but only relocated to a different controlling document. The proposed changes are administrative in nature, should result in improved administrative practices, and do not affect plant operations. The addition of the footnote to allow up to 12 hours for valve testing the CCW MOVs [motor-operated valves] does not affect the severity of any accident previously evaluated. This footnote does not impact plant safety since the second isolation device in the affected penetrations would still be available to provide isolation between the RCS and the outside atmosphere.

The probability of occurrence of a previously evaluated accident is not increased because this change does not introduce any new potential accident initiating conditions. The consequences of an accident previously evaluated is not increased because the ability of containment to restrict the release of any fission product radioactivity to the environment will not be degraded by this change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature, do not result in physical alterations or changes to the operation of the plant, and cause no change in the method by which any safety-related system performs its function. The addition of the footnote to allow up to 12 hours for valve testing the CCW MOVs does not affect the severity of any accident previously evaluated. The additional time provides assurance that the inoperable valve is in proper working order prior to returning it to OPERABLE status. Therefore, this proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The administrative change to relocate Technical Specification Table 3.6-1 to appropriate plant procedures does not alter the basic regulatory requirements for containment isolation and will not adversely affect containment isolation capability for credible accident scenarios. Adequate control of the content of the table is assured by existing plant procedures. The additional footnote to extend the allowed outage time to 12 hours for the CCW MOVs does not affect containment isolation capability since the

second isolation device in the affected penetrations would still be available to provide isolation between the RCS and the outside atmosphere, and to ensure that a release of radioactive material to the environment following an accident will not exceed the assumptions used in the LOCA Analyses.

The proposed relocation of the Technical Specification Table 3.6-1 does not alter the requirements for containment isolation valve operability currently in the technical specifications. The LCO and Surveillance Requirements would be retained in the revised technical specifications. Therefore, the proposed change will not affect the meaning, application, and function of the current technical specification requirements for the valves in Table 3.6-1.

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.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 22, 1995

Description of amendment request: The proposed license amendment request would relocate Technical Specification Tables 3.3-2, "Reactor Trip System Instrumentation Response Times," and 3.3-5, "Engineered Safety Features Response Times," and applicable Bases discussions, to Updated Safety Analysis Report (USAR) Chapter 16. The NRC has already implemented this line-item technical specification improvement in the new Standard Technical Specifications (NUREG-1431 for Westinghouse plants). This amendment request follows the guidance provided by the NRC in Generic Letter 93-08, "Relocation of Technical Specification Tables of Instrument Response Time Limits," for relocating instrument response time tables.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request does not change any Reactor Trip System (RTS) or Engineered Safety Features Actuation System (ESFAS) instrument response times or surveillance intervals currently prescribed in Technical Specification Tables 3.3-2 and 3.3-5. The RTS and ESFAS will continue to function in a manner consistent with the assumptions in the Updated Safety Analysis Report Chapter 15 accident analyses and the plant design basis. Therefore, overall protection system performance will remain within the bounds of the accident analyses documented in USAR Chapter 15. As such, there will be no degradation in system performance, nor will there be an increase in the number of challenges to equipment assumed to function during an accident situation.

The proposed technical specification revision does not involve any hardware changes or changes to any instrumentation setpoints, system operating parameters, or system accident mitigation capabilities, nor do the changes affect the probability of any event initiators. Thus, the proposed change will not result in an increase in the consequences of or the probability of occurrence of any accident or safety-related equipment malfunction.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, there are no hardware changes associated with this proposed amendment request, nor are there any changes in the method by which any safety-related plant system performs its safety function. The normal manner of plant operation is not affected by this proposed change.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes. Therefore, the possibility of a new or different kind of accident is not created by the proposed changes.

3. The proposed change does not involve a significant reduction in a margin of safety.

No response times will be changed by this amendment request. The proposed request only changes the document where the response times will be listed. This proposed amendment request will not affect the manner in which safety limits or limiting safety system settings are determined, nor will there be [be] any effect on plant systems necessary to assure the accomplishment of protection functions. The proposed change will not impact any margin of safety defined in the basis for any Technical Specification.

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.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Previously Published Notices Of Nonsideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and opportunity for a hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook, Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of application for amendment: August 4, 1995 (AEP:NRC:1129E)

Description of amendment request: The proposed amendment would modify Technical Specification 4.4.5.4 and 4.4.5.5, on steam generators, to allow for repair of hybrid expansion joint sleeves under redefined repair boundary limits.

Date of publication of individual notice in the Federal Register: August 14, 1995 (60 FR 41904)

Expiration date of individual notice: For comments: August 29, 1995; hearing requests: September 13, 1995

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 21, 1995
Description of amendments request: Amend technical specification 3.7.5.c to allow an increase in the average essential raw cooling water supply header temperature from 84.5°F to 87°F until September 30, 1995.

Date of publication of individual notice in the Federal Register: August 28, 1995 (60 FR 44517)

Expiration date of individual notice: September 12, 1995

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document

Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: June 17, 1994

Brief description of amendments: These amendments revise the surveillance requirement and Bases section of TS 4.7.1.6 to increase the minimum nitrogen accumulator pressure for the atmospheric dump valves (ADV).

Date of issuance: September 6, 1995
Effective date: September 6, 1995

Amendment Nos.: Unit 1 - Amendment No. 99; Unit 2 - Amendment No. 87; Unit 3 - Amendment No. 70

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 17, 1994 (59 FR 42333)
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 6, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: March 31, 1995

Brief description of amendments: The amendments clarify the shutdown margin definition, change the shutdown margin applicability and surveillance requirements to comply with the safety analysis assumptions for subcritical inadvertent control element assembly withdrawal (UFSAR Section 15.4, and expand the applicability for core protection calculator (CPC) operability. In addition, the amendments add a reference to the Core Operating Limits Report for the MODE 6 refueling boron concentration limit. The amendments also change the power calibration requirements for the linear power level, the CPC delta T power, and CPC nuclear power signals to allow more conservative settings than previously required.

Date of issuance: September 1, 1995

Effective date: September 1, 1995
Amendment Nos.: Unit 1 - Amendment No. 98; Unit 2 - Amendment No. 86; Unit - Amendment No. 69

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 6, 1995 (60 FR 29871) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 1, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Phoenix Public Library, 1221 N. Central, Phoenix, Arizona 85004

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: June 3, 1995, as supplemented on August 7, 1995. The supplemental submittal did not expand the scope of the original Federal Register notice or change the no significant hazards determination.

Brief description of amendment: The amendment clarifies the definition of operability of the charging pumps by adding a footnote to TS Section 3.2.2.a that states that the connectivity of the emergency power sources is not required for charging pump operability. The bases statement for TS 3.2.2 is also changed for clarification.

Date of issuance: September 5, 1995
Effective date: September 5, 1995
Amendment No.: 166

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: July 5, 1995 (60 FR 35063) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: February 21, 1995

Brief description of amendments: The amendments revise the technical

specifications to permit replacement of the reactor coolant resistance temperature detector (RTD) bypass manifold system with fast response RTDs mounted in thermowells welded directly into the reactor coolant system piping.

Date of issuance: September 5, 1995
Effective date: September 5, 1995
Amendment Nos.: 74 and 66

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 5, 1995 (60 FR 35063) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 5, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: February 23, 1995

Brief description of amendments: The amendment revises the Quad Cities Nuclear Power Station, Units 1 and 2, operating licenses to reflect the transfer of the Iowa-Illinois Gas and Electric Company's 25 percent undivided ownership to MidAmerican Energy Company.

Date of issuance: September 11, 1995
Effective date: As of the consummation of the merger between Iowa-Illinois Gas and Electric Company, Midwest Power Systems, Inc., MidAmerican Energy Company, and Midwest Resources, Inc.

Amendment Nos.: 159 and 155
Facility Operating License Nos. DPR-29 and DPR-30: The amendments revised the operating licenses.

Date of initial notice in Federal Register: July 5, 1995 (60 FR 35054) The Commission's related evaluation of the amendments is contained in an Environmental Assessment and Finding of No Significant Impact dated March 21, 1995, and in a Safety Evaluation dated September 11, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 31, 1995

Brief description of amendments: The amendments authorize an alternative repair criteria for defects found in the tube expansion region within the tubesheet.

Date of issuance: September 11, 1995
Effective date: September 11, 1995
Amendment Nos.: 168 and 155

Facility Operating License Nos. DPR-39 and DPR-48: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 5, 1995 (60 FR 35067) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 11, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: September 19, 1994, as supplemented April 26 and June 19, 1995

Brief description of amendments: These changes to the Technical Specifications (TS) increase the enrichment limits for fuel stored in the fuel pools and establish restricted loading patterns and associated burnup criteria for qualifying fuel in the spent fuel pools. In addition, several administrative changes have been included in order to provide clarity to the TS and bring them more in line with the Standard Technical Specifications format. These changes are as follows: (1) The TS index is changed to add TS 3/4.9.12 and 3/4.9.13, Tables 3.9-1 and 3.9-2 and Figure 3.9-1; (2) TS 3/4.9.12, Spent Fuel Pool (SFP) Boron Concentration is added to establish a boron concentration limit and to establish a Limiting Condition for Operation (LCO) for all modes of operation and to allow the numerical value of the limit to be specified in the Core Operating Limits Report (COLR); (3) TS 3/4.9.13, Tables 3.9-1 and 3.9-2 and Figure 3.9-1 are being added to establish restricted loading patterns for spent fuel storage and associated burnup criteria; (4) Corresponding BASES for TS 3/4.9.12 and 3/4.9.13 are added to explain the basis for each LCO, Action Statement and Surveillance

Requirement covered by the subject TS; (5) TS 5.6, Fuel Storage, is changed to reflect limits for criticality analysis for fuel storage; and (6) TS 6.9, Reporting Requirements, is changed to reflect the inclusion of the SFP boron concentration limit values in the COLR as established by TS 3/4.9.12.

Date of issuance: August 31, 1995

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 134 and 128

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 23, 1995 (60 FR 27338) The June 19, 1995, letter provided clarifying information that did not change the scope of the September 19, 1994, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 1995, and Environmental Assessment dated August 15, 1995. No significant hazards consideration comments received: No

Local Public Document Room

location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: August 31, 1994, as supplemented May 18, 1995.

Brief description of amendments:

These amendments delete Beaver Valley Power Station, Unit 2, License Conditions 2.C.(3), 2.C.(5), 2.C.(7), 2.C.(8), 2.C.(9) and 2.C.(10) to reflect completion of activities required by these license conditions and make the following revisions to the Beaver Valley Power Station, Units 1 and 2, TSs:

1. Eliminate references to specific frequencies for each of the TS required audits (TS 6.2.2.8).
2. Eliminate references to reviews and audits of the Emergency plan and Security Plant (TSs 6.5.2.8 and 6.8.1).
3. Include Offsite Dose Calculation Manual and Process Control Program and associated implementing procedures into the list of required audits (TS 6.5.2.8).
4. Editorial changes which were necessitated by a reorganization (TS 6.2.1, 6.2.3.1, 6.2.3.4, 6.5.2.2, 6.5.2.8, 6.5.2.9, and 6.5.2.10).
5. Eliminate reference to Appendix A of 10 CFR Part 55 (TS 6.4.1).

6. Separate the Inservice Inspection (ISI) and Inservice Testing (IST) Programs surveillance requirements and remove the requirement that relief requests be granted before they are implemented for both IST and ISI (TS 4.0.5).

The May 18, 1995, letter requested withdrawal of the proposed changes to TS 6.5.2.8 dealing with audits of the Beaver Valley Power Station, Units 1 and 2, fire protection program and withdrawal of a proposed 25-percent grace period for all audit frequencies (Item 6 in August 31, 1994 application).

Date of issuance: August 31, 1995

Effective date: Units 1 and 2, as of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 191 and 74

Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Units 1 and 2 Technical Specifications, and the Unit 2 License.

Date of initial notice in Federal Register: (59 FR 65812) December 21, 1994. The May 18, 1995, letter did not change the original no significant hazards consideration determination or expand the scope of the December 21, 1994, Federal Register notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 1995. No significant hazards consideration comments received: No

Local Public Document Room

location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: October 11, 1994, as supplemented June 23, 1995, and August 24, 1995

Brief description of amendments:

These amendments revise Beaver Valley Power Station Technical Specifications (TSs) 1.18, "Quadrant Power Tilt Ratio," 3/4.2.4, "Quadrant Power Tilt Ratio," the table Notation of TS Table 3.3-1, "Reactor Trip System Instrumentation," and associated Bases to incorporate the guidance provided in the NRC's Improved Standard Technical Specifications (NUREG-1431, Revision 1) to these TSs. The amendments clarify the requirements of the subject TSs with regard to the use of excore power range neutron flux detectors to monitor quadrant power tilt ratio when an excore power range neutron flux instrument is inoperable. The changes also make several minor editorial changes in the subject TSs.

Date of issuance: September 15, 1995

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment Nos.: 192 and 75

Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39436) The August 24, 1995, letter provided typed final TS pages, with minor editorial changes, for issuance of these amendments. The August 24, 1995, letter did not change the initial proposed no significant hazards consideration determination or expand the scope of the August 2, 1995, Federal Register notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 15, 1995. No significant hazards consideration comments received: No

Local Public Document Room

location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 22, 1994

Brief description of amendment: The amendment changes the Appendix A Technical Specifications by removing the seismic and meteorological monitoring instrumentation requirements. These requirements are to be relocated in the Updated Final Safety Analysis Report.

Date of issuance: September 5, 1995

Effective date: September 5, 1995

Amendment No.: 112

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 3, 1994 (59 FR 39585) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 1995. No significant hazards consideration comments received: No

Local Public Document Room

location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 22, 1994, and December 9, 1994

Brief description of amendment: The amendment changes the Appendix A TSs by revising the plant protection system trip setpoints and allowable

values such that they will be consistent with the current setpoint/uncertainty methodology being implemented at Waterford 3.

Date of issuance: September 5, 1995

Effective date: September 5, 1995

Amendment No.: 113

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 3, 1994 (59 FR 39586) and February 1, 1995 (60 FR 6300) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 1995. No significant hazards consideration comments received: No

Local Public Document Room

location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request:

December 9, 1994, as supplemented by letter dated July 25, 1995

Brief description of amendment: The requested changes revised the allowable opening tolerances on the pressurizer safety valves (PSVs) and the main steam line safety valves (MSSVs) from plus or minus 1 percent to plus or minus 3 percent. However, following testing, the as-left lift setting of the PSVs and MSSVs will be within plus or minus 1 percent of the pressure specified in the Technical Specifications.

Date of issuance: September 11, 1995

Effective date: September 11, 1995

Amendment No.: 111

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 1, 1995 (60 FR 6300) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1995. No significant hazards consideration comments received: No

Local Public Document Room

location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: May 23, 1994

Brief description of amendment: The amendment revises Technical Specification 3.5.2 for Emergency Core Cooling Systems (ECCS) by removing the option that allows High Pressure

Safety Injection (HPSI) Pump 1C to be used as an alternative to the preferred pump for subsystem operability. HPSI pump 1C is an installed spare which is not required to be maintained in an operable status, and this change upgrades the ECCS operability requirements consistent with actual plant operating needs.

Date of issuance: September 11, 1995

Effective date: September 11, 1995

Amendment No.: 139

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 6, 1994 (59 FR 34663) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1995. No significant hazards consideration comments received: No

Local Public Document Room

location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: February 27, 1995

Brief description of amendment: This amendment will change Table 3.3-3 and 3.3-4 to accommodate an improved coincidence logic and relay replacement for the 4.16 kV Loss of Voltage Relays. Actions required for certain trip units with the number of operable channels one less than the total number of channels will also be changed. In addition, the format used to state the time delay for the 4.16 kV Degraded Voltage trip unit will be revised.

Date of issuance: September 1, 1995

Effective date: September 1, 1995

Amendment No.: 79

Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 29, 1995 (60 FR 16187) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1995. No significant hazards consideration comments received: No

Local Public Document Room

location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: January 13, 1995, as supplemented by letters dated April 5 and June 20, 1995.

Brief description of amendments: The amendments modify

Facility Operating License Nos. DRP-57 and NPF-5 and the corresponding TS for Hatch Units 1 and 2, respectively, to authorize an increase in the maximum power level from 2436 megawatts thermal (MWt) to 2558 MWt. The amendments also approve changes to the Technical Specification to implement uprated power operation.

Date of issuance: August 31, 1995

Effective date: As of the date of issuance to be implemented prior to startup in Cycle 17 for Unit 1; and prior to startup in Cycle 13 for Unit 2

Amendment Nos.: 197 and 138

Facility Operating License Nos. DRP-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 5, 1995 (60 FR 35072) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 1995 and an Environmental Assessment dated July 21, 1995. No significant hazards consideration comments received: No

Local Public Document Room

location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: June 6, 1995, as supplemented August 9, 1995.

Brief description of amendments: The amendments revise Technical Specification Surveillance Requirements (SR) 3.6.4.1.3 and 3.6.4.1.4 for the secondary containment drawdown. The revision reduces the SR acceptance criteria to greater than or equal to 0.20 inch water gauge (wg) negative pressure from greater than or equal to 0.25 inch wg negative pressure. The appropriate TS Bases pages are also changed to reflect the TS revision.

Date of issuance: September 11, 1995

Effective date: As of the date of issuance to be implemented within 60 days

Amendment Nos.: 198 and 139

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 21, 1995 (60 FR 32364) The August 9, 1995, letter provided clarifying information that did not change the scope of the June 6, 1995, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 11, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 26, 1995

Brief description of amendment: The amendment revises the snubber visual inspection intervals to match the schedule developed by the NRC staff for use with a 24-month refueling interval. This schedule was documented in Generic Letter 90-09. The amendment also revises the bases for the snubber visual inspection interval to be consistent with the bases described in Generic Letter 90-09.

Date of issuance: September 6, 1995

Effective date: September 6, 1995

Amendment No.: 182

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39440). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 6, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 25, 1995

Brief description of amendment: The amendment revises the Physical Security Plan vital island requirements.

Date of issuance: September 12, 1995

Effective date: September 12, 1995

Amendment No.: 83

Facility Operating License No. NPF-47. The amendment revised the operating license.

Date of initial notice in Federal Register: July 19, 1995 (60 FR 37091) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1995. No significant hazards consideration comments received. No

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 25, 1995, as supplemented by letter dated August 3, 1995.

Brief description of amendments: The amendments revised the technical specifications (TSs) on containment leakage, making the action statement consistent with the need to perform Type C testing at power, and replacing the surveillance requirements with a single requirement to apply the requirements of Appendix J as modified by approved exemptions. The amendments also revised the TSs on containment integrity, containment leakage, and containment air locks, to eliminate the numerical value of calculated peak containment internal pressure related to the design basis accident.

Date of issuance: September 7, 1995

Effective date: September 7, 1995

Amendment Nos.: Unit 1 - Amendment No. 80; Unit 2 - Amendment No. 69

Facility Operating License Nos. NPF-76 and NPF-80. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 19, 1995 (60 FR 37092) The August 3, 1995, supplement provided clarifying information and did not change the original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 7, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 31, 1995, as supplemented by letter dated August 2, 1995

Brief description of amendments: The amendments modified (by relocation to the Technical Requirements Manual) TS 3/4.1.2.1, Boration Systems/Flow Paths - Shutdown, TS 3/4.1.2.2, Boration Systems/Flow Paths - Operating, TS 3/4.1.2.3, Charging Pumps - Shutdown, TS 3/4.1.2.4, Charging Pumps - Operating, TS 3/4.1.2.5, Borated Water Sources - Shutdown, TS 3/4.1.2.6, Borated Water Sources - Operating, TS 3/4.4.2.1, Safety Valves - Shutdown, and the associated Bases.

Date of issuance: September 5, 1995

Effective date: September 5, 1995

Amendment Nos.: Unit 1 - Amendment No. 79; Unit 2 - Amendment No. 68

Facility Operating License Nos. NPF-76 and NPF-80. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39441) The additional information contained in the supplemental letter dated August 2, 1995, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 5, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook, Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of application for amendment: February 3, 1995, as supplemented April 25, 1995.

Brief description of amendment: The amendment modifies the technical specifications to extend the interim steam generator tube plugging criteria used in Cycle 14 to the next operating cycle (Cycle 15).

Date of issuance: September 13, 1995

Effective date: September 13, 1995

Amendment No.: 200

Facility Operating License No. DPR-58. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: July 19, 1995 (60 FR 37093) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook, Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: February 15, 1994, as supplemented June 29, 1995

Brief description of amendment: The amendment deletes Technical Specification section 3/4.3.4, associated bases, and associated index listings for the Unit 2 turbine overspeed protection system.

Date of issuance: September 1, 1995

Effective date: September 1, 1995

Amendment No.: 185

Facility Operating License No. DPR-74. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: March 30, 1994 (59 FR 14890) The licensee's submittal of June 29, 1995, did not change the basis for the proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 15, 1995

Brief description of amendment: The amendment changes the Technical Specifications to revise the definition for logic system functional test and revises the surveillance interval for emergency core cooling system logic system functional testing from 6 months to 18 months.

Date of issuance: September 7, 1995

Effective date: September 7, 1995

Amendment No.: 171

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 19, 1995 (60 FR 37096) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 7, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, NE 68305

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: January 6, 1995

Brief description of amendment: The amendment incorporates Limiting Condition for Operation 3.3.3.1 from Standard Technical Specifications into Technical Specification (TS) 3/4.3.7.5, Accident Monitoring Instrumentation and make associated changes in TS 3/4.4.2, Safety Relief Valves.

Date of issuance: September 11, 1995
Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 69

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: February 15, 1995 (60 FR 8748) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: January 6, 1995, as supplemented April 18, 1995

Brief description of amendment: The amendment revises Technical Specifications (TSs) Sections 3.8.1.1 and 3.8.1.2; TS Surveillance Requirements Section 4.8.1.1.2; TS Bases Section 3/4.8.1.3; and TS Administrative Controls Section 6.8.4. The changes include: updating the minimum day tank and storage tank oil inventory, specific actions required if oil level fall below minimum required, revising and relocating the fuel oil sampling and testing criteria to the associated Bases, and specific action to be taken if the fuel oil properties do not meet the specified

limits. In addition, a requirement was added for a diesel fuel oil testing program. These changes are consistent with guidance provided in NUREG-1434.

Date of issuance: September 15, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 70

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: February 15, 1995 (60 FR 8747) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 16, 1995.

Description of amendment request: The amendment revises the Appendix A Technical Specifications (TS) relating to containment building penetrations. Specifically, the amendment modifies Limiting Conditions for Operation 3.9.4 to permit both doors of one personnel airlock to be open during core alterations or irradiated fuel movement if certain conditions are met and to add equivalent and alternate penetration closure methodologies. Surveillance Requirement 4.9.4 is changed to reflect that the penetrations are to be verified to be in the condition required. Bases Section 3/4 9.4 also is revised to reflect the changes described above.

Date of issuance: August 31, 1995

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 40

Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 21, 1995 (60 FR 32369) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: May 30, 1995.

Description of amendment request: The amendment revises the Appendix A Technical Specifications (TS) relating to Moderator Temperature Coefficient. The amendment changes the upper limit for the moderator temperature coefficient (MTC) for certain operating conditions. Additionally, a reference for the analytical method used to determine the cycle-specific MTC upper limit is added to TS 6.8.1.6.b.

Date of issuance: September 14, 1995
Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 41
Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 5, 1995 (60 FR 35082). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 16, 1995

Description of amendment request: The amendment revises the Appendix A Technical Specifications (TS) relating to core reactivity control available from boroated water sources. The amendment changes the minimum boron concentration specified for the refueling water storage tank (RWST) in Limiting Condition for Operation (LCO) in TS 3.1.2.5 and replaces the minimum specified concentration for boron with an acceptable range of boron concentration for the RWST and the accumulators in the LCOs for TS 3.1.2.6, 3.5.1.1, and 3.5.4.

Date of issuance: September 14, 1995
Effective date: As of the date of issuance, to be implemented prior to entering MODE 4 following the fourth refueling outage.

Amendment No.: 42
Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39442).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: July 11, 1995

Brief description of amendment: The amendment modifies Technical Specification 3.5.F.7 to also allow the use of pull-to-lock switches to defeat the automatic initiation of the emergency core cooling system while in the refuel condition. The amendment also makes editorial corrections and makes changes to the associated Bases section.

Date of issuance: September 13, 1995
Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 88
Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39442). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1995. No significant hazards consideration comments received: No
Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: July 18, 1995

Brief description of amendment: The amendment adds operability and surveillance requirements for reactor pressure vessel overfill protection instrumentation. The amendment also adds the associated Bases.

Date of issuance: September 13, 1995
Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 87
Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39443). The Commission's related evaluation of the amendment is contained in a Safety

Evaluation dated September 13, 1995. No significant hazards consideration comments received: No
Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska
Date of amendment request: April 7, 1995

Brief description of amendment: The amendment revises the technical specifications (TS) to relocate the axial power distribution limits to the Core Operating Limits Report (COLR).

Date of issuance: September 1, 1995
Effective date: September 1, 1995
Amendment No.: 170

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 23, 1995 (60 FR 27339). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 8, 1995, as supplemented by letter dated July 11, 1995.

Brief description of amendment: The amendment changes Sections 2.3, 3.1, 3.2, 3.3, and 3.6 of the Technical Specifications in accordance with the guidance of Generic Letter (GL) 93-05, "Line Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation," dated September 27, 1993. The changes are consistent with Station operating experience and NUREG-1366, "Improvements to Technical Specifications Surveillance Requirements," dated December 1992. In addition, a change was made to TS Section 3.1 in accordance with the Commission's Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors. Also, changes were made to the TS sections identified above for clarity and to correct administrative errors.

Date of issuance: September 7, 1995
Effective date: September 7, 1995
Amendment No.: 171

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 6, 1995 (60 FR 29883) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 7, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: April 11, 1995

Brief description of amendment: This amendment extends on a one-time basis the allowed outage time from 3 to 7 days for one offsite circuit being out of service.

Date of issuance: August 31, 1995
Effective date: As of the date of issuance and is to be implemented within 30 days.

Amendment No.: 153
Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 6, 1995 (60 FR 29886). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: February 2, 1995

Brief description of amendments: These amendments change the Technical Specifications for the two Susquehanna units to increase the licensed discharge fuel assembly for SPC 9X9-2 fuel from 40 to 45 GWD/MTU. This change is consistent with the Commission's approval of Topical Report PL-NF-94-005-P, "Technical Basis for SPC 9X9-2 Extended Fuel Exposure at Susquehanna SES," documented in a letter to PP&L dated December 15, 1994.

Date of issuance: September 12, 1995
Effective date: September 12, 1995

Amendment Nos.: 154 and 124
Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 29, 1995 (60 FR 16194) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: March 31, 1995

Brief description of amendment: This amendment changes Technical Specification Section 6.9.3.2 to allow four GE demonstration assemblies to be loaded into Susquehanna Unit 2, Cycle 8 core.

Date of issuance: September 13, 1995
Effective date: As of date of issuance and shall be implemented within 30 days.

Amendment No.: 125
Facility Operating License No. NPF-22. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 26, 1995 (60 FR 20523) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: May 5, 1995, and supplemented by letter dated August 18, 1995

Brief description of amendment: This amendment deletes from SSES Technical Specification Table 3.6.3-1, "Primary Containment Isolation Valves," three relief valves in the residual heat removal system. These specific valves which were originally intended to support the steam condensing mode, were previously eliminated from the plant design. The valves are being replaced during the September Unit 2 refueling outage and will be replaced by blind flanges.

Date of issuance: September 11, 1995
Effective date: September 11, 1995
Amendment No.: 123

Facility Operating License No. NPF-22. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 5, 1995 (60 FR 35083 and July 17, 1995 (60 FR 36449) The supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original Federal Register notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: February 23, 1995, as supplemented July 28, 1995

Brief description of amendment: The amendment revised the minimum emergency diesel generator (EDG) fuel oil requirements, as indicated in Technical Specification (TS) Section 3.7 (Auxiliary Electrical Systems), from 7056 to 6671 gallons. The actual minimum fuel oil level had always been 6671 gallons; however, the previous TS limit of 7056 gallons was based on a level indicator that had an accuracy of +/- 385 gallons. This revision clarified the TS such that any level indicator can now be used as long as an actual minimum level of 6671 gallons is assured.

Date of issuance: August 30, 1995
Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 161
Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 29, 1995 (60 FR 16196) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: March 2, 1995

Brief description of amendment: The amendment revised the titles of several management positions as described in Technical Specifications Section 6.0 (Administrative Controls). Specifically, the title of Executive Vice President and Chief Nuclear Officer and the title of Shift Supervisor were changed to Chief Nuclear Officer and Shift Manager, respectively. In addition, the position titles of Senior Reactor Operator and Reactor Operator were deleted and replaced with qualification requirements.

Date of issuance: August 31, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 162

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 29, 1995 (60 FR 16197) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: October 3, 1994

Brief description of amendment: The amendment proposed changes to FitzPatrick TSs which will extend the instrumentation functional test interval and allowable out-of-service times, remove the average power range monitor downscale scram function and the instrument response time values, and incorporate several editorial, clarification, and correction changes.

Date of issuance: September 11, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 227

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 9, 1994 (59 FR 55887) The Commission's related evaluation of the amendment is

contained in a Safety Evaluation dated September 11, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: September 29, 1994

Brief description of amendment: This amendment revises Table 4.3.6-1, "Control Rod Block Instrumentation Surveillance," of the Hope Creek TS. The channel calibration frequencies for the Source Range Monitor (SRM) and the Intermediate Range Monitor (IRM), in TS Table 4.3.6-1, are changed for the up-scale and the down-scale trip functions on each instrument from "SA" (once-per-184 days) to "R" (once-per-refueling cycle).

Date of issuance: September 12, 1995

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 78

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 18, 1995 (60 FR 3676). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: May 2, 1995

Brief description of amendments: The amendments eliminate the monthly manual initiation of auxiliary feedwater from Technical Specification Tables 3.3-3, 3.3-4 and 4.3-2.

Date of issuance: September 6, 1995

Effective date: Units 1 and 2, as of the date of issuance, to be implemented within 60 days.

Amendment Nos. 175 and 156

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 6, 1995 (60 FR 29887) The

Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 6, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: June 19, 1995

Brief description of amendment: The amendment restructures the primary containment and primary containment leakage technical specifications to reduce the repetition of those requirements contained in NRC regulations such as Appendix J to 10 CFR Part 50.

Date of issuance: September 5, 1995

Effective date: September 5, 1995

Amendment No.: 126

Facility Operating License No. NPF-12: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: July 19, 1995 (60 FR 37099) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: May 20, 1994

Brief description of amendments: The amendments revise Technical Specification 3/4.7.3, "Component Cooling Water System," and the corresponding Bases to support the addition of the component cooling water surge tank backup nitrogen supply (BNS) system.

Date of issuance: September 13, 1995

Effective date: September 13, 1995

Amendment Nos.: Unit 2 - Amendment No. 125; Unit 3 - Amendment No. 114

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 31, 1994 (59 FR

45034)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 13, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: March 31, 1995, supplemented July 14, 1995 (TS 349)

Brief description of amendment: These amendments revise the Browns Ferry Nuclear Plant (BFN) Units 1, 2, and 3 reactor vessel pressure-temperature curves and bolt-up temperatures.

Date of issuance: September 13, 1995
Effective date: September 13, 1995
Amendment Nos.: 224, 239, 198

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 6, 1995 (60 FR 29888)The July 14, 1995 letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: May 11, 1995, supplemented June 30, 1995 (TS 359)

Brief description of amendment: The amendments provide for the addition of a reactor trip on low scram pilot air header pressure for BFN Unit 3, and revise a note regarding instrumentation requirements for all three BFN reactors.

Date of issuance: August 29, 1995
Effective date: August 29, 1995
Amendment Nos.: 223, 228 and 197

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 6, 1995 (60 FR 29889)The June 30, 1995 letter provided clarifying information that did not change the initial proposed no significant hazards

consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 29, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: June 29, 1995 (TS 95-14)

Brief description of amendments: The amendments revise Technical Specification 3.9.4, Containment Building Penetrations, to allow both sets of containment personnel airlock doors to be open during core alterations and fuel movement provided one door is capable of closure and one train of auxiliary building gas treatment remains operable.

Date of issuance: September 6, 1995
Effective date: September 6, 1995
Amendment Nos.: 209 and 199

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in Federal Register: July 19, 1995 (60 FR 37100)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 7, 1995 (TS 95-11)

Brief description of amendments: The amendments revise the time constant used in the overtemperature delta temperature and the overpower delta temperature trip equations of Technical Specification Table 2.2-1.

Date of issuance: September 15, 1995
Effective date: September 15, 1995
Amendment Nos.: 211 and 201

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in Federal Register: April 26, 1995 (60 FR 20527); superseded August 15, 1995 (60 FR 42187) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated

September 15, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 21, 1995 (TS 95-21)

Brief description of amendments: The amendments change Technical Specification 3.7.5.c to allow an increase in the average essential raw cooling water supply header temperature from 84.5°F to 87°F until September 30, 1995.

Date of issuance: September 13, 1995
Effective date: September 13, 1995

Amendment Nos.: 210 and 200
Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (August 28, 1995, 60 FR 44517). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards determination. No comments have been received. The notice also provided an opportunity to request a hearing, by September 12, 1995, but indicated that if the Commission makes a final no significant hazards consideration determination before the expiration of the notice period, any such hearing would take place after issuance of the amendments. The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 13, 1995.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: April 28, 1995

Brief description of amendment: The amendment extends for one additional operating cycle the exception to Limiting Condition for Operation 3.0.4 as it applies to the main steam isolation

valve leakage control system Technical Specification.

Date of issuance: September 8, 1995

Effective date: September 8, 1995

Amendment No.: 71

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 23, 1995 (60 FR 27344) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 1995. No significant hazards consideration comments received: No

Local Public Document Room

location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: April 10, 1995

Brief description of amendment: This amendment changes auxiliary feedwater system, motor driven feedwater pump, and condensate system Technical Specifications to increase clarity and changes format to more closely follow improved standard technical specifications and increases content of Bases discussions.

Date of issuance: September 5, 1995

Effective date: September 5, 1995

Amendment No.: 200

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39453) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 1995. No significant hazards consideration comments received: No

Local Public Document Room

location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: November 10, 1994

Brief description of amendments: Clarify the surveillance requirements for the Reactor Protection and Engineered Safeguards Systems instrumentation and actuation logic.

Date of issuance: September 14, 1995

Effective date: September 14, 1995

Amendment Nos.: 205 and 205

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 12, 1995 (60 FR 18630) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 1995. No significant hazards consideration comments received: No

Local Public Document Room

location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: July 14, 1995

Brief description of amendments:

These amendments would provide a 2-hour allowed outage time for one residual heat removal loop to accommodate plant safety and emergency power systems surveillance testing, permit depressurizing safety injection accumulators in lieu of accumulator isolation, and make administrative changes.

Date of issuance: September 1, 1995

Effective date: September 1, 1995

Amendment Nos.: 204 and 204

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39455) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1995. No significant hazards consideration comments received: No

Local Public Document Room

location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: December 16, 1994.

Brief description of amendment: The amendment revises the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications Sections 3.4 and 4.1 by removing the limiting conditions for operation (LCO) and the surveillance requirements for the turbine overspeed protection system (TOPS). The TOPS requirements will be relocated to the Updated Safety Analysis Report (USAR).

Date of issuance: August 31, 1995

Effective date: August 31, 1995

Amendment No.: 121

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 18, 1995 (60 FR 3676). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1995. No significant hazards consideration comments received: No

Local Public Document Room

location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for

example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By October 27, 1995, the licensee may file

a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention

must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear

Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: August 28, 1995

Brief description of amendment: The amendment revises Primary Containment Purge System Technical Specification Section 3.6.1.7, Limiting Condition for Operation. The revision extends the amount of time the 12-inch and 14-inch purge system supply and exhaust lines may be used for venting or purging from 90 to 135 hours per 365 days. In addition, expired footnotes were deleted as an editorial change and the associated Bases section was revised.

Date of issuance: August 31, 1995

Effective date: As of the date of issuance to be implemented upon receipt.

Amendment No.: 68

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: NoThe Commission's related evaluation of the amendment, emergency circumstances and consultation with the State, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 31, 1995.

Local Public Document Room

Location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J.

Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Ledyard B. Marsh

For the Nuclear Regulatory Commission
John N. Hannon,

Acting Director, Division of Reactor Projects - III/IV Office of Nuclear Reactor Regulation
[Doc. 95-23806 Filed 9-26-95; 8:45 am]

BILLING CODE 7590-01-F

[Docket Nos. STN 50-454, STN 50-455, STN 50-456 and STN 50-457]

**Commonwealth Edison Company;
Notice of Consideration of Issuance of
Amendments to Facility Operating
Licenses, Proposed no Significant
Hazards Consideration Determination,
and Opportunity for A Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-37, NPF-66, NPF-72, and NPF-77, issued to Commonwealth Edison Company for operation of the Byron Station, Units 1 and 2, located in Ogle County, Illinois and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendments would revise the present voltage-based repair criteria in the Byron 1 and Braidwood 1 Technical Specifications (TSs). These proposed revisions would raise the lower voltage limit from its present value of 1.0 volt to 3.0 volts; there would no longer be an upper voltage limit.

The Braidwood 1 TSs were revised by License Amendment No. 54, issued on August 18, 1994, to add voltage-based repair criteria to the existing steam generator (SG) tube repair criteria. The Byron 1 TSs were revised in a similar manner by License Amendment No. 66, issued on October 24, 1994.

The voltage-based repair criteria in the subject TSs are applicable only to a specific type of SG tube degradation which is predominantly axially-oriented outer diameter stress corrosion cracking (ODSCC). This particular form of SG tube degradation occurs entirely within the intersections of the SG tubes with the tube support plates (TSPs).

The present voltage values for the ODSCC repair criteria are based on the assumption of a "free span" exposure of the SG tube flaw; i.e., no credit is given for any constraint against burst or leakage, which may be provided by the presence of the TSPs. This approach is, in turn, based on the assumption that under postulated accident conditions, the TSPs may be displaced sufficiently by blowdown hydrodynamic loads such that a SG tube flaw which was fully confined within the thickness of the TSP prior to the accident would then be fully exposed. This approach was first advanced by the NRC staff in a draft generic letter issued on August 12, 1994, which was subsequently modified slightly and issued as Generic letter (GL) 95-05, "Voltage-Based Repair Criteria For Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking," dated

August 3, 1995. The previous license amendments related to the issue of ODSCC were based to a large extent on the draft generic letter cited above.

The fundamental difference between the pending proposal to raise the lower voltage repair limit to 3.0 volts and the methodology contained in GL 95-05, is that the licensee proposes to install certain modifications to the SG internal structures, thereby limiting to a small value, the maximum displacement of the TSPs under accident conditions. The proposed structural modifications consist of expanding a limited number of SG tubes only on the hot leg side of the TSP, at each of the intersections of the tubes with the TSPs. The purpose of this approach would be to greatly reduce the probability of SG tube burst under postulated accident conditions by several orders of magnitude. There would be a negligible impact on the primary-to-secondary SG tube leakage under accident conditions.

While the voltage-based repair criteria for ODSCC flaws are applicable only to Byron 1 and Braidwood 1, the pending request for license amendments involves all four units in that both stations have a common set of TSs.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments 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 change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The previously evaluated accidents of interest are steam generator tube burst and main steam line break [MSLB]. Their potential impact on public health and safety due to the change in SG tube plugging criteria proposed in this amendment request is very low as discussed below. Tube burst related to the types of cracks under

consideration is precluded during normal operating plant conditions since the tube support plates are adjacent to the degraded regions of the tube in the tube to tube support plate crevices.

During accident conditions, i.e., MSLB, the tubes and TSP may move relative to each other, which can expose a crack length portion to freespan conditions. Testing has shown that the burst pressure correlates to the crack length that is exposed to the freespan, regardless of the length that is still contained within the TSP bounds.

Therefore, a more appropriate methodology has been established for addressing leakage and burst considerations that is based on limiting potential TSP displacements during postulated MSLB events, thus reducing the freespan exposed crack length to minimal levels. The tube expansion process to be employed in conjunction with this TS change is designed to provide postulated TSP displacements that result in negligible tube burst probabilities due to the minimal freespan exposed crack lengths.

Thermal hydraulic modeling was used to determine TSP loading during MSLB conditions. A safety factor was conservatively applied to these loads to envelope the collective uncertainties in the analyses. Various operating conditions were evaluated and the most limiting operating condition was used in the analyses. Additional models were used to verify the thermal hydraulic results.

Assessment of the tube burst probability was based on a conservative assumption that all hot-leg TSP intersections (32,046) contained throughwall cracks equal to the postulated displacement and that the crack lengths were located within the boundaries of the TSP. Alternatively, it was assumed that all hot-leg TSP intersections contained throughwall cracks with length equal to the thickness of the TSP. The postulated TSP motion was conservatively assumed to be uniform and equal to the maximum displacement calculated.

The total burst probability for all 32,046 throughwall indications given a uniform MSLB TSP displacement of 0.31" is calculated to be 1×10^{-5} . This is a factor of 1000 less than the Generic Letter 95-05 burst probability limit of 1×10^{-2} . Therefore, the functional design criteria for tube expansion is to limit the TSP motion to 0.31" or less. However, the design goal for tube expansion limits the TSP MSLB motion to less than 0.1", which results in a total tube burst probability of 1×10^{-10} for all 32,046 postulated throughwall indications. Additional tubes will be expanded to provide redundancy to the required expansions.

The structural limit for the hot-leg SG tube repair criteria with tube expansion is based on axial tensile loading requirements to preclude axial tensile severing of the tube. Axially oriented ODSCC does not significantly impact the axial tensile loading of the tube, therefore, the more limiting degradation mode with respect to affecting the tube structural limit at TSPs is cellular corrosion. Tensile tests that measure the force required to sever a tube with cellular corrosion and uncorroded cross sectional areas are used to establish the lower bound

structural limit. Based upon these tests, a lower bound 95% confidence level structural voltage limit of 37 volts was established for cellular corrosion. This limit meets the Regulatory Guide (RG) 1.121, "Basis for Plugging Steam Generator Tubes," structural requirements based upon the normal operating pressure differential with a safety factor of 3.0 applied. Due to the limited database supporting this value, the structural limit was conservatively reduced to 20 volts. Accounting for voltage growth and Non-Destructive Examination (NDE) uncertainty, the full [interim plugging criteria] IPC upper limit exceeds 10 volts. However, for added conservatism a single voltage repair limit for hot-leg indications is specified in this request. All hot-leg indications with bobbin coil probe voltages greater than the hot-leg voltage repair limit will be plugged or repaired.

The freespan tube burst probability must be calculated for the cold-leg TSP indications to be within the requirements of Generic Letter 95-05. The freespan structural voltage limit is calculated using correlations from the database described in Generic Letter 95-05, with the inclusion of the recent Byron and Braidwood tube pull results. This structural limit is 4.75 volts. The lower voltage repair limit for cold-leg indications continues to be 1.0 volt. The upper voltage repair limit for cold-leg indications will be calculated in accordance with Generic Letter 95-05. Since flow distribution baffle indications are to be repaired to the 40% depth criteria, no leakage or burst analyses are required for these indications.

Per Generic Letter 95-05, MSLB leak rate and tube burst probability analyses are required prior to returning to power and are to be included in a report to the Nuclear Regulatory Commission (NRC) within 90 days of restart. If allowable limits on leak rates and burst probability are exceeded, the results are to be reported to the NRC and a safety assessment of the significance of the results is to be performed prior to returning the steam generators to service.

A postulated MSLB outside of containment but upstream of the Main Steam Isolation Valve (MSIV) represents the most limiting radiological condition relative to the IPC. The ODSCC voltage distribution at the TSP intersections are projected to the end of the cycle and MSLB leakage is calculated.

A site specific calculation has determined the allowable MSLB leakage limit for Byron Unit 1 and Braidwood Unit 1. These limits use the recommended dose equivalent Iodine-131 transient spiking values consistent with NUREG-0800, "Standard Review Plan" and ensure site boundary doses are within a small fraction of the 10 CFR 100 requirements. The projected MSLB leakage rate calculation methodology described in WCAP-14046, "Braidwood Unit 1 Technical Support for Cycle 5 Steam Generator Interim Plugging Criteria," and WCAP 14277, "SLB Leak Rate and Tube Burst Probability Analysis Methods for ODSCC at TSP Intersections," will be used to calculate end-of-cycle (EOC) leakage. This method includes a Probability Of Detection (POD) value of 0.6 for all voltage amplitude ranges and uses the accepted leak rate versus bobbin voltage

correlation methodology (full Monte Carlo) for calculating leak rate, as described in Generic Letter 95-05. The database used for the leak and burst correlations is consistent with that described in Generic Letter 95-05 with the inclusion of the Byron Unit 1 and Braidwood Unit 1 tube pull results. The EOC voltage distribution is developed from the POD adjusted beginning-of-cycle (BOC) voltage distributions and uses Monte Carlo techniques to account for variances in growth and uncertainty.

The Electric Power Research Institute (EPRI) leak rate correlation has been used. It is based on free span indications that have burst pressures above the MSLB pressure differential. There is a low but finite probability that indications may burst at a pressure less than MSLB pressure. With limited TSP motion due to tube expansion, the tube is constrained by the TSP and tube burst is precluded. However, the flanks of the crack open up to contact the Inside Diameter (ID) of the TSP hole and result in a primary-to-secondary leak rate potentially exceeding that obtained from the EPRI correlation. This phenomenon is known as an Indication Restricted from Burst (IRB) condition.

ComEd has performed laboratory testing to determine the bounding leak rate obtainable in an IRB condition. The bounding leak rate value was then applied in a leak rate calculation methodology that accounts for the MSLB leak rate contribution from IRB indications to the total MSLB leak rate calculated as described above. Results indicate that the IRB contribution to the total leak rate value is negligible, however, ComEd will conservatively add a leakage contribution due to IRBs in addition to the leakage calculated in accordance with Generic Letter 95-05. When this is done, the dose at the site boundary resulting from the predicted leakage is shown to be a small fraction (less than 10%) of 10 CFR 100 limits.

Modification of the Byron and Braidwood Specifications for conformance with Generic Letter 95-05 requirements is primarily administrative and does not significantly increase the probability of any accidents previously evaluated. For Braidwood, the changes decrease the allowed burst probability from 2.5×10^{-2} to 1.0×10^{-2} . This change is in the conservative direction. Byron Station has previously incorporated this requirement.

In addition, defense in depth is provided by lowering the Unit 1 [reactor coolant system] RCS dose equivalent I-131 limit from $1.0 \mu\text{Ci/gm}$ to $0.35 \mu\text{Ci/gm}$. Based on current predictions of MSLB leakage at the time of SG replacement, the lower RCS dose equivalent I-131 limit also ensures that the resulting 2-hour dose rates at the Braidwood and Byron site boundaries will not exceed an appropriately small fraction of 10 CFR 100 dose guideline values.

For these reasons, an increase in the IPC voltage repair limit to a maximum of 3.0 volts for the hot-leg support plate intersections does not adversely affect steam generator tube integrity and results in acceptable dose consequences. By effectively eliminating tube burst at hot-leg TSP intersections, the likelihood of a tube rupture is substantially reduced and the probability of occurrence of an accident previously evaluated is reduced.

This conclusion is not affected by recent foreign and domestic plant SG experiences. As the following evaluation shows, these experiences are not relevant to Byron and Braidwood. A foreign unit detected eddy current signal distortions in one area of the top tube support plate during a 1995 inspection. The steam generators had been chemically cleaned in 1992. Visual inspection showed that a small section of the top support plate had broken free and was resting next to the steam generator tube bundle wrapper. The support plate showed indications of metal loss. The chemical cleaning process used by the foreign unit was developed by the utility and differs significantly from the modified EPRI/SGOG process performed at Byron Unit 1 in 1994.

The foreign process, coupled with specific application of the process, resulted in tube support plate corrosion of up to 250 mils compared to a maximum of 2.16 mils (11 mils maximum allowed) measured at Byron. During the Byron eddy current inspection performed after the chemical cleaning, no distortion of the tube support plate signals was reported. Therefore, these differences in cleaning processes imply that this foreign experience is irrelevant to the effects of the chemical cleaning process on the TSPs at Byron.

A number of units have experienced TSP cracking associated with severe tube denting due to TSP corrosion at the tube to TSP crevice. WCAP 14273, Section 12.4, shows that a diametral reduction of 65 mils is required to develop stress levels above yield in the TSP ligaments at dented intersections. The bobbin voltage associated with a 1 mil radial dent is 20 to 25 volts.

Although, Byron Unit 1 and Braidwood Unit 1 have not seen corrosion-induced denting, an appropriately sized bobbin probe will be used as a go/no-go gauge to assess hot-leg dents, if they occur in the future. If a tube has a dent at a hot-leg intersection that fails to pass the go/no-go test probe, cold-leg repair criteria will be applied to the affected tube and the adjacent tubes. In this way, any indications at these locations will be treated as free-span indications for the purposes of burst and leakage evaluation, which is bounded by the existing 1.0 volt IPC analysis. IPC repair limits will not be applied to tubes with dents > 5.0 volts since they could mask a 1.0 volt signal. Tubes with corrosion-induced dents > 5.0 volts and those tubes adjacent to such a tube will not be selected for tube expansion to preclude adverse effects of the failure of such a tube on limiting TSP displacement. Therefore, the denting experience at other plants is not relevant to Byron and Braidwood.

A foreign utility's steam generators have experienced cracking at the top tube support plate. The cause of the cracking appears to be the configuration of the single anti-rotation device, connected between the steam generator shell and wrapper, and the wrapper internals. The single anti-rotation device carries the full load associated with wrapper to shell motion. This rotational load is believed to be transferred to the TSP via the wrapper internals. The Byron/Braidwood Unit 1 steam generator design (D-4) uses three anti-rotation devices to spread the

rotational load. The D-4 wrapper internals are configured such that this load is not directly transmitted to the TSP.

No top support plate cracking has been detected at Byron Unit 1 or Braidwood Unit 1 and very few (<1%) of the indications seen at Byron and Braidwood to date have been at the top TSP elevation.

Nevertheless, an analysis was performed to assess the impact of cracking of the top support plate. The results show an increase in top support plate deflection for a very limited number of tubes to greater than the 0.10" limit used in the 3.0 volt IPC analysis. The deflections of the lower support plates also increase, but remain within the 0.10" limit. Thus, hot-leg indications in a cracked top TSP continue to be bounded by the existing analysis. ComEd will develop an inspection plan for the SG internals to identify if indications detrimental to the load path exist. If the inspection determines that indications detrimental to the integrity of the load path necessary to support the 3 volt IPC are found, the results are to be reported to the NRC and a safety assessment of the significance of the results is to be performed prior to returning the steam generators to service.

A domestic utility reported several distorted TSP signals over the past three refueling outage tube inspections. It was determined that these signals were associated with the TSP geometry in an area where an access cover is welded into the TSP. These signal distortions are not attributed to TSP cracking or degradation. Since the distorted signals were due to TSP geometry which did not indicate or result in a defect of the TSP, there is no increase in the probability or consequences of an accident previously evaluated due to Byron Unit 1 and Braidwood Unit 1 steam generator TSP geometries which may result in distorted eddy current signals.

One foreign unit observed a dislocation of the tube bundle wrapper when they were unable to pass sludge lancing equipment through a handhole in the wrapper. The dislocation appears to be a result of improper attachment of the wrapper to the support structure. Steam generator sludge lance operations have been successfully performed on Byron Unit 1 and Braidwood Unit 1 which indicates that no problem with wrapper attachment exists. The foreign unit's wrapper support design is significantly different than that used on Byron Unit 1 and Braidwood Unit 1. Therefore, a similar wrapper dislocation will not occur and the foreign experience is not applicable to Byron and Braidwood.

Therefore, the proposed amendment does not result in any significant increase in the probability or consequences of an accident previously evaluated within the Byron Unit 1 and Braidwood Unit 1 Updated Final Safety Analysis Report (UFSAR).

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed steam generator tube plugging criteria with tube expansion does not introduce any significant changes to the plant design basis. Use of the

criteria does not provide a mechanism which could result in an accident outside of the region of the tube support plate elevations as ODSCC does not extend beyond the thickness of the tube support plates. Neither a single nor multiple tube rupture event would be expected in a steam generator in which the plugging criteria has been applied.

The tube burst assessment involves a Monte Carlo simulation of the site specific voltage distribution to generate a total burst probability that includes the summation of the probabilities of 1 tube bursting, 2 tubes bursting, etc. For the hot-leg TSP intersections, the maximum total probability of burst, by design, is estimated to be 1×10^{-10} with all tube expansions functional.

Accounting for the unlikely event of expansion failures, a sufficient number of redundant expansions exist to ensure that the burst probability remains below 1×10^{-5} . This includes the conservative assumption that all 32,046 hot-leg TSP intersections contain throughwall indications. This level of burst probability is considered to be negligible when compared to the Generic Letter 95-05 limit of 1×10^{-2} .

In addressing the combined effects of Loss Of Coolant Accident (LOCA) + Safe Shutdown Earthquake (SSE) on the SG as required by General Design Criteria (GDC) 2, it has been determined that tube collapse may occur in the steam generators at some plants. The tube support plates may become deformed as a result of lateral loads at the wedge supports located at the periphery of the plate due to the combined effects of the LOCA rarefaction wave and SSE loadings. The resulting pressure differential on the deformed tubes may cause some of the tubes to collapse. There are two issues associated with SG tube collapse. First, the collapse of SG tubing reduces the RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase Peak Clad Temperature (PCT). Second, there is a potential that partial throughwall cracks in tubes could progress to throughwall cracks during tube deformation or collapse. The tubes subject to collapse have been identified via a plant specific analysis and excluded from application of the voltage-based criteria. This analysis is included in revision 3 to WCAP-14046 which was submitted to the NRC June 19, 1995.

ComEd will continue to apply a maximum primary-to-secondary leakage limit of 150 gallons per day (gpd) through any one SG at Byron and Braidwood to help preclude the potential for excessive leakage during all plant conditions. The RG 1.121 criterion for establishing operational leakage limits that require plant shutdown are based on detecting a free span crack prior to resulting in primary-to-secondary operational leakage which could potentially develop into a tube rupture during faulted plant conditions. The 150 gpd limit provides for leakage detection and plant shutdown in the event of an unexpected single crack leak associated with the longest permissible free span crack length.

Tube burst is precluded during normal operation due to the proximity of the TSP to

the tube and during a postulated MSLB event with tube expansion. The 150 gpd limit provides a conservative limit for plant shutdown prior to reaching critical crack lengths should significant crack extension unexpectedly occur outside the thickness of the TSP.

Lowering the Unit 1 RCS dose equivalent I-131 limit from 1.0 $\mu\text{Ci/gm}$ to 0.35 $\mu\text{Ci/gm}$ is conservative and provides a defense in depth approach to implementation of this IPC.

Based on current predictions of MSLB leakage at the time of SG replacement, the lower RCS dose equivalent I-131 limit also ensures that the resulting 2-hour dose rates at the Braidwood and Byron site boundaries will not exceed an appropriately small fraction of 10 CFR 100 dose guideline values.

Modification of the Byron and Braidwood Specifications for conformance with Generic Letter 95-05 requirements is primarily administrative and will not alter the plant design basis. For Braidwood, the decrease in the allowed burst probability from 2.5×10^{-2} to 1.0×10^{-2} is conservative. Byron Station has previously incorporated this requirement.

With implementation of an increased IPC voltage repair limit (up to a maximum of 3.0 volts) using tube expansion for the hot-leg support plate intersections, steam generator tube integrity continues to be maintained through inservice inspection, tube repair and primary-to-secondary leakage monitoring. By effectively eliminating tube burst at hot-leg TSP intersections, the potential for multiple tube ruptures is essentially eliminated. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

ComEd has evaluated industry experiences with TSP degradation, eddy current signal distortions, and component misalignment. Eddy current signal distortions due to TSP geometry are not indicative of TSP degradation and do not result in any kind of accident.

The component misalignment experienced by one unit is not applicable to Byron Unit 1 or Braidwood Unit 1 and, thus, will not result in any kind of accident. Specific limitations, as discussed above, will be applied to indications at hot-leg intersections which contain dents. These limitations ensure that integrity of the SG tubes is maintained consistent with current analyses should tube denting or TSP cracking occur. Application of the 3.0 volt hot-leg IPC to Byron Unit 1 and Braidwood Unit 1, with the limitations specified, will not result in the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The use of the voltage-based, bobbin coil, tube support plate elevation plugging criteria with tube expansion at Byron Unit 1 and Braidwood Unit 1 is demonstrated to maintain steam generator tube integrity commensurate with the criteria of RG 1.121. RG 1.121 describes a method acceptable to the NRC staff for meeting GDC 14, 15, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture.

This is accomplished by determining an eddy current inspection voltage value which represents a limit for leaving a SG tube in service. Tubes with ODSCC voltage indications beyond this limiting value must be removed from service by plugging or repaired by sleeving. Upon implementation of an increased IPC voltage repair limit (up to a maximum of 3.0 volts) for the hot-leg, even under the worst case conditions, the occurrence of ODSCC at the tube support plate elevations has been evaluated and shown not to present a credible potential for a steam generator tube rupture event during normal or faulted plant conditions. The End Of Cycle (EOC) distribution of crack indications at the tube support plate elevations will be confirmed to result in acceptable primary-to-secondary leakage during all plant conditions such that radiological consequences are not adversely impacted.

Addressing RG 1.83 considerations, implementation of the increased hot-leg tube support plate intersection bobbin coil voltage-based repair criteria is supplemented by enhanced eddy current inspection guidelines to provide consistency in voltage normalization and a 100% eddy current inspection sample size at the affected tube support plate elevations.

For the leak and burst assessments, the population of indications in the voltage distribution is dependant on the POD function. The purpose of the POD function is to account for indications that may not be identified by the data analyst.

In implementing this proposed IPC, ComEd will use the conservative Generic Letter 95-05 POD value of 0.6 for all voltage amplitude ranges.

Lowering the Unit 1 RCS dose equivalent I-131 limit from 1.0 $\mu\text{Ci/gm}$ to 0.35 $\mu\text{Ci/gm}$ is conservative and provides a defense in depth approach to implementation of this IPC. Based on current predictions of MSLB leakage at the time of SG replacement, the lower RCS dose equivalent I-131 limit also ensures that the resulting 2-hour dose rates at the Braidwood and Byron site boundaries will not exceed an appropriately small fraction of 10 CFR 100 dose guideline values.

Modification of the Byron and Braidwood Specifications for conformance with the Generic Letter 95-05 requirements is primarily administrative and will not reduce any safety margins. For Braidwood, the decrease in the allowed burst probability from 2.5×10^{-2} to 1.0×10^{-2} is conservative. Byron Station has previously incorporated this requirement.

Implementation of the tube support plate elevation repair limits will decrease the number of tubes which must be repaired. The installation of steam generator tube plugs or sleeves reduces the RCS flow margin. Thus, implementation of the interim plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

As discussed previously, ComEd has evaluated industry experiences with TSP degradation, eddy current signal distortions, and component misalignment. Eddy current signal distortions at tube support plates will be evaluated to attempt determination of the

cause of the distortion. A signal distortion alone will not result in reduction in the margin of safety. The foreign unit that experienced the component misalignment was of a significantly different design than the Byron Unit 1 and Braidwood Unit 1 steam generators. Analysis of the design differences shows that component misalignment of that type is not applicable to Byron Unit 1 or Braidwood Unit 1 and, thus, will not result in a reduction in the margin of safety.

Specific limitations, as discussed previously, will be applied to indications at hot-leg intersections which contain dents. These limitations conservatively treat indications as freespan to ensure that integrity of the SG tubes is maintained consistent with current analyses should tube denting or TSP cracking occur. Also, tubes with large dents (> 5.0 volts) and tubes adjacent to these dented tubes will not be used for tube expansion to ensure success of tube support plate motion limitation under accident conditions. Application of the 3.0 volt hot-leg IPC to Byron Unit 1 and Braidwood Unit 1, with the limitations specified, will not result in a reduction in a margin of safety.

Thus, the implementation of this amendment does not result in a significant reduction in a margin of safety.

Therefore, based on the above evaluation, ComEd has concluded that these changes involve no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to

take this action will occur very infrequently.

Written comments may be submitted by mail to the 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 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 27, 1995, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms which for Byron is located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; and for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

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 amendments.

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, 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 Mr. Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, 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 amendments dated September 1, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms which for Byron is located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; and for Braidwood, the Wilmington Public

Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 19th day of September 1995.

For the Nuclear Regulatory Commission.

M. David Lynch,

Senior Project Manager, Project Directorate III-2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

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[Docket No. 50-298]

Nebraska Public Power District; Cooper Nuclear Station; Notice of Withdrawal of Applications for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Nebraska Public Power District, (the licensee) to withdraw its January 26, 1990, and August 23, August 31, and September 28, 1993, applications for proposed amendment to Facility Operating License No. DPR-46 for the Cooper Nuclear Station, located in Nemaha County, Nebraska.

The proposed amendments would have modified the facility technical specifications to revise: safety valve and safety relief valve setpoint tolerances; the Administrative Controls section position titles and organization; and certain requirements for primary containment isolation instrumentation and valves.

The Commission had previously issued Notices of Consideration of Issuance of Amendment published in the Federal Register on August 22, 1990 (55 FR 34374), September 15, 1993 (58 FR 48385), October 13, 1993 (58 FR 52987), and February 16, 1994 (59 FR 7690). However, by letter dated September 8, 1995, the licensee withdrew the proposed changes.

For further details with respect to this action, see the applications for amendment dated January 26, 1990, and August 23, August 31, and September 28, 1993, and the licensee's letter dated September 8, 1995, which withdrew the applications for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Auburn Public Library, 118 15th Street, Auburn, NE 68305.

Dated at Rockville, Maryland, this 20th day of September 1995.

For the Nuclear Regulatory Commission.

James R. Hall,

Senior Project Manager Project Directorate IV-1 Division of Reactor Projects III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 95-23928 Filed 9-26-95; 8:45 am]

BILLING CODE 7590-01-P

[Docket Number 40-6659]

Petrotomics Co.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of application from Petrotomics Company to change a site-reclamation milestone in License Condition 50 of Source Material License SUA-551 for the Shirley Basin, Wyoming Uranium Mill site Notice of Opportunity for a Hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated September 5, 1995, an application from Petrotomics Company (Petrotomics) to amend License Condition (LC) 50 of Source Material License No. SUA-551 for the Shirley Basin Wyoming uranium mill site. The license amendment application proposes to modify LC 50 to change the completion date for a site-reclamation milestone. The new date proposed by Petrotomics would extend completion of placement of final radon barrier on the tailings pile by one year, and ten months.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415-6640.

SUPPLEMENTARY INFORMATION: The portion of LC 50 with the proposed change would read as follows:

A. (3) Placement of final barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m²/s above background for area of tailings pile not covered by evaporation ponds—October 31, 1997.

Petrotomics' application to amend LC 50 of Source Material License SUA-551, which describes the proposed change to the license condition and the reasons for the request is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW., (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in

Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the Federal Register. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Petrotomics Company, P.O. Box 8509, Shirley Basin, Wyoming 82615, Attention: Ron Juday; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 21st day of September 1995.

John O. Thoma,

Acting Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95-23933 Filed 9-26-95; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36254; International Series Release No. 857; File No. SR-OCC-95-05]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change to Issue, Clear, and Settle Customized Foreign Currency Options on the Italian Lira and the Spanish Peseta

September 19, 1995.

On May 4, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-OCC-95-05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the Federal Register on July 14, 1995.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

Under the rule change, OCC will issue, clear, and settle option transactions where the Italian lira or the Spanish peseta is either the trading currency or the underlying currency.³ The Commission is approving a proposal by The Philadelphia Stock Exchange ("PHLX") to list and trade such foreign currency options through the PHLX customized options facility concurrently with the approval of this proposed rule change.⁴

The PHLX rule filings enable its members to trade customized contracts between the lira or the peseta and any other approved currency. Currently, OCC has approval to list and clear flexibly structured option contracts⁵ on

any combination of the following currencies: (1) Australian dollar, (2) British pound, (3) Canadian dollar, (4) German mark, (5) European Economic Community currency unit, (6) French franc, (7) Japanese yen, (8) Swiss franc, and (9) United States dollar. The Italian lira and the Spanish peseta now will be included in OCC's list of approved currencies.

Options on the lira or the peseta will be cleared and settled in accordance with the clearance and settlement mechanisms already in place for flexibly structured foreign currency options and for cross-rate foreign currency options. In addition, options on the lira or the peseta will be margined like OCC's existing foreign currency and cross-rate foreign currency option contracts. Accordingly, OCC has determined that no changes to its By-Laws or rules are necessary to accommodate these new contracts.

II. Discussion

Section 17A(b)(3)(F)⁶ of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that OCC's proposed rule change is consistent with OCC's obligations under the Act because OCC's proposal will allow the clearance and settlement of option contracts where the peseta or the lira is either the trading currency or the underlying currency by using existing OCC systems, rules, and procedures already in place for flexibly structured foreign currency options and for cross-rate foreign currency options. Thus, OCC should be able to implement the clearance and settlement of such options with little difficulty due to the similarity of these option contracts to the option contracts currently cleared and settled in OCC's existing system.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

foreign currency as an index option having an expiration date, an exercise price, an exercise style, an index value determinant, and in the case of a capped option, a cap interval, that are reported to OCC by a national securities exchange or association registered with OCC pursuant to OCC's matched trade reporting requirements set forth in Article VI, Section 6 of the OCC By-Laws and Rule 401 of the OCC's Rules.

⁶ 15 U.S.C. 78q-1(b)(3)(F) (1988).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-95-05) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-23934 Filed 9-26-95; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Buffalo District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Buffalo District Advisory Council will hold a public meeting on Thursday, October 5, 1995 at 10:00 a.m. at the M & T Bank, M & T Center, One Fountain Plaza, 2nd floor board room, Buffalo, New York to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Franklin J. Sciortino, District Director, U.S. Small Business Administration, 111 West Huron Street, Buffalo, New York 14202, (716) 551-4301.

Dated: September 20, 1995.

Art DeCoursey,

Acting Director, Office of Advisory Council.

[FR Doc. 95-23900 Filed 9-26-95; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Honda

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

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of American Honda Motor Co., Inc., on behalf of Honda Motor Company, Ltd., (Honda) for an exemption of a high-theft line (whose nameplate is confidential) from the parts-marking requirements of the Federal motor vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the

¹ 15 U.S.C. 78s(b)(1) (1988).

² Securities Exchange Act Release No. 35937 (July 5, 1995), 60 FR 36320.

³ The term "trading currency" is defined in Article I, Section 1 of the OCC By-Laws as the currency in which premium and/or exercise prices are denominated for a class of foreign currency options or cross-rate foreign currency options. The term "underlying currency" is defined in Article I Section 1 of the OCC By-Laws as the currency which is required to be delivered upon the exercise of a class of foreign currency or cross-rate foreign currency options.

⁴ For a discussion of the addition of the lira and the peseta to the list of approved currencies on which customized foreign currency options may be listed and traded through the PHLX customized options facility, refer to Securities Exchange Act Release No. 36255 (September 20, 1995) [File Nos. SR-PHLX-20 and SR-PHLX-21] (order approving the proposed rule change to list and trade options on the Italian lira and Spanish peseta)

⁵ The term "flexibly structured option" is defined in Article XXIII, Section 1(F)(1) in respect of flexibly structured index options where the premium and exercise price are denominated in a

line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with the (confidential) model year.

FOR FURTHER INFORMATION CONTACT: Ms Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh St., S.W., Washington, DC. 20590. Ms Gray's telephone number is (202) 366-1740. Her fax number is (202) 493-2739.

SUPPLEMENTARY INFORMATION: In a petition dated June 16, 1995, American Honda Motor Co., Inc., requested on behalf of Honda Motor Co., Ltd., an exemption from the parts-marking requirements of the Theft Prevention Standard for a motor vehicle line. The nameplate of the line and the model year of introduction are confidential. The submittal requested an exemption from the parts-marking requirements pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire line. In an August 9, 1995, telephone conversation with NHTSA officials, Honda clarified the scope of its petition.

Honda's June 16 letter and information provided in the August 9 telephone conversation, together constitute a complete petition, as required by 49 CFR part 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6. In a letter dated July 11, 1995, to Honda, the agency granted the petitioner's request for confidential treatment of most aspects of its petition, including the nameplate of the line and the model year of its introduction.

In its petition, Honda provided a detailed description and diagrams of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes an engine starter-interrupt function and an alarm function. The antitheft device is activated by removing the ignition key and locking the doors with it. The alarm monitors the doors, hood, battery terminals and circuitry, and engine starter circuit.

In order to ensure the reliability and durability of the device, Honda stated that it conducted tests, based on its own specified standards. Honda provided a detailed list of the tests conducted. Honda stated its belief that the device is reliable and durable since the device complied with Honda's specified requirements for each test.

Honda compared the device proposed for its new line with devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements.

Honda has concluded that the antitheft device proposed for its new line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements. Honda bases its belief on reduced theft rates of the Saab 900 and Lexus SC car lines. Both lines had experienced theft rates below the median theft rate (3.5826) set for Model Years (MY) 1990/1991. Additionally, Honda stated that the Honda Acura NSX has been equipped with an antitheft device since MY 1991. The theft rate of the NSX continues to be below the median theft rate (3.5826). Since the vehicle line that is the subject of this petition will be equipped with a similar system as the NSX, Honda expects that the antitheft device on the vehicle line for which it now seeks an exemption will also be as effective in reducing and deterring theft.

Based on the evidence submitted by Honda, the agency believes that the antitheft device for the new Honda line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standards (49 CFR part 541).

The agency believes that the device will provide the types of performance listed in 49 CFR 543.6(a)(3): Promoting activation, attracting attention to unauthorized entries, preventing defeat or circumvention of the device by unauthorized persons, preventing operation of the vehicle by unauthorized entrants, and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 331006 and 49 CFR 543.6(a) (4) and (5), the agency finds that Honda has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Honda provided about its device, much of which is confidential. This confidential information included a description of reliability and functional tests conducted by Honda for the antitheft device and its components.

For the foregoing reasons, the agency hereby grants in full Honda's petition for exemption for the line from the parts-marking requirements of 49 CFR part 541.

If Honda decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully

marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Honda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption." The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult with the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: September 22, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95-23989 Filed 9-26-95; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Customs Service

Receipt of Domestic Interested Party Petition Concerning Country of Origin Marking for Hinges

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition filed on behalf of a domestic interested party concerning the country of origin marking requirements for metal hinges. The petitioner requests that Customs require imported metal hinges to be marked individually by a die sunk, molding or etching process in a conspicuous place such as the exposed

surface of the hinge. The petitioner contends that the country of origin marking on the container in which hinges are imported is not sufficient. Public comment is solicited regarding the application of the marking requirements to imported metal hinges.

DATES: Comments must be received on or before November 27, 1995.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Regulations Branch, Office of Regulations and Rulings, 1301 Constitution Avenue, NW. (Franklin Court), Washington, DC. 20229. Comments may be viewed at the Office of Regulations and Rulings, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Monika Rice, Special Classification and Marking Branch, Office of Regulations and Rulings, U.S. Customs Service, (202-482-6980).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516) and part 175, Customs Regulations (19 CFR part 175), a domestic interested party may challenge certain decisions made by Customs regarding imported merchandise which is claimed to be similar to the class or kind of merchandise manufactured, produced or wholesaled by the domestic interested party. This document provides notice that a domestic interested party is challenging the marking requirements of imported metal hinges.

The petitioner is Hager Hinge Company, a domestic manufacturer of hinges. This entity qualifies as a domestic interested party within the meaning of 19 U.S.C. 1516(a)(2).

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin shall be marked in a conspicuous place with the English name of the country of origin. The country of origin marking requirements and exceptions of 19 U.S.C. 1304 are implemented by part 134, Customs Regulations (19 CFR part 134).

The hinges at issue are classifiable under subheading 8302.10.60 or subheading 8302.10.90, Harmonized Tariff Schedule of the United States (HTSUS), depending on the material of construction which basically is brass, aluminum, steel, or stainless steel. Hinges are stamped from dies with knuckles rolled, milled or reamed; assembled with bearings, if required; polished to remove impurities on the

face or knuckle; and electroplated. Steel hinges are described as having great strength, which can be electroplated with various finishes, and are most commonly used in controlled environments, such as the interior of a building. Stainless steel hinges are also described as having great strength, are non-corrosive, and can be polished to either bright or satin finishes, but may not be electroplated in the same manner as steel. Brass hinges are described as having less strength than steel or stainless steel, and may not be used on fire rated door applications, but may be electroplated with many finishes. Additionally, there are four basic types of hinges: Full Mortise (the most common, comprising 90 percent of all hinges used), Full Surface, Half Mortise, and Half Surface. A Full Mortise hinge is mortised to both the door and the frame; the Full Surface hinge is affixed to the surface (not recessed) of the door and the frame; the Half Mortise hinge is mortised to the door (recessed) and surface applied to the frame; and the Half Surface hinge is surface applied to the door and mortised to the frame (recessed). The hinges described above are stated to be sold through distributors for sale in hardware stores and home centers, and are also sold in bulk to general and sub-contractors for use in building construction.

The petitioner contends that the country of origin marking on these imported metal hinges be placed onto each individual hinge by a die sunk, molding or etching process in a conspicuous place such as the exposed surface of the hinge. The petitioner contends that the country of origin marking on the container in which the hinges are imported is not sufficient because, in practice, the hinges are often removed from their container before reaching the ultimate purchaser. In a retail setting, hinges may be removed from their container and sold from bulk bins for easy access and examination. Furthermore, in building construction, the petitioner contends that the building purchaser has less likelihood of ascertaining the country of origin which is important in determining the quality of a building's construction. The petitioner contends that despite the certification requirements imposed by 19 CFR 134.26 for repackaged articles, and the demand for liquidated damages under 19 CFR 134.54(a) for failure to adhere to the certification, anything less than individual marking on each metal hinge is statutorily insufficient. Consequently, the petitioner proposes that Customs require imported metal hinges to be marked individually by a

die sunk, molding or etching process in a conspicuous place because as stated in 19 CFR 134.41, as a general rule, marking requirements are best met by marking worked into the article at the time of manufacture and it is suggested that the country of origin on metal articles be die sunk, molded, or etched.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties. The petition of the domestic interested party, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4 p.m. at the Regulations Branch, Suite 4000, Franklin Court, 1099 14th Street, NW., Washington, D.C.

AUTHORITY

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal drafter of this document was Monika Rice, Special Classification and Marking Branch, United States Customs Service. Personnel from other Customs offices participated in its development.

George J. Weise,

Commissioner of Customs.

Approved: August 28, 1995.

John P. Simpson

Deputy Assistant Secretary of the Treasury
[FR Doc. 95-23953 Filed 9-26-95; 8:45 am]

BILLING CODE 4820-02-P

Geographic Boundaries of Customs Brokerage, Cartage, and Ligherage Districts

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document informs the public of the geographic areas covered for purposes of Customs broker permits and for certain cartage and ligherage purposes where the word "district" appears in the Customs Regulations.

EFFECTIVE DATE: September 30, 1995 at 11:59 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Jerry Laderberg, Office of Field Operations (202)927-0415.

SUPPLEMENTARY INFORMATION:

Background

In Treasury Decisions 95-77 and 95-78, both published in this issue of the Federal Register, Customs amended its regulations to reflect its new organizational structure. Concerning this reorganization, Customs stated that, although the concepts of districts and regions would, for the most part, be eliminated, they would still exist for certain limited purposes concerning broker permits and cartage and lighterage licensing. Accordingly, in § 111.1, definitions of "district" and "district director" were added to enable the current statutory Customs broker licensing and permit schemes to operate, and in § 112.1, a definition of "district" was added for certain purposes regarding the cartage and lighterage of merchandise by parties excepted from obtaining a license to do so. Both of these sections provided that Customs would publish a listing of each district, and the ports thereunder, on or before October 1, 1995, and whenever updated. This document constitutes the referenced publication.

In the table below, arranged alphabetically by State or other geographic location, each of the service ports listed in the left column represents a "district" for purposes of §§ 111.1 and 112.1, and the ports of entry listed to the right of each service port represent the ports within that "district."

Service ports	Ports of entry
Alabama	
Mobile	Birmingham Gulfport, MS Huntsville Mobile Pascagoula, MS
Alaska	
Anchorage	Alcan Anchorage Dalton Cache Fairbanks Juneau Ketchikan Sitka Skagway Valdez Wrangell

Service ports	Ports of entry
Arizona	
Nogales	Douglas Lukeville Naco Nogales Phoenix San Luis Sasabe Tucson
California	
Los Angeles	Los Angeles-Long Beach LAX Las Vegas, NV Port Hueneme Port San Luis
San Diego	Andrade Calexico Tecate
San Francisco	Eureka Fresno Reno, NV San Francisco-Oakland
District of Columbia	
Dulles	Alexandria, VA Dulles, VA
Florida	
Miami	Key West Miami Port Everglades West Palm Beach
Tampa	Boca Grande Fernandina Beach Jacksonville Orlando Panama City Pensacola Port Canaveral Port Manatee St. Petersburg Tampa
Georgia	
Savannah	Atlanta Brunswick Savannah
Hawaii	
Honolulu	Hilo Honolulu Kahului Nawiliwili-Port Allen

Service ports	Ports of entry
Illinois	
Chicago	Chicago Davenport, IA-Moline and Rock Island Des Moines, IA Omaha, NE Peoria Rockford
Louisiana	
New Orleans	Baton Rouge Chattanooga, TN Gramercy Greenville, MS Knoxville, TN Lake Charles Little Rock-North Little Rock, AR Memphis, TN Morgan City Nashville, TN New Orleans Shreveport-Bossier City Vicksburg, MS
Maine	
Portland	Bangor Bar Harbor Bath Belfast Bridgewater Calais Eastport Fort Fairfield Fort Kent Houlton Jackman Jonesport Limestone Madawaska Portland Portsmouth, NH Rockland Van Buren Vanceboro
Maryland	
Baltimore	Annapolis Baltimore Cambridge

Service ports	Ports of entry	Service ports	Ports of entry	Service ports	Ports of entry
Massachusetts		New York		Ohio	
Boston	Boston Bridgeport, CT Fall River Gloucester Hartford, CT Lawrence New Bedford New Haven, CT New London, CT Plymouth Salem Springfield Worcester	Buffalo	Buffalo-Niagara Falls Oswego Rochester Sodus Point Syracuse Utica	Cleveland	Ashtabula/Conneaut Cincinnati- Lawrenceburg, IN Cleveland Columbus Dayton Erie, PA Indianapolis, IN Louisville, KY Owensboro, KY- Evansville, IN Toledo-Sandusky
Michigan		JFK/New York/New- ark.	Alexandria Bay Cape Vincent Champlain-Rouses Point Clayton Massena Ogdensburg Trout River Albany New York/Newark, NJ JFK Perth Amboy, NJ	Oregon	
Detroit	Battle Creek Detroit Grand Rapids Muskegon Port Huron Saginaw-Bay City- Flint Sault Ste. Marie	North Carolina		Portland	Astoria Boise, ID Coos Bay Longview Newport Portland
Minnesota		Charlotte	Beaufort-Morehead City Charlotte Durham Reidsville Wilmington Winston-Salem	Pennsylvania	
Duluth	Ashland, WI Duluth and Superior, WI Grand Portage International Falls- Ranier	North Dakota		Philadelphia	Harrisburg Lehigh Valley Philadelphia-Chester, PA and Wilmington, DE Pittsburgh Wilkes-Barre/Scranton
Minneapolis	Minneapolis-St. Paul	Pembina	Ambrose Antler Baudette, MN Carbury Dunseith Fortuna Hannah Hansboro Maida Neche Noonan Northgate Noyes, MN Pembina Pinecreek, MN Portal Roseau, MN Sarles Sherwood St. John Walhalla Warroad, MN Westhope	Puerto Rico	
Missouri		Montana		San Juan	Aquadilla Fajardo Guanica Humacao Jobos Mayaguez Ponce San Juan
St. Louis	Kansas City Springfield St. Joseph St. Louis Wichita, KS	Great Falls	Butte Del Bonita Denver, CO Eastport, ID Great Falls Morgan Opheim Piegan Porthill, ID Raymond Roosville Salt Lake City, UT Scobey Sweetgrass Turner Whitetail Whitlash	Rhode Island	
South Carolina		Texas		Providence	Newport Providence
Texas		Virginia		West Virginia	
Dallas	Amarillo Austin Dallas/Fort Worth Lubbock Oklahoma City, OK San Antonio Tulsa, OK	Charleston	Charleston Columbia Georgetown Greenville- Spartenburg	Wisconsin	

Service ports	Ports of entry
El Paso	Albuquerque, NM Columbus, NM El Paso Fabens Presidio Santa Teresa, NM
Houston	Houston-Galveston
* Port Arthur	Port Arthur
Laredo	Brownsville Del Rio Eagle Pass Hidalgo Laredo Progreso Rio Grande City Roma

Vermont

St. Albans	Beecher Falls Burlington Derby Line Highgate Springs- Alburg Norton Richford St. Albans
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Virginia

Norfolk	Charleston, WV Front Royal Norfolk-Newport News Richmond-Petersburg
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Virgin Islands, U.S.

Charlotte Amalie	Charlotte Amalie, St. Thomas Christiansted, St. Croix Coral Bay, St. John Cruz Bay, St. John Frederiksted, St. Croix
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Washington

Seattle	Aberdeen Blaine Boundary Danville Ferry Frontier Laurier Lynden Metaline Falls Nighthawk Oroville Point Roberts Puget Sound Spokane Sumas
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Service ports	Ports of entry
Wisconsin	
Milwaukee	Green Bay Manitowoc Marinette Milwaukee Racine Sheboygan

* Not a Service Port.

Dated: September 22, 1995.

Samuel H. Banks,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 95-24011 Filed 9-26-95; 8:45 am]

BILLING CODE 4820-02-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Tariff-rate Quota for Refined Sugar (Other Than Specialty Sugar)

AGENCY: Office of the United States Trade Representative; 600 17th Street NW., Washington, DC 20508.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the in-quota quantity of the tariff-rate quota for imported refined sugar (other than specialty sugars) will be available on a globalized basis, the certificate of quota eligibility requirements for this sugar are being suspended, and the quota quantity reserved for the importation of specialty sugars will be allocated among supplying countries as provided in this notice.

EFFECTIVE DATE: October 1, 1995.

ADDRESSES: Inquiries may be mailed or delivered to Tom Perkins, Senior Economist, Office of Agricultural Affairs (Room 421), Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Tom Perkins, Office of Agricultural Affairs, 202-395-6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains a tariff-rate quota for imports of refined sugar (sugars, syrups and molasses provided for under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS). The Secretary of Agriculture, by notice in the Federal Register of August 15, 1995 (60 FR 42142), established the in-quota quantity of the tariff-rate quota for refined sugar for the period October 1,

1995-September 30, 1996, at 22,000 metric tons, raw value, and reserve 1,656 metric tons, raw value, of this amount of the importation of specialty sugars.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to determine the allocation of the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under President Proclamation No. 6763 (60 FR 1007).

Pursuant to section 404(d)(3) of the Uruguay Round Agreements Act and Additional U.S. Note 5 to chapter 17 of the HTS, I have determined that the quantity of the 1995-96 tariff-rate quota for refined sugar that is reserved for the importation of specialty sugars (1,656 metric tons, raw value) shall be allowed to each of the following countries and areas, in the amount of 72 metric tons, raw value: Belgium, Burma, Cameroon, People's Republic of China, Denmark, Federal Republic of Germany, France, Hong Kong, Indonesia, Ireland, Italy, Japan, Kenya, Republic of Korea, Luxembourg, Netherlands, Netherlands Antilles, Suriname, Sweden, Switzerland, United Kingdom, Venezuela and Republic of Yemen.

I have also determined not to allocate the in-quota quantity of the tariff-rate quota for refined sugar, as provided for in Additional U.S. Note 5 to chapter 17 of the HTS and established by the Secretary of Agriculture, among supplying countries, except for the allocation of the quantity reserved for the importation of specialty sugars.

In addition, I have determined that suspension of the certificate of quota eligibility (CQE) requirements for sugar entering under the tariff-rate quota for refined sugar gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. Accordingly, pursuant to 15 CFR 2011.110(a), effective October 1, 1995, the provisions of subpart A of part 2011 of 15 CFR are suspended with respect to imports of sugar under the refined sugar tariff-rate quota. The CQE system will remain in place for imports of raw cane sugar.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95-23937 Filed 9-26-95; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 187

Wednesday, September 27, 1995

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, October 2, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 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: September 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-24052 Filed 9-25-95; 11:19 am]

BILLING CODE 6210-01-P

NATIONAL SCIENCE FOUNDATION

National Science Board

DATE AND TIME:

October 5, 1995, 9:30 a.m., Closed Session
 October 5, 1995, 10:00 a.m., Open Session
 October 6, 1995, 8:30 a.m., Closed Session
 October 6, 1995, 8:35 a.m., Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED

Thursday, October 5, 1995

(CLOSED SESSION (9:30 a.m.—10:00 a.m.))

—Minutes, August 1995 Meeting
 —NSB Member Proposal

Friday, October 5, 1995

(OPEN SESSION (10:00 a.m.—12:00 a.m.))

—Leading Edge Computing and Front End Research

Friday, October 6, 1995

(CLOSED SESSION (8:30 a.m.—8:35 a.m.))

—Minutes, August 1995 Meeting
 —Grants and Contracts

Friday, October 6, 1995

(OPEN SESSION (8:35 a.m.—10:00 a.m.))

—Minutes, August 1995 Meeting
 —Closed Session Agenda Items for November 1995 Meeting
 —Chairman's Report
 —Director's Report
 —Committee Reports
 —Other Business
 —Presentation: Creating Bose-Einstein Condensates
 —Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 95-24058 Filed 9-25-95; 11:20 am]

BILLING CODE 7555-01-M

Corrections

Federal Register

Vol. 60, No. 187

Wednesday, September 27, 1995

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-5272-1]

RIN 2060-AD-94

National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries

Correction

In rule document 95-20252 beginning on page 43244 in the issue of Friday, August 18, 1995, make the following correction:

§ 63.652 [Corrected]

On page 43276, in the second column, in § 63.652(g)(4)(vi)(B), the equation should read as follows:

$$EGLR_{ic} = 1 \times 10^{-8} G$$

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 10, 13 and 17

RIN 1018-AC57

Fish and Wildlife Service, General Provisions and General Permit Procedures

Correction

In proposed rule document 95-21862 beginning on page 46087 in the issue of Tuesday, September 5, 1995, make the following corrections:

1. On page 46087, in the third column, under **DATES**, insert "or before" after "on".

2. On page 46088, in the 1st column, in the 1st full paragraph, in the 16th line, "not" should read "now".

3. On page 46090, in the first column, in the third full paragraph, in the first line, "§ 13.21(b)" should read "§ 13.21(c)".

4. On the same page, in the 2d column, in the 30th line, add an "s" to "evidence".

5. On page 46091, in the third column, in the third full paragraph, in the fourth line, "not" should read "now".

§ 13.30 [Corrected]

6. On page 46103, in the third column, in § 13.30, in the table, in paragraph (a), in the second column, in the second line, remove the "1" after the

period; and remove the line under paragraph (h).

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8600]

RIN 1545-AE86

Definition of an S Corporation

Correction

In rule document 95-17914 beginning on page 37578 in the issue of Friday, July 21, 1995, make the following corrections:

§ 1.1361-1 [Corrected]

1. On page 37581, in the second column, in § 1.1361-1, the heading should read "§ 1.1361-1 S Corporation defined."

2. On page 37584, in the first column, in § 1.1361-1(j)(2)(ii), in the fourth line, "requirements" was misspelled.

3. On the same page, in the 3rd column, in § 1.1361-1(j)(4), in the 11th line, "1361 (c)(2)(A)(i)" should read "1361(c)(2)(A)(i)".

4. On page 37587, in the second column, in § 1.1361-1(k)(1), in *Example 4(i)*, the heading should read "*OSST when terms do not require current distribution of income.*".

BILLING CODE 1505-01-D

Federal Register

Wednesday
September 27, 1995

Part II

**Department of
Health and Human
Services**

**Centers for Disease Control and
Prevention**

**Intravascular Device-Related Infections
Prevention; Guideline Availability; Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guideline for Prevention of Intravascular Device-Related Infections: Part 1. "Intravascular Device-Related Infections: An Overview" and Part 2. "Recommendations for Prevention of Intravascular Device-Related Infections; Notice of Comment Period"

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice is a request for review and comment of the draft Guideline for Prevention of Intravascular Device-related Infections. The Guideline consists of two parts: Part 1. "Intravascular Device-related Infections: An Overview" and Part 2. "Recommendations for Prevention of Intravascular Device-related Infections," and was prepared by the Hospital Infection Control Practices Advisory Committee (HICPAC) and the National Center for Infectious Diseases (NCID), CDC.

DATES: Written comments on the draft document must be received on or before October 30, 1995.

ADDRESSES: Comments on this document should be submitted in writing to the CDC, Attention: IV Guideline Information Center, Mailstop E-69, 1600 Clifton Road, NE., Atlanta, Georgia 30333. To order copies of the Federal Register containing the document, contact the U.S. Government Printing Office, Order and Information Desk, Washington, DC 20402-9329, telephone (202) 512-1800. Specify the date of the issue requested and stock number 069-001-00089-1. See page II of the Federal Register for additional ordering and cost information. In addition, the Federal Register containing this draft document may be viewed and photocopied at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries that receive the Federal Register throughout the country. The order-desk operator can tell you the location of the U.S. Government Depository Library nearest you.

FOR FURTHER INFORMATION CONTACT: The IV Guideline Information Center, telephone (404) 332-2569.

SUPPLEMENTARY INFORMATION: This 2-part document updates and replaces the

previously published CDC Guideline for Prevention of Intravascular Infections (Am J Infect Control 1983;11:183-199). Part 1, "Intravascular Device-related Infections: An Overview," reviews issues relevant to intravascular device-related infections and serves as the background for the consensus recommendations of the Hospital Infection Control Practices Advisory Committee (HICPAC) that are contained in Part 2, "Recommendations for Prevention of Intravascular Device-related Infection."

HICPAC was established in 1991 to provide advice and guidance to the Secretary and the Assistant Secretary for Health, DHHS; the Director, CDC; and the Director, NCID regarding the practice of hospital infection control and strategies for surveillance, prevention, and control of nosocomial infections in U.S. hospitals. The committee also advises CDC on periodic updating of guidelines and other policy statements regarding prevention of nosocomial infections.

The Guideline for Prevention of Intravascular Device-related Infections is the third in a series of CDC guidelines being revised by HICPAC and NCID, CDC.

Dated: September 14, 1995.

Claire V. Broome,
Deputy Director, Centers for Disease Control and Prevention (CDC).

Guideline for Prevention of Intravascular Device-Related Infections Executive Summary

The revised guideline is designed to reduce the incidence of intravascular device-related infections and provides an overview of the evidence for recommendations considered prudent by consensus of HICPAC members. A working draft of the guideline was reviewed by experts in hospital infection control, internal medicine, pediatrics, and intravenous therapy; however, all recommendations contained in the guideline may not reflect the opinion of all reviewers.

This document focuses largely on the epidemiology, pathogenesis and diagnosis of, and preventive strategies for, infections associated with the intravascular devices most commonly used in health care settings and for which there is adequate scientific data on which to base recommendations for device use and care. Such devices include peripheral venous and arterial catheters, central venous and arterial catheters, peripherally inserted central venous catheters, and pressure monitoring systems. Newer devices (e.g., antimicrobial-impregnated

catheters, needleless infusion systems) are also discussed. However, intraaortic balloon pumps, cardiac catheters, pacemakers, and extracorporeal membrane oxygenators are not addressed in this document because there is insufficient scientific data on which to base recommendations for use and care.

The unique circumstances and special considerations related to intravascular device-related infections in pediatric patients and infections associated with parenteral nutrition and hemodialysis will be addressed in separate sections.

Introduction

Intravascular devices are indispensable in modern-day medical practice. However, the use of intravascular devices is frequently complicated by a variety of local and/or systemic infectious complications. Infections related to the use of intravascular devices, particularly catheter-related bloodstream infections, are associated with increased morbidity and mortality, prolonged hospitalization, and increased medical costs.

Part 1, "Intravascular Device-related Infections: An Overview" addresses many of the issues and controversies in intravascular-device use and maintenance. These issues include definitions and diagnosis of catheter-related infection, barrier precautions during catheter insertion, changes of catheters and administration sets, catheter-site care, and the use of prophylactic antimicrobials, flush solutions and anticoagulants. Part 2, "Recommendations for Prevention of Intravascular Device-related Infections" provides consensus recommendations of the HICPAC for the prevention and control of infections related to the use of intravascular devices.

The Guideline for Prevention of Intravascular Device-related Infections is intended for use by personnel who are responsible for surveillance and control of infections in the acute-care, hospital-based setting, but many of the recommendations may be adaptable for use in the outpatient or home-care setting.

Part 1. Intravascular Device-Related Infections: An Overview

Contents

- I. Background
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 - Peripheral arterial catheters
 - Midline catheters
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- Central arterial catheters
- Pressure monitoring systems
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Table 1. Definitions for Catheter-related Infection

Table 2. Factors Associated with Infusion-related Phlebitis among Patients with Peripheral Venous Catheters

Figure 1. Potential Sources for Contamination of Intravascular Devices

I. Background

Intravascular devices are indispensable in modern-day medical practice. They are used to administer intravenous fluids, medications, blood products, and parenteral nutrition fluids, and to monitor the hemodynamic status of critically ill patients. However, the use of intravascular-devices is frequently complicated by a variety of local and/or systemic infectious complications (see definitions in Table 1), including septic thrombophlebitis, endocarditis, bloodstream infection (BSI), and metastatic infection (e.g., osteomyelitis, endophthalmitis, arthritis) resulting from hematogenous seeding of another body site by a colonized catheter. Catheter-related infections (CRIs), particularly catheter-related BSIs (CR-BSIs), are associated with increased morbidity; mortality of 10%–20%; prolonged hospitalization (mean of 7 days); and increased medical costs, in excess of \$6,000 (1988 dollars) per hospitalization.^{1–5}

II. Epidemiology

An estimated 200,000 nosocomial BSIs occur each year.⁶ During 1980–1989, significant increases were detected in the rates of nosocomial BSI reported from the National Nosocomial Infection Surveillance (NNIS) System hospitals where hospital-wide surveillance was conducted.⁷ Reported rates increased by 70%–279%, depending on hospital size and affiliation.

Most nosocomial BSIs are related to the use of an intravascular device, with BSI rates being substantially higher among patients with intravascular devices than among those without such devices.⁸ As with overall rates of nosocomial BSI, rates of device-related BSI vary considerably by hospital size, hospital unit/service, and type of device. During the years 1986–1990, NNIS hospitals conducting intensive care unit (ICU) surveillance reported rates of central catheter-related BSI ranging from 2.1 (respiratory ICU) to 30.2 (burn ICU) BSIs per 1,000 central catheter days. Rates of noncentral catheter-related BSI were substantially lower, ranging from 0 (coronary, medical, and medical/surgical ICU) to 2.0 (trauma ICU) BSIs per 1,000 noncentral catheter-days.⁸

The incidence of and potential risk factors for intravascular-device related infections may vary considerably with the type and intended use of the device, and these factors should be considered when selecting a device for use.

In general, intravascular devices can be divided into two broad categories,

those used for short-term, or temporary, vascular access and those used for long-term vascular access. Long-term (indwelling) vascular devices usually require surgical insertion, while short-term devices can be inserted percutaneously.

Devices Used for Short-Term Vascular Access

Peripheral venous catheters. Of all intravascular devices, the peripheral venous catheter is the most commonly used. Phlebitis, largely a physicochemical or mechanical rather than infectious phenomenon, remains the most important complication associated with the use of peripheral venous catheters. A number of factors, including type of infusate and catheter material and size, influence a patient's risk for developing phlebitis (Table 2); when phlebitis does occur, the risk of local CRI may be increased.^{9–13} However, peripheral venous catheters have rarely been associated with BSI;^{9 14–17} this may reflect the short duration of catheterization with these devices.

Peripheral arterial catheters. Peripheral arterial catheters are commonly used in acute-care settings to monitor the hemodynamic status of critically ill patients. Data suggest that peripheral arterial catheters may be associated with a substantially lower risk of local CRI and CR-BSI than are peripheral venous catheters left in place for a comparable length of time.¹⁸ Although the reasons for the differences in rates of CRI associated with these two types of catheters are not clear, arterial catheters may be less prone to colonization than are venous catheters because they are exposed to higher vascular pressures.¹⁹ Factors shown to predispose patients with peripheral arterial catheters to CRI are inflammation at the catheter insertion site, catheterization >4 days, or catheter insertion by cutdown.^{20 21} In contrast to peripheral venous catheters, peripheral arterial catheters inserted in the lower extremities, specifically the femoral area, do not clearly pose a greater risk of infection than do peripheral arterial catheters inserted in upper extremities or brachial areas.²²

In addition to monitoring hemodynamic status, arterial catheters may also be used to administer local intraarterial chemotherapy. Although this is a well-established method for treating metastatic or unresectable tumors, very little has been published on the infectious complications associated with this form of therapy. Maki et al. conducted an epidemiologic investigation of endarteritis associated

with intraarterial chemotherapy administration and identified several risk factors for infection: leukopenia, hypoalbuminemia, prior radiation therapy, difficult catheterization, and repeated manipulation of the catheter.²³

Midline catheters. Midline catheters are peripherally inserted (into antecubital veins), six-inch elastomer catheters that do not enter central veins, but have recently been used as an alternative to central venous catheterization. Presently, there is little published scientific data on which to assess the infectious risks posed by these newer devices.

Nontunneled central venous catheters (CVCs). CVCs account for an estimated 90% of all catheter-related bloodstream infections⁶ and nontunneled (percutaneously-inserted) CVCs are the most commonly used central catheters. Among the factors that influence the risk of infection associated with the use of CVCs are the number of catheter lumens and the site at which the catheter is inserted.

Multilumen CVCs are often preferred by clinicians, because they permit the concurrent administration of various fluids/medications and hemodynamic monitoring among critically ill patients. In nonrandomized trials, multilumen catheters have been associated with a higher risk of infection than have their single-lumen counterparts.²⁴⁻²⁶ In two of three randomized trials multilumen catheters were associated with an increased risk of infection.²⁷⁻²⁹ Multilumen catheter insertion sites may be particularly prone to infection because of increased trauma at the insertion site and/or because multiple ports increase the frequency of CVC manipulation.^{25,26} Although patients with multilumen catheters tend to be more ill, the infection risk found with the use of these catheters may be independent of the patient's underlying disease severity.²⁸

In addition to the number of lumens, the site at which a CVC is inserted may play a major role in CVC-related infections. Five of six studies have shown a significantly higher colonization or infection rate with catheters inserted into the internal jugular vein compared with those inserted into the subclavian vein, with a risk ratio as high as 2.7.³⁰⁻³⁵ Other risk factors for CVC-related infections include repeated catheterization, presence of a septic focus elsewhere in the body, exposure of the catheter to bacteremia, absence of systemic antimicrobial therapy,³¹ duration of catheterization, and type of dressing.³³

Central arterial catheters. Pulmonary artery catheters (PACs) (i.e., Swan

Ganz¹ catheters) differ from CVCs in that they are inserted through a Teflon introducer and typically remain in place an average of only 3 days. However, they carry many of the same risks and have similar rates of BSI as do other central catheters. Risk factors reported for CRI in patients with PACs include duration of catheterization >3 days,³⁶ >5 days,³⁷ or >7 days;²¹ colonization of the skin insertion site;^{36,38} and catheter insertion in the operating room using submaximal barrier precautions (i.e., gloves, small-fenestrated drape).³⁶ Site of insertion may also influence the risk of infection associated with PACs. Two studies suggest that PACs inserted into jugular veins have a higher rate of infection compared with those inserted into subclavian veins;^{36,39} three other studies found no difference in infection rates associated with the two insertion sites.^{37,38,40}

Pressure monitoring systems. Pressure monitoring systems used in conjunction with arterial catheters have been associated with both epidemic and endemic nosocomial BSIs.^{41,42} The first outbreak of infections due to contamination of pressure monitoring systems was reported in 1971;⁴³ subsequently, 26 such outbreaks have been reported.⁴⁴⁻⁴⁸ The final common pathway for microorganisms that enter the bloodstream of patients and cause bacteremia is the fluid column in the tubing between the patient's intravascular catheter and the pressure monitoring apparatus. Microorganisms in a fluid filled system may move from the pressure monitoring apparatus to the patient or from the patient to the pressure monitoring system.⁴²

The earliest outbreaks related to pressure monitoring were due to contaminated infusate⁴³ or failure to sterilize the fluid pathway in reusable transducers, particularly the chamber domes.^{49,50} Because of the difficulties in sterilizing reusable transducers, sterile disposable plastic chamber domes were developed. These domes have a plastic membrane that makes contact with the sensor diaphragm on the head of the transducer and isolates the sterile fluid pathway from the transducer. However, systems containing these disposable domes have also been associated with outbreaks.^{45,46,51,52} While reesterilization of disposable domes may damage the membrane and permit ingress of microorganisms into the sterile fluid pathway,⁵³ in most outbreaks the membranes in the disposable domes

remained intact.^{46,51} A study in 1979 showed that fluid used to fill the space between the transducer head and the membrane of the disposable dome frequently contaminated the hands of the operator and that the system was inoculated by touch contamination during the subsequent assembly of the pressure monitoring system.⁵² This mode of contamination is most likely to occur when glucose solutions are used between the transducer head and the chamber dome membrane and when transducers are not effectively decontaminated between uses.⁵⁴ Most outbreaks that have occurred since the introduction of the disposable chamber dome have been due to this type of contamination.⁵⁴

Other mechanisms by which pressure monitoring systems have been contaminated include contamination of infusate,⁴¹ in-use contamination of the system by nonsterile calibrating devices,⁵⁵ contamination of the system by ice used to chill syringes,⁵⁶ introduction of microorganisms into the system by contaminated disinfectant⁴⁹ and in-use contamination of the system related to blind, stagnant columns of fluid between the transducer and infusion system.⁴² The importance of the latter mechanism in contamination was shown by a substantial drop in contamination of the system after introduction of a continuous flush device that eliminated the stagnant column of fluid.⁵⁷

To date, no outbreaks have been reported with the use of disposable pressure transducers. A prospective study of disposable transducers has shown a very low rate of associated infection (one case of bacteremia in 157 courses of pressure monitoring).⁵⁸ This study also showed that disposable transducers can be safely used for 4 days.⁵⁸ Disposable transducers were used as a control measure in one reported outbreak caused by contaminated reusable transducers.⁴⁵

Peripherally Inserted CVCs

Peripherally inserted CVCs (PICCs) are inserted into the right atrium by way of the cephalic and basilar veins of the antecubital space and provide an alternative to subclavian or jugular vein catheterization and, because they do not require surgical insertion, cost much less to insert than tunneled subclavian catheters or subcutaneous ports. PICCs have been used for a variety of purposes, including total parenteral nutrition (TPN) administration, and their use appears to be associated with a rate of infection similar to that reported with other percutaneously inserted CVCs.⁵⁹ Further studies are

¹ Use of trade names is for identification only and does not imply endorsement by the U.S. Public Health Service or the U.S. Department of Health and Human Services.

needed to adequately determine how long PICCs can safely be left in place^{59,60} and to determine the epidemiology and microbiology of associated infections.

Devices Used for Long-Term Vascular Access

Tunneled central venous catheters. Surgically implanted right atrial catheters, including Hickmans, Broviacs, Groshongs, and Quintons, are commonly used to provide vascular access to patients requiring prolonged intravenous therapy (e.g., chemotherapy or home-infusion therapy, hemodialysis). In contrast to percutaneously inserted (nontunneled) CVCs, these catheters have a tunneled portion exiting the skin and a Dacron cuff just inside the exit site. The cuff inhibits migration of organisms into the catheter tract by stimulating growth of the surrounding tissue, thus sealing the catheter tract and providing a natural anchor for the catheter. In general, the rates of infections reported with the use of tunneled catheters have been significantly lower than those reported with the use of nontunneled CVCs;⁶¹⁻⁶⁹ however, two recent studies, one randomized, found no significant difference in the rates of infection among tunneled and nontunneled catheters.^{59,70}

Totally implantable intravascular devices (TIDs). TIDs are also tunneled beneath the skin, but have a subcutaneous port or reservoir with a self-sealing septum that is accessed by needle puncture through intact skin. TIDs offer the advantage of improved patient image and obviate the need for routine catheter-site care. Among devices used for long-term vascular access, TIDs have the lowest reported rates of catheter-related BSI,⁷¹⁻⁸¹ possibly because they are located beneath the skin with no orifice for ingress of microorganisms.

Recently, several investigators have attempted to compare the infectious morbidity associated with TIDs and other tunneled catheters. In one randomized study, TIDs and Hickman catheters had comparable rates of infection.⁷⁸ In another randomized study, TIDs had lower rates of infection compared with other tunneled catheters.⁷⁹ Groeger et al. conducted one of the largest comparisons of the infectious complications associated with long-term vascular access devices to date. In this prospective examination of 1431 devices in patients with cancer, TIDs (0.21 infections per 1,000 device-days) had a significantly lower rate of infectious complications compared with other tunneled catheters (2.77 infections

per 1,000 device days, $p < 0.001$).⁸⁰ However, the devices in Groeger's study were not randomly assigned, thus the differences observed may be due to factors other than those inherent to the devices. Existing data suggest that either of the indwelling devices can be safely used with a low risk of infection. The selection of a given device depends on the intended use, patient population, and patient/practitioner preference.

III. Microbiology

Over the past two decades, there has been a marked change in the distribution of pathogens reported to cause nosocomial BSIs.^{7,82,83} Since the mid-1980's, an increasing proportion of nosocomial BSIs reported to NNIS have been due to gram-positive, rather than gram-negative, species. Moreover, a major portion of the overall increase in nosocomial BSIs reported to NNIS during the past decade was due to significant increases in four pathogens: coagulase-negative staphylococci (CoNS), *Candida spp.*, enterococci, and *Staphylococcus aureus*. The distribution of these pathogens varied by hospital size and affiliation (i.e., teaching, nonteaching).⁷

CoNS, particularly *S. epidermidis*, have become the most frequently isolated pathogens in CRIs and accounted for an estimated 28% of all nosocomial BSIs reported to NNIS during 1986-89.^{7,84} The emergence of CoNS as the primary pathogen causing CRIs can be attributed to several factors: (1) increased use of prosthetic/indwelling devices (e.g., intravascular catheters);⁸⁵ (2) improved survival of low birthweight neonates and increased use of intralipids in these patients;⁸⁶ and (3) recognition of CoNS as true nosocomial pathogens rather than harmless commensals.⁷ The prevalence of these pathogens also shows that the hands of healthcare workers (HCWs) and the flora of patients' skin are likely the predominant sources of pathogens for most CRIs.

Prior to 1986, *S. aureus* was the most frequently reported pathogen causing nosocomial BSIs.⁸⁴ Now, *S. aureus* accounts for an estimated 16% of reported nosocomial BSIs.⁸⁷ *S. aureus* BSIs may be complicated by metastatic foci of infection (e.g., vertebral osteomyelitis) and endocarditis.⁸⁸⁻⁹⁰

Enterococci, another emerging nosocomial bloodstream pathogen, accounted for 8% of nosocomial BSIs reported to NNIS during 1986-1989.⁸⁴ More alarming, has been the emergence of vancomycin-resistant enterococci (VRE). During 1989-1993, 3.8% of the blood isolates from BSIs reported to NNIS were vancomycin resistant.

Although data were not available to adequately assess the attributable mortality of either the BSI or the antimicrobial resistance of the isolate, mortality was significantly higher among patients whose isolates were vancomycin resistant (36.6%) than among those whose isolates were vancomycin susceptible (16.4%).⁹¹ Risk factors associated with VRE BSIs include receipt of antimicrobials (including vancomycin), gastrointestinal colonization with VRE, underlying disease severity (e.g., in oncology or transplant patients), abdominal or cardiac surgical procedures, use of indwelling devices, and prolonged hospital stay.⁹²⁻⁹⁹ Although enterococcal BSIs may arise from the patients' endogenous flora, nosocomial transmission of VRE via the hands of HCWs,⁹³ patient-care equipment,¹⁰⁰ and contaminated environmental surfaces^{92,93} has also been suggested by the findings of recent outbreak investigations. The emergence of enterococci as significant nosocomial bloodstream pathogens is likely due, in part, to the increased use of invasive devices and the injudicious use of broad-spectrum antimicrobials for treatment and prophylaxis of infections.¹⁰¹⁻¹⁰⁵

Fungal pathogens represent an increasing proportion of nosocomial BSIs. During 1980-1990, NNIS hospitals reported a nearly fivefold increase in the rate of nosocomial fungal BSIs (1.0 to 4.9/10,000 discharges) and a nearly twofold increase in the proportion of BSIs due to fungal pathogens (5.4 to 9.9%).¹⁰⁶ Such increases were detected for hospitals of all sizes and affiliations and on all major hospital services. *Candida spp.*, particularly *C. albicans*, accounted for >75% of all nosocomial fungal infections reported to NNIS during this period. Candidemia has traditionally been thought to arise from the endogenous flora of colonized patients,¹⁰⁷⁻¹⁰⁹ but recent epidemiologic studies, assisted by the use of molecular typing, show that exogenous infection due to administration of contaminated fluids,^{110,111} use of contaminated equipment,¹¹² cross-infection,¹¹³⁻¹¹⁷ and the colonized hands of HCWs¹¹⁸⁻¹²² are also important contributors to candidemia among hospitalized patients.

Although less commonly implicated than either gram-positive bacterial or fungal species as a cause of BSI, gram-negative microorganisms account for the majority of CRIs associated with the use of arterial catheters. Moreover, it has been suggested that clusters of infections caused by certain gram-negative species, such as *Enterobacter*

spp., *Acinetobacter spp.*, *S. marcescens* or non-aeruginosa pseudomonads, should automatically raise suspicion of a common source, such as a contaminated pressure monitoring device. The predominance of gram-negative microorganisms in infections associated with pressure monitoring devices may be due to concomitant receipt of broad-spectrum antimicrobials by patients undergoing hemodynamic monitoring.

IV. Pathogenesis

The pathogenesis of CRIs is multifactorial and complex (Figure 1), but available scientific data show most CRIs appear to result from migration of skin organisms at the insertion site into the cutaneous catheter tract with eventual colonization of the catheter tip.¹²³⁻¹²⁶ However, there is a smaller, but growing, body of data to suggest that hub contamination can be an important contributor to intraluminal colonization of catheters, particularly long-term catheters.¹²⁷⁻¹³⁰

The relative importance of these two mechanisms of catheter contamination is the source of continuing debate. Recent findings suggest that duration of catheterization influences which of the two mechanisms predominates. Using electron microscopy, Raad demonstrated that hub contamination was the more likely mechanism of infection for long-term catheters (i.e., in place >30 days), while skin contamination was the more likely mechanism for short-term catheters (i.e., <10 days).¹³⁰ Although much less common than either of these two mechanisms, hematogenous seeding of the catheter tip from a distant focus of infection or administration of contaminated infusate may also cause CRIs.^{128 131-134}

Two other important pathogenic determinants of CRI are (1) the material of which the device is made, and (2) the intrinsic properties of the infecting organism. In vitro studies show that catheters made of polyvinyl chloride or polyethylene appear to be less resistant to the adherence of microorganisms than are newer catheters made of Teflon, silicone elastomer, or polyurethane.¹³⁵⁻¹³⁷ Some catheter materials also have surface irregularities that may further enhance the microbial adherence of certain species (e.g., CoNS, *Acinetobacter calcoaceticus*, and *Pseudomonas aeruginosa*).^{138 139} Thus, catheters made of certain materials may be more prone to microbial colonization and subsequent infection. Additionally, certain catheter materials are more thrombogenic than others, a characteristic that also may predispose

to catheter colonization and catheter-related infection.¹⁴⁰

The adherence properties of a given microorganism are also important in the pathogenesis of CRI. For example, *S. aureus* can adhere to host proteins (e.g., fibronectin) commonly present on catheters,^{141 142} and CoNS, the most frequent etiologic agents in CRIs, adhere to polymer surfaces more readily than do other common nosocomial pathogens such as *E. coli* or *S. aureus*.¹⁴³ Additionally, certain strains of CoNS produce an extracellular polysaccharide often referred to as "slime." In the presence of catheters, this slime potentiates the pathogenicity of CoNS by allowing them to withstand host defense mechanisms^{144 145} (e.g., acting as a barrier to engulfment and killing by polymorphonuclear leukocytes) or by making them less susceptible to antimicrobial agents¹⁴⁶ (e.g., forming a matrix that binds antimicrobials before their contact with the organism cell wall). More recent studies suggest that certain *Candida spp.*, in the presence of glucose-containing fluids, may produce "slime" similar to that of their bacterial counterparts, potentially explaining the increased proportion of BSIs due to fungal pathogens among patients receiving parenteral nutrition fluids.¹⁴⁷

V. Definitions and Diagnosis of Catheter-Related Infections

Establishing a clinical diagnosis of CRI, especially catheter-related BSI, is often difficult. Diagnosis is typically based on clinical and/or laboratory criteria, with each having significant diagnostic limitations. The introduction of semiquantitative methods for culturing catheters has greatly enhanced our ability to diagnose CRIs. Both semiquantitative and quantitative methods have greater specificity in identifying CRI than do traditional broth cultures, where a clinically insignificant inocula of microorganisms can result in a positive catheter culture.^{31 148}

However, interpretation of the results of these culture methods may vary depending on the type and location of the catheter and the culture methodology used. The use of varying definitions in studies of CRI have made it difficult to compare existing studies of these infections.

The predictive values of semiquantitative and quantitative methods may vary, depending on the source of catheter colonization.¹³⁰ For example, if the skin is the primary source of catheter colonization, methods that culture the external surface of the catheter may be preferable. Conversely, if hub contamination is the primary mechanism for catheter colonization,

methods that culture both the external and internal surfaces may have greater yield.¹³⁰ As the use of antimicrobial-coated catheters becomes more prevalent, existing definitions of catheter colonization and CRI may need to be modified.

Infections Associated with Short-Term Catheters

The most widely used laboratory technique for diagnosis of CRI is the roll-plate method described by Maki et al.¹⁴⁸ This method cultures a segment of the catheter after it has been removed from the patient by rolling the catheter segment across the surface of an agar plate and determining the number of bacterial colonies present after overnight incubation. Growth of ≥ 15 colony forming units (cfus) from a proximal or distal catheter segment by semiquantitative culture in the absence of accompanying signs of inflammation at the catheter site is considered indicative of catheter colonization. Growth of ≥ 15 cfus from a catheter by semiquantitative culture with accompanying signs of inflammation (e.g., erythema, warmth, swelling, or tenderness) at the device site is indicative of local CRI. In the absence of semiquantitative culture, CRI may be diagnosed when there is purulent drainage from the skin-catheter junction. Limitations of the roll plate method are that it requires removal of the catheter and overnight incubation before results become available.

Cooper et al. proposed direct gram-staining of catheters on removal as a rapid way to diagnose catheter infection and as a complement to semiquantitative culture.¹²⁶ However, this method appears to be considerably more time-consuming than semiquantitative culture and, thus, may be impractical for routine diagnostic use.

Acridine-orange staining of catheters has been proposed as a modification of the gram-staining technique.¹⁴⁹ Although similar to gram-staining, acridine-orange staining is a single-step procedure that uses a fluorescent dye to enhance detection of microorganisms in clinical specimens. This procedure avoids many of the technical shortcomings encountered with the direct gram-staining technique, but confirmatory studies documenting its quantitative test performance are needed before it can be recommended.

The most sensitive technique for diagnosis of CRI is quantitative culture. To culture a catheter quantitatively, the catheter segment is either flushed with and then immersed in broth¹⁵⁰ or placed in broth and sonicated,^{151 152} the

broth recovered from these procedures is cultured quantitatively. Sonication releases microorganisms from both the luminal and external surfaces of the catheter and thus may have greater sensitivity for diagnosing CRIs, especially those associated with central venous and arterial catheters, than do methods that only culture the external surface of the catheter.¹⁵²

All semiquantitative and quantitative catheter culture methods require removal of the implicated catheter, but the venous access site can be preserved by removing the catheter over a guidewire and inserting a new catheter over the guidewire. The proximal and distal segments of the catheter removed over the guidewire are cultured using the semiquantitative technique.¹⁵³ If a catheter is removed over a guidewire and has a negative culture, the catheter inserted over the guidewire may be left in place. If the catheter removed over a guidewire has a culture result suggesting colonization/infection, the second catheter should be removed, and a new catheter inserted at a new site.^{59 131 153}

Quantitative blood culturing techniques have been developed for diagnosis of CR-BSI in patients where catheter removal is undesirable because of limited vascular access. These techniques rely on quantitative culture of paired blood samples, one obtained through the central catheter and the other from a peripheral venipuncture site. In most studies, a colony count from the blood obtained from the catheter that is five to tenfold greater than the colony count from the blood obtained from a peripheral vein has been predictive of CR-BSI.¹⁵⁴⁻¹⁵⁶

Infections Associated With Long-Term Catheters

The use of these indwelling catheters may be complicated by a variety of local infectious complications: exit-site, tunnel, or pocket infections, as defined in Table 1.⁶⁹ However, clinical diagnosis of CRI involving the intravascular portion of indwelling catheters is particularly difficult; thus, laboratory diagnosis is important. The utility of the roll-plate method for diagnosis of infection associated with long-term vascular access devices has not been evaluated, but recovery of ≥ 15 cfus on semiquantitative culture of a catheter segment may be diagnostic of colonization of the intravascular segment. BSI resulting from a colonized intravascular segment may also be suspected if ≥ 10 -fold higher concentration of microorganisms on quantitative culture of blood obtained from the catheter compared with the

concentration of microorganisms in blood obtained from a peripheral venous site.¹⁵⁷⁻¹⁵⁹

Catheter-Related Bloodstream Infection

CR-BSI is most stringently defined as isolation of the same organism (i.e., identical species, antibiogram) from semiquantitative or quantitative cultures of both a catheter segment and the blood (preferably drawn from a peripheral vein) of a patient with accompanying clinical symptoms of BSI and no other apparent source of infection. In the absence of laboratory confirmation, defervescence after removal of an implicated catheter from a patient with BSI is also considered indirect evidence of CR-BSI.

Infusate-Related Bloodstream Infection

Since BSI may result from the administration of contaminated intravenous fluids, culturing intravenous fluids should be part of an investigation of potential sources of infection. Infusate-related BSI is usually defined as the isolation of the same organism from both infusate and separate percutaneous blood cultures, with no other identifiable source of infection.

VI. Strategies for Prevention of Catheter-Related Infections

Strict adherence to handwashing and aseptic technique remains the cornerstone of prevention of CRIs; however, other measures may confer additional protection and must be considered when formulating preventive strategies. These measures include the selection of an appropriate site of catheter insertion, selection of appropriate catheter material(s), use of barrier precautions during catheter insertion, change of catheters and administration sets at appropriate intervals, catheter-site care, and the use of filters, flush solutions, prophylactic antimicrobials, and newer intravascular devices (e.g., impregnated catheters, needleless infusion systems).

Site of Catheter Insertion

The site at which a catheter is placed may influence the subsequent risk of CRI. For peripheral venous catheters, lower extremity insertions pose a greater risk of phlebitis than do those inserted in the upper extremity, and upper extremity sites differ in their risk for phlebitis.¹⁶⁰⁻¹⁶⁴ Peripheral venous catheters inserted into hand veins have a lower risk of phlebitis than do those inserted in upper arm or wrist veins.⁶

Among CVCs, catheters inserted into subclavian veins have a lower risk for infection than do those inserted in

either jugular or femoral veins.^{31-36 39} Internal jugular insertion sites may pose a greater risk for infection because of their proximity to oropharyngeal secretions, and because catheters at internal jugular sites are difficult to immobilize. However, mechanical complications associated with insertion are less common with internal jugular vein insertion than with subclavian venous catheterization.

Type of Catheter Material

The relationship between catheter material and infectious morbidity has been largely examined by the study of peripheral venous catheters. The majority of peripheral venous catheters in the U.S. are made of Teflon or polyurethane, and these catheters appear to be associated with fewer infectious complications than are catheters made of polyvinyl chloride or polyethylene.^{17 135 165} In one large, randomized prospective study of Teflon and polyurethane catheters, the two types of catheters had comparable rates of local infection, 5.4% and 6.9%, respectively,¹⁷ but polyurethane catheters were associated with a nearly 30% lower risk of phlebitis when compared with Teflon catheters. In this trial, neither the Teflon nor polyurethane catheter was associated with BSI.¹⁷ By contrast, polyvinyl chloride or polyethylene catheters have been associated with BSI rates ranging from 0%-5%.^{166 167}

Steel needles, used as an alternative to synthetic catheters for peripheral venous access, have the same rate of infectious complications as do Teflon catheters.^{168 169}

However, the use of steel needles is frequently complicated by infiltration of intravenous fluids into the subcutaneous tissues, a potentially serious complication if the infused fluid is a vesicant.¹⁶⁹ In view of the low rates of BSI seen with newer Teflon and polyurethane catheters, the relative risks and benefits of using steel needles must be evaluated on an individual patient basis.

Catheter material seems to also be an important determinant in the risk of infection associated with CVCs. Most CVCs used in the U.S. are made of polyurethane, polyvinyl chloride, polyethylene, or silicone. In one small, prospective trial comparing silicone with polyvinyl TPN catheters, silicone catheters had a significantly lower rate of CR-BSI than did polyvinyl chloride catheters, 0.83 and 19 per 1,000 catheter days, respectively; however, the silicone catheters were tunneled, and the polyvinyl chloride catheters were largely nontunneled. The polyvinyl

chloride catheters also were associated with a higher risk of mechanical complications (i.e., breakage, blockage, displacement, and thrombosis).¹⁷⁰ Because of the potential confounding caused by the different types of catheters in this comparison (i.e., tunneled vs. nontunneled), appropriate conclusions about the contribution of catheter material to CVC-related infections can not be drawn.

Barrier Precautions During Catheter Insertion

It is generally accepted that good handwashing before and attention to aseptic technique during insertion of peripheral venous catheters provide adequate protection against infection. Central venous catheterization, however, carries a significantly greater risk of infection, and the level of barrier precautions needed to prevent infection during insertion of CVCs has been a source of debate.

Until recently, it was assumed that catheters inserted in the operating room posed a lower risk of infection than did those inserted on inpatient wards or other patient-care areas. However, data from two recent prospective studies suggest that the difference in risk of infection depends largely on the magnitude of barrier protection used during catheter insertion, rather than the sterility of the surrounding environment (i.e., ward vs. operating room)^{36 171}; CVCs or PACs inserted in the operating room using submaximal barrier precautions (i.e., gloves, small fenestrated drape) were more likely to become colonized and to be associated with subsequent BSI than were those inserted on the ward or in the ICU using maximal barrier precautions (i.e., gloves, gown, large drape, masks). These data suggest that if maximal barrier precautions are used during CVC insertion, catheter contamination and subsequent CVC-related infections can be minimized, irrespective of whether the catheter is inserted in the operating room or at the patient's bedside.^{171 172}

Changing Catheters and Administration Sets

Intravenous administration set changes. The optimal interval for routinely changing intravenous administration sets used for patient care has been examined in three well-controlled studies. Data from each of these studies show that changing administration sets ≥ 72 -hours after initiation of use is not only safe, but cost-beneficial.¹⁷³⁻¹⁷⁵ However, because certain fluids (i.e., blood, blood products, TPN, and lipid emulsions) are more likely than other parenteral fluids

to support microbial growth if contaminated,^{132 176-179} more frequent tubing changes may be required when such fluids are administered.

A common component of intravenous administration sets is the stopcock. Stopcocks are used for injection of medications, administration of intravenous infusions, or collection of blood samples and, thus, represent a potential portal of entry for microorganisms into vascular catheters or intravenous fluids. Although stopcock contamination is common, ranging between 45% and 50% in most series, the relative contribution of stopcock contamination to intravascular catheter or intravenous fluid contamination is unclear. Few studies have been able to demonstrate that the organism(s) colonizing stopcocks is the same one responsible for CRI.^{180 181} Data suggest that the use of a closed-needle sampling system can significantly reduce sampling-port and intravenous fluid contamination.^{182 183}

"Piggyback" systems may be used as an alternative to stopcocks. However, they also pose a risk for contamination of the intravascular fluid if the needle entering the rubber membrane of an injection port is partially exposed to air, or comes into direct contact with the tape used to fix the needle to the port. A recently described "piggyback" system appears to prevent contamination at these sites and reduces the incidence of CR-BSI sixfold compared with conventional stopcock and "piggyback" systems.¹⁸²

Intravenous catheter changes. Routine or scheduled change of intravascular catheters has been advocated as a method to reduce CRIs. Studies of peripheral venous catheters show that the incidences of thrombophlebitis and bacterial colonization of catheters seem to increase dramatically when catheters are left in place >72 hours.^{12 168} Both phlebitis and catheter colonization have been associated with an increased risk of CRI. Because of the increased risk of infection, as well as patient discomfort associated with phlebitis, peripheral catheter sites are commonly rotated at 48-72 hour intervals to reduce the risk of phlebitis.

In the maintenance of CVCs, decisions regarding the frequency of catheter change are substantially more complicated. Some investigators have shown duration of catheterization to be a risk factor for infection,^{33 35 184 185} and routine change of CVCs at specified intervals has been advocated as a measure to reduce infection. However, more recent data suggest that the daily risk of infection remains constant and show that routine changes of CVCs,

without a clinical indication, do not reduce the rate of catheter colonization or the rate of catheter-related BSI.^{186, 187}

The method of replacing CVCs has also been a topic of controversy and intensive study. CVCs can be changed by placing a new catheter over a guidewire at the existing site or by inserting the new catheter at another site. Catheter replacement over a guidewire has become an accepted technique for changing a malfunctioning catheter or exchanging a PAC for a CVC when invasive monitoring is no longer needed. Catheters inserted over a guidewire are associated with less discomfort and a significantly lower rate of mechanical complications than are those percutaneously inserted at a new site.^{131 186 188 189} Guidewire-assisted exchange may, however, be accompanied by complications, most notably bleeding at the site, hydrothorax, and subsequent infection of the newly placed catheter.^{131 189}

Studies examining the infectious risks associated with guidewire insertions have yielded conflicting results. Three prospective studies (two randomized) have shown no significant difference in infection rates between catheters inserted percutaneously and those inserted over a guidewire.^{153 187 190} One prospective randomized study has shown a significantly higher rate of BSIs associated with catheters changed over a guidewire compared with catheters inserted percutaneously.¹⁸⁶ Most investigators agree that if guidewire-assisted catheter change occurs in the setting of an CRI, the newly placed catheter should be removed (131, 153, 187, 188).

Catheter-Site Care

Cutaneous antiseptics and antimicrobial ointments. Skin cleansing/antiseptics of the insertion site is regarded as one of the most important measures for preventing CRI, but comparative studies of cutaneous antiseptics have largely examined its efficacy in eradicating bacterial flora from the hands of hospital personnel.^{191 192} However, in one trial, the effectiveness of 2% chlorhexidine, 10% povidone-iodine, and 70% alcohol¹⁹³ as cutaneous antiseptics were compared in preventing central venous and arterial CRIs. The rate of catheter-related BSI when chlorhexidine was used for catheter site preparation was 84% lower than the rates when the other two antiseptic regimens were used; however, the 2% chlorhexidine preparation used in this trial is not currently available in the U.S. More recently, a sustained-release chlorhexidine gluconate patch (250 mu/

mg dressing) has been introduced as a dressing for catheter insertion sites. In one randomized trial of epidural catheters, the use of these patches significantly reduced the incidence of catheter colonization.¹⁹⁴ However, the efficacy of the chlorhexidine patch in reducing intravascular device-related infection still needs to be determined.

Tincture of iodine also has been widely used in hospitals for skin antiseptics before catheter insertion, but its efficacy in reducing catheter colonization and infection have not been thoroughly evaluated. Data derived from examining its use as an antiseptic prior to blood culturing suggest that it, like 70% alcohol and 10% povidone iodine, may be an effective cutaneous antiseptic for preparation of the skin prior to insertion of intravascular catheters.¹⁹⁵ However, tincture of iodine may cause skin irritation.¹⁹⁵

The application of antimicrobial ointments to the catheter site at the time of catheter insertion and/or during routine dressing changes has also been used to reduce microbial contamination of catheter-insertion sites. Studies of the efficacy of this practice in preventing CRIs have yielded contradictory findings.^{30 196-200} Moreover, the use of polyantibiotic ointments that are not fungicidal may significantly increase the rate of colonization of the catheter by *Candida* spp.^{198 200 201}

Recently, topical mupirocin, a nonsystemic anti-staphylococcal antimicrobial with documented efficacy in reducing nasal staphylococcal spp. carriage,²⁰² has been used for cutaneous antiseptics in conjunction with 2.5% tincture of iodine prior to catheter insertion. Used in this way, mupirocin was reported to reduce the incidence of internal jugular catheter colonization among cardiac surgery patients. However, the utility of mupirocin in reducing the rate of colonization of peripheral or arterial catheters has not been demonstrated²⁰³ and its use on catheter sites has not been approved. Moreover, mupirocin resistance has been reported (204-206). Controlled studies are needed to fully evaluate the effectiveness and potential adverse effects of mupirocin use for catheter-site maintenance.

Catheter-site dressing regimens.

Transparent, semipermeable, polyurethane dressings have become a popular means of dressing catheter-insertion sites. These transparent dressings reliably secure the device, permit continuous visual inspection of the catheter site, permit patients to bathe and shower without saturating the dressing, and require less frequent changes than do standard gauze and

tape dressings, thus saving personnel time. Nevertheless, the use of transparent dressings remains one of the most actively researched, and controversial, areas of catheter site care. Some studies suggest that their use increases both microbial colonization of the catheter site and the risk of subsequent CRI,^{15 207-210} while other studies have shown no difference in catheter colonization and infection rates between the use of transparent dressings and gauze and tape dressings.^{10 165 211} The potential risk of infection posed by transparent dressings appears to vary with the type of catheter (peripheral or central venous catheter) they are used to dress and, perhaps, with the season of the year.^{10 15 209}

In the largest controlled trial of dressing regimens to date, Maki et al. examined the infectious morbidity associated with the use of transparent dressings on >2,000 peripheral catheters.¹⁶⁵ Their findings suggest that the rate of catheter colonization among catheters dressed with transparent dressings (5.7%) is comparable to that of those dressed with gauze (4.6%) and that there are no clinically important differences in either the incidences of catheter-site colonization or phlebitis between the two groups. Further, these data suggest that transparent dressings can be safely left on peripheral venous catheters for the duration of catheter insertion without increasing the risk of thrombophlebitis.¹⁶⁵

Studies of the use of transparent dressings on CVCs have also yielded contradictory findings. Some investigators have found an increased risk of CRI among CVCs with a transparent dressing compared with those gauze;^{209 210} others have found the risk of infection posed by these two types of dressings to be comparable.^{211 212} Most of the data on the use of transparent dressings on CVCs are derived from studies of short-term nontunneled devices and little data have been published regarding the use of transparent dressings on long-term, tunneled CVCs.²¹³ In a metaanalysis of catheter dressing regimens, CVCs on which a transparent dressing was used had a significantly higher incidence of catheter tip colonization, but a nonsignificant increase in the incidence of CR-BSI.²¹⁴ Preliminary data suggest that newer transparent dressings that permit the escape of moisture from beneath the dressing may be associated with lower rates of skin colonization and CRI,^{213 215} but the length of time that a transparent dressing can be safely left on a CVC catheter site is unknown.

Collodion has also been evaluated for use as a potential dressing for catheter

sites. One small (n=34), retrospective study of its use on CVCs reported a low incidence of CRIs, despite catheters remaining in place an average of 16.5 days.²¹⁶ However, before collodion can be recommended for routine use as a catheter site dressing, randomized trials comparing collodion to existing dressings should be done.

In-Line Filters

In-line filters may reduce the incidence of infusion-related phlebitis (217-220), but there are no data to support their efficacy in preventing infections associated with intravascular devices and infusion systems. Proponents of the use of filters cite a number of potential benefits: (1) reducing the risk of infection from contaminated infusate or proximal contamination (i.e., introduced proximal to the filter); (2) reducing the risk of phlebitis in patients who require high doses of medication (e.g., antimicrobials) or in those in whom infusion-related phlebitis has already occurred; (3) removing particulate matter that may contaminate intravenous fluids;²²¹ and (4) filtering endotoxin produced by gram-negative organisms in contaminated infusates.²²² These theoretical advantages must be tempered by the knowledge that infusate-related BSI rarely occurs and that pre-use filtration in the pharmacy is a more practical, and less costly, way to remove particulates from infusates. Furthermore, in-line filters may become blocked, especially with certain solutions (dextran, lipids, mannitol), and consequently increase line manipulations and/or decrease the availability of administered drugs.²²³ Because of these potential untoward effects, the routine use of in-line filters may increase cost, personnel time, and possible infections.²²⁴

Silver-Chelated Collagen Cuffs

Since 1987, a silver-chelated, collagen cuff that is attachable to percutaneously inserted CVCs has been commercially available. Similar to the cuff used on Hickman and Broviac catheters, this cuff is designed to form a mechanical barrier to skin microorganisms migrating into the cutaneous catheter tract;^{201 225} the silver provides an additional antimicrobial barrier.^{201 225} Two randomized controlled trials examining the efficacy of silver-chelated collagen cuffs have been published. In the first trial, cuffed CVCs were associated with a threefold lower risk of catheter colonization and a nearly fourfold lower risk of CR-BSI compared with traditional noncuffed CVCs.²²⁵ In the second trial, a 78% reduction in

catheter colonization and a 100% reduction in CR-BSI were observed with these devices.²⁰¹ The relative contribution of the cuff versus the antimicrobial properties of the silver preventing CRI is uncertain. No controlled trials examining the efficacy of cuffs without antiseptic or antimicrobial coating have been published.

The protective effect of these cuffed CVCs appears to be immediate and exceeds that seen with the use of antimicrobial ointment alone.²⁰¹ However, cuffs appear to be most beneficial with catheters left in place for >4 days.²²⁵ Studies on the efficacy of these cuffs in preventing infection with longer-term CVCs (i.e., >20 days) have not been published.

Antimicrobial-Impregnated (Coated) Catheters

In animal models, antimicrobial or antiseptic impregnation of catheters appears to reduce bacterial adherence and biofilm formation,²²⁶⁻²²⁷ but the utility of these impregnated catheters in clinical settings has only recently been evaluated. Kamal et al. conducted a large, randomized, prospective trial among SICU patients to evaluate a CVC bonded with cefazolin for the entire length of its external and luminal surfaces.²²⁸ The authors found a sevenfold reduction in the incidence of catheter colonization (2% vs 14%), but no difference in catheter-site inflammation (i.e., culture-negative inflammation of the insertion site). No bacteremias occurred in either group. The authors suggest that antimicrobial coating of the luminal surfaces of catheters may be particularly beneficial in reducing the risk of infection resulting from hub contamination.

Data supporting the utility of antimicrobial coating for peripheral catheters are much less conclusive. Kamal et al. also studied a small number of peripheral arterial catheters as part of their evaluation of the cefazolin-impregnated catheter.²²⁸ Although impregnated peripheral arterial catheters had a fivefold lower incidence of CRI compared with noncoated catheters (3% vs 15%), this difference was not statistically significant. The lack of demonstrable efficacy of antimicrobial coating of peripheral arterial catheters in reducing CRI may be due, in part, to the inherently low incidence of CRI associated with the use of peripheral arterial catheters.

Of the studies reported to date, antimicrobial-coated catheters do not appear to pose any greater risk of adverse effects than do noncoated catheters, but additional controlled

trials need to be done to fully evaluate their efficacy, determine the appropriate situations for their use, and assess the risk of emergence of resistant bloodstream pathogens.

Intravenous Therapy Personnel

Because insertion and maintenance of intravascular catheters by inexperienced staff may increase the risk of catheter colonization¹⁵³ and CR-BSI, many institutions have established infusion therapy teams. Available data suggest that trained personnel designated with the responsibility for insertion and maintenance of intravascular devices provide a service that effectively reduces CRIs and overall costs.²²⁹⁻²³¹

Prophylactic Antimicrobials

Prophylactic administration of antimicrobials has been used to reduce the incidence of CR-BSIs, but scientific studies on the efficacy of this practice are inconclusive. Two published studies, one randomized²³² and one nonrandomized,²³³ suggest that antimicrobials administered systemically at the time of (or immediately after) insertion of a CVC may reduce the incidence of CR-BSI. Two randomized trials of systemically administered antibiotics demonstrated no benefit of such prophylaxis.²³⁴⁻²³⁵ One randomized controlled trial showed a significant protective effect of a heparin-vancomycin flush solution used daily in immunocompromised patients with tunneled CVCs.²³⁶ Two other randomized controlled trials have examined the effect of continuous low dose (25µg) vancomycin, added to TPN fluids, in reducing the incidence of CoNS BSI in low birthweight infants.²³⁷⁻²³⁸ In one of these trials, the incidence of CoNS BSI decreased from 34% to 1.4% ($P < 0.001$) among neonates weighing <1500 gm.²³⁷ However, 4/71 (5.6%) treated neonates developed a BSI due to gram-positive cocci after vancomycin prophylaxis was completed. The other trial studied neonates weighing <1000 gm and found that the use of vancomycin was associated with a significantly lower incidence (0% vs 15%) of CoNS CR-BSI.²³⁸ Although prophylactic administration of vancomycin decreased the incidence of CoNS BSI, it did not decrease overall mortality among low birth weight infants in either study. Further studies are needed to assess the additional benefit afforded by prophylactic antimicrobials in reducing CRIs when standard infection control measures are adhered to and to assess the concern that such prophylaxis may select for resistant microorganisms,

particularly those resistant to vancomycin.

Flush Solutions, Anticoagulants, and Other Intravenous Additives

Flush solutions are designed to prevent thrombosis, rather than infection, but thrombi and fibrin deposits on catheters may serve as a nidus for microbial colonization of the intravascular devices. Furthermore, catheter thrombosis appears to be one of the most important factors associated with infection of long-term catheters.⁶⁹⁻²³⁹ Thus, the use of anticoagulants (e.g., heparin) or thrombolytic agents may have a role in the prevention of CR-BSI. However, several recent studies suggest that 0.9% saline is as effective as heparin in maintaining catheter patency and reducing phlebitis among peripheral catheters.¹³⁷⁻²⁴⁰⁻²⁴¹ Furthermore, recent in vitro studies suggest that the growth of CoNS on catheters may be enhanced in the presence of heparin. In contrast, the growth of CoNS on catheters can be inhibited by edetic acid (EDTA),²⁴² suggesting that EDTA, rather than heparin, may decrease the incidence of CoNS CR-BSIs. Also, the routine use of heparin to maintain catheter patency, even at doses as low as 250-500 units/day, has been associated with thrombocytopenia and thromboembolic and hemorrhagic complications.²⁴³⁻²⁴⁶ Clinical trials are needed to further assess the relative efficacy, risks, and benefits of the routine use of various anticoagulants (e.g., EDTA) in preventing CRI.

The risk of phlebitis associated with the infusion of certain fluids (e.g., potassium chloride,²⁴⁷ lidocaine,²⁴⁷⁻²⁴⁸ antimicrobials,²⁴⁷ also may be reduced by the use of certain intravenous additives, such as hydrocortisone.²⁴⁷ Bassan et al. in a prospective, controlled trial of patients being evaluated for possible myocardial infarction found that heparin and/or hydrocortisone significantly reduced the incidence of phlebitis in veins infused with lidocaine.²⁴⁸ In other trials, topical application of venodialators such as glycerol trinitate,²⁴⁹⁻²⁵⁰ or anti-inflammatory agents such as cortisone near the catheter site,²⁵¹ has effectively reduced the incidence of infusion-related thrombophlebitis and increased the life span of the catheters.²⁵¹⁻²⁵² Larger, controlled trials are needed to assess the advisability of the routine use of these agents to reduce phlebitis.

Needleless Intravascular Devices

Attempts to reduce the incidence of sharps injuries and the resultant risk of transmission of bloodborne infections to

HCWs have led to the design and introduction of needleless intravenous systems. However, there are limited data by which to assess the potential risk of contamination of the catheter and infusate and subsequent CRI that may be associated with the use of these devices. In one trial where conventional and needleless heparin-lock systems were compared, the rates of infection were comparable.²⁵³ However, in another investigation, the combined use of a needleless infusion system and TPN was associated with an increased rate of BSIs among patients receiving home infusion therapy.²⁵⁴ As the use of these systems becomes more widespread, the potential infectious risks associated with their use can be more fully evaluated.

Multidose Parenteral Medication Vials (MDVs)

Parenteral medications are commonly dispensed in MDVs that may be used for prolonged periods for one or more patients. Although the overall risk of extrinsic contamination of MDVs appears to be small, an estimated 0.5 per 1,000 vials,²⁵⁵ the consequences of contamination may be serious. Contamination of MDVs due to breaks in aseptic technique have resulted in several nosocomial outbreaks. The implicated vehicles in these outbreaks have been lipids infused intravenously from multidose containers¹⁷⁷ and medications used for intra-articular injections.^{256 257} However, when bacteria or yeasts were inoculated into some commonly used medications, such as heparin, potassium chloride, procainamide, methohexital, succinylcholine chloride, and sodium thiopental, and left at room temperature, no microorganisms could be cultured from these medications after 96 hours, with rare exceptions, irrespective of whether they contained a preservative.²⁵⁸ Microorganisms could proliferate in lidocaine and insulin only if the inocula were prepared in peptone water (with one exception), which allowed for transfer of nutrients to the vials. Even under these conditions, when vials were kept at 4°C (the recommended storage temperature), microorganisms did not proliferate in the insulin. There is one report of hepatitis B virus transmission related to the use of a contaminated vial of bupivacaine in a hemodialysis unit.²⁵⁹

VII. Intravascular Device-Related Infections Associated With Total Parenteral Nutrition

Catheter-related BSI remains one of the most important complications of TPN therapy and reported rates of

infection during TPN vary widely depending on the population studied and the definitions used. Because TPN solutions commonly contain dextrose, amino acids, and/or lipid emulsions, they are more likely than conventional intravenous fluids to support microbial growth if contaminated.^{177 179 260-263} Lipid emulsions are particularly suited for the growth of specific bacteria and yeasts,^{176 177} with microbial growth occurring as early as 6 hours after inoculation of a lipid emulsion and reaching clinically significant levels (>10⁶ CFU/ml) within 24 hours.¹⁷⁸ Newer combined TPN solutions (e.g., 3-in-1 system) which use glucose, amino acids, lipid emulsion, and additives in one multiliter administration bag, may increase the risk of infection associated with TPN, but data on which to assess this risk are not available.

Although TPN solutions are particularly suited for microbial growth, most infections that occur during the administration of TPN result from contamination of the catheter. TPN-related CRI result much less commonly from infusion of contaminated fluids or from hematogenous seeding of the catheter.

The microbiology of TPN-related CR-BSIs is similar to that of other CR-BSIs, with gram-positive species, particularly CoNS or *S. aureus*, being the predominant pathogens. However, the proportion of BSIs due to fungal pathogens, particularly *Candida* spp., are significantly greater in patients receiving TPN.¹⁰⁶

Risk Factors

A number of factors have been associated with the development of CRI during TPN therapy, including catheter-site colonization,^{123 125 155} method and site of catheter insertion, the experience of the personnel inserting the catheter,¹⁵³ the use of the TPN line for purposes other than administration of parenteral nutrition fluids,²⁶⁴ breaks in the protocol for aseptic maintenance of the infusion systems,^{167 223 264 265} and the use of triple-lumen catheters.^{24 25 27 28}

Surveillance and Diagnosis

Surveillance for CRI during TPN administration should be the same as during the administration of other types of infusion therapy. Although culturing the skin adjacent to the catheter insertion site may help predict BSI in patients who are receiving TPN,^{123 125 155} routine microbiologic surveillance can not be advocated. As with other suspected CRIs, semiquantitative and quantitative catheter cultures may also be useful for the diagnosis of TPN-related CRIs. Vanhuynegem et al.

evaluated the efficacy of semiquantitative cultures of blood drawn through in place TPN catheters in febrile patients for diagnosing CR-BSI.²⁶⁶ Comparing their methodology to the semiquantitative culture technique of Maki, they found that such cultures had a positive predictive value of 60%, and a negative predictive value of 100%. Moreover, using this technique, they were able to prevent unnecessary removal of 87% of the catheters in which infection was suspected.

Strategies for Prevention

The strategies previously outlined for the prevention of CRIs are also effective in reducing the risk of infections associated with TPN, and rigorous aseptic nursing care has been shown to greatly reduce the incidence for TPN-related infection.^{265 267 268} Nevertheless, a number of supplemental preventive measures that have been proposed to reduce the risk for TPN-related CRIs bear discussion, including special precautions for infusate preparation, cutaneous antisepsis, and catheter selection and care.

Infusate preparation. Since TPN solutions are prone to microbial growth if contaminated, strict attention must be given to asepsis during the compounding of TPN solutions. Although controlled trials have not been done, centralized preparation of TPN solutions in hospital pharmacies, using a laminar flow hood, has generally been regarded as the safest method of preparation.

Cutaneous antisepsis. Findings on the efficacy of various antiseptic skin preparations on decreasing the incidence of CRI during TPN suggest that tincture of iodine and chlorhexidine in ethyl alcohol are superior to povidone-iodine as a skin antiseptic during TPN catheter care.²⁶⁹ Furthermore, in one prospective randomized study, the application of povidone-iodine ointment to the insertion sites of subclavian catheters used for TPN was not associated with a decrease in CRIs when compared with catheters on which povidone-iodine was not used.²⁶⁸

The application of organic solvents, such as acetone or ether, to "defat" (remove skin lipids) the skin prior to catheter insertion and during routine dressing changes has been a standard component of many hyperalimentation protocols. However, these agents appear neither to confer additional protection against skin colonization nor significantly decrease the incidence of CRI. Moreover, their use can greatly increase local inflammation and patient discomfort.²⁷⁰

Selection of catheter. Tunnelling of TPN catheters has been proposed for three reasons: (1) to prevent dislodgement of the catheter; (2) to reduce the incidence of CR-BSI by increasing the distance between the sites where the catheter exits the skin and where it enters the subclavian vein; and (3) to protect the catheter from potentially contaminated sites such as tracheostomies. However, few prospective randomized studies have been done to evaluate the efficacy of this practice. When Koehane et al. assessed the risk of BSI among patients with short-term, noncuffed, tunneled and nontunneled TPN catheters, they demonstrated a reduction in the incidence of CR-BSI among tunneled catheters as compared with nontunneled catheters.²⁶⁷ However, this reduction was greatest when a designated nutrition nurse was used to maintain the catheter; after improved adherence to the infection control protocol, short-term, noncuffed, tunneled and nontunneled catheters were associated with a similar rate of BSI. The only other controlled trial of short-term, noncuffed, tunneled and nontunneled catheters similarly failed to demonstrate a beneficial effect of tunnelling after rigorous attention to infection control,¹²⁷ suggesting that if strict infection control practices are adhered to, short-term, noncuffed, tunneled and nontunneled TPN catheters have a similar risk of infection.

Catheter-site dressings. The use of occlusive dressings on catheters used for TPN has been a continuing source of debate. Two controlled studies suggest that, with adherence to strict infection control protocols, semipermeable, transparent dressings are a safe, cost-effective alternative to gauze and tape for dressing TPN catheter-insertion sites.^{212 268} Moreover, data suggest that transparent dressings used on TPN catheter sites can be safely changed at 7-day intervals.^{212 268 271}

Catheter changes. Prospective, randomized trials examining the frequency of TPN catheter changes have not been published. However, data from a study in 1974 suggest that the rate of infection (6.2%) for TPN catheters in place for >30 days is similar to the rate of infection (7%) for all catheters.²⁶⁵

Specialized personnel. Many institutions have protocols and a nutritional support team for insertion and maintenance of catheters used for TPN. As with vascular devices used for other purposes, the use of specially trained personnel to insert and maintain the catheters appears to reduce the rate of infection in patients receiving TPN.^{230, 231, 267}

VIII. Intravascular Device-Related Infections Associated With Hemodialysis Catheters

Epidemiology

Each year approximately 150,000 patients undergo maintenance hemodialysis for chronic renal failure. Since 1979, when the Uldall subclavian catheter was introduced, CVCs have gained popularity as a convenient, rapid way of establishing temporary vascular hemodialysis access until placement or maturation of a permanent arteriovenous fistula or permanent access for patients without alternative vascular access.²⁷² In 1990, an estimated 73% of centers participating in the National Surveillance System for Hemodialysis Associated Diseases had ≥ 1 patients in whom CVCs were used for permanent vascular access.²⁷³ However, only a limited number of controlled trials examining the infectious risk associated with the use of CVCs for hemodialysis have been published; most data are derived from small studies at individual institutions.

Subclavian hemodialysis catheters have been associated with a rate of BSI that exceeds that reported for virtually all other subclavian catheters²⁷⁴⁻²⁸³ or for alternative forms of hemodialysis vascular access^{275 284} and their use may be complicated by bacterial endocarditis, septic pulmonary emboli,^{274 275 282 284} and/or thrombosis (e.g., venous thrombosis, catheter occlusion). The factors contributing to the increased rate of infection experienced with CVCs used for hemodialysis have not been fully elucidated,^{277 278} but manipulations and dressing changes of dialysis catheters by inadequately trained personnel,²⁸⁵ duration of catheterization and mean number of hemodialysis runs,²⁷⁷ and cutdown insertion of the catheter²⁸⁶ may increase the risk of CRI among hemodialysis patients.

More recently, jugular vein catheters have been used for hemodialysis access because descriptive studies indicate that they are associated with fewer mechanical complications than subclavian catheters, including subclavian thrombosis, stenosis, and perforation.²⁸⁷⁻²⁹⁴ These double-lumen, Dacron-cuffed, silicone CVCs have been used for exclusive, or prolonged, vascular access in chronic hemodialysis patients^{286 295} and appear to have a longer median use-life and fewer insertion complications than do either of their single-lumened Teflon or polyurethane counterparts.^{280 295 296} Moss et al. recently reviewed the 4-year experience with double-lumen, cuffed, silicone catheters at their institution. All

catheters (n=168) had been placed for long-term use (≥ 1 month) and were the sole vascular access for hemodialysis.²⁸⁶ The median life span for these catheters was 18.5 months, with 12- and 24-month catheter survival being 65% and 30%, respectively. As with subclavian hemodialysis catheters, thrombosis (catheter and vein) and infection were the most frequent catheter complications. BSI occurred in 16/131 (12%) patients and exit-site infections in 28/131 (21%); diabetics (33%) were significantly more likely to develop exit-site infections than were nondiabetics (11%). Based on the duration of catheterization, the authors determined the following rates of CRIs associated with the use of double-lumen CVCs: 0.25 BSIs per patient-year, 0.36 exit-site infections per patient-year (nondiabetics), and 0.87 exit-site infections per patient-year (diabetics). The BSI rates reported in this review were comparable to those reported for more conventional forms of hemodialysis vascular access (0.09-0.20 BSIs per patient-year).^{284 297-299}

Two studies have examined the potential impact of tunneled hemodialysis catheters on the risk of subsequent CRI. In a nonrandomized study, Hickman catheters used for prolonged hemodialysis access was associated with a significantly lower rate of BSI (0.08 BSIs per 100 catheter-days) than were nontunneled hemodialysis catheter.³⁰⁰ Schwab et al. prospectively examined the use of cuffed, tunneled, double-lumen jugular venous catheters for prolonged hemodialysis access. Compared with percutaneously inserted, noncuffed subclavian dialysis catheters, double-lumen jugular venous catheters had a longer live span, a lower (1.3% vs 3.6%) incidence of associated BSIs, but a significantly higher incidence of exit-site infection (29% vs 9%).²⁹⁵

Hemodialysis catheters may become contaminated by a variety of proposed mechanisms: (1) penetration of organisms from the skin due to the pulsatile action of the dialysis pump; (2) manipulation of catheter connections by medical personnel with contaminated hands; (3) leakage of contaminated hemodialysis fluid into the blood compartment; or (4) administration of contaminated blood or other solutions through the catheter during the dialysis session.

Microbiology

CR-BSIs in hemodialysis patients, as in other patient populations, are most frequently caused by *S. epidermidis*.^{274-276 281-283 285} However, because of their high rates of

colonization with *S. aureus*,³⁰¹ hemodialysis patients have a greater proportion of CR-BSIs due to *S. aureus*²⁸⁴ than among other patient populations.

Strategies for Prevention of Hemodialysis Catheter-Related Infections

Strategies for the prevention of infections associated with the use of hemodialysis catheters have not been as rigorously examined as those proposed for the prevention of infections associated with CVCs used for other purposes. Although there are limited data on infectious complications in hemodialysis settings associated with various types of catheters, frequency of catheter change, cutaneous antiseptics, and prophylactic administration of antimicrobials, no studies examining catheter-site dressing regimens, or the utility of newer devices, such as antimicrobial-impregnated hemodialysis catheters have been published.

Cutaneous antiseptics. In some series, as many as 50 to 62% of hemodialysis patients have been found to be carriers of *S. aureus*.³⁰¹⁻³⁰⁴ Therefore, skin antiseptics is a crucial component for the prevention of hemodialysis catheter-associated infections. In one randomized, controlled study of 129 subclavian dialysis catheters, the routine application of povidone-iodine ointment to catheter-insertion sites was more effective than plain gauze in reducing the incidence of exit-site infections (5% vs 18%), catheter-tip colonization (17% vs 36%), and BSIs (2% vs 17%);³⁰⁴ duration of catheterization was comparable for treated (mean, 38.6 days) and nontreated (mean, 36.2 days) catheters, each ranging from 2-210 days. The beneficial effect of povidone-iodine ointment was most evident among patients with *S. aureus* nasal carriage where its use reduced the incidences of BSI and exit-site infection by 100% and catheter-tip colonization by 71%. No adverse effects were detected with the routine application of povidone-iodine ointment to subclavian dialysis catheter-insertion sites.

Catheter changes. Since attainment and preservation of vascular access in patients with chronic renal failure are often difficult, the frequency of catheter change and the role of guidewire catheter exchange are of utmost importance. However, to date, there are limited data on which to base recommendations for either of these issues in hemodialysis patients. One prospective, randomized trial of subclavian dialysis catheters using guidewire exchange suggested that the

rate of BSIs was comparable when catheters were changed weekly or when clinically indicated.³⁰⁵ One recent study examined the role of guidewire exchange in the treatment of infected jugular vein hemodialysis catheters. In this study, a 92% one-year catheter survival was observed with the combined use of guidewire exchange and administration of antimicrobials 48 hours before and 2 weeks after guidewire exchange, when frank pus was not present at the exit site.³⁰⁶ These findings, however, are contrary to a large body of data suggesting that guidewire exchange should not be done in the setting of documented CRI.^{59 131 153 307 308}

Prophylactic antimicrobials. Hemodialysis patients receiving antistaphylococcal antimicrobials at the time of catheter placement have been shown to have a lower incidence of CRI.^{274 276 277 309} However, the role of prophylactic antimicrobials has not been directly studied.

Whether hemodialysis catheters can be treated in the same way as CVCs used for other purposes is unclear. Prospective, controlled trials of hemodialysis catheters are needed to determine the epidemiology of CRIs associated with their use and to evaluate the role of preventive role of different types of catheter materials, appropriate insertion sites, intervals for catheter change, guidewire exchange, catheter-site dressing regimens, and the use of newer modalities (e.g., such as antimicrobial-impregnated hemodialysis catheters).

IX. Intravascular Device-Related Infections in Pediatric Patients

This section addresses some of the specific issues relevant to intravascular access and intravascular device-related infections among the pediatric population. However, the epidemiology of intravascular-device related infections in pediatric patients is less well-described than that in adults, and there are limitations to the existing data. First, few controlled trials of intravascular devices in children have been reported; most published data are derived from uncontrolled retrospective or prospective studies. Second, pediatric data that are available were derived, largely, from studies in neonatal (NICU) or pediatric intensive care units (PICU) where rates of infection are usually higher than on general pediatric wards. Finally, semiquantitative culture methods have, in large part, not been used in the studies of CRIs in children because such cultures require catheter removal.

Microbiology

As in adults, most CR-BSIs in children are caused by staphylococcal spp., with *S. epidermidis* being the predominant species.^{310 311} Other species of gram-positive cocci and fungi are the next most frequently isolated pathogens, with *Malassezia furfur* being an especially common pathogen in neonates receiving intravenous intralipids.³¹¹⁻³¹⁹

Bertone et al. performed quantitative skin cultures on 50 neonates to determine the microbial flora present at commonly used catheter-insertion sites.³²⁰ Only 33 neonates had an intravascular device in place at the time of culturing; 25 had peripheral venous catheters and eight had CVCs. The highest mean colony counts were found at jugular sites (2.7×10^4 cfus/10cm²) and the lowest at subclavian sites (5.2×10^3 cfus/10-cm²). However, femoral and jugular sites had similar mean colony counts as did subclavian and umbilical sites. Although CoNS was the pathogen most frequently cultured from all body sites, other microbial species (e.g., aerobic gram-negative bacilli, yeast, and *Enterococcus* spp.) were more commonly cultured from umbilical and femoral sites.³²⁰

Epidemiology

The majority of nosocomial BSIs in children are also related to the use of an intravascular device. During 1985-1990, children's hospitals participating in NNIS and conducting ICU surveillance reported significantly higher rates of BSI among PICU patients with CVCs (11.4 BSIs per 1,000 central-catheter days) compared with those without CVCs (0.4 BSIs per 1,000 noncentral-catheter days).⁸ Participating Level III NICUs reported a median of 5.1 BSIs per 1,000 umbilical or central-catheter days for the $\geq 1,500$ gram birthweight group and 14.6 BSIs per 1,000 umbilical or central-catheter days for the $< 1,500$ gram birthweight group over the same period.³²¹ Birthweight and device utilization were important determinants of a NICU infant's risk for acquiring BSI.³²¹ Others have shown receipt of intravenous lipids to also be an important risk factor for the acquisition of CR-BSI, particularly CoNS BSIs, among neonates.⁸⁶

Cronin studied 376 catheters, of varying types, to determine the incidence of catheter colonization and CR-BSI among NICU patients.³²² The incidence of catheter colonization varied by type of catheter, site of insertion, and duration of catheterization. Consistent with the findings of other investigators, the rate

of catheter colonization was significantly lower among patients receiving systemic antimicrobials, having birthweight ≥ 1500 gm, and not receiving parenteral nutrition. In general, the colonization rates detected in this study were higher than those previously reported for catheters in adults and children.^{17 148 311 312} However, the authors could not conclusively determine the relationship of catheter colonization to BSI.

Peripheral venous catheters. As in adults, the use of peripheral venous catheters in pediatric patients may be complicated by phlebitis, extravasation, and catheter colonization. Garland et al. prospectively studied 654 peripheral Teflon catheters in PICU patients to determine the incidence of and risk factors for each of these complications.³¹¹ Of the 654 catheters studied, 83 (13%) were associated with phlebitis. Catheter location, infusion of hyperalimentation fluids with continuous intravenous lipid emulsions, and length of ICU stay before catheter insertion were all factors that increased a patient's risk for phlebitis. However, contrary to the studies among adults, the risk of phlebitis did not increase with the duration of cannulation. The overall incidence of phlebitis in this ICU population (13%) was comparable to that reported in general pediatric patients (10%); for children >10 years of age the incidence of phlebitis (21%) was comparable to that reported for adults¹⁶⁹ and older children.³²³

Of 459 peripheral venous catheters cultured by Garland, 54 (11.8%) were colonized. However, only one (1.9%) of these colonized catheters was associated with CR-BSI. In an earlier study, comparable rates of catheter colonization (10.4%) were found for Teflon peripheral catheters (n=115) used in patients on general pediatric wards.³¹² Time in place was the single most important predictor of subsequent catheter colonization, with the incidence of colonization increasing threefold after catheters remained in place >144 hours.³¹¹ Between 48 and 144 hours, the catheter colonization rate was stable at 11%. Other factors significantly but less strongly associated with catheter colonization were patient age and receipt of lipid emulsions. Catheters inserted emergently were no more prone to colonization than were those inserted electively.³¹¹

Extravasation, the most frequent complication, occurred with 28% of catheters. Several risk factors for extravasation were identified, including patient age (≤ 1 year), receipt of anticonvulsant, and duration of catheterization (≤ 72 hours); the risk of

extravasation decreased significantly after the catheter was in place for ≥ 72 hours.³¹¹

There are limited data examining the relationship of catheter material to the risk of infection among pediatric patients. In one study of premature infants, Teflon catheters and steel needles used in scalp veins had a comparable risk of infection. However, Teflon catheters had a significantly longer survival than did steel needles.³¹³

Peripheral arterial catheters. In a prospective study using semiquantitative culture of 340 peripheral arterial catheters, Furfaro identified two risk factors for CRI: (1) use of an arterial system of a certain design, and (2) duration of catheterization.³¹⁴ The implicated arterial system (system A) contained a stopcock and a 120-cm pressure tubing through which blood was drawn back to clear the line of heparin before taking a sample. The alternate system (system B), with a significantly lower risk of infection, contained a one-way valve that did not permit blood backflow into the tubing. The authors noted that the implicated arterial system (A) was the design most widely used in U.S. hospitals.³¹⁴

Although there was a correlation between duration of catheterization and risk of catheter colonization, the risk remained constant for 2–20 days at 6.2%. Catheters in place ≤ 48 hours had a zero risk of colonization.³¹⁴

Umbilical catheters (UCs). Although the umbilical stump becomes heavily colonized soon after birth, umbilical vessel catheterization is often used for vascular access in newborn infants because umbilical vessels are easily cannulated, allow for delivery of intravenous fluids/medications, permit easy collection of blood samples, and permit measurement of hemodynamic status. Studies of the infectious complications associated with UCs indicate that the incidences of catheter colonization and BSI appear to be similar for umbilical vein catheters (UVC) and umbilical artery catheters (UAC). The incidences of colonization reported among UACs have ranged from 40 to 55%;^{324 325} those among UVCs have varied between 22% and 59%.^{324–326} The incidences of BSI detected for the two types of catheters are also similar, 5% for UACs and 3%–8% for UVCs.^{324 326} However, the risk factors for infection appear to differ for the two types of catheters.

Landers et al. found that neonates with very low birthweight and prolonged receipt of antimicrobials were at increased risk for UAC-related BSIs. In contrast, those with higher

birthweight and receipt of parenteral nutrition fluids were at increased risk for UVC-related BSI; duration of catheterization was not an independent risk factor for infection either type of umbilical catheter.³²⁴

In addition to the risk of endemic infection, umbilical vessel catheterization has been associated with epidemics among critically ill NICU infants. Solomon et al. reported an outbreak of *C. parapsilosis* fungemia among NICU infants⁴¹ in which duration of umbilical artery catheterization, prolonged receipt of parenteral nutrition, and low gestational age were risk factors for fungemia.⁴¹

Several investigators have reported lower rates of UC colonization among infants or neonates receiving systemic antimicrobials during umbilical catheterization.^{315 325 326} However, the one prospective study of prophylactic antimicrobials in patients with chronic UACs found no clear benefit to this therapy.³²⁷

Central venous catheters. The use of indwelling catheters (e.g., Hickmans and Broviacs, TIDs) in children has become increasingly important over the past decade for the treatment of children with chronic medical conditions, especially malignancies. The Broviac, rather than the Hickman, catheter is preferentially used in children because of its smaller diameter; TIDs may be particularly advantageous in younger pediatric patients (<2 years) where external catheter segments may be contiguous with the diaper area and thus easily contaminated.^{73 328 329}

Although data from the Children's Cancer Study Group suggest that as many as 18% of all chronic venous access devices in children are removed due to infection,³³⁰ the use of these devices in children have generally been associated with low rates of infections.^{64 66 71 73 77 331 332} Several factors have been associated with an increased risk of infection among children with indwelling CVCs, including younger age (<2 years), underlying malabsorption syndrome, and receipt of TPN.³³³ Although Indwelling CVCs are largely used in immunocompromised patients for the administration of chemotherapy, neutropenia has not, in children, been shown to increase the risk of infection associated with these devices.³³⁴

As with adults, the relative merits and risk associated with the use of long-term vascular access devices in children have been the source of considerable investigation. In most studies, TIDs had longer survival and fewer infectious complications than other tunneled catheters. In one study in which the

potentially confounding variables of patient age, underlying diagnosis, and therapy were controlled for in a matched analysis, Hickmans and TIDs were associated with comparable rates of infection. Broviacs still had a higher rate of infection than TIDs, but this difference was only significant after 400 days of catheterization.³³⁵

Because of the limited vascular sites, the required frequency of catheter change in children is particularly important. Stenzel examined the frequency of catheter change in PICU patients by using survival analysis techniques. In that study of 395 CVCs, catheters remained free of infection for a median of 23.7 days. More importantly, there was no relationship between duration of catheterization and the daily probability of infection ($r=0.21$, $p>0.1$), suggesting that routine catheter replacement would not be expected to reduce the incidence of CRI.³³⁶

Results of prospective randomized trials examining the effect dressing

regimens, frequency of catheter and administration sets changes, or use of newer antimicrobial-coated catheters in reducing the incidence of CRI among pediatric patients have not been published.

Table 1

Definitions for Catheter-Related Infection

Colonized catheter: growth of >15 colony forming units from a proximal or distal catheter segment in the absence of accompanying clinical symptoms.

Exit-site infection: erythema, tenderness, induration, and/or purulence within 2cm of the skin at the exit site of the catheter.

Pocket infection: erythema and necrosis of the skin over the reservoir of a totally implantable device and/or purulent exudate in the subcutaneous pocket containing the reservoir.

Tunnel infection: erythema, tenderness, and induration in the tissues overlying the catheter and >2cm from the exit site.

Catheter-related bloodstream infection (CR-BSI): isolation of the same organism (i.e., identical species, antibiogram) from a semiquantitative or quantitative culture of a catheter segment and from the blood (preferably drawn from a peripheral vein)

of a patient with accompanying clinical symptoms of BSI and no other apparent source of infection. In the absence of laboratory confirmation, defervescence after removal of an implicated catheter from a patient with BSI may be considered indirect evidence of CR-BSI.

Infusate-related bloodstream infection:

isolation of the same organism from infusate and from separate percutaneous blood cultures, with no other identifiable source of infection.

Table 2

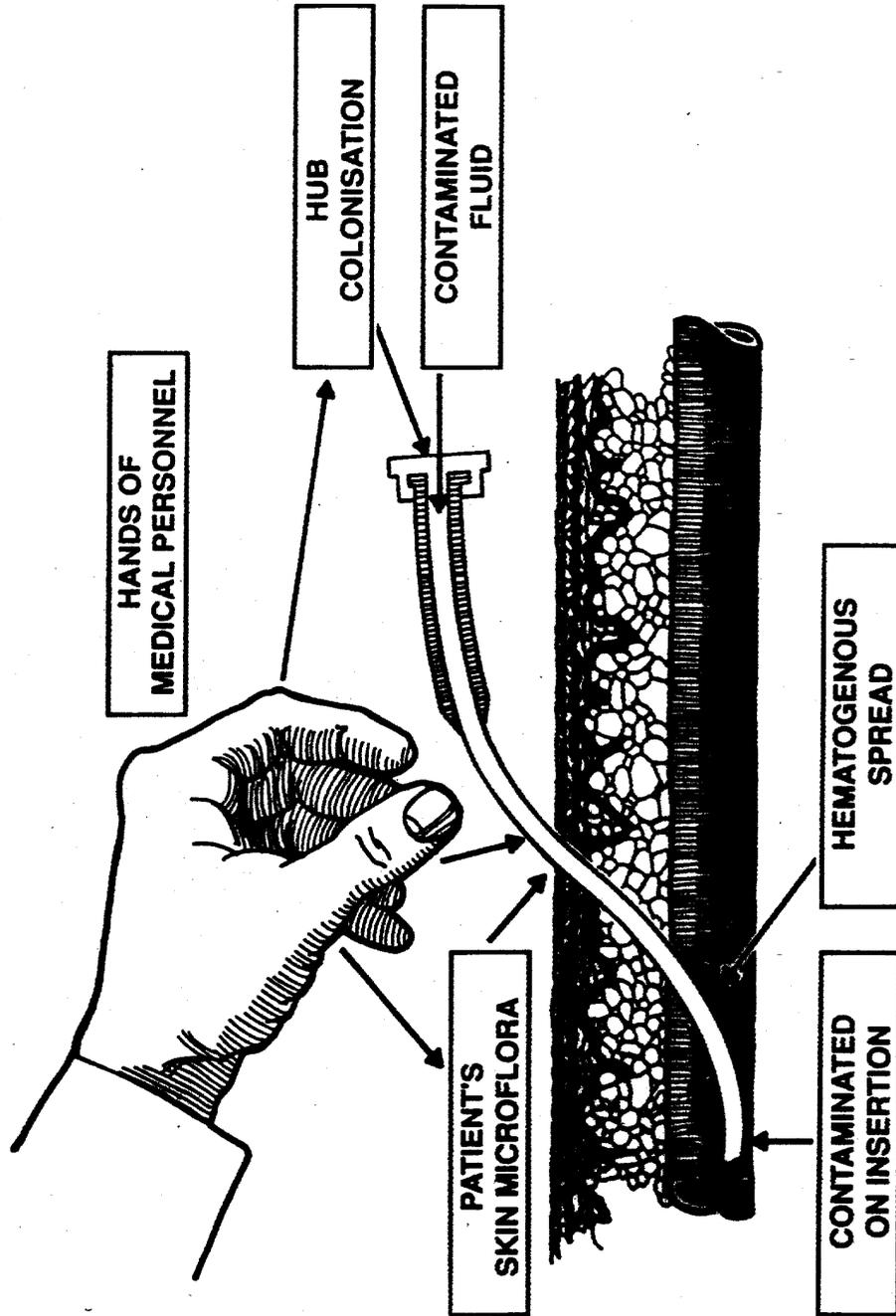
Factors Associated With Infusion-Related Phlebitis Among Patients With Peripheral Venous Catheters

Catheter material
Catheter size
Site of catheter insertion
Experience of personnel inserting catheter
Duration of catheterization
Composition of infusate
Frequency of dressing change
Catheter-related infection
Skin prep
Host factors
Emergency room insertion

BILLING CODE 4163-18-P

EXECUTIVE CORRESPONDENCE

Figure 1. Potential Sources for Contamination of Intravascular Devices



Part 2. Recommendations for the Prevention of Nosocomial Intravascular Device-Related Infections

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References

I. Introduction

This guideline presents general recommendations for intravascular-device use in all patients, device-specific recommendations, and recommendations for special circumstances, i.e., intravascular-device use in pediatric patients, and central venous catheter use for parenteral nutrition administration and hemodialysis access.

As in previous CDC guidelines, each recommendation is categorized on the basis of existing scientific data, theoretical rationale, applicability, and economic impact. However, the previous CDC system for categorizing recommendations has been modified as follows:

Category IA. Strongly recommended for all hospitals and strongly supported by well-designed experimental or epidemiologic studies.

Category IB. Strongly recommended for all hospitals and viewed as effective by experts in the field and a consensus of HICPAC based on strong rationale and suggestive evidence, even though definitive scientific studies may not have been done.

Category II. Suggested for implementation in many hospitals. Recommendations may be supported by suggestive clinical or epidemiologic studies, a strong theoretical rationale, or definitive studies applicable to some, but not all, hospitals.

No Recommendation; Unresolved Issue. Practices for which insufficient evidence or consensus regarding efficacy exists.

II. General Recommendations for Intravascular-Device Use

A. Health Care Worker Education and Training

Conduct ongoing education and training of health care workers regarding indications for the use of and procedures for the insertion and maintenance of intravascular devices, and appropriate infection control measures to prevent intravascular device-related infections.^{285 337 338}

Category IA

B. Surveillance

1. Conduct surveillance for intravascular device-related infections to determine device-specific infection rates, monitor trends in those rates, and assist in identifying lapses in infection control practices within one's own institution. Express data as the number of catheter-related infections or catheter-related bloodstream infections per 1000 catheter-days to facilitate comparisons with national trends.^{7 339-341}

Category II

2. Palpate the catheter insertion site for tenderness daily through the intact dressing.

Category IB

3. Visually inspect the catheter site if the patient develops tenderness at the insertion site, fever without obvious source, or symptoms of local or bloodstream infection.

Category IB

4. In patients who have large, bulky dressings that prevent palpation or direct visualization of the catheter-insertion site, remove the dressing and visually inspect the catheter site at least daily and apply a new dressing.

Category II

5. Record the date and time of catheter insertion in a obvious location near the catheter-insertion site (e.g., on the dressing or on the bed).

Category IB

6. Do not routinely perform surveillance cultures of patients or of devices used for intravascular access.

Category IB

C. Handwashing

Wash hands using an antiseptic-containing product before palpating, inserting, changing, or dressing any intravascular device.

Category II

D. Barrier Precautions During Catheter Insertion and Care

1. Wear vinyl or latex gloves when inserting an intravascular catheter as required by the Occupational Safety and Health Administration (OSHA) Bloodborne Pathogens Standard.³⁴²

Category IB

2. Wear vinyl or latex gloves when changing the dressings on intravascular catheters.³⁴²

Category IB

3. NO RECOMMENDATION for the use of sterile versus nonsterile gloves during dressing changes.

Unresolved Issue

E. Catheter-Site Care

1. Cutaneous Antiseptics and Antimicrobial Ointments

Cleanse the skin site with an appropriate antiseptic including 70% alcohol, 10% povidone-iodine, or 2% tincture of iodine before catheter insertion.²⁶⁹ (EXCEPTION: see umbilical catheter section)

Category IA

2. Catheter-Site Dressing Regimens

a. Use either a sterile gauze or transparent dressing to cover the catheter site.^{10 165 211 268}

Category IA

b. Leave dressings in place until the catheter is removed, or changed, or the dressing becomes damp, loosened, or soiled. Change dressings more frequently in diaphoretic patients.¹⁶⁵

Category IB

F. Changing Intravenous Catheters and Administration Sets

1. Remove an intravascular device as soon as its use is no longer clinically indicated.

Category IA

2. Change intravenous tubing, including "piggyback" tubing no more frequently than at 72-hour intervals, unless clinically indicated.¹⁷³⁻¹⁷⁵ (Exception: See F3 Below)

Category IA

3. No Recommendation for intravenous tubing changes beyond 72-hour intervals.

Unresolved Issue

4. Change tubing used to administer blood, blood products, or lipid emulsions within 24 hours of completing the infusion.^{178 179}

Category IB

G. Preparation and Quality Control of Intravenous Admixtures

1. Admix all parenteral fluids in the pharmacy in a laminar-flow hood using aseptic technique.

Category II

2. Check all containers of parenteral fluid for visible turbidity, leaks, cracks, particulate matter, and the manufacturer's expiration date before use.

Category IA

3. Use single-dose vials for parenteral additives or medications whenever possible.^{256 257 259}

Category II

4. If Multidose Vials are Used:

a. Refrigerate multidose vials after they are opened unless otherwise specified by the manufacturer.²⁵⁸

Category II

b. Cleanse the rubber diaphragm of multidose vials with alcohol before inserting needle into the vial.³⁴³

Category IA

c. Use a sterile needle and syringe each time a multidose vial is accessed and avoid touch contamination of the needle prior to penetrating the rubber diaphragm.^{259 344-346}

Category IA

d. Discard multidose-vials when empty, when suspected or visible contamination occurs, or when the manufacturer's stated expiration date is reached.²⁵⁶⁻²⁵⁹

Category IA

H. "Hang Time" for Parenteral Fluids

1. Do not leave parenteral nutrition fluids hanging for longer than 24 hours.^{347 348}

Category IA

2. No Recommendation for the "hang time" of intravenous fluids other than parenteral nutrition fluids.

Unresolved Issue

I. In-Line Filters

Do not routinely use filters for infection control purposes.^{220 222-224}

Category IA

J. Intravenous Therapy Personnel

Designate trained personnel for the insertion and maintenance of intravascular devices.²²⁹⁻²³¹

Category IB

K. Needleless Intravascular Devices

No Recommendation for use, maintenance, or frequency of change of needleless intravenous devices.

Unresolved Issue

L. Prophylactic Antimicrobials

Do not routinely administer antimicrobials for prophylaxis of catheter colonization or bloodstream infection before insertion or during use of an intravascular device.^{69 234 235}

Category IB

III. Peripheral Venous Catheters

A. Selection of Catheter

1. Select catheters based on the intended purpose and duration of use, known complications (e.g., phlebitis and infiltration), and experience at the institution. Use a Teflon catheter, a polyurethane catheter, or a steel needle.^{12 17 165 168 169}

Category IB

2. Avoid the use of steel needles for the administration of fluids/medications that may cause tissue necrosis if extravasation occurs.¹⁶⁹

Category IA

3. No Recommendation for the use of antimicrobial-impregnated peripheral venous catheters.

Unresolved Issue

B. Selection of Catheter-Insertion Site

1. *In adults*, use an upper extremity site in preference to one on a lower extremity for catheter insertion. Transfer a catheter inserted in a lower extremity site to an upper extremity site as soon as the latter is available.¹⁶⁰⁻¹⁶⁴

Category IA

2. *In pediatric patients*, insert catheters into a scalp, hand, or foot site in preference to a leg, arm, or antecubital fossa site.³¹¹

Category II

C. Catheter Changes

1. *In adults*, change peripheral venous catheters and rotate peripheral venous sites every 48-72 hours to minimize the risk of phlebitis.^{12 165 168}

Category IB

2. *In adults*, remove catheters inserted under emergency conditions, where breaks in aseptic technique are likely to have occurred. Insert a new catheter at a different site within 24 hours.

Category IB

3. *In pediatric patients*, No Recommendation for the frequency of change of peripheral venous catheters.

Unresolved Issue

4. *In pediatric patients*, No Recommendation for removal of catheters inserted under emergency conditions, where breaks in aseptic technique are likely to have occurred.

Unresolved Issue

5. No Recommendation for the frequency of change of midline catheters.

Unresolved Issue

6. Remove peripheral venous catheters when the patient develops signs of phlebitis (i.e., warmth, tenderness, erythema, palpable venous cord) at the insertion site.^{11 12 148}

Category IA

D. Catheter and Catheter-Site Care

1. Flush Solutions, Anticoagulants and Other Intravenous Additives

a. Routinely flush peripheral venous heparin locks with normal saline unless they are used for obtaining blood specimens in which case a dilute heparin (10 units per ml) flush solution should be used.^{241 349}

Category IB

b. No Recommendation for the routine application of topical nitrates near the insertion site of peripheral venous catheters.^{249 250 252}

Unresolved Issue**2. Cutaneous Antiseptics and Antimicrobial Ointments**

No Recommendation for the routine application of topical antimicrobial ointment to the insertion site of peripheral venous catheters.^{197 198 200}

Unresolved Issue**IV. Central Venous and Arterial Catheters****A. Selection of Catheter**

1. Use a single-lumen central venous catheter unless multiple ports are essential for the management of the patient.²⁶⁻²⁹

Category IB

2. Use tunneled catheters (e.g., Hickman or Broviac) or implantable vascular access devices (i.e., ports) for patients ≥ 4 years of age in whom long-term vascular access (>30 days) is anticipated.^{61-63, 68, 72, 73, 350} Use totally implantable access devices for younger pediatric patients (age <4) who require long-term vascular access.^{71, 73, 332, 351, 352}

Category IA

3. In adults, consider use of a silver-impregnated, collagen-cuffed or antimicrobial-impregnated central venous catheter if, after full adherence to other catheter infection control measures (e.g., maximal barrier precautions), there is still an unacceptably high rate of infection.^{201, 225, 228} Designate trained personnel to insert cuffed catheters to ensure maximal efficacy and prevent possible extrusion.^{201, 225}

Category II

4. In pediatric patients, No Recommendation for the use of antimicrobial/antiseptic-impregnated central venous catheters.

Unresolved Issue**B. Selection of Catheter-Insertion Site**

1. Use subclavian, rather than jugular or femoral, sites for central venous catheter placement unless medically contraindicated (e.g., coagulopathy).³¹⁻³⁵

Category IB

2. No Recommendation on preferred site for insertion of pulmonary artery (Swan-Ganz) catheters.³⁶⁻⁴⁰

Unresolved Issue**C. Barrier Precautions During Catheter Insertion**

Use sterile technique including a sterile gown and gloves, a mask, and a large sterile drape for the insertion of central venous catheters. Use these precautions even if the catheter is inserted in the operating room.^{36, 203}

Category IB**D. Catheter Changes**

1. No Recommendation for the frequency of routine changes of dressings used on central venous catheter sites.²⁶⁸

Unresolved Issue

2. No Recommendation for frequency of change of totally implantable devices (i.e., ports) or the needles used to access them.

Unresolved Issue

3. Change peripherally inserted central venous catheters at least every 6 weeks.⁵⁹

Category IB

4. No Recommendation for the frequency of change of peripherally inserted central venous catheters when the duration of therapy is expected to exceed 6 weeks.

Unresolved Issue

5. Change pulmonary artery catheters at least every 5 days.^{21 36 37}

Category IB

6. No Recommendation for the removal of central catheters inserted under emergency conditions, where breaks in aseptic technique are likely to have occurred.

Unresolved Issue

7. Do not routinely change percutaneously inserted central venous catheters by any means as a method to prevent catheter-related infections.^{186 187 357}

Category IA

8. Use guidewire-assisted catheter exchange to replace a malfunctioning catheter or to convert an existing catheter if there is no evidence of infection at the catheter site.^{131 153 186-190}

Category IB

9. If catheter-related infection is suspected, but there is no evidence of local catheter-related infection (e.g., purulent drainage, erythema, tenderness), change the catheter over a guidewire. Send the removed catheter for semiquantitative or quantitative

culture. Leave the newly inserted catheter in place if the catheter culture is negative. If the catheter culture indicates colonization/infection, remove the newly inserted catheter and insert a new catheter at a different site.^{131 153 187 188}

Category IB

10. Do not use guidewire-assisted catheter exchange whenever catheter-related infection is documented. If the patient requires continued vascular access, remove the implicated catheter and replace it with another catheter at a different insertion site.^{131, 153, 187, 188}

Category IA**E. Catheter and Catheter-Site Care****1. General Measures**

a. Do not use parenteral nutrition catheters for purposes other than hyperalimentation (e.g., administration of fluids, blood/blood products).^{167 224 264 265}

Category IA

b. No Recommendation for obtaining blood samples for culture through central venous or central arterial catheters.³⁵³⁻³⁵⁶

Unresolved Issue**2. Flush Solutions, Anticoagulants, and other Intravenous Additives**

Flush indwelling central venous catheters (e.g., Hickman and Broviac) routinely with an anticoagulant. Groshongs do not require routine flushing with an anticoagulant.^{62 64-66 69}

Category IB**3. Cutaneous Antiseptics and Antimicrobial Ointments**

a. Do not routinely apply antimicrobial ointment to central venous catheter-insertion sites.^{30 200}

Category IB

b. Do not apply organic solvents (e.g., acetone or ether) to the skin before insertion of parenteral nutrition catheters.²⁷⁰

Category IA**4. Catheter-Site Dressing Regimens**

Change catheter-site dressings when they become damp, soiled, or loose or if inspection of the site or catheter change is necessary.

Category IA**V. Additional Recommendations for Central Venous Hemodialysis Catheters****A. Selection of Catheter**

Use cuffed central venous catheters for hemodialysis if the period of

temporary access is anticipated to be ≥ 1 month.^{286 295}

Category IB

B. Selection of Catheter-Insertion Site

No Recommendation for the site of insertion of central venous hemodialysis catheters.

Unresolved Issue

C. Catheter Changes

1. No Recommendation for the frequency of routine changes of dressings used on hemodialysis catheter sites.

Unresolved Issue

2. No Recommendation for the removal of hemodialysis catheters when a patient develops fever without an obvious source.

Unresolved Issue

D. Catheter and Catheter-Site Care

1. General Measures

a. Do not use hemodialysis catheters for purposes other than hemodialysis (e.g., administration of fluids, blood/blood products, or parenteral nutrition).

Category II

b. Restrict manipulations of the hemodialysis catheter, including dressing changes, to trained dialysis personnel.²⁸⁵

Category IB

2. Cutaneous Antiseptics and Antimicrobial Ointments

Apply povidone-iodine ointment to the catheter insertion site before and after hemodialysis.³⁰⁴

Category IB

VI. Peripheral Arterial Catheters and Pressure-Monitoring Devices

A. Selection of Pressure-Monitoring System

Use disposable, rather than reusable, transducer assemblies when possible.^{45 47 58}

Category IA

B. Catheter and Pressure-Monitoring System Changes

1. *In adults*, change peripheral arterial catheters and rotate catheter-insertion sites every 4 days.^{20 21}

Category IB

2. *In pediatric patients*, No Recommendation for the frequency of change of peripheral arterial catheters.

Unresolved Issue

3. Replace disposable or reusable transducers at 96-hour intervals. Replace other components of the system, including the tubing, continuous-flush device, and flush solution at the time the transducer is changed.^{47 58}

Category IB

4. Replace the arterial catheter and the entire monitoring system if the patient develops a bacteremia while the catheter is in place, irrespective of the source of bacteremia. The catheter and monitoring system should be replaced 24 to 48 hours after antimicrobial therapy has been started.^{42 47}

Category IB

C. Care of Pressure-Monitoring Systems

1. General Measures

a. Keep sterile all devices and fluids that come into contact with the fluid of the pressure-monitoring circuit (e.g., calibration devices, heparinized saline).^{43 49 55 56}

Category IA

b. Minimize the number of manipulations and entries into the pressure-monitoring system. Use a closed-flush system (i.e., continuous flush), rather than an open system (i.e., one that requires a syringe and stopcock), to maintain the patency of the pressure-monitoring catheters. If stopcocks are used, treat them as a sterile field and cover them with a cap or syringe when not in use.^{47 57}

Category IA

c. When the pressure monitoring system is accessed through a rubber diaphragm rather than a stopcock, wipe the diaphragm with an appropriate antiseptic before and after accessing the system.¹⁸³

Category IA

d. Do not administer dextrose-containing solutions or parenteral nutrition fluids through the pressure-monitoring circuit. Use only heparinized normal saline.⁴⁷

Category IA

e. Do not routinely use pressure-monitoring devices to obtain blood cultures.⁴⁷

Category IB

2. Sterilization or Disinfection of Pressure-Monitoring Systems

a. Clean reusable transducers first with soap and water and then sterilize with ethylene oxide or subject to high-level disinfection when: (1) The transducer is used between patients, (2) the transducer is reused on a single patient who requires prolonged pressure monitoring, or (3) the monitoring circuit (including chamber-dome and continuous flow device) is replaced.^{47 54} Because transducers differ in design, consult the manufacturers' instructions for detailed reprocessing recommendations.

Category IA

b. Sterilize and disinfect transducers in a central processing area. Reprocess and disinfect reusable transducers in patient care areas only in emergency situations.⁴⁷

Category IB

VII. Additional Recommendations for Umbilical Catheters

A. Catheter Changes

1. No Recommendation for the frequency of change of umbilical catheters.

Unresolved Issue

2. No Recommendation for the removal or exchange of umbilical vein catheters when the patient develops a fever without an obvious source.

Unresolved Issue

B. Catheter-Site Care

1. Cleanse the umbilical insertion site with an appropriate antiseptic, including alcohol or 10% povidone-iodine before catheter insertion.^{322 324 325} Do not use tincture of iodine because of the potential effect on the neonatal thyroid.

Category IB

2. No Recommendation for the routine application of polymicrobial ointment to umbilical catheter insertion sites.

Unresolved Issue

APPENDIX.—SUMMARY OF RECOMMENDED PROCEDURES FOR MAINTENANCE OF INTRAVASCULAR CATHETERS, ADMINISTRATION SETS AND PARENTERAL FLUIDS

Frequency of catheter/device change	Frequency of dressing change	Frequency of administration set change	"Hang time" for parenteral fluids	Use of antimicrobial ointments
<p>Peripheral Venous Catheters:</p> <p>In adults, change catheter and rotate site every 48–72 hours. Replace catheters inserted under emergency conditions within 24 hours.</p> <p>In pediatric patients, NO RECOMMENDATION for the frequency of catheter change or for the removal of catheters inserted under emergency conditions.</p>	<p>Leave dressings in place until the catheter is removed, or changed, or the dressing becomes damp, loosened, or soiled.</p> <p>.....</p>	<p>Change intravenous tubing, including "piggy-back" tubing no more frequently than at 72-hour intervals.</p> <p>NO RECOMMENDATION for intravenous tubing changes beyond 72-hour intervals.</p> <p>Change tubing used to administer blood, blood products, or lipid emulsions within 24 hours of completing the infusion.</p>	<p>Do not leave parenteral nutrition fluids hanging >24 hours.</p> <p>NO RECOMMENDATION for the "hang time" of intravenous fluids other than parenteral nutrition fluids.</p>	<p>NO RECOMMENDATION for the routine application of antimicrobial ointments to catheter site.</p>
<p>Peripheral Arterial Catheters and Pressure-monitoring Devices:</p> <p>In adults, change catheter and rotate insertion sites every 4 days.</p> <p>In pediatric patients, NO RECOMMENDATION for the frequency of catheter change.</p> <p>Replace disposable or reusable transducers at 96-hour intervals. Replace other components of the system, including the tubing, continuous-flush device and flush solution at the time the transducer is changed.</p>	<p>Leave dressing in place until the catheter is removed, or changed, or the dressing becomes damp, loosened, or soiled.</p> <p>.....</p>	<p>Change intravenous tubing, including "piggy-back" tubing no more frequently than at 72-hour intervals.</p> <p>NO RECOMMENDATION for intravenous tubing changes beyond 72-hour intervals.</p>	<p>Do not administer dextrose-containing solutions or parenteral nutrition fluids through the pressure monitoring circuit. Use only heparinized normal saline.</p> <p>NO RECOMMENDATION for the "hang time" of heparinized normal saline.</p>	<p>NO RECOMMENDATION for the routine application of antimicrobial ointments to catheter site.</p>
<p>Midline Catheters:</p> <p>NO RECOMMENDATION for the frequency of catheter change.</p>	<p>Leave dressing in place until the catheter is removed, or changed, or the dressing becomes damp, loosened, or soiled.</p>	<p>Change intravenous tubing, including "piggy-back" tubing no more frequently than at 72-hour intervals.</p> <p>NO RECOMMENDATION for intravenous tubing changes beyond 72-hour intervals.</p> <p>Change tubing used to administer blood, blood products, or lipid emulsions within 24 hours of completing the infusion.</p>	<p>Do not leave parenteral nutrition fluids hanging >24 hours.</p> <p>NO RECOMMENDATION for the "hang time" of intravenous fluids other than parenteral nutrition fluids.</p>	<p>NO RECOMMENDATION for the routine application of antimicrobial ointments to catheter site.</p>

APPENDIX.—SUMMARY OF RECOMMENDED PROCEDURES FOR MAINTENANCE OF INTRAVASCULAR CATHETERS,
ADMINISTRATION SETS AND PARENTERAL FLUIDS—Continued

Frequency of catheter/de-vice change	Frequency of dressing change	Frequency of administra-tion set change	"Hang time" for parenteral fluids	Use of antimicrobial oint-ments
<p>Central Venous Catheters (nontunneled catheters and tunneled catheters [Hickmans, Groshongs, Ports]:</p> <p>Do not routinely change percutaneously inserted (nontunneled) central venous catheters by either rotating insertion sites or by guidewire-as-sisted catheter ex-change.</p> <p>NO RECOMMENDA-TION for frequency of change of tun-neled catheters, to-tally implantable de-vices (i.e., ports), or the needles used to access them.</p>	<p>Leave dressing in place until the catheter is re-moved, or change, or the dressing becomes damp, loosened, or soiled.</p> <p>NO RECOMMENDATION for the frequency of rou-tine changes of dressing used on catheter site.</p>	<p>Change intraveneous tub-ing, including "piggy-back tubing" no more frequently than at 72-hour intervals.</p> <p>NO RECOMMENDATION for intravenous tubing changes beyond 72-hour intervals.</p> <p>Change tubing used to ad-minister blood, blood products, or lipid emul-sions within 24 hours of completing the infusion.</p>	<p>Do not leave parenteral nutrition fluids hanging >24 hours.</p> <p>NO RECOMMENDATION for the "hang time" of intravenous fluids other than parenteral nutrition fluids.</p>	<p>Do not routinely apply antimicrobial ointment to catheter insertion site.</p>
<p>Peripherally Inserted Central Venous Cath-eters:</p> <p>Change at least every 6 weeks.</p> <p>NO RECOMMENDA-TION for frequency of change when the duration of therapy is expected to ex-ceed 6 weeks.</p>	<p>Leave dressing in place until the catheter is re-moved, or changed, or the dressing becomes damp, loosened, or soiled.</p> <p>NO RECOMMENDATION for the frequency of rou-tine changes of dressing used on catheter site.</p>	<p>Change intravenous tub-ing, including "piggy-back" tubing no more frequently than at 72 hour intervals.</p> <p>NO RECOMMENDATION for intravenous tubing changes beyond 72-hour intervals.</p> <p>Change tubing used to ad-minister blood, blood products, or lipid emul-sions within 24 hours of completing the infusion.</p>	<p>Do not leave parenteral nutrition fluids hanging >24 hours.</p> <p>NO RECOMMENDATION for the "hang time" of intravenous fluids other than parenteral nutrition fluids.</p>	<p>Do not routinely apply antimicrobial ointment to catheter insertion site.</p>
<p>Central Arterial Catheters (pulmonary artery cath-eters):</p> <p>Change catheter at least every 5 days.</p>	<p>Leave dressing in place until the catheter is re-moved, or changed, or the dressing becomes damp, loosened, or soiled.</p> <p>NO RECOMMENDATION for the frequency of rou-tine changes of dressing used on catheter site.</p>	<p>Change intravenous tub-ing, including "piggy-back" tubing no more frequently than at 72 hour intervals.</p> <p>NO RECOMMENDATION for intravenous tubing changes beyond 72-hour intervals.</p>	<p>NO RECOMMENDATION for the "hang time" of intravenous fluids other than parenteral nutrition fluids.</p>	<p>Do not routinely apply antimicrobial ointment to catheter insertion site.</p>
<p>Central Hemodialysis Cath-eters:</p> <p>NO RECOMMENDA-TION for the fre-quency of catheter change.</p>	<p>Leave dressing in place until the catheter is re-moved, or changed, or the dressing becomes damp, loosened, or soiled.</p> <p>NO RECOMMENDATION for the frequency of dressing change.</p>	<p>NOT APPLICABLE (Do not use hemodialysis catheters for purposes other than hemodialysis [e.g., administration of fluids, blood/blood prod-ucts, or parenteral nutri-tion]).</p>	<p>NOT APPLICABLE (Do not use hemodialysis catheters for purposes other than hemodialysis [e.g., administration of fluids, blood/blood prod-ucts, or parenteral nutri-tion]).</p>	<p>Apply povidone-iodine ointment to the catheter insertion site before and after hemodialysis.</p>

APPENDIX.—SUMMARY OF RECOMMENDED PROCEDURES FOR MAINTENANCE OF INTRAVASCULAR CATHETERS, ADMINISTRATION SETS AND PARENTERAL FLUIDS—Continued

Frequency of catheter/device change	Frequency of dressing change	Frequency of administration set change	"Hang time" for parenteral fluids	Use of antimicrobial ointments
Umbilical Catheters: NO RECOMMENDATION for frequency of catheter change.	NOT APPLICABLE	Change intravenous tubing, including "piggy-back tubing" no more frequently than at 72-hour intervals. NO RECOMMENDATION for intravenous tubing changes beyond 72-hour intervals. Change tubing used to administer blood, blood products or lipid emulsions within 24 hours of completing the infusion.	Do not leave parenteral nutrition fluids hanging >24 hours. NO RECOMMENDATION for the "hang time" of intravenous fluids other than parenteral nutrition fluids.	NO RECOMMENDATION for the routine application of antimicrobial ointments to the catheter site.

References

- Smith RL, Meixler SM, Simberkoff MS. Excess mortality in critically ill patients with nosocomial bloodstream infections. *Chest* 1991;100:164-7.
- Martin MA, Pfaller MA, Wenzel RP. Coagulase-negative staphylococcal bacteremia. Mortality and hospital stay. *Ann Intern Med* 1989;110:9-16.
- Haley RW. Estimating the extra charges and prolongation of hospitalization due to nosocomial infections: A comparison of methods. *J Infect Dis* 1980;141:248-57.
- Pittet D, Tarara D, Wenzel RP. Nosocomial bloodstream infection in critically ill patients: excess length of stay, extra costs, and attributable mortality. *JAMA* 1994;162:1598-601.
- Arnouf PM, Quimosing EM, Brech M. Consequences of intravascular catheter sepsis. *Clin Infect Dis* 1993;16:778-84.
- Maki DG. Infections due to infusion therapy. In: Bennett JV, Brachman PS, eds. *Hospital Infections*. Third ed. Boston/Toronto/London: Little, Brown and Company, 1992.
- Banerjee SN, Emori TG, Culver DH, et al. Secular trends in nosocomial primary bloodstream infection in the United States, 1980-1989. *Am J Med* 1991;91(Suppl 3B):86S-9S.
- Jarvis WR, Edwards JR, Culver DH, et al. Nosocomial infection rates in adult and pediatric intensive care units in the United States. *Am J Med* 1991;91 (Suppl 3B):3B-185S-91S.
- Gantz NM, Presswood GM, Goldbert R, et al. Effects of dressing type and change interval on intravenous therapy complication rates. *Diagn Microbiol Infect Dis* 1984;2:325-32.
- Hoffman KK, Western S, Groschel DHM, et al. Bacterial colonization and phlebitis-associated risk with transparent polyurethane film for peripheral intravenous site dressings. *Am J Clin Path* 1988;16:101-6.
- Smallman L, Burdon DW, Alexander-Williams J. The effect of skin preparation and care on the incidence of superficial thrombophlebitis. *Br J Surg* 1980;67:861-2.
- Collin J, Collin C, Constable FL, Johnston IDA. Infusion thrombophlebitis and infection with various cannulas. *Lancet* 1975;2:150-3.
- Larson E, Hargiss C. A decentralized approach to maintenance of intravenous therapy. *Am J Clin Path* 1984;8:620-4.
- Ena J, Cercenado E, Martinez D, et al. Cross-sectional epidemiology of phlebitis and catheter-related infections. *Infect Control Hosp Epidemiol* 1992;13:15-20.
- Craven DE, Lichtenberg A, Kunches LM, et al. A randomized study comparing a transparent polyurethane dressing to a dry gauze dressing for peripheral intravenous catheter sites. *Infect Control* 1985;6:361-6.
- Tager IB, Ginsberg MB, Ellis SE, et al. An epidemiologic study of the risks associated with peripheral intravenous catheters. *Am J Epidemiol* 1983;118:839-51.
- Maki DG, Ringer M. Risk factors for infusion-related phlebitis with small peripheral venous catheters. A randomized controlled trial. *Ann Intern Med* 1991;114:845-54.
- Gardner RM, Schwartz R, Wong HC, Burke JP. Percutaneous indwelling radial-artery catheters for monitoring cardiovascular function. *N Engl J Med* 1974;290:1227-31.
- Samsouk W, Freeman JB, Coultish I, Oxley C. Colonization of intravascular catheters in an intensive care unit. *Am J Surg* 1985;149:730-2.
- Band JD, Maki DG. Infections caused by arterial catheters used for hemodynamic monitoring. *Am J Med* 1979;67:735-41.
- Raad I, Umphrey I, Khan A, Truett LJ, Bodey GP. The duration of placement as a predictor of peripheral and pulmonary arterial catheter infections. *J Hosp Infect* 1993;23:17-26.
- Thomas F, Burke JP, Parker J, et al. The risk of infection related to radial vs femoral sites for arterial catheterization. *Crit Care Med* 1983;11:807-12.
- Maki DG, McCormick RD, Uman SJ, Wirtanen GW. Septic endarteritis due to intra-arterial catheters for cancer chemotherapy. *Cancer* 1979;44:1228-40.
- Pemberton LB, Lyman B, Lander V, Covinsky J. Sepsis from triple- vs single-lumen catheters during total parenteral nutrition in surgical or critically ill patients. *Arch Surg* 1986;121:591-4.
- Yeung C, May J, Hughes R. Infection rate for single-lumen vs. triple-lumen subclavian catheters. *Infect Control Hosp Epidemiol* 1988;9:154-8.
- Hilton E, Haslett TM, Borenstein MT, et al. Central catheter infections: single-versus triple-lumen catheters. Influence of guide wires on infection rates when used for replacement of catheters. *Am J Med* 1988;84:667-72.
- McCarthy MC, Shives JK, Robison RJ, Broadie TA. Prospective evaluation of single- and triple-lumen catheters in total parenteral nutrition. *J Parenter Enteral Nutr* 1987;11:259-62.
- Clark-Christoff N, Watters VA, Sparks W, Snyder P, Grant JP. Use of triple-lumen subclavian catheters for administration of total parenteral nutrition. *J Parenter Enteral Nutr* 1992;16:403-7.
- Farkas JC, Liu N, Bleriot JP, Chevret S, Goldstein FW, Carlet J. Single- versus triple-lumen central catheter-related sepsis: A prospective randomized study in a critically ill population. *Am J Med* 1992;93:277-82.
- Prager RL, Silva J. Colonization of central venous catheters. *South Med J* 1984;77:458-61.
- Brun-Buisson C, Abrouk F, Legrand P, Huet Y, Larabi S, Rapin M. Diagnosis of central venous catheter-related sepsis. Critical level of quantitative tip cultures. *Arch Intern Med* 1987;147:873-7.
- Collignon P, Soni N, Pearson I, Sorrell T, Woods P. Sepsis associated with central vein catheters in critically ill patients. *Intens Care Med* 1988;14:227-31.
- Richet H, Hubert B, Nitemberg G, et al. Prospective multicenter study of vascular catheter-related complications and risk factors for positive central-catheter cultures in intensive care unit patients. *J Clin Microbiol* 1990;28:2520-5.
- Horowitz HW, Dworkin BM, Savino JA, et al. Central catheter-related infections: Comparison of pulmonary artery catheters and triple lumen catheters for the delivery of hyperalimentation in a critical care setting. *J Parenter Enteral Nutr* 1990;14:558-92.
- Gil RT, Kruse JA, Thill-Baharozian MC, Carlson RW. Triple- vs single-lumen central

- venous catheters. A prospective study in a critically ill population. *Arch Intern Med* 1989;149:1139-43.
36. Mermel LA, McCormick RD, Springman SR, Maki DG. The pathogenesis and epidemiology of catheter-related infection with pulmonary artery Swan-Ganz catheters: a prospective study utilizing molecular subtyping. *Am J Med* 1991;91:197-205.
37. Rello J, Coll P, Net A, Prats G. Infection of pulmonary artery catheters. Epidemiologic characteristics and multivariate analysis of risk factors. *Chest* 1993;103:132-6.
38. Singh S, Nelson N, Acosta I, Check FE, Puri VK. Catheter colonization and bacteremia with pulmonary and arterial catheters. *Crit Care Med* 1982;10:736-9.
39. Pinilla JC, Ross DF, Martin T, Crump H. Study of the incidence of intravascular catheter infection and associated septicemia in critically ill patients. *Crit Care Med* 1983;11:21-5.
40. Senagore A, Waller JD, Bonnell BW, et al. Pulmonary artery catheterization: A prospective study of internal jugular and subclavian approaches. *Crit Care Med* 1987;15:35-7.
41. Solomon SL, Alexander H, Eley JW, et al. Nosocomial fungemia in neonates associated with intravascular pressure-monitoring devices. *Pediatr Infect Dis* 1986;5:680-5.
42. Maki DG, Hassemer CA. Endemic rate of fluid contamination and related septicemia in arterial pressure monitoring. *Am J Med* 1981;70:733-8.
43. Phillips I, Eykyn S, Curtis MA, Snell JJS. *Pseudomonas cepacia* (multivorans) septicemia in an intensive care unit. *Lancet* 1972;1:375-7.
44. Gahrn-Hansen B, Alstrup P, Dessau R, et al. Outbreak of infection with *Achromobacter xiloxoxidans* from contaminated intravascular pressure transducers. *J Hosp Infect* 1988;12:1-6.
45. Villarino ME, Jarvis WR, O'Hara C, Bresnahan J, Clark N. Epidemic of *Serratia marcescens* bacteremia in a cardiac intensive care unit. *J Clin Microbiol* 1989;27:2433-6.
46. Hekker TAM, Van Overhagen W, Schneider AJ. Pressure transducers: an overlooked source of sepsis in the intensive care unit. *Intens Care Med* 1990;16:511-2.
47. Mermel LA, Maki DG. Epidemic bloodstream infections from hemodynamic pressure monitoring: signs of the times. *Infect Control Hosp Epidemiol* 1989;10:47-53.
48. Thomas A, Lalitha MK, Jesudason MY, John S. Transducer-related *Enterobacter cloacae* sepsis in post-operative cardiothoracic patients. *J Hosp Infect* 1993;25:211-4.
49. Weinstein RA, Emori TG, Anderson RL, Stamm WE. Pressure transducers as a source of bacteremia after open heart surgery. Report of an outbreak and guidelines for prevention. *Chest* 1976;69:338-44.
50. Weinstein RA, Stamm WE, Kramer L, Corey L. Pressure monitoring devices: overlooked source of nosocomial infection. *JAMA* 1976;236:936-8.
51. Buxton AE, Anderson RL, Klimek J, Quintiliani R. Failure of disposable domes to prevent septicemia acquired from contaminated pressure transducers. *Chest* 1978;74:508-13.
52. Donowitz LG, Marsik FJ, Hoyt JW, Wenzel RP. *Serratia marcescens* bacteremia from contaminated pressure transducers. *JAMA* 1979;242:1749-51.
53. Retailiau HF. Infection control with invasive pressure monitoring devices. *Am J Clin Path* 1979:13-7.
54. Beck-Sague CM, Jarvis WR. Epidemic bloodstream infections associated with pressure transducers: a persistent problem. *Infect Control* 1989;10:54-9.
55. Fisher MC, Long SS, Roberts EM, Dunn JM, Balsara RK. *Pseudomonas maltophilia* bacteremia in children undergoing open heart surgery. *JAMA* 1981;246:1571-4.
56. Stamm WE, Colella JJ, Anderson RL, et al. Indwelling arterial catheters as a source of nosocomial bacteremia—An outbreak caused by *Flavobacterium* species. *N Engl J Med* 1982;306:1099-102.
57. Shinozaki T, Deane RS, Mazuzan JE, Hamel AJ, Hazelton D. Bacterial contamination of arterial lines. *JAMA* 1983;249:223-5.
58. Luskin RL, Weinstein RA, Nathan C, Chamberlin WH, Kabins SA. Extended use of disposable pressure transducers: a bacteriologic evaluation. *JAMA* 1986;255:916-20.
59. Raad I, Davis S, Becker M, et al. Low infection rate and long durability of nontunneled silastic catheters. A safe cost-effective alternative for long-term venous access. *Arch Intern Med* 1993;153:1791-6.
60. Williams DN, Gibson J, Vos J, Kind AC. Infusion thrombophlebitis and infiltration associated with intravenous cannulae: A controlled study comparing three different cannula types. *NITA* 1982;5:379-82.
61. Abraham JL, Mullen JL. A prospective study of prolonged central venous access in leukemia. *JAMA* 1982;248:2868-73.
62. Pessa ME, Howard RJ. Complications of Hickman-Broviac catheters. *Surg Gynecol Obstet* 1985;161:257-60.
63. Rannem T, Ladefoged K, Tvede M, Lorentzen JE, Jarnum S. Catheter-related septicemia in patients receiving home parenteral nutrition. *Scand J Gastroenterol* 1986;21:455-60.
64. Dabyshe PJ, Weightman NC, Speller DCE. Problems associated with indwelling central venous catheters. *Arch Dis Child*;1985;60:129-39.
65. Shulman RJ, Rahmna S, Mahoney D, et al. A totally implanted venous access system used in patients with cancer. *Infect Control* 1987;3:61-72.
66. Shapiro ED, Wald ER, Nelson KA, et al. Broviac catheter-related bacteremia in oncology patients. *Infect Surg* 1982;6:103-6.
67. Weightman NC, Simpson EM, Speller DC, Mott MG, Oakhill A. Bacteraemia related to indwelling central venous catheters: prevention, diagnosis and treatment. *Eur J Clin Microbiol Infect Dis* 1988;7:125-9.
68. Schuman ES, Winters V, Gross GF, Hayes JF. Management of Hickman catheter sepsis. *Am J Surg* 1985;149:627-8.
69. Press OW, Ramsey PG, Larson EB, Fefer A, Hickman RO. Hickman catheter infections in patients with malignancies. *Medicine* 1984;63:189-200.
70. Andrivet P, Bacquer A, Ngoc CV, et al. Lack of clinical benefit from subcutaneous tunnel insertion of central venous catheters in immunocompromised patients. *Clin Infect Dis* 1994;18:199-206.
71. McDowell HP, Hart CA, Martin J. Implantable subcutaneous venous catheters. *Arch Dis Child* 1986;61:1037-8.
72. Brickner H, Saeter G. Fifty-five patient years' experience with a totally implanted system for intravenous chemotherapy. *Cancer* 1986;57:1124-9.
73. Wurzel CL, Halom K, Feldman JG, Rubin LG. Infection rates of Broviac-Hickman catheters and implantable venous devices. *Am J Dis Child* 1988;142:536-40.
74. Pegues D, Axelrod P, McClarren C, et al. Comparison of infections in Hickman and implanted port catheters in adult solid tumor patients. *J Surg Oncol* 1992;49:156-62.
75. van der Pijl H, Jos Frissen PH. Experience with a totally implantable venous access device (Port-A-Cath) in patients with AIDS. *AIDS* 1992;6:709-13.
76. Gyves J, Ensminger W, Niederhuber J, et al. A totally-implanted injection port system for blood sampling and chemotherapy administration. *JAMA* 1984;251:2538-41.
77. Lokich JJ, Bothe A, Benotti P, Moore C. Complications and management of implanted venous access catheters. *J Clin Oncol* 1985;3:710-7.
78. Kappers-Klunne MC, Degener JE, Stijnen T, Abels J. Complications from long-term indwelling central venous catheters in hematologic malignancy patients with special reference to infection. *Cancer* 1989;64:1747-52.
79. Carde P, Cosset-Delaigue MF, Laplanche A, Chareau I. Classical external indwelling central venous catheter versus total implanted venous access systems for chemotherapy administration: a randomized trial in 100 patients with solid tumors. *Eur J Cancer Clin Oncol* 1989;25:939-44.
80. Groeger JS, Lucas AB, Thaler HT, et al. Infectious morbidity associated with long-term use of venous access devices in patients with cancer. *Ann Intern Med* 1993;119:1168-74.
81. Khoury MD, Lloyd LR, Burrows J, Berg R, Yap J. A totally implanted venous access system for the delivery of chemotherapy. *Cancer* 1985;56:1231-4.
82. Stillman RI, Wenzel RP, Donowitz LC. Emergence of coagulase negative staphylococci as major nosocomial bloodstream pathogens. *Infect Control* 1987;8:108-12.
83. Morrison AJ Jr, Freer CV, Searcy MA, et al. Nosocomial bloodstream infections: secular trends in a statewide surveillance program in Virginia. *Infect Control* 1986;7:550-3.
84. Schaberg DR, Culver DH, Gaynes RP. Major trends in the microbial etiology of nosocomial infection. *Am J Med* 1991;91(suppl 3B):3B72S-75S.
85. Dougherty SH. Pathobiology of infection in prosthetic devices. *Rev Infect Dis* 1988;10:1102-17.
86. Freeman J, Goldmann DA, Smith NE, et al. Association of intravenous lipid emulsion and coagulase-negative staphylococcal bacteremia in neonatal intensive care units. *N Engl J Med* 1990;323:301-8.
87. Jarvis WR, Martone WJ. Predominant pathogens in hospital infections. *J*

- Antimicrob Chemother 1992;29 (Suppl A):19-24.
88. Dugdall DC, Ramsey PG. *Staphylococcus aureus* bacteremia patients with Hickman catheters. Am J Med 1990;89:137-41.
89. Libman H, Arbeit RD. Complications associated with *Staphylococcus aureus* bacteremia. Arch Intern Med 1984;144:541-5.
90. Raad I, Narro J, Khan A, Tarrand J, Vartivarian S, Bodey GP. Serious complications of vascular catheter-related *Staphylococcus aureus* bacteremia in cancer patients. Eur J Clin Microbiol Infect Dis 1992;11:675-82.
91. Centers for Disease Control and Prevention. Nosocomial enterococci resistant to vancomycin—United States, 1989-1993. MMWR 1993;42:597-9.
92. Karanfil LV, Murphy M, Josephson A, et al. A cluster of vancomycin-resistant *Enterococcus faecium* in an intensive care unit. Infect Control Hosp Epidemiol 1992;13:195-200.
93. Boyce JM, Opal SM, Chow JW, et al. Outbreak of multidrug-resistant *Enterococcus faecium* with transferable vanB class vancomycin resistance. J Clin Microbiol 1994;32:1148-53.
94. Handwerker S, Raucher B, Altarac D, et al. Nosocomial outbreak due to *Enterococcus faecium* highly resistant to vancomycin, penicillin, and gentamicin. Clin Infect Dis 1993;16:750-5.
95. Rubin LG, Tucci V, Cercenado E, Eliopoulos G, Isenberg HD. Vancomycin-resistant *Enterococcus faecium* in hospitalized children. Infect Control Hosp Epidemiol 1992;13:700-5.
96. Montecalvo MA, Horowitz H, Gedris C, et al. Outbreak of vancomycin-, ampicillin-, and aminoglycoside-resistant *Enterococcus faecium* in an adult oncology unit. Antimicrob Agents Chemother 1994;38:1363-7.
97. Frieden TR, Munsiff SS, Low DE, et al. Emergence of vancomycin-resistant enterococci in New York City. Lancet 1993;342:76-9.
98. Boyle JF, Soumakis SA, Rendo A, et al. Epidemiologic analysis and genotype characterization of a nosocomial outbreak of vancomycin-resistant enterococci. J Clin Microbiol 1993;1993:31.
99. Edmond MB, Ober JF, Weinbaum DL, et al. Vancomycin-resistant *Enterococcus faecium* bacteremia: risk factors for infection. Clin Infect Dis 1995;20:1126-33.
100. Livornese LLJ, Dias S, Samel C, et al. Hospital-acquired infection with vancomycin-resistant *Enterococcus faecium* transmitted by electronic thermometers. Ann Intern Med 1992;117:112-6.
101. Moellering RCJ. Enterococcal infections in patients treated with moxalactam. Rev Infect Dis 1982;(4 suppl):S70-S711.
102. Yu VL. Enterococcal superinfection and colonization after therapy with moxalactam, a new broad-spectrum antibiotic. Ann Intern Med 1981;94:784-5.
103. Feliciano DV, Gentry LO, Bitondo CG, et al. Single agent cephalosporin prophylaxis for penetrating abdominal trauma: results and comment on the emergence of the enterococcus. Am J Surg 1986;152:674-81.
104. Pallares R, Dick R, Wenzel RP, Adams JR, Nettleman MD. Trends in antimicrobial utilization at a tertiary teaching hospital during a 15-year period (1978-1992). Infect Control Hosp Epidemiol 1993;14:376-82.
105. Ena J, Dick RW, Jones RN, Wenzel RP. The epidemiology of intravenous vancomycin usage in a university hospital: a 10-year study. JAMA 1993;269:598-602.
106. Beck-Sagué CM, Jarvis WR. Secular trends in the epidemiology of nosocomial fungal infections in the United States, 1980-1990. J Infect Dis 1993;167:1247-51.
107. Voss A, Hollis RJ, Pfaller MA, Wenzel RP, Doebbeling BN. Investigation of the sequence of colonization and candidemia in nonneutropenic patients. J Clin Microbiol 1994;32:975-80.
108. Pfaller MA, Cabezudo I, Hollis R, Huston B, Wenzel RP. The use of biotyping and DNA fingerprinting in typing *Candida albicans* from hospitalized patients. Diagn Microbiol Infect Dis 1990;13:481-9.
109. Reagan DR, Pfaller MA, Hollis RJ, Wenzel RP. Characterization of the sequence of colonization and nosocomial candidemia using DNA fingerprinting and a DNA probe. J Clin Microbiol 1990;28:2733-8.
110. Moro ML, Maffei C, Manso E, Morace G, Polonelli L, Biavasco F. Nosocomial outbreaks of systemic candidosis associated with parenteral nutrition. Infect Control Hosp Epidemiol 1990;11:27-35.
111. Sherertz RJ, Gledhill KS, Hampton KD, et al. Outbreak of *Candida* bloodstream infections associated with retrograde medication administration in a neonatal intensive care unit. J Pediatr 1992;120:455-61.
112. Weems JJ, Chamberland ME, Ward J, Willy M, Padnye AA, Solomon SL. *Candida parapsilosis* fungemia associated with parenteral nutrition and contaminated blood pressure transducers. J Clin Microbiol 1987;1925:1029-32.
113. Phelps M, Ayliffe GAJ, Babb JR. An outbreak of candidiasis in a special care baby unit: the use of resistogram typing method. J Hosp Infect 1986;7:13-20.
114. Vaudry WL, Tierney AJ, Wenman WM. Investigation of systemic *Candida albicans* infections in a neonatal intensive care unit. J Infect Dis 1988;158:1375-9.
115. Burnie JP, Odds FC, Lee W, Webster C, Williams JD. Outbreak of systemic *Candida albicans* in an intensive care unit caused by cross infection. Br Med J 1985;290:746-8.
116. Finkelstein R, Reinhertz G, Hashman N, Merzbach D. Outbreak of *Candida tropicalis* fungemia in a neonatal intensive care unit. Infect Control Hosp Epidemiol 1993;14:587-90.
117. Lee W, Burnie JP, Matthews RC, Oppenheim BO, Damani NN. Hospital outbreaks with yeasts. J Hosp Infect 1991;18 (suppl A):237-49.
118. Isenberg HD, Tucci V, Cintron F, Singer C, Weinstein GS, Tyras DH. Single source outbreak of *Candida tropicalis* complicating coronary bypass surgery. J Clin Microbiol 1989;27:2426-8.
119. Hunter PR, Harrison GAJ, Fraser CAM. Cross infection and diversity of *Candida albicans* strain carriage in patients and nursing staff on an intensive care unit. J Med Vet Mycol 1990;28:317-25.
120. Burnie JP. Candida of hands. J Hosp Infect 1986;8:1-4.
121. Doebbeling BN, Hollis RJ, Isenberg HD, Wenzel RP, Pfaller MA. Restriction fragment analysis of a *Candida tropicalis* outbreak of sternal wound infections. J Clin Microbiol 1991;29:1268-70.
122. Burnie JP, Lee W, William JD, Matthews RC, Odds FC. Control of an outbreak of systemic *Candida albicans*. Br Med J [Clin Res] 1985;291:1092-3.
123. Snydman DR, Pober BR, Murray SA, Gorbea HF, Majka JA, Perry LK. Predictive value of surveillance skin cultures in total parenteral nutrition-related infection. Lancet 1982;1:385-8.
124. Kelsey MC, Gosling M. A comparison of the morbidity associated with occlusive and non-occlusive dressings applied to peripheral intravenous devices. J Hosp Infect 1984;5:313-21.
125. Bjornson HS, Colley R, Bower RH, Duty VP, Schwartz-Fulton JT, Fischer JE. Association between microorganism growth at the catheter insertion site and colonization of the catheter in patients receiving total parenteral nutrition. Surgery 1982;92:720-7.
126. Cooper GL, Hopkins CC. Rapid diagnosis of intravascular catheter-associated infection by direct gram staining of catheter segments. N Engl J Med 1985;312:1142-47.
127. deCicco M, Chiaradia V, Veronesi A, et al. Source and route of microbial colonization of parenteral nutrition catheters. Lancet 1989;2:1258-61.
128. Linares J, Sitges-Serra A, Garau J, et al. Pathogenesis of catheter sepsis: A prospective study with quantitative and semiquantitative cultures of catheter hub and segments. J Clin Microbiol 1985;21:357-60.
129. Sitges-Serra A, Linares J, Perez JL, et al. A randomized trial on the effect of tubing changes on hub contamination and catheter sepsis during parenteral nutrition. J Parenter Enteral Nutr 1985;9:322-5.
130. Raad I, Casterton W, Sabharwal U, et al. Ultrastructural analysis of indwelling vascular catheters: A quantitative relationship between luminal colonization and duration of placement. J Infect Dis 1993;168:400-7.
131. Pettigrew RA, Lang SDR, Haydock DA, Parry BR, Bremner DA, Hill GL. Catheter-related sepsis in patients on intravenous nutrition: a prospective study of quantitative catheter cultures and guidewire changes for suspected sepsis. Br J Surg 1985;72:52-5.
132. Maki DG, Martin WT. Nationwide epidemic of septicemia caused by contaminated infusion products. IV. Growth of microbial pathogens in fluids for intravenous infection. J Infect Dis 1975;131:267-72.
133. Centers for Disease Control. Nosocomial bacteremia associated with intravenous fluid therapy. MMWR 1971;20 (suppl 9).
134. Maki DG, Anderson RL, Shulam JA. In-use contamination of intravenous infusion fluid. Appl Microbiol 1974;28:778-84.
135. Sheth NK, Rose HD, Franson TR, et al. In vitro quantitative adherence of bacteria on polyvinyl chloride and Teflon catheters in hospitalized patients. J Clin Microbiol 1983;18:1061-3.
136. Hogt AH, Dankert J, Feijen J. Encapsulation, slime production and surface

- hydrophobicity of coagulase-negative staphylococci. *FEMS Microbiol Lett* 1983;18:211-5.
137. Ashkenazi S, Weiss E, Drucker MM. Bacterial adherence to intravenous catheters and needles and its influence by cannula type and bacterial surface hydrophobicity. *J Lab Clin Med* 1986;107:136-40.
138. Locci R, Peters G, Pulverer G. Microbial colonization of prosthetic devices I. Microtopographical characteristics of intravenous catheters as detected by scanning microscopy. *Zentralbl Bakteriol* 1981;173:285-92.
139. Peters G, Locci R, Pulverer G. Microbial colonization of prosthetic devices II. Scanning electron microscopy of naturally infected intravenous catheters. *Zentralbl Bakteriol* 1981;173:293-9.
140. Stillman RM, Soliman F, Garcia L, et al. Etiology of catheter-associated sepsis: correlation with thrombogenicity. *Arch Surg* 1977;112:1497-502.
141. Herrmann M, Vaudaux PE, Pittet D, et al. Fibronectin, fibrinogen, and laminin act as mediators of adherence of clinical staphylococcal isolates to foreign material. *J Infect Dis* 1988;158:693-701.
142. Vaudaux P, Suzuki R, Waldvogel FA, Morgenthaler JJ, Nydegger UE. Foreign body infection: role of fibronectin as a ligand for the adherence of *Staphylococcus aureus*. *J Infect Dis* 1984;150:546-53.
143. Gristina AG. Biomaterial-centered infection: microbial adhesion versus tissue integration. *Science* 1987;237:1588-95.
144. Johnson GM, Lee DA, Regelman WE, Gray ED, Peters G, Quie PG. Interference with granulocyte function by *Staphylococcus epidermidis* slime. *Infect Immun* 1986;54:13-20.
145. Gray ED, Peters G, Versteegen M, Regelman WE. Effect of extracellular slime substance from *Staphylococcus epidermidis* on the human cellular immune response. *Lancet* 1984;1:365-7.
146. Farber BF, Kaplan H, Clogston AG. *Staphylococcus epidermidis* extracted slime inhibits the antimicrobial action of glycopeptide antibiotics. *J Infect Dis* 1990;161:37-40.
147. Branchini ML, Pfaller MA, Rhine-Chalberg J, Frempong T, Isenberg HD. Genotypic variation in slime production among blood and catheter isolates of *Candida parapsilosis*. *J Clin Microbiol* 1994;32:452-6.
148. Maki DG, Weise CE, Sarafin HW. A semiquantitative culture method for identifying intravenous catheter-related infection. *N Engl J Med* 1977;296:1305-9.
149. Zufferey J, Rime B, Francioli P, Bille J. Simple method for rapid diagnosis of catheter-associated infection by direct acridine orange staining of catheter tips. *J Clin Microbiol* 1988;26:175-7.
150. Cleri DJ, Corrado ML, Seligman SJ. Quantitative culture of intravenous catheters and other intravascular inserts. *J Infect Dis* 1987;141:781-6.
151. Sherertz RJ, Raad II, Balani A, et al. Three year experience with sonicated vascular catheter cultures in a clinical microbiology laboratory. *J Clin Microbiol* 1990;28:76-82.
152. Raad II, Sabbagh MF, Rand KH, et al. Quantitative tip culture methods and the diagnosis of central venous catheter-related infections. *Diagn Microbiol Infect Dis* 1992;15:13-20.
153. Armstrong CW, Mayhall CG, Miller KB, et al. Prospective study of catheter replacement and other risk factors for infection of hyperalimentation catheters. *J Infect Dis* 1986;154:808-16.
154. Fan ST, Teoh-Chan CH. Evaluation of central venous catheter sepsis by differential quantitative culture. *Eur J Clin Microbiol Infect Dis* 1989;8:142-4.
155. Armstrong CW, Mayhall CG, Miller KB, et al. Clinical predictors of infection of central venous catheters used for total parenteral nutrition. *Infect Control Hosp Epidemiol* 1990;11:71-8.
156. Wing EJ, Norden CW, Shaddock RK, Winkelstein A. Use of quantitative bacteriologic techniques to diagnose catheter-related sepsis. *Arch Intern Med* 1979;139:482-3.
157. Raucher HS, Hyatt AC, Barzilay MB, et al. Quantitative blood cultures in the evaluation of septicemia in children with Broviac catheters. *J Pediatr* 1984;104:29-33.
158. Flynn PM, Shenep JL, Stokes DC, Barrett FF. In place management of confirmed central venous catheter-related bacteremia. *Pediatr Infect Dis J* 1987;6:729-34.
159. Ruderman JW, Morgan MA, Klein AH. Quantitative cultures in the diagnosis of sepsis in infants with umbilical Broviac catheters. *J Pediatr* 1988;112:748-51.
160. Bansmer G, Keith D, Tesluk H. Complications following use of indwelling catheters of inferior vena cava. *JAMA* 1958;167:1606-11.
161. Phillips RW, Eyre JD. Septic thrombophlebitis with septicemia. *N Engl J Med* 1958;259:729-31.
162. Indar R. The dangers of indwelling polyethylene cannulae in deep veins. *Lancet* 1959;1:284-6.
163. McNair TJ, Dudley HA. The local complications of intravenous therapy. *Lancet* 1959;2:365-8.
164. Crane C. Venous interruption of septic thrombophlebitis. *N Engl J Med* 1960;262:947-51.
165. Maki DG, Ringer M. Evaluation of dressing regimens for prevention of infection with peripheral intravenous catheters. Gauze, a transparent polyurethane dressing, and an iodophor-transparent dressing. *JAMA* 1987;258:2396-403.
166. Collins RN, Braun PA, Zimmer SH, Kass EH. Risk of local and systemic infection with polyurethane intravenous catheters. *N Engl J Med* 1968;279:340-3.
167. Maki DG, Goldmann DA, Rhame FS. Infection control in intravenous therapy. *Ann Intern Med* 1973;79:867-87.
168. Band JD, Maki DG. Steel needles used for intravenous therapy. Morbidity in patients with hematologic malignancy. *Arch Intern Med* 1980;140:31-4.
169. Tully JL, Friedland GH, Baldini LM, Goldmann DA. Complications of intravenous therapy with steel needles and Teflon catheters. A comparative study. *Am J Med* 1981;70:702-6.
170. Mitchell A, Atkins S, Royle GT, Kettlewell MGW. Reduced catheter sepsis and prolonged catheter life using a tunneled silicone rubber catheter for total parenteral nutrition. *Br J Surg* 1982;69:420-2.
171. Raad II, Hohn DC, Gilbreath BJ, et al. Prevention of central venous catheter-related infections by using maximal sterile barrier precautions during insertion. *Infect Control Hosp Epidemiol* 1994;15:231-8.
172. Maki DG. Yes, Virginia, aseptic technique is very important: Maximal barrier precautions during insertion reduce the risk of central venous catheter-related bacteremia. *Infect Control Hosp Epidemiol* 1994;15:227-30.
173. Snyderman DR, Donnelly-Reidy M, Perry LK, Martin WJ. Intravenous tubing containing burettes can be safely changed at 72-hour intervals. *Infect Control* 1987;8(3):113-6.
174. Josephson A, Gombert ME, Sierra MF, Karanfil LV, Tansino GF. The relationship between intravenous fluid contamination and the frequency of tubing replacement. *Infect Control* 1985;6:367-70.
175. Maki DG, Botticelli JT, LeRoy ML, Thielke TS. Prospective study of replacing administration sets for intravenous therapy at 48- vs 72-hour intervals: 72 hours is safe and cost-effective. *JAMA* 1987;258:1777-81.
176. McKee KT, Melly MA, Greene HL. Gram-negative bacillary sepsis associated with use of lipid emulsion in parenteral nutrition. *Am J Dis Child* 1979;133:649-50.
177. Jarvis WR, Highsmith AK, Allen JR, Haley RW. Polymicrobial bacteremia associated with lipid emulsion in a neonatal intensive care unit. *Pediatr Infect Dis* 1983;2:203-8.
178. Melley MA, Meng HC, Schaffner W. Microbial growth in lipid emulsions used in parenteral nutrition. *Arch Surg* 1975;110:1479-81.
179. Crocker KS, Noga R, Filibeck DJ, et al. Microbial growth comparisons of five commercial parenteral lipid emulsions. *J Parenter Enteral Nutr* 1984;8:391-5.
180. McArthur BJ, Hargiss C, Schoenknecht FD. Stopcock contamination in an ICU. *Am J Nurs* 1975;75:96-7.
181. Walrath JM, Abbott NK, Caplan E, Scalan E. Stopcock: Bacterial contamination in invasive monitoring systems. *Heart Lung* 1979;8:100-04.
182. Inque Y, Nez R, Matsuda H, et al. Prevention of catheter-related sepsis during parenteral nutrition: effect of a new connection device. *J Parenter Enteral Nutr* 1992;16:581-5.
183. Crow S, Conrad SA, Chaney-Rowell C, King JW. Microbial contamination of arterial infusions used for hemodynamic monitoring: a randomized trial of contamination with sampling through conventional stopcocks versus a novel closed system. *Infect Control* 1989;10:557-61.
184. Miller JJ, Bahman V, Mathru M. Comparison of the sterility of long-term central venous catheterization using single-lumen, triple-lumen, and pulmonary artery catheters. *Crit Care Med* 1984;12:634-7.
185. Ullman RF, Gurevich I, Schoch PE, Cunha BA. Colonization and bacteremia related to duration of triple-lumen intravascular catheter placement. *Infect Control* 1990;18:201-7.
186. Cobb DK, High KP, Sawyer RG, et al. A controlled trial of scheduled replacement

- of central venous and pulmonary artery catheters. *N Engl J Med* 1992;327 (15):1062-8.
187. Eyer S, Brummitt C, Crossley K, et al. Catheter-related sepsis: Prospective, randomized study of three different methods of long-term catheter maintenance. *Crit Care Med* 1990;18:1073-9.
188. Michel LA, Bradpiece HA, Randour P, Pouthier F. Safety of central venous catheter change over a guidewire for suspected catheter-related sepsis: a prospective randomized trial. *Int Surg* 1988;73:180-6.
189. Newsome HH Jr, Armstrong CW, Mayhall CG, et al. Mechanical complications from insertion of subclavian venous feeding catheters: Comparison of de novo percutaneous venipuncture to change of catheter over guidewire. *J Parenter Enteral Nutr* 1984;8:560-2.
190. Snyder RH, Archer FJ, Endy T, et al. Catheter infection: a comparison of two catheter maintenance techniques. *Ann Surg* 1988;208:651-3.
191. Ayliffe GAJ, Babb JR, Davies JG, et al. Hand disinfection: A comparison of various agents in laboratory and ward studies. *J Hosp Infect* 1988;11:226-43.
192. Rotter M, Koller W, Wewalka G. Povidone-iodine and chlorhexidine gluconate containing detergents for disinfection of hands. *J Hosp Infect* 1980;1:149-58.
193. Maki DG, Ringer M, Alvarado CJ. Prospective randomized trial of povidone-iodine, alcohol, and chlorhexidine for prevention of infection associated with central venous and arterial catheters. *Lancet* 1991;338:339-43.
194. Shapiro JM, Bond EL, Garman JK. Use of a chlorhexidine dressing to reduce microbial colonization of epidural catheters. *Anesthesiology* 1990;73:625-31.
195. Strand CL, Wajsborn RR, Sturmman K. Effect of iodophor vs iodine tincture skin preparation on blood culture contamination rate. *JAMA* 1993;269:1004-6.
196. Moran JM, Atwood RP, Rowe MI. A clinical and bacteriologic study of infections associated with venous cutdowns. *N Engl J Med* 1965;272:554-60.
197. Norden CW. Application of antibiotic ointment to the site of venous catheterization: A controlled trial. *J Infect Dis* 1969;120:611-15.
198. Zinner SH, Denny-Brown BC, Braun P, Burke JP, Toala P, Kass EH. Risk of infection with indwelling intravenous catheters: effect of application of antibiotic ointment. *J Infect Dis* 1969;120:616-19.
199. Jerrad MM, Freeman JB. The effects of antibiotic ointments and antiseptics on the skin flora beneath subclavian catheter dressings during intravenous hyperalimentation. *J Surg Res* 1977;22:521-6.
200. Maki DG, Band JD. A comparative study of polyantibiotic and iodophor ointment in prevention of vascular catheter-related infection. *Am J Med* 1981;70:739-44.
201. Flowers RH, Schwenzer KJ, Kopel RF, Fisch MJ, Tucker SI, Farr BM. Efficacy of an attachable subcutaneous cuff for the prevention of intravascular catheter-related infection. A randomized, controlled trial. *JAMA* 1989;261:878-83.
202. Reagan DR, Doebbeling BN, Pfaller MA, et al. Elimination of coincident *Staphylococcus aureus* nasal and hand carriage with intranasal application of mupirocin calcium ointment. *Ann Intern Med* 1991;114:101-6.
203. Hill RLR, Fisher AP, Ware RJ, et al. Mupirocin for the reduction of colonization of internal jugular cannulae—a randomized controlled trial. *J Hosp Infect* 1990;15:311-21.
204. Smith MD, Sanghrija M, Lock S. Mupirocin-resistant *Staphylococcus aureus*. *Lancet* 1987;2:1471-3.
205. Smith GE, Kennedy CTC. *Staphylococcus aureus* resistant to mupirocin. *J Antimicrob Chemother* 1988;21:141-2.
206. Noble WC, Rahman M, Cookson B, et al. Transferable mupirocin-resistance. *J Antimicrob Chemother* 1988;22:771-2.
207. Katich M, Band J. Local infection of the intravenous-cannulae wound associated with transparent dressings. *J Infect Dis* 1985;151:971-2.
208. Dickerson N, Horton P, Smith S, Rose RC III. Clinically significant central venous catheter infections in a community hospital: association with type of dressing. *J Infect Dis* 1989;160:720-1.
209. Conly JM, Grieves K, Peters B. A prospective, randomized study comparing transparent and dry gauze dressings for central venous catheters. *J Infect Dis* 1989;159:310-9.
210. Powell C, Regan C, Fabri PJ, Ruberg RL. Evaluation of Opsite catheter dressings for parenteral nutrition: a prospective, randomized study. *J Parenter Enteral Nutr* 1982;6:43-6.
211. Ricard P, Martin R, Marcoux JA. Protection of indwelling vascular catheters: incidence of bacterial contamination and catheter-related sepsis. *Crit Care Med* 1985;13:541-3.
212. Young GP, Alexeyeff M, Russell D, Thomas RJS. Catheter sepsis during parenteral nutrition: the safety of long-term OpSite dressings. *J Parenter Enteral Nutr* 1988;12:365-70.
213. Maki DG, Stolz S, Wheeler S. A prospective, randomized, three-way clinical comparison of a novel, highly-permeable polyurethane dressing with 206 Swan Ganz pulmonary artery catheters: Opsite IV 3000 vs Tegaderm vs gauze and Tape. I. Cutaneous colonization under the dressing, catheter-related infection. Maki DG, ed. In: *Improving Catheter Site Care*. London: Royal Society of Medicine Services, 1991.
214. Hoffman KK, Weber DJ, Samsa GP, Rutala WA. Transparent polyurethane film as an intravenous catheter dressing: A meta-analysis of the infection risks. *JAMA* 1992;267:2072-6.
215. Quinlan A. In vivo assessment of microbial proliferation under Opsite IV 3000, Tegaderm and Tegaderm Plus, with and without serum. In: *Proceedings and Abstracts of the Third International Meeting of the Hospital Infection Society*. London: Hospital Infection Society.
216. Babycos CR, Barracos A, Mancuso J, Turner-Marse T. Collodion as a safe, cost-effective dressing for central venous catheters. *South Med J* 1990;83:1286-87.
217. Rusko WJU, Batt JN. Effect of filtration on complications of postoperative intravenous therapy. *Am J Hosp Pharm* 1979;36:1355-6.
218. Allcutt DA, Lort D, McCollum CN. Final inline filtration for intravenous infusions: a prospective study. *Br J Surg* 1983;70:111-3.
219. Falchuk KH, Peterson L, McNeil BJ. Microparticulate-induced phlebitis: Its prevention by in-line filtration. *N Engl J Med* 1985;312:78-82.
220. Maddox RR, John JF Jr, Brown LL, Smith CE. Effect of inline filtration on postinfusion phlebitis. *Clin Pharm* 1983;2:58-61.
221. Turco SJ, Davis NM. Particulate matter in intravenous infusion fluids. *Am J Hosp Pharm* 1973;30:611-3.
222. Baumgartner TG, Schmidt GL, Thakker KM, et al. Bacterial endotoxin retention by inline intravenous filters. *Am J Hosp Pharm* 1986;43:681-4.
223. Butler LD, Munson JM, Deluca PP. Effect of inline filtration on the potency of low-dose drugs. *Am J Hosp Pharm* 1980;37:935-41.
224. Freeman JB, Litton AA. Preponderance of gram-positive infections during parenteral alimentation. *Surg Gynecol Obstet* 1974;139:905-8.
225. Maki DG, Cobb L, Garman JK, Shapiro JM, Ringer M, Helgeson RB. An attachable silver-impregnated cuff for prevention of infection with central venous catheters: A prospective randomized multicenter trial. *Am J Med* 1988;85:307-14.
226. Trooskin SZ, Donetz AP, Harvey RA, Greco RS. Prevention of catheter sepsis by antibiotic bonding. *Surgery* 1985;97:547-51.
227. Sherertz RJ, Carruth WA, Hampton AA, Byron MP, Solomon DD. Efficacy of antibiotic-coated catheters in preventing subcutaneous *Staphylococcus aureus* infection in rabbits. *J Infect Dis* 1993;167:98-106.
228. Kamal GD, Pfaller MA, Rempe LE, Jebson PJ. Reduced intravascular catheter infection by antibiotic bonding. A prospective, randomized, controlled trial. *JAMA* 1991;265:2364-8.
229. Tomford JW, Hershey CO, McLaren JCE, Porter DK, Cohen DI. Intravenous therapy team and peripheral venous catheter-associated complications: A prospective control study. *Arch Intern Med* 1984;144:1191-4.
230. Nelson DB, Kein CL, Mohr B, Frank S, Davis SD. Dressing changes by specialized personnel reduce infection rates in patients receiving central venous nutrition. *J Parenter Enteral Nutr* 1986;10:220-2.
231. Faubion WC, Wesley JR, Khaldi N, et al. Total parenteral nutrition catheter sepsis: Impact of the team approach. *J Parenter Enteral Nutr* 1986;10:642-5.
232. Bock SN, Lee RE, Fisher B, et al. A prospective randomized trial evaluating prophylactic antibiotics to prevent triple-lumen catheter-related sepsis in patients treated with immunotherapy. *J Clin Oncol* 1990;8(1):161-9.
233. Al-Sibai MB. The value of prophylactic antibiotics during insertion of long-term indwelling silastic right atrial catheters in cancer patients. *Cancer* 1987;60:1891-5.
234. McKee R. Does antibiotic prophylaxis at the time of catheter insertion reduce the

- incidence of catheter-related sepsis in intravenous nutrition? *J Hosp Infect* 1985;6:419-25.
235. Ranson MR, Oppenheim BA, Jackson A, Kamthan AG, Scarffe JH. Double-blind placebo controlled study of vancomycin prophylaxis for central venous catheter insertion in cancer patients. *J Hosp Infect* 1990;15:95-102.
236. Schwartz C, Henrickson KJ, Roghmann K, Powell K. Prevention of bacteremia attributed to luminal colonization of tunneled central venous catheters with vancomycin-susceptible organisms. *J Clin Oncol* 1990;8:1591-7.
237. Kacica MA, Horgan MJ, Ochoa L. Prevention of gram-positive sepsis in neonates weighing less than 1500 grams. *J Pediatr* 1994;125:253-8.
238. Spafford PS, Sinkin RA, Cox C, Reubens L, Powell KR. Prevention of central venous catheter-related coagulase-negative staphylococcal sepsis in neonates. *J Pediatr* 1994;125:259-63.
239. Raad II, Luna M, Khalil SA, Costerton JW, Lam C, Bodey GP. The relationship between the thrombotic and infectious complications of central venous catheters. *JAMA* 1994;271:1014-6.
240. Ashton J, Gibson V, Summers S. Effects of heparin versus saline solution on intermittent infusion device irrigation. *Heart Lung* 1990;19:608-12.
241. Weber DR. Is heparin really necessary in the lock and, if so, how much? *DICP Ann Pharmacother* 1991;25:399-407.
242. Root JL. Inhibitory effect of disodium EDTA upon the growth of *Staphylococcus epidermidis* in vitro: relation to infection prophylaxis of Hickman catheters. *Antimicrob Agents Chemother* 1988;32:1627-31.
243. Heeger PS, Backstrom JT. Heparin flushes and thrombocytopenia. *Ann Intern Med* 1986;19:69-72.
244. Passannante A, Macik BG. Case report: The heparin flush syndrome: A cause of iatrogenic hemorrhage. *Am J Med Sci* 1988;296:71-3.
245. Rhodes GR, Dixon RH, Silver D. Heparin induced thrombocytopenia with thrombotic and hemorrhagic manifestations. *Surg Gynecol Obstet* 1973;136:409-16.
246. Silver D, Kapsch DN, Tsoi EK. Heparin-induced thrombocytopenia, thrombosis, and hemorrhage. *Ann Surg* 1983;198:301-6.
247. Sketch MH. Use of percutaneously inserted venous catheters in coronary care units. *Chest* 1972;62:684-9.
248. Bassan MM. Prevention of lidocaine-infusion phlebitis by heparin and hydrocortisone. *Chest* 1983;84:439-41.
249. Khawaja HT. Effect of transdermal glyceryl trinitrate on the survival of peripheral intravenous infusions: a double-blind prospective clinical study. *Br J Surg* 1988;75:1212-5.
250. Wright A. Use of transdermal glyceryl trinitrate to reduce failure of intravenous infusion due to phlebitis and extravasation. *Lancet* 1985;2:1148-50.
251. Woodhouse CR. Movelat in the prevention of infusion thrombophlebitis. *Br Med J* 1979;1:454-5.
252. O'Brien BJ, Buxton MJ, Khawaja HT. An economic evaluation of transdermal glyceryl trinitrate in the prevention of intravenous infusion failure. *J Clin Epidemiol* 1990;43:757-63.
253. Adams KS, Zehrer CL, Thomas W. Comparison of a needleless system with conventional heparin locks. *Infect Control Hosp Epidemiol* 1993;21:263-9.
254. Danzig LE, Short L, Collins K, et al. Bloodstream infections associated with a needleless intravenous infusion system and total parenteral nutrition. *Infect Control Hosp Epidemiol* 1995;16(part 2):22.
255. Longfield R, Longfield J, Smith LP, Hyams KC, Stroher ME. Multidose medication vial sterility: An in-use study and a review of the literature. *Infect Control* 1984;5:165-9.
256. Nakashima AK, Highsmith AK, Martone WJ. Survival of *Serratia marcescens* in benzalkonium chloride and in multiple-dose medication vials: relationship to epidemic septic arthritis. *J Clin Microbiol* 1987;25:1019-21.
257. Kothari T, Reyes MP, Brooks N, Brown MJ, Lerner AM. *Pseudomonas cepacia* septic arthritis due to intra-articular injections of methylprednisolone [letter]. *Can Med Assoc J* 1977;116:1230-5.
258. Highsmith AK. Growth of nosocomial pathogens in multiple-dose parenteral medication vials. *J Clin Microbiol* 1982;15:1024-8.
259. Alter MJ, Ahtone J, Maynard JE. Hepatitis B virus transmission associated with a multiple-dose vial in a hemodialysis unit. *Ann Intern Med* 1983;99:330-3.
260. Herruzo-Cabrera R, Garcia-Caballero J, Vera Cortes ML, et al. Growth of microorganisms in parenteral nutrient solutions. *Am J Hosp Pharm* 1984;41:1178-80.
261. Scheckelhoff DJ, Mirtallo JM, Ayers LW, Visconti JA. Growth of bacteria and fungi in total parenteral nutrient admixtures. *Am J Hosp Pharm* 1986;43:73-7.
262. Degleux G, Le Coutour X, Hecquard C, Oblin I. Septicemia caused by contaminated parenteral nutrition pouches: the refrigerator as an unusual cause. *J Parenter Enteral Nutr* 1991;15:474-5.
263. Llop JM, Mangués I, Perez JL, Lopez P, Tuban M. *Staphylococcus saprophyticus* sepsis related to total parenteral nutrition admixtures contamination. *J Parenter Enteral Nutr* 1993;17:575-7.
264. Snyderman DR, Murray SA, Kornfeld SJ, Majka JA, Ellis CA. Total parenteral nutrition-related infections. *Am J Med* 1982;73:695-9.
265. Ryan JA, Abel RM, Abbott WA, et al. Catheter complication in parenteral nutrition. A prospective study of 200 consecutive patients. *N Engl J Med* 1974;290:757-61.
266. Vanhuynegem L, Parmentier P, Potvlieghe C. In place bacteriologic diagnosis of total parenteral nutrition catheter infection. *Surgery* 1988;103:174-7.
267. Keohane PP, Attrill H, Northover J, et al. Effect of catheter tunnelling and a nutrition nurse on catheter sepsis during parenteral nutrition: a controlled trial. *Lancet* 1983;1388-90.
268. Powell CR, Traetow MJ, Fabri PJ, Kudsk KA, Ruberg RL. Op-Site dressing study: A prospective randomized study evaluating povidone iodine ointment and extension set changes with 7-day Op-Site dressings applied to total parenteral nutrition subclavian sites. *J Parenter Enteral Nutr* 1985;9:443-6.
269. Rannem T, Ladefoged K, Hegnhøj F, Hylander Møller E, Bruun B, Farnum S. Catheter-related sepsis in long-term parenteral nutrition with Broviac catheters. An evaluation of different disinfectants. *Clinical Nutrition* 1990;9:131-6.
270. Maki DG, McCormack KN. Defatting catheter insertion sites in total parenteral nutrition is no value as an infection control measure. *Am J Med* 1987;83:833-40.
271. Palidar PJB, Simonowitz DA, Oreskovich MR, et al. Use of Op-Site as an occlusive dressing for total parenteral nutrition catheters. *J Parenter Enteral Nutr* 1982;6:150-1.
272. Uldall PR, Dyck RF, Woods F, et al. A subclavian catheter for temporary vascular access for hemodialysis and plasmapheresis. *Dialysis Transplant* 1979;296:1305-9.
273. Tokars JJ, Alter MS, Favero MS, Moyer LA, Bland LA. National surveillance of hemodialysis associated disease in the United States, 1990. *ASAIO J* 1993;39:71-80.
274. Pezzarossi HE, Ponce de Leon S, Calva JJ, Lazo de la Vega SA, Ruiz-Palacios GM. High incidence of subclavian dialysis catheter-related bacteremias. *Infect Control* 1986;7:596-9.
275. Keane WF, Shapiro FL, Raj L. Incidence and type of infection occurring in 445 chronic hemodialysis patients. *Trans Am Soc Artif Intern Organ* 1977;23:41-6.
276. Sherertz RJ, Falk RJ, Huffman KA, Thomann CA, Mattern WD. Infections associated with subclavian Uldall catheters. *Arch Intern Med* 1983;143:52-6.
277. Cheesbrough JS, Finch RG, Burden RP. A prospective study of the mechanisms of infection associated with hemodialysis catheters. *J Infect Dis* 1986;154:579-89.
278. Almirall J, Gonzalez J, Rello J, et al. Infection of hemodialysis catheters: incidence and mechanisms. *Am J Nephrol* 1989;9:454-9.
279. Blake PG, Huraib S, Uldall PR. The use of dual lumen jugular venous catheters as definitive long term access for haemodialysis. *Int J Artif Organs* 1990;13:26-31.
280. Bour ES, Weaver AS, Yang HC, Gifford RRM. Experience with the double-lumen silastic catheter for hemoaccess. *Gynecol Obstet* 1990;171:33-9.
281. Shusterman NH, Kross K, Muffen JL. Successful use of double-lumen, silicone rubber catheters permanent hemodialysis access. *Kidney Int* 1989;35:887-90.
282. Shaffer D, Madras PN, Williams ME, D'Elia JA, Kaldany A, Monaco AP. Use of Dacron cuffed silicone catheters as long-term hemodialysis access. *ASAIO J* 1992;38:55-8.
283. Kong NCT, Morad Z, Suleiman AB. Subclavian catheters as temporary vascular access. *Sing Med J* 1989;261-2.
284. Dobkin JF, Miller MH, Steigbigel NH. Septicemia in patients on chronic hemodialysis. *Ann Intern Med* 1978;88:28-33.
285. Vanherweghem JL, Dhaene M, Goldman M, et al. Infections associated with subclavian dialysis catheters: the key role of nurse training. *Nephron* 1986;42:116-9.

286. Moss AH, Vasilakis C, Holley JL, Foulks CJ, Pillai K, McDowell DE. Use of a silicone dual-lumen catheter with a Dacron cuff as a long-term vascular access for hemodialysis patients. *Am J Kidney Dis* 1990;16:211-5.
287. Watson AR, Bahoric A, Wesson D. A central venous (WBW) catheter for multipurpose vascular access in children. *Artif Organs* 1986;10:59-61.
288. Canaud B, Beraud JJ, Joyeux H, Mion C. Internal jugular vein cannulation using two silastic catheters. *Nephron* 1986;43:133-8.
289. Donnelly PK, Hoenich NA, Lennard TWJ, Proud G, Taylor RMR. Surgical management of long-term central venous access in uraemic patients. *Nephrol Dial Transplant* 1988;3:57-65.
290. Howell PB, Walter PE, Donowitz GR, Farr BM. Risk factors for infection of adult patients with cancer who have tunneled central venous catheters. *Cancer* 1995;75:1367-75.
291. Tapson JS, Uldall PR. Avoiding deaths from subclavian cannulation for haemodialysis. *Int J Artif Organs* 1983;6:227-30.
292. Barton BR, Hermann G, Weil R. Cardiothoracic emergencies associated with subclavian hemodialysis catheters. *JAMA* 1983;250:2600-62.
293. Tapson JS, Uldall PR. Fatal hemothorax caused by a subclavian hemodialysis catheter. *Arch Intern Med* 1984;144:1685-7.
294. Brady HR, Fitzcharles B, Goldberg H, et al. Diagnosis and management of subclavian vein thrombosis occurring with subclavian cannulation for haemodialysis. *Blood Purif* 1989;7:210-7.
295. Schwab SJ, Buller GL, McCann RL, Bollinger RR, Stickel DL. Prospective evaluation of a Dacron-cuffed hemodialysis catheter for prolonged use. *Am J Kidney Dis* 1988;11:166-9.
296. Pourchez T, Moriniere P, Fournier A, Pietri J. Use of a Perm-cath (Quinton) catheter in uraemic patients in whom the creation of conventional vascular access for haemodialysis is difficult. *Nephron* 1989;53:297-302.
297. Kaplowitz LG, Comstock JA, Landwehr DM, et al. A prospective study of infections in hemodialysis patients: patient hygiene and other risk factors for infection. *Infect Control Hosp Epidemiol* 1988;8:534-41.
298. Meyrier A, Chevet D, Marsac J, Leroux-Robert C, Sraer JD, Scetbon V. Staphylococcemias chez les malades hemodialyses. *Nouv Presse Med* 1973;2:2379-83.
299. Foissac-Gegoux P, Dumont A. Septicemias au cours du traitement par hemodialyse periodique. *Nouv Presse Med* 1974;3:151.
300. Cappello M, De Pauw L, Bastin G, et al. Central venous access for hemodialysis using the Hickman catheter. *Nephrol Dial Transplant* 1989;4:988-92.
301. Yu VL, Goetz A, Wagener M, et al. Staphylococcus aureus nasal carriage and infection in patients on hemodialysis: efficacy of antibiotic prophylaxis. *N Engl J Med* 1986;315:91-6.
302. Kirmani S, Tuazon CU, Murray HW, Parrish AE, Sheagan JN. Staphylococcal aureus carriage rate of patients receiving long-term hemodialysis. *Arch Intern Med* 1978;138:1657-79.
303. Ralston AJ, Harlow GR, et al. Infections of Scribner and Brescia arteriovenous shunts. *Br Med J* 1971;3:408-9.
304. Levin A, Mason AJ, Jindal KK, Fong IW, Goldstein MB. Prevention of hemodialysis subclavian vein catheter infections by topical povidone-iodine. *Kidney Int* 1991;40:934-8.
305. Uldall PR et al. The subclavian cannula: Temporary vascular access for hemodialysis when long-term peritoneal dialysis has to be interrupted. *Peritoneal Dial Bull* 1981;1:97-9.
306. Carlisle EJJ, Blake P, McCarthy F, Vas S, Uldall R. Septicemia in long-term jugular hemodialysis catheters: eradicating infection by changing the catheter over a guidewire. *Int J Artif Organs* 1991;14:150-3.
307. Farber BF. The multi-lumen catheter: proposed guidelines for its use. *Infect Control Hosp Epidemiol* 1988;9:206-8.
308. Graeve AH, Carpenter CM, Schiller WR. Management of central venous catheters using a wire introducer. *Am J Surg* 1981;142:752-5.
309. Domoto DT, Kennedy DJ. Antibiotic treatment of chronic central venous hemodialysis catheter infection without catheter removal. *Int J Artif Organs* 1985;10:239-40.
310. Freeman J, Platt R, Sidebottom DG, Laclair JM, Epstein MF, Goldmann DA. Coagulase-negative staphylococcal bacteremia in the changing neonatal intensive care unit population. *JAMA* 1987;258:2548-52.
311. Garland JS, Dunne WM, Havens P, et al. Peripheral intravenous catheter complications in critically ill children: a prospective study. *Pediatrics* 1992;89:1145-50.
312. Garland JS, Nelson DB, Cheah T, Hennes HH, Johnson TM. Infectious complications during peripheral intravenous therapy with Teflon catheters: a prospective study. *Pediatr Infect Dis J* 1987;6:918-21.
313. Batton DG, Maisels MJ, Appelbaum P. Use of peripheral intravenous cannulas in premature infants: A controlled study. *Pediatrics* 1982;70:487-90.
314. Furfaro S, Gauthier M, Lacroix J, Nadeau D, Lefleur L, Mathews S. Arterial catheter-related infections in children: a 1-year cohort analysis. *Am J Dis Child* 1991;145:1037-42.
315. Adam RD, Edwards LD, Becker CC, Schrom HM. Semiquantitative cultures and routine tip cultures on umbilical catheters. *J Pediatr* 1982;100:123-6.
316. Danker WM, Spector SA, Fierer J, et al. Malassezia fungemia in neonates and adults: complication of hyperalimentation. *Rev Infect Dis* 1987;9:743-53.
317. Garcia CR, Johnston BL, Corvi G, et al. Intravenous catheter-associated Malassezia furfur fungemia. *Am J Med* 1987;83:790-92.
318. Long JG, Keyserling HL. Catheter-related infection in infants due to unusual lipophilic yeast—Malassezia furfur. *Pediatrics* 1985;76:896-900.
319. Alpert G, Bell LM, Campos JM. Malassezia furfur fungemia in infancy. *Clin Pediatr* 1987;26:528-31.
320. Bertone SA, Fisher MC, Mortensen JE. Quantitative skin cultures at potential catheter sites in neonates. *Infect Control Hosp Epidemiol* 1994;15:315-8.
321. Gaynes RP, Martone WJ, Culver DH, et al. Comparison of rates of nosocomial infections in neonatal intensive care units in the United States. *Am J Med* 1991;91 (suppl 3B):192S-6S.
322. Cronin WA, Germanson TP, Donowitz LG. Intravascular catheter colonization and related bloodstream infection in critically ill neonates. *Infect Control Hosp Epidemiol* 1990;11:301-8.
323. Nelson DB, Garland JS. The natural history of Teflon catheter associated phlebitis in children. *Am J Dis Child* 1987;141:1090-2.
324. Landers S, Moise AA, Fraley JK, Smith EO, Baker CJ. Factors associated with umbilical catheter-related sepsis in neonates. *Am J Dis Child* 1991;145:675-80.
325. Krauss AN, Albert RF, Kannan MM. Contamination of umbilical catheters in the newborn infant. *J Pediatr* 1970;77:965-9.
326. Balagtas RC, Bell CE, Edwards LD, Levin S. Risk of local and systemic infections associated with umbilical vein catheterization: A prospective study in 86 newborn patients. *Pediatrics* 1971;48:359-67.
327. Bard H, Albert G, Teasdale F, Doray B, Martineau B. Prophylactic antibiotics in chronic umbilical artery catheterization in respiratory distress syndrome. *Arch Dis Child* 1973;48:630-5.
328. Mayhall CG. Diagnosis and management of infections of implantable devices used for prolonged venous access. In: Remington JS, Swartz MN, eds. *Current Clinical Topics In Infectious Diseases*. v. 12. Boston: Blackwell Scientific Publications, 1992:83-110.
329. LaQualgia MP, Lucas A, Thaler HT, Freidlander-Klar H, Exelby PR, Groeger JS. A prospective analysis of vascular access device-related infections in children. *J Pediatr Surg* 1992;27:840-2.
330. Wiener ES, McGuire P, Stolar CJH, et al. The CCSG prospective study of venous access devices: an analysis of insertions and causes for removal. *J Pediatr Surg* 1992;27:155-64.
331. Sola JE, Stone MM, Wise B, Columbani PM. Atypical thrombotic and septic complications of totally implantable venous access devices in patients with cystic fibrosis. *Pediatr Pulmonol* 1992;14:239-42.
332. Johnson PR, Decker MD, Edwards KM, et al. Frequency of Broviac catheter infections in pediatric oncology patients. *J Infect Dis* 1984;154:570-8.
333. Mulloy RH, Jadavji T, Russell ML. Tunneled central venous catheter sepsis: risk factors in a pediatric hospital. *J Parenter Enteral Nutr* 1991;15:460-3.
334. Gorelick MH, Owen WC, Seibel NL, Reaman GH. Lack of association between neutropenia and the incidence of bacteremia associated with indwelling central venous catheters in febrile pediatric cancer patients. *Pediatr Infect Dis J* 1991;10:506-10.
335. Mirro J, Rao BN, Stokes DC, et al. A prospective study of Hickman/Broviac

catheters and implantable ports in pediatric oncology patients. *J Clin Oncol* 1989;7:214-22.

336. Stenzel JP, Green TP, Fuhrman BP, Carlson PE, Marchessault RP. Percutaneous central venous catheterization in a pediatric intensive care unit: A survival analysis of complications. *Crit Care Med* 1989;17:984-8.

337. Conly JM, Hill S, Ross J, Lertzman J, Louie TJ. Handwashing practices in an intensive care unit: the effects of an educational program and its relationship to infection rates. *Am J Clin Path* 1989;17:330-9.

338. Seto WH, Ching TY, Yuen KY, Chu YB, Seto WL. The enhancement of infection control in-service education by ward opinion leaders. *Am J Clin Path* 1991;19:86-91.

339. Freeman J, McGowan JE. Methodologic issues in hospital epidemiology. I. Rates, case finding and interpretation. *Rev Infect Dis* 1981;3:658-67.

340. Haley RW, Culver DH, White JW, et al. The efficacy of infection surveillance and control programs in preventing nosocomial infections in US hospitals. *Am J Epidemiol* 1985;121:182-205.

341. Josephson A, Karanfil L, Alonso H, Watson A, Bilgith J. Risk-specific nosocomial infection rates. *Am J Med* 1991;91(suppl 3B):131S-7S.

342. Centers for Disease Control and Prevention. Update: Universal precautions for prevention of transmission of HIV, hepatitis B, and other bloodborne pathogens in healthcare settings. *MMWR* 1988;24:377-82,387-88.

343. Cortopassi RF, Kikugawa CA. Evaluation of antiseptics in the preparation of intravenous admixtures. *Am J Hosp Pharm* 1977;34:1193-6.

344. Plott RT, Wagner RF, Tyring SK. Iatrogenic contamination of multidose vials in simulated use: a reassessment of current patient injection technique. *Arch Dermatol* 1990;126:1441-4.

345. Lutz CT, Bell CE, Wedner HJ, Krogstad DJ. Allergy testing of multiple patients should no longer be performed with a common syringe. *N Engl J Med* 1984;310:1335-7.

346. Shulan DJ, Weiler JM, Koontz F, Richerson HB. Contamination of intradermal skin test syringes. *J Allergy Clin Immunol* 1985;76:226-7.

347. Keammerer D, Mayhall CG, Hall GO, Pesko LJ, Thomas RB. Microbial growth patterns in intravenous fat emulsions. *Am J Hosp Pharm* 1983;40:1650-3.

348. D'Angio RG, Riechers KC, Gilsdorf RB, Constantino JM. Effect of the mode of lipid administration on parenteral nutrition-related infections. *Ann Pharmacother* 1992;26:14-7.

349. ASHP. ASHP therapeutic position statement on the institutional use of 0.9% sodium chloride injection to maintain patency of peripheral indwelling intermittent infusion devices. *Am J Hosp Pharm* 1994;51:1572-4.

350. Gyves J, Ensminger W, Niederhuber J, et al. Totally-implanted system for intravenous chemotherapy in patients with cancer. *Am J Med* 1982;73:841-5.

351. Shulman RJ, Smith EO, Rahman S, Gardner P, Reed T, Mahoney D. Single- vs double-lumen central venous catheters in pediatric oncology patients. *Am J Dis Child* 1988;142:893-5.

352. Nahata MC, King DR, Powell DA, Marx SM, Ginn-Pease ME. Management of catheter-related infections in pediatric patients. *J Parenter Enteral Nutr* 1988;12:58-9.

353. Felices FJ, Hernandez JL, Ruiz J, Meseguer J, Gomez JA, Molina E. Use of the central venous pressure catheter to obtain blood cultures. *Crit Care Med* 1979;7:78-9.

354. Tafuro P, Colbourn D, Gurevich I, et al. Comparison of blood cultures obtained simultaneously by venipuncture and from vascular lines. *J Hosp Infect* 1986;7:283-8.

355. Bryant JK, Strand CL. Reliability of blood cultures collected from intravascular catheter versus venipuncture. *Am J Clin Pathol* 1987;88:113-6.

356. Wormser GP, Onorato IM, Preminger TJ, Culver D, Martone WJ. Sensitivity and specificity of blood cultures obtained through intravascular catheters. *Crit Care Med* 1990;18:152-6.

357. Powell C, Kudsk KA, Lulich PA, Mandelbaum JA, Fabri PJ. Effect of frequent guidewire changes on triple-lumen catheter sepsis. *J Parenter Enteral Nutr* 1988;12:462-4.

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Federal Register

Wednesday
September 27, 1995

Part III

**Department of the
Treasury**

Customs Service

19 CFR Part 4, et al.

19 CFR Chapter I

**Technical Corrections Regarding Customs
Organization; Interim Rules**

DEPARTMENT OF THE TREASURY**Customs Service**

19 CFR Parts 4, 19, 24, 101, 103, 111, 112, 113, 118, 122, 127, 141, 142, 146, and 174

[T.D. 95-77]

RIN 1515-AB84

Technical Corrections Regarding Customs Organization

AGENCY: Customs Service, Treasury.

ACTION: Interim rule.

SUMMARY: This document amends the Customs Regulations to reflect Customs new organizational structure. The revisions are nonsubstantive or merely procedural in nature.

DATES: These changes are effective at 11:59 p.m., EST on September 30, 1995. Comments must be received on or before November 27, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at Franklin Court, 1099 14th Street, NW—Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jerry Laderberg, Office of Field Operations (202) 927-0415; Gregory R. Vilders, Attorney, Regulations Branch (202) 482-6930.

SUPPLEMENTARY INFORMATION:**Background**

In its continuing efforts to achieve more efficient use of its personnel, facilities, and resources, to provide better services to carriers, importers, and the public in general, Customs is changing the structure of its organization both in the field and at Headquarters.

The current organizational structure is the result of reorganizations of the Customs Service by the President's Reorganization Plan No. 1 of 1965 and Reorganization Plan No. 2 of 1973; Headquarters reorganizations of 1979 and 1990; and a Regional consolidation in 1982.

The present reorganization is prompted by a number of changes within Customs and its operating environment: the tremendous growth in our workload; the size of the organization; the growth in administrative and overhead positions; changes in technology; new requirements placed on the agency; changes in trade and travel patterns; and

unnecessary layers and barriers in the organization that have grown over time. Creating an organizational structure that addresses these current problems facilitates a move to process-oriented management, which allows adaptation to an environment of continuous change.

In the Fall of 1993, Customs began a study of its organizational structure. During the study, comments and suggestions were received from Customs Headquarters and field offices, the Treasury Department, the National Treasury Employees Union, consultants, trade organizations, and other government agencies. At the completion of the study in the Spring of 1994, a report entitled "People, Processes, & Partnerships: A Report on the Customs Service for the 21st Century" was issued which recommended that Customs reduce its management layers in the field and reorganize its Headquarters functions. As a result of the study, Customs has determined to reorganize from the ground up, with the ports of entry serving as the foundation.

Districts and regions will, for the most part, be eliminated. They will still exist as geographical descriptions for limited purposes such as for broker permits and certain cartage and lighterage purposes. The ports of entry now will be empowered with most of the functions and authority that have been held in the district and regional offices. Some ports will be designated as service ports, and will have a full range of cargo processing functions, including inspection, entry, collection, and verification. Headquarters will also be reorganized. The full reorganization will be effective at 11:59 p.m., EST on September 30, 1995.

Customs is also creating twenty Customs Management Centers (CMCs), which will report to the Assistant Commissioner of Field Operations at Customs Headquarters. While these CMCs will provide oversight of the core business processes at the ports of entry within their respective geographic areas, they will not play a substantive role in the trade community's interaction with Customs. They will not be a formal level of appeal for external matters; their most important function will be to ensure that Customs delivers high quality uniform service at the ports.

Five Strategic Trade Centers (STCs), each with a defined area of responsibility, are also created in the reorganization to enhance Customs capacity to address major trade issues, such as textile transshipments, valuation, antidumping, and the enforcement of intellectual property rights.

Because the CMCs and STCs will not have direct contact with the public, Customs is not including any reference to these organizational entities in the regulations.

The current regulations contain a significant number of references (over 2,000) to organizational entities which will no longer exist or which will have a different functional context on October 1, 1995. Accordingly, regulatory references to "district directors", "regional commissioners", etc., are replaced with "port directors", "Assistant Commissioner", etc., to reflect the new field and Headquarters structure of Customs and where decisional authority will now lie. The changes set forth in this document are nonsubstantive or merely procedural in nature.

In a separate technical correction document published in today's Federal Register, changes are made throughout Chapter 1 of the Customs Regulations to reflect the reorganization. This document serves to revise certain sections contained in 15 Parts of the Customs Regulations (parts 4, 19, 24, 101, 103, 111, 112, 113, 118, 122, 127, 141, 142, 146, and 174) which are either obsolete or require such extensive rewriting that they cannot be presented in the column format adopted in the other technical correction document.

Discussion of Amendments

In Part 4, 13 footnotes (footnotes 2, 21, 29, 63, 64, 66, 68, 69, 73, 90, 93, 94, and 100) are removed which reference the field term "collector" of Customs, an obsolete position, and applicable statutory text is added where appropriate to §§ 4.1(c)(2), 4.9(c), 4.31(a), and 4.61(b)(6) and (23). Also, § 4.14(c) is revised to remove references to regional field positions, and § 4.24(f) is revised to replace references to Regional Commissioners with references to the Director of the service port (a new organizational entity, defined at § 101.1) located nearest to the port of entry.

In Part 19, a parenthetical reference to a definition of "district" found at § 112.1 is added to § 19.44(g).

In Part 24, a parenthetical reference to a definition of "district" found at § 111.1 is added to § 24.1(a)(3)(i), and the third sentences of paragraph (a) and subparagraph (c)(1) of § 24.4 are removed because there is no longer a necessity for importers to identify different ports in the application to defer payment of estimated import taxes on alcoholic beverages within districts, since districts are no longer part of Customs organization. Also, a similar requirement for district directors to notify other ports in his district is

removed from § 24.4(d)(1) for the same reason.

In Part 101, § 101.1 is amended by removing the definitions of the terms "area", "Customs district" and "Customs region", adding a definition for the term "service port", and revising the second, and third and fourth parenthetical sentences of the definition of "Port and port of entry", which concerns the Virgin Islands. The section heading and headings and text to § 101.3 paragraphs (a) and (b) are revised, the lists of Customs ports at § 101.3(b) and Customs stations at § 101.4(c) are rearranged to list the Customs ports alphabetically by State, rather than by regions, and in § 101.3 a new list of Customs service ports similarly arranged by State is added. Lastly, § 101.6(e) is amended by removing the parenthetical words "and are approved by the Commissioner of Customs", and by removing the last sentence, to reflect that port directors now set the hours for Customs services performed outside their port's offices.

In Part 103, § 103.1 is revised concerning the location of public reading rooms by removing the references to Customs Regions.

In Part 111, definitions of "district", "district director" and "region" are added at § 111.1 to enable the current statutory broker licensing and permitting schemes to operate. Section 111.13(f), concerning broker examination notification, § 111.19(d), concerning review of district directors' recommendations to grant/deny a waiver by the Regional Commissioner, and § 111.23(e)(3), concerning notification between regions, are removed as unnecessary or no longer applicable, as is the provision in § 111.45(c), concerning forwarding a copy of the revocation of broker's license to the district director.

In Part 112, a definition of "district" is added at § 112.1 to reflect that for certain purposes regarding carriage of merchandise the "district" concept is still applicable. A parenthetical reference to the definition of "district" at § 112.1 is added to § 112.2(b).

In Part 113, § 113.37 is amended at paragraph (a) to remove a sentence concerning the Department distribution of a Circular to district directors, and at paragraph (g)(2) to revise the text regarding the filing of corporate surety power of attorney documents at district offices. Section 113.38 is amended to remove paragraph (c)(2) because with the removal of regional commissioners this provision no longer has application, and the subparagraphs thereafter ((c)(3)-(7)) are redesignated ((c)(2)-(6)). In § 113.39(a), the last sentence of the

introductory text is deleted for the same reason.

In Part 118, a parenthetical reference to the definition of "district" at § 112.1 is added to § 118.4(g) and (l).

In Part 122, § 122.14(e) is amended by removing the second sentence, which concerns appeals to the Commissioner of denials of landing rights, and § 122.31(b) is amended by removing the third and fourth sentences, which concern the filing of scheduled airline schedules with Regional Commissioners and a 30-day notice requirement; none of these provisions are necessary under the reorganized field structure.

In Part 127, § 127.22 is revised to remove references to district headquarters ports.

In Part 141, the provisions of § 141.45 are revised concerning the filing of certified copies of power of attorney documents.

In Part 142, §§ 142.13 and 142.25 are similarly amended to move to new subparagraph (a)(4) what is currently set forth in paragraph (b). This change gives port directors the authority to require that entry summary documentation be filed and that estimated duties, if any, be deposited at the time of entry before the merchandise is released, if the importer is substantially or habitually delinquent in payment of Customs bills.

In Part 146, a parenthetical reference to the definition of "district" at § 112.1 is added to §§ 146.4(h) and 146.40(b).

In Part 174, § 174.1 is amended by removing paragraph (a), which pertains to district directors.

Comments

Before adopting these interim regulations as final regulations, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1099 14th Street, NW—Suite 4000, Washington, D.C.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to 5 U.S.C. 553 (a)(2) and (b)(B), public notice is inapplicable to these interim regulations because they concern matters relating to agency management and personnel. Further, inasmuch as these amendments merely

advise the public of Customs new field and Headquarters organization which will be in effect October 1, 1995 (the beginning of the fiscal year), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reasons, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d) (2) and (3) for dispensing with the requirement for a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Customs duties and inspection, Entry, Exports, Imports, Inspection, Reporting and recordkeeping requirements.

19 CFR Part 19

Bonds, Customs duties and inspection, Exports, Freight, Imports, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

19 CFR Part 24

Customs duties and inspection, Financial and accounting procedures, Harbors, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

19 CFR Part 103

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

19 CFR 111

Administrative practice and procedure, Bonds, Brokers, Customs duties and inspection, Imports, Licensing, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 112

Administrative practice and procedure, Bonds, Common carriers,

Customs duties and inspection, Exports, Freight forwarders, Imports, Licensing, Motor carriers, Reporting and recordkeeping requirements.

19 CFR Part 113

Bonds, Customs duties and inspection, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 118

Customs duties and inspection, Examination stations, Imports, Licensing, Reporting and recordkeeping requirements.

19 CFR Part 122

Administrative practice and procedure, Air carriers, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 127

Customs duties and inspection, Merchandise (unclaimed or abandoned), Reporting and recordkeeping requirements.

19 CFR Part 141

Bonds, Customs duties and inspection, Entry of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Customs duties and inspection, Entry procedures, Reporting and recordkeeping requirements.

19 CFR Part 146

Bonds, Customs duties and inspection, Entry, Exports, Foreign trade zones, Imports, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 174

Administrative practice and procedure, Customs duties and inspection, Imports.

Amendments to the Regulations

For the reasons given above, parts 4, 19, 24, 101, 103, 111, 112, 113, 118, 122, 127, 141, 142, 146, and 174 of the Customs Regulations (19 CFR Parts 4, 19, 24, 101, 103, 111, 112, 113, 118, 122, 127, 141, 142, 146, and 174) are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

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

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;
* * * * *

Part 4 [Amended]

2. Part 4 is amended by removing and reserving footnotes 2, 21, 29, 63, 64, 66, 68, 69, 73, 90, 93, 94, and 100; and removing the superscript footnote-referencing designations 2, 21, 29, 63, 64, 66, 68, 69, 73, 90, 93, 94, and 100 from the text.

§ 4.1 [Amended]

3. In § 4.1, paragraph (c)(2) is amended by adding to the end, before the period, the parenthetical reference “(19 U.S.C. 1433)”.

4. In § 4.9, paragraph (c) is amended by adding the following sentences at the end:

§ 4.9 Formal entry.

* * * * *
(c) * * * It shall not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of section 434 of this Act until such master shall produce to him a clearance in due form from the director of the port where such vessel has been entered. Any consul offending against the provisions of this section shall be liable to a fine of not more than \$5,000. (Tariff Act of 1930, section 438, as amended; 19 U.S.C. 1434).

5. In § 4.14, paragraphs (c) (1) and (2) are revised to read as follows:

§ 4.14 Foreign equipment purchases by, and repairs to, American vessels.

* * * * *
(c) *Remission or refund of duty*—(1) *Vessel repair liquidation units.* Vessel Repair Liquidation Units (VRLUs) are located in New York, New York; New Orleans, Louisiana; and San Francisco, California. The New York unit processes and liquidates vessel repair entries filed at ports on the Great Lakes and on the Atlantic Coast of the U.S. north of, but not including Norfolk, Virginia. The New Orleans unit processes and liquidates vessel repair entries filed at ports on the Atlantic Coast of the U.S. from Norfolk, Virginia, southward, and all U.S. ports on the Gulf of Mexico, including ports in Puerto Rico. The San Francisco unit processes and liquidates vessel repair entries filed at all ports on the Pacific Coast of the U.S., including those in Alaska and Hawaii. After entries are processed and liquidated, bulletin notices of liquidation are returned to original ports of entry for posting.

(2) *Authority.* In cases in which both clearly applicable Headquarters precedent exists, and the resulting refund or remission of duty will be less than \$50,000, the proper VRLU may

approve or deny Applications for Relief. In cases in which clearly applicable precedent does not exist, or the resulting refund or remission will be \$50,000 or greater, the Application for Relief will be referred for action to the Entry and Carrier Rulings Branch, Customs Headquarters.

* * * * *

6. In § 4.24, paragraph (f) is revised to read as follows:

§ 4.24 Application for refund of tonnage tax.

* * * * *

(f) The owner or operator of the vessel involved, or other party in interest, may file with the port Director a petition addressed to the Commissioner of Customs for a review of the port director's decision on an application for refund of regular tonnage tax. Such petition shall be filed in duplicate within 30 days from the date of notice of the initial decision, shall completely identify the case, and shall set forth in detail the exceptions to the decision.

§ 4.31 [Amended]

7. In § 4.31, paragraph (a) is amended by adding to the end of the first sentence, before the period, the words “, regarding such accident, stress of weather, or other necessity”.

§ 4.61 [Amended]

8. In § 4.61, paragraph (b)(6) is amended by adding to the end, before the period, the parenthetical reference “(46 U.S.C.App. 97)” and paragraph (b)(19) is amended by adding to the end, before the period, the parenthetical reference “(46 U.S.C.App. 100)”.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;
* * * * *

§ 19.44 [Amended]

2. In § 19.44, paragraph (g) is amended by adding the parenthetical “(see definition of “district” at § 112.1)” following the words “boundaries of the district”.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff

Schedule of the United States), 1450, 1624; 31 U.S.C. 9701.

§ 24.1 [Amended]

2. In § 24.1, the third sentence of paragraph (a)(3)(i) is amended by adding the parenthetical words “(see definition of “district” at § 111.1)” following the words “not licensed in the district”.

§ 24.4 [Amended]

3. In § 24.4, paragraphs (a) and (c)(1) are amended by removing the third sentence; and paragraph (d)(1) is amended by removing the words “and will at the same time notify all ports in his district at which the procedure will be used according to the importer’s application”.

PART 101—GENERAL PROVISIONS

1. The authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 101.1 [Amended]

2. Section 101.1 is amended by removing paragraphs (a)–(c); removing the paragraph designations for all remaining definitions and placing them

in appropriate alphabetical order; adding, in appropriate alphabetical order, the definition of a “service port”; and revising the second sentence, and the parenthetical phrase of the definition of “Port and port of entry”. The addition and revisions to read as follows:

§ 101.1 Definitions.

* * * * *

Service port. The term “service port” refers to a Customs location having a full range of cargo processing functions, including inspections, entry, collections, and verification. *Port and port of entry.* * * * The terms “port” and “port of entry” incorporate the geographical area under the jurisdiction of a port director. (The Customs ports in the Virgin Islands, although under the jurisdiction of the Secretary of the Treasury, have their own Customs laws (48 U.S.C. 1406(i)). These ports, therefore, are outside the Customs territory of the United States and the ports thereof are not “ports of entry” within the meaning of these regulations).

3. Section 101.3 is revised to read as follows:

§ 101.3 Customs service ports and ports of entry.

(a) *Designation of Customs field organization.* The Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement), pursuant to authority delegated by the Secretary of the Treasury, is authorized to establish, rearrange or consolidate, and to discontinue Customs ports of entry as the needs of the Customs Service may require.

(b) *List of Ports of Entry and Service Ports.* The following is a list of Customs Ports of Entry and Service Ports. Many of the ports listed were created by the President’s message of March 3, 1913, concerning a reorganization of the Customs Service pursuant to the Act of August 24, 1912 (37 Stat. 434; 19 U.S.C. 1). Subsequent orders of the President or of the Secretary of the Treasury which affected these ports, or which created (or subsequently affected) additional ports, are cited following the name of the ports.

(1) *Customs ports of entry.* A list of Customs ports of entry by State and the limits of each port are set forth below:

Ports of entry	Limits of port
Alabama	
Birmingham	
Huntsville	T.D. 83–196.
Mobile	Including territory described in T.D. 76–259.
Alaska	
Alcan	T.D. 71–210.
Anchorage	T.D.s 55295 and 68–50.
Dalton Cache	T.D. 79–74.
Fairbanks	E.O. 8064, Mar. 9, 1939 (4 FR 1191).
Juneau	
Ketchikan	Including territory described in T.D. 74–100.
Sitka	Including territory described in T.D. 55609.
Skagway	
Valdez	Including territory described in T.D. 79–201.
Wrangell	Including territory described in T.D. 56420.
Arizona	
Douglas	Including territory described in E.O. 9382, Sept. 25, 1943 (8 FR 13083).
Lukeville	E.O. 10088, Dec. 3, 1949 (14 FR 7287).
Naco	
Nogales	Including territory described in T.D. 77–285.
Phoenix	T.D. 71–103.
San Luis	E.O. 5322, Apr. 9, 1930.
Sasabe	E.O. 5608, Apr. 22, 1931.
Tucson	Including territory described in T.D. 89–102.
Arkansas	
Little Rock-North Little Rock	T.D. 70–146. (Restated in T.D. 84–126).

Ports of entry	Limits of port
California	
Andrade Calexico Eureka Fresno + Los Angeles-Long Beach Port Hueneme Port San Luis San Diego + San Francisco-Oakland Tecate	E.O. 4780, Dec. 13, 1927. Including territory described in T.D. 74-18. Including territory described in T.D. 78-130. T.D. 92-10. T.D. 85-163. Including Benicia, Martinez, Richard, Sacramento, San Jose, and Stockton, T.D. 82-9. E.O. 4780, Dec. 13, 1927.
Colorado	
Denver	T.D. 80-180.
Connecticut	
Bridgeport Hartford New Haven New London	Including territory described in T.D. 68-224. Including territory described in T.D. 68-224. Including territory described in T.D. 68-224. Including territory described in T.D. 68-224.
Delaware	
Philadelphia-Chester, PA and Wilmington, DE ..	Included in the consolidated port of Philadelphia-Chester, PA, T.D. 84-195.
District of Columbia	
Washington	Including territory described in T.D. 68-67.
Florida	
Boca Grande Fernandina Beach Jacksonville Key West + Miami Orlando Panama City Pensacola Port Canaveral Port Everglades Port Manatee St. Petersburg Tampa West Palm Beach	Including St. Mary's, GA; T.D. 53033. T.D. 69-45. Including territory described in T.D. 53994. Including territory described in T.D. 53514. T.D. 76-306. E.O. 3919, Nov. 1, 1923. Including territory described in T.D. 66-212. E.O. 5770, Dec. 31, 1931; including territory described in T.D. 53514. Mail: Fort Lauderdale, FL. T.D. 88-14. E.O. 7928, July 14, 1938 (3 FR 1749); including territory described in T.D. 53994. Including territory described in T.D. 68-91. E.O. 4324, Oct. 15, 1925; including territory described in T.D. 53514.
Georgia	
Atlanta Brunswick Fernandina Beach, FL Savannah	Including territory described in T.D. 55548. Including territory described in T.D. 86-162. Including St. Mary's, GA; T.D. 53033. Including territory described in E.O. 8367, Mar. 5, 1940 (5 FR 985).
Hawaii	
Hilo Honolulu Kahului Nawiliwili-Port Allen	T.D. 95-11. Including territory described in T.D. 90-59. T.D. 95-11. E.O. 4385, Feb. 25, 1926; including territory described in T.D. 56424.
Idaho	
Boise Eastport	Pub.L. 98-573; T.D. 85-22.

Ports of entry	Limits of port
Porthill	
Illinois	
+ Chicago Davenport, IA-Moline and Rock Island, IL Peoria Rockford	Including territory described in T.D. 71-121. T.D.s 86-76 and 89-10. Including territory described in T.D.72-130. T.D. 95-62.
Indiana	
Cincinnati, OH-Lawrenceburg, IN Indianapolis Owensboro, KY-Evansville, IN	Consolidated port, T.D. 84-91. Consolidated port, T.D. 84-91.
Iowa	
Davenport,IA-Moline and Rock Island, IL Des Moines	T.D.s 86-76 and 89-10. T.D. 75-104.
Kansas	
Wichita	T.D. 74-93.
Kentucky	
Louisville Owensboro, KY-Evansville, IN	Including territory described in T.D. 77-232. Consolidated port, T.D. 84-91.
Louisiana	
Baton Rouge Gramercy Lake Charles Morgan City + New Orleans Shreveport-Bossier City	E.O. 5993, Jan. 13, 1933; including territory described in T.D.s 53514 and 54381. (Restated in T.D. 84-126). T.D. 82-93. (Restated in T.D. 84-126). E.O. 5475, Nov. 3, 1930; including territory described in T.D. 54137. T.D. 54682; including territory described in T.D.s 66-266 and 94-77. (Restated in T.D. 84-126). E.O. 5130, May 29, 1929; including territory described in T.D. 74-206. (Restated in T.D. 84-126). Including territory described in T.D. 86-145.
Maine	
Bangor Bar Harbor Bath Belfast Bridgewater Calais Eastport Fort Fairfield Fort Kent Houlton Jackman Jonesport Limestone Madawaska Portland Portsmouth, N.H Rockland Van Buren Vanceboro	Including Brewer, ME, E.O. 9297, Feb. 1, 1943 (8 FR 1479). Including Mount Desert Island, the city of Ellsworth, and the townships of Hancock, Sullivan, Sorrento, Gouldsboro, and Winter Harbor and Trenton, E.O. 4572, Jan. 27, 1927, and T.D. 78-130. Including Booth Bay and Wiscasset, E.O. 4356, Dec. 15, 1925. Including Searsport, E.O. 6754, June 28, 1934. E.O. 8079, Apr. 4, 1939 (4 FR 1475). Including townships of Calais, Robbinston, and Baring, E.O. 6284, Sept. 13, 1933. Including Lubec and Cutler, E.O. 4296, Aug. 26, 1925. E.O. 4156, Feb. 14, 1925. Including townships of Jackman, Sandy Bay, Bald Mountain, Holeb, Attean, Lowelltown, Dennistown, and Moose River, T.D. 54683. Including towns (townships) of Beals, Jonesboro, Roque Bluffs, and Machiasport, E.O. 4296, Aug. 26, 1925; E.O. 8695, Feb. 25, 1941 (6 FR 1187). Including territory described in E.O. 9297, Feb. 1, 1943 (8 FR 1479). Including Kittery, ME.

Ports of entry	Limits of port
Maryland	
Annapolis Baltimore Cambridge	Including territory described in T.D. 68-123. E.O. 3888, Aug. 13, 1923; Crisfield.
Massachusetts	
+ Boston Fall River Gloucester Lawrence New Bedford Plymouth Salem Springfield Worcester	Including territory and waters adjacent thereto described in T.D. 56493. Including territory described in T.D. 54476. E.O. 5444, Sept. 16, 1930; E.O. 10088, Dec. 3, 1949 (14 FR 7287); including territory described in T.D. 71-12. Including Beverly, Marblehead, and Lynn; including Peabody, E.O. 9207, July 29, 1942 (7 FR 5931). T.D. 69-189.
Michigan	
Battle Creek Detroit Grand Rapids Marinette, WI Muskegon Port Huron Saginaw-Bay City-Flint Sault Ste. Marie	T.D. 72-233. Including territory described in E.O. 9073, Feb. 25, 1942 (7 FR 1588), and T.D. 53738. T.D. 77-4. Including Menominee, MI. E.O. 8315, Dec. 22, 1939 (4 FR 4941); including territory described in T.D. 56230. Including territory described in T.D. 87-117. Consolidated port, T.D. 79-74; including territory described in T.D. 82-9. Including territory described in T.D. 79-74.
Minnesota	
Baudette Duluth, MN and Superior, WI Grand Portage International Falls-Ranier Minneapolis-St. Paul Noyes Pinecreek Roseau Warroad	E.O. 4422, Apr. 19, 1926. Including territory described in T.D. 55904. T.D. 56073. Including territory described in T.D. 66-246. Including territory described in T.D. 69-15. E.O. 5835, Apr. 13, 1932. E.O. 7632, June 15, 1937 (2 FR 1245). E.O. 7632, June 15, 1937 (2 FR 1245).
Mississippi	
Greenville Gulfport Pascagoula Vicksburg	T.D. 73-325. (Restated in T.D. 84-126). Including territory described in T.D. 86-68. T.D. 72-123; including territory described in T.D. 93-32. (Restated in T.D. 84-126).
Missouri	
Kansas City Springfield St. Joseph St. Louis	Including Kansas City, KS and North Kansas City, MO, E.O. 8528, Aug. 27, 1940 (5 FR 3403); including territory described in T.D. 67-56. Including all territory within Greene and Christian Counties, T.D. 84-84. Including territory described in T.D.s 67-57 and 69-224.
Montana	
Butte Del Bonita Great Falls Morgan Opheim Piegan Raymond Roosville Scobey Sweetgrass	T.D. 73-121. E.O. 7947, Aug. 9, 1938 (3 FR 1965); Mail: Cut Bank, MT. E.O. 7632, June 15, 1937 (2 FR 1245); Mail: Loring, MT. E.O. 7632, June 15, 1937 (2 FR 1245). E.O. 7632, June 15, 1937 (2 FR 1245); Mail: Babb, MT. E.O. 7632, June 15, 1937 (2 FR 1245). E.O. 7632, June 15, 1937 (2 FR 1245); Mail: Eureka, MT. E.O. 7632, June 15, 1937 (2 FR 1245).

Ports of entry	Limits of port
Turner Whitetail Whittlash	E.O. 7632, June 15, 1937 (2 FR 1245). E.O. 7632, June 15, 1937 (2 FR 1245). E.O. 7632, June 15, 1937 (2 FR 1245).
Nebraska	
Omaha	Including territory described in T.D. 73–228.
Nevada	
Las Vegas	Including territory described in T.D. 79–74.
Reno	Including territory described in T.D. 73–56.
New Hampshire	
Portsmouth	Including Kittery, ME.
New Jersey	
Philadelphia-Chester, PA and Wilmington, DE ..	Included in the consolidated port of Philadelphia-Chester, PA, and includes Wilmington, DE, and Camden, Gloucester City, and Salem, NJ, T.D. 84–195.
Perth Amboy	
New Mexico	
Albuquerque	Including territory described in T.D. 74–304.
Columbus	
Santa Teresa	T.D. 94–34.
New York	
Albany	
Alexandria Bay	Including territory described in E.O. 10042, Mar. 10, 1949 (14 FR 1155).
Buffalo-Niagara Falls	T.D. 56512.
Cape Vincent	
Champlain-Rouses Point	Including territory described in T.D. 67–68.
Clayton	
Massena	T.D. 54834.
+ New York	Including territory described in E.O. 4205, Apr. 15, 1925 (T.D. 40809).
Ogdensburg	
Oswego	
Rochester	
Sodus Point	
Syracuse	
Trout River	Consolidated port includes Chateaugay and Fort Covington, T.D. 83–253.
Utica	
North Carolina	
Beaufort-Morehead City	Including territory described in T.D. 87–76.
Charlotte	T.D. 56079.
Durham	E.O. 4876, May 3, 1928; including territory described in E.O. 9433, Apr. 4, 1944 (9 FR 3761), and T.D. 82–9.
Reidsville	E.O. 5159, July 18, 1929; including territory described in E.O. 9433, Apr. 6, 1944 (9 FR 3761).
Wilmington	Including townships of Northwest, Wilmington, and Cape Fear, E.O. 7761, Dec. 3, 1937 (2 FR 2679); including territory described in E.O. 10042, Mar. 10, 1949 (14 FR 1155).
Winston-Salem	Including territory described in T.D. 87–64.
North Dakota	
Ambrose	E.O. 5835, April 13, 1932.
Antler	
Carbury	E.O. 5137, June 17, 1929.
Dunseith	E.O. 7632, June 15, 1937 (2 FR 1245).
Fortuna	E.O. 7632, June 15, 1937 (2 FR 1245).
Hannah	
Hansboro	
Maida	E.O. 7632, June 15, 1937 (2 FR 1245).
Neché	

Ports of entry	Limits of port
Noonan Northgate Pembina Portal Sarles Sherwood St. John Walhalla Westhope	E.O. 7632, June 15, 1937 (2 FR 1245). E.O. 5835, Apr. 13, 1932. E.O. 4236, June 1, 1925.
Ohio	
Ashtabula/Conneaut Cincinnati, OH-Lawrenceburg, IN Cleveland Columbus Dayton Toledo-Sandusky	Consolidated port, T.D. 77-232. Consolidated port, T.D. 84-91. Including territory described in T.D. 77-232; consolidated port, T.D. 87-123. Including territory described in T.D. 82-9. Including territory described in T.D. 76-77. Consolidated port, T.D. 84-89.
Oklahoma	
Oklahoma City Tulsa	Including territory described in T.D. 66-132. T.D. 69-142.
Oregon	
Astoria Coos Bay Longview Newport Portland	Including territory described in T.D. 73-338. E.O. 4094, Oct. 28, 1924; E.O. 5193, Sept. 14, 1929; E.O. 5445, Sept. 16, 1930; E.O. 9533, Mar. 23, 1945 (10 FR 3173). Including territory described in T.D. 73-338.
Pennsylvania	
Erie Harrisburg Lehigh Valley Philadelphia-Chester, PA and Wilmington, DE .. Pittsburgh Wilkes-Barre/Scranton	Including territory described in T.D. 77-5. T.D. 71-233. T.D. 93-75. Consolidated port includes Wilmington, DE, and Camden, Gloucester City, and Salem, NJ, T.D. 84-195. Including territory described in T.D. 67-197. T.D. 75-64.
Puerto Rico	
Aquadilla Fajardo Guanica Humacao Jobos Mayaguez Ponce San Juan	Including territory described in T.D. 70-157. E.O. 9162, May 13, 1942 (7 FR 3569). T.D. 22305. Including territory described in T.D. 54017. Including territory described in T.D. 54017.
Rhode Island	
Newport Providence	Including territory described in T.D. 67-3.
South Carolina	
Charleston Columbia Georgetown Greenville-Spartanburg	Including territory described in T.D. 76-142. Including all territory in Richland and Lexington Counties, T.D. 82-239. T.D. 70-148.
Tennessee	
Chattanooga	(Restated in T.D. 84-126).

Ports of entry	Limits of port
Knoxville Memphis Nashville	T.D. 75–128. (Restated in T.D. 84–126). (Restated in T.D. 84–126). (Restated in T.D. 84–126).
Texas	
Amarillo Austin Beaumont, Orange, Port Arthur, Sabine Brownsville Dallas-Fort Worth Del Rio Eagle Pass El Paso Fabens Hidalgo + Houston-Galveston Laredo Lubbock Presidio Progreso Rio Grande City Roma San Antonio	T.D. 75–129. T.D. 81–170. Consolidated port, T.D. 74–231; including territory described in T.D. 81–160. Including territory described in T.D. 79–254. T.D. 73–297; T.D. 79–232; T.D. 81–170. Including territory described in T.D. 91–93. T.D. 54407, including territory described in T.D. 78–221. E.O. 4869, May 1, 1928. T.D. 85–164. Consolidated port includes territory lying within corporate limits of both Houston and Galveston, and remaining territory in Harris and Galveston Counties, T.D.s 81–160 and 82–15; includes Corpus Christi, E.O. 8288, Nov. 22, 1939 (4 FR 4691), and territory described in T.D. 78–130; includes Freeport, E.O. 7632, June 15, 1937 (2 FR 1245); and includes Port Lavaca-Point Comfort, T.D. 56115. Including territory described in T.D. 90–69. T.D. 76–79. E.O. 2702, Sept. 7, 1917. T.D. 85–164. Including territory described in T.D. 92–43. E.O. 4830, Mar. 14, 1928.
Utah	
Salt Lake City	T.D. 69–76.
Vermont	
Beecher Falls Burlington Derby Line Highgate Springs/Alburg Norton Richford St. Albans	Including town of South Burlington, T.D. 54677. E.O. 7632, June 15, 1937 (2 FR 1245); includes territory described in T.D. 77–165. T.D. 73–249. Including township of St. Albans, E.O. 3925, Nov. 13, 1923; E.O. 7632, June 15, 1937 (2 FR 1245); T.D. 77–165.
Virginia	
Alexandria, VA Front Royal Norfolk-Newport News Richmond-Petersburg	T.D. 68–67. T.D. 89–63. Consolidated port includes waters and shores of Hampton Roads. Consolidated port, T.D. 68–179.
Virgin Islands, U.S.	
Charlotte Amalie, St. Thomas Christiansted, St. Croix Coral Bay, St. John Cruz Bay, St. John Frederiksted, St. Croix	
Washington	
Aberdeen Blaine Boundary Danville Ferry Frontier Laurier Lynden Metaline Falls	Including territory described in T.D.s 56229, 79–169, and 84–90. E.O. 5835, Apr. 13, 1932. T.D. 67–65. T.D. 67–65. E.O. 7632, June 15, 1937 (2 FR 1245). E.O. 7632, June 15, 1937 (2 FR 1245).

Ports of entry	Limits of port
Nighthawk Oroville Point Roberts Puget Sound	E.O. 5206, Oct. 11, 1929. T.D. 78-272. Consolidated port includes Seattle, Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Townsend, and Tacoma, T.D. 83-146.
Spokane Sumas	

West Virginia

Charleston	T.D. 73-170 and including territory described in T.D. 73-212.
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Wisconsin

Ashland Duluth, MN and Superior, WI Green Bay	Including territory described in T.D. 55904. Including townships of Ashwaubenon, Allouez, Preble, and Howard, and city of De Pere, T.D. 54597.
Manitowoc Marinette Milwaukee Racine Sheboygan	Including Menominee, MI. Including territory described in T.D. 72-105. Including city of Kenosha and townships of Mount Pleasant and Somers, T.D. 54884.

+ Indicates Drawback unit/office.

(2) *Customs service ports.* A list of Customs service ports and the States in which they are located is set forth below:

State	Service ports
Alabama	Mobile.
Alaska	Anchorage.
Arizona	Nogales.
California	Los Angeles. LAX. San Diego. San Francisco.
Colorado	Denver.
Florida	Miami. Tampa.
Georgia	Savannah.
Hawaii	Honolulu.
Illinois	Chicago.
Louisiana	New Orleans.
Maine	Portland.
Maryland	Baltimore.
Massachusetts	Boston.
Michigan	Detroit.
Minnesota	Duluth. Minneapolis.
Missouri	St. Louis.
Montana	Great Falls.
New Jersey	New York/Newark.
New York	Buffalo. Champlain. JFK. New York/Newark.
North Carolina	Charlotte.
North Dakota	Pembina.
Ohio	Cleveland.
Oregon	Portland.
Pennsylvania	Philadelphia.
Puerto Rico	San Juan.
Rhode Island	Providence.
South Carolina	Charleston.
Texas	Dallas. El Paso. Houston. Laredo.

State	Service ports
Vermont	St. Albans.
Virginia	Dulles. Norfolk.
Virgin Islands	Charlotte Amalie.
Washington	Blaine. Seattle.
Wisconsin	Milwaukee.

§ 101.4 [Amended]

4. In § 101.4, paragraph (c) is revised to read as follows:

Customs station	Supervisory port of entry
Alaska	
Barrow	Fairbanks.
Dutch Harbor	Anchorage.
Eagle	Alcan.
Fort Yukon	Fairbanks.
Haines	Dalton Cache.
Hyder	Ketchikan.
Kaktovik (Barter Island).	Fairbanks.
Kenai (Nikiski)	Anchorage.
Kodiak	Anchorage.
Northway	Alcan.
Pelican	Juneau.
Petersburg	Wrangell.
California	
Campo	Tecate.
Monterey	San Francisco-Oakland.
Otay Mesa	San Diego.
San Ysidro	San Diego.

Customs station	Supervisory port of entry
Colorado	
Colorado Springs	Denver.
Delaware	
Lewes	Philadelphia, PA.
Florida	
Fort Pierce	West Palm Beach.
Green Cove Springs	Jacksonville.
Port St. Joe	Panama City.
Indiana	
Fort Wayne	Indianapolis.
Maine	
Bucksport	Belfast.
Coburn Gore	Jackman.
Daaquam	Jackman.
Easton	Fort Fairfield.
Estcourt	Fort Kent.
Forest City	Houlton.
Hamlin	Van Buren.
Maryland	
Salisbury	Baltimore.
Massachusetts	
Provincetown	Plymouth.

Customs station	Supervisory port of entry
Michigan	
Alpena	Saginaw-Bay City-Flint.
Detour	Sault Ste. Marie.
Escanaba	Sault Ste. Marie.
Grand Haven	Muskegon.
Houghton	Sault Ste. Marie.
Marquette	Sault Ste. Marie.
Rogers City	Saginaw-Bay City-Flint.
Minnesota	
Crane Lake	Duluth, MN-Superior, WI.
Ely	Duluth, MN-Superior, WI.
Lancaster	Noyes.
Oak Island	Warroad.
Mississippi	
Biloxi	Mobile, AL.
Montana	
Wild Horse	Great Falls.
Willow Creek	Great Falls.
New Jersey	
Atlantic City	Philadelphia-Chester, PA and Wilmington, DE.
Port Norris	Philadelphia-Chester, PA and Wilmington, DE.
Tuckerton	Philadelphia-Chester, PA and Wilmington, DE, PA.
New York	
Cannons Corners	Champlain-Rouses Point.
Churubusco	Trout River.
Jamieson's Line	Trout River.
New Hampshire	
Pittsburg	Beecher Falls, VT.
Monticello	Houlton, ME.
Orient	Houlton, ME.
Ste. Aurelie	Jackman, ME.
St. Pamphile	Jackman, ME.
New Mexico	
Antelope Wells (Mail: Hachita, NM).	Rio Grande City, TX.
North Dakota	
Grand Forks	Pembina.
Minot	Pembina.

Customs station	Supervisory port of entry
Ohio	
Akron	Cleveland.
Fairport Harbor	Ashtabula/Conneaut.
Lorain	Sandusky.
Marblehead-Lakeside	Sandusky.
Put-in-Bay	Sandusky.
Oklahoma	
Muskogee	Tulsa.
Texas	
Amistad Dam	Del Rio.
Falcon Dam	Roma.
Fort Hancock	Fabens.
Los Ebanos	Rio Grande City.
Marathon	El Paso.
Vermont	
Beebe Plaine	Derby Line.
Canaan	Beecher Falls.
East Richford	Richford.
Newport	Derby Line.
North Troy	Derby Line.
West Berkshire	Richford.
<p>§ 101.6 [Amended]</p> <p>5. In § 101.6, paragraph (e) is amended by removing these words in the parenthetical "and are approved by the Commissioner of Customs", and the last sentence.</p> <p>PART 103—AVAILABILITY OF INFORMATION</p> <p>1. The authority citation for part 103 continues to read as follows:</p> <p style="padding-left: 2em;">Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.</p> <p>§ 103.1 [Amended]</p> <p>2. Section 103.1 is amended by removing from the list the entry for the "Northeast Region", "New York Region", "North Central Region", "Southeast Region", "South Central Region", "Southwest Region", and "Pacific Region".</p> <p>PART 111—CUSTOMS BROKERS</p> <p>1. The general authority citation for part 111 is revised to read as follows:</p> <p style="padding-left: 2em;">Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 1641.</p> <p style="text-align: center;">* * * * *</p> <p>§ 111.1 [Amended]</p> <p>2. Section 111.1 is amended by removing the paragraph designations for all definitions and placing them in appropriate alphabetical order, and adding, in appropriate alphabetical</p>	

order, the definitions of "district", "district director", and "Region" to read as follows:

§ 111.1 Definitions.

* * * * *

District. "District" means the geographic area covered by a Customs broker permit issued under this part. A listing of each district, and the ports thereunder, will be published on or before October 1, 1995, and whenever updated.

District director. "District director" means the port director of Customs at the port designated as a district for purposes of this part.

* * * * *

Region. "Region" means the geographic area covered by a waiver issued pursuant to § 111.19(d).

* * * * *

§ 111.13 [Removed]

3. In § 111.13, paragraph (f) is removed.

§ 111.19 [Amended]

4. In § 111.19, paragraph (d) is amended by removing the last sentence.

§ 111.23 [Removed]

5. In § 111.23, paragraph (e)(3) is removed.

§ 111.25 [Removed]

6. In § 111.45, paragraph (c) is amended by removing the third sentence.

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. The authority citation for part 112 continues to read as follows:

Authority: 19 U.S.C. 66, 1551, 1565, 1623, 1624.

§ 112.1 [Amended]

2. Section 112.1 is amended by removing the paragraph designations for all definitions and placing them in appropriate alphabetical order, and adding, in appropriate alphabetical order, the definition of "district" to read as follows:

§ 112.1 Definitions.

* * * * *

District. "District" means the geographic area in which the parties excepted by the last sentence of § 112.2(b)(2) may operate under their bonds without obtaining a cartage or lighterage license issued under this Part. A listing of each district, and the ports thereunder, will be published on or before October 1, 1995, and whenever updated.

* * * * *

§ 112.2 [Amended]

3. Section 112.2 is amended by adding the parenthetical phrase "(see definition of "district" at § 112.1)" following the words "district boundaries" wherever they appear.

PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.37 [Amended]

2. In § 113.37, paragraph (a) is amended by removing the second sentence; and paragraph (g)(2) is revised to read as follows:

§ 113.37 Corporate sureties.

* * * * *

(g) * * *

(2) *Filing.* The corporate surety power of attorney executed on Customs Form 5297 shall be filed with Customs. The original(s) of the corporate surety power of attorney shall be retained at the port where it(they) was(were) filed.

* * * * *

§ 113.38 [Amended]

3. In § 113.38, paragraph (c)(2) is removed and paragraphs (c)(3)–(7) are redesignated as paragraphs (c)(2)–(6).

§ 113.39 [Amended]

4. In § 113.39, the introductory text of paragraph (a) is amended by removing the second sentence.

PART 118—CENTRALIZED EXAMINATION STATIONS

1. The authority citation for part 118 continues to read as follows:

Authority: 19 U.S.C. 66, 1499, 1623, 1624.

§ 118.4 [Amended]

2. In § 118.4, paragraphs (g) and (l) are amended by adding the parenthetical phrase "(see definition of "district" at § 112.1)" following the words "district boundaries".

§ 118.24 [Removed]

3. Section 118.24 is removed.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644; 46 U.S.C.App. 1509.

§ 122.14 [Amended]

2. In § 122.14, paragraph (e) is amended by removing the second sentence.

§ 122.31 [Amended]

3. In § 122.31, paragraph (b) is amended by removing the third and fourth sentences.

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

1. The authority citation for part 127 continues to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 7553.

2. Section 127.22 is revised to read as follows:

§ 127.22 Place of sale.

The port director, in his discretion, may authorize the sale of merchandise subject to sale (including explosives, perishable articles and articles liable to depreciation) at any port. The consignee of any merchandise which is to be transferred from the port where it was imported to another port for sale, shall be notified of the transfer so that he may have the option of making entry of the merchandise before the transfer and sale.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

2. Section 141.45 is revised to read as follows:

§ 141.45 Certified copies of power of attorney.

Upon request of a party in interest, a port director having on file an original power of attorney document (which is not limited to transactions in a specific Customs location) will forward a certified copy of the document to another port director.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

§ 142.13 [Amended]

2. Section 142.13 is amended by adding a new paragraph (a)(4); by removing paragraph (b); and by redesignating paragraph (c) as paragraph (b). Paragraph (a)(4) reads as follows:

§ 142.13 When entry summary must be filed at time of entry.

(a) * * *

(4) Is substantially or habitually delinquent in the payment of Customs bills. See § 142.14.

* * * * *

§ 142.25 [Amended]

3. Section 142.25 is amended by adding a new paragraph (a)(4); by removing paragraph (b); and by redesignating paragraph (c) as paragraph (b). Paragraph (a)(4) reads as follows:

§ 142.25 Discontinuance of immediate delivery privileges.

(a) * * *

(4) Is substantially or habitually delinquent in the payment of Customs bills. See § 142.26.

* * * * *

PART 146—FOREIGN TRADE ZONES

1. The general authority citation for part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

* * * * *

§ 146.4 [Amended]

2. In § 146.4, paragraph (h) is amended by adding the parenthetical phrase "(see definition of "district" at § 112.1)" following the words "district boundaries".

§ 146.40 [Amended]

3. In § 146.40, paragraph (b) is amended by adding the parenthetical phrase "(see definition of "district" at § 112.1)" following the words "in the district" in the introductory text.

PART 174—PROTESTS

1. The authority citation for part 174 continues to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

§ 174.1 [Amended]

2. Section 174.1 is amended by removing paragraph (a), and removing the paragraph designation for the remaining definition.

George J. Weise,
Commissioner of Customs.

Approved: September 11, 1995.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 95–23728 Filed 9–26–95; 8:45 am]
BILLING CODE 4820–02–P

19 CFR Chapter I

[T.D. 95–78]

RIN 1515–AB84

Technical Corrections Regarding Customs Organization

AGENCY: Customs Service, Treasury.
ACTION: Interim rule.

SUMMARY: This document amends the Customs Regulations to reflect Customs new organizational structure. The changes are nonsubstantive or merely procedural in nature.

DATES: These changes are effective at 11:59 p.m., EST on September 30, 1995. Comments must be received on or before November 27, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at Franklin Court, 1099 14th Street, NW—Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Laderberg, Office of Field Operations (202) 927-0415; Gregory R. Vilders, Attorney, Regulations Branch (202) 482-6930.

SUPPLEMENTARY INFORMATION:

Background

In its continuing efforts to achieve more efficient use of its personnel, facilities, and resources, and to provide better services to carriers, importers, and the public in general, Customs is changing the structure of its organization both in the field and at Headquarters.

Customs is now eliminating districts and regions from its field organization to place more emphasis on field operations, especially at the Customs ports of entry, and restructuring to provide better support services for those ports of entry. The current regulations contain a significant number of references (over 2,000) to organizational entities which will no longer exist or which will have a different functional context at 11:59 p.m., EST on September 30, 1995. Accordingly, regulatory references to “district directors”, “regional commissioners”, etc., are replaced with “port directors”, “Assistant Commissioner”, etc., to

reflect the new field and Headquarters structure of Customs and where decisional authority will now lie. All Parts in Chapter 1 of title 19 of the Code of Federal Regulations are affected in this document except Part 181 which contains the North American Free Trade Agreement regulations that, as adopted in final form with effect from October 1, 1995, will include all appropriate organizational reference changes. The changes set forth in this document are nonsubstantive or merely procedural in nature, pertaining to internal agency operations.

In a separate technical correction document published in today’s Federal Register, 15 parts of the Customs Regulations that contain provisions which require such extensive rewriting that they cannot be presented in the table format employed here are revised. Also, because the Background portion of the other technical correction document more fully explains the reasons for the changes reflected in this document, it is equally applicable here.

Comments

Before adopting these interim regulations as final regulations, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1099 14th Street, NW—Suite 4000, Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to 5 U.S.C. 553(a)(2) and (b)(B), public notice is inapplicable to

these interim regulations because they concern matters relating to agency management and personnel. Further, inasmuch as these amendments merely advise the public of Customs new field and Headquarters organization which will be in effect October 1, 1995 (the beginning of the fiscal year), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reasons, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(2) and (3) for dispensing with the requirement for a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, Regulations Branch. However, personnel from other offices participated in its development.

Amendments to the Regulations

For the reasons given above and under the authority of 19 U.S.C. 66 and 1624, those parts of chapter I of the Customs Regulations (19 CFR chapter I) listed below are amended as set forth below:

In the list below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add, in their place, the words indicated in the right column; where a dot leader is present across the right column, there are no replacement words:

Section	Remove	Add
4.1(b)	within a Customs district	at a Customs port.
4.1(b), (c)(1), (d), and (g)	district director	port director.
4.1(c)(2)	district director of Customs	port director.
4.2(a)	district director	port director.
4.5(a)	district director	port director.
4.6(a) and (b)	district	port.
4.6(b)	defined in §§ 101.1(b) and	described in § .
4.7(b) and (d)(2)	district director	port director.
4.9(a)	district	port.
4.9(b)	District Director of Customs	port director.
4.9(b) and (c)	district director	port director.
4.12(a)(1)-(5)(b)	district director	port director.
4.13(c)	district director	port director.
4.14(b)(1)	district director	port director.
4.14(b)(2)(ii), (d)(1)(v), and (d)(2)(iii)	Carrier Rulings	Entry and Carrier Rulings.
4.14(b)(2)(ii)(A), (d)(1)(v), and (d)(2)(iii) and (iv)	regional commissioner	vessel repair liquidation unit.

Section	Remove	Add
4.14(b)(2)(ii)(A)	Enforcement	Investigations.
4.15(a) and (c)	district director	port director.
4.16(a)	district director of Customs	port director.
4.16(a) and (b)	district director	port director.
4.20(c) table note 3	district director	port director.
4.23	district director	port director.
4.24(a)	several Regional Commissioners of Customs	Directors of the ports where the collections were made.
4.24(b)	Regional Commissioner of Customs	appropriate port director.
.....	Regional Commissioner	port director.
.....	Regional Commissioner of Customs	Port Director.
4.30(a), (f)–(i), (i)(3), and (k)–(m)	district director	port director.
4.31(a)	district director at	director of.
4.31	district director	port director.
4.31(b)	in his district	at the port.
4.32(b)	district director	port director.
4.33(a)(1)	district director to the	director of that.
4.33(a)(2), (c)(2) and (3), and (d)	district director	port director.
4.33(c)(1)	district.	
4.33(c)(3)	district director at	director of.
4.34(a), (b), (d), and (g)	district director	port director.
4.34(a) and (d)	district director at	director of.
4.35	district director	port director.
4.36(d)	district director	port director.
4.37(a), (c), (d), and (f)	district director	port director.
4.38	district director	port director.
4.39(e)	district directors	port directors.
4.41(b)	district.	
4.41(c)	in the district	at the port.
.....	district director at	director of.
4.41(d)	district director	port director.
4.60(d)	district director	port director.
4.61(b) introductory text	district director	port director.
4.65a	district director of Customs	port director.
4.66(a) introductory text	district director	port director.
4.66a	district director	port director.
4.66b	district director	port director.
4.66c	district director	port director.
4.68(a)	district director	port director.
4.72	district director	port director.
4.73	district director	port director.
4.73(d)	in his district	at his port.
4.74	district director	port director.
4.75(a) and (c)	district director	port director.
4.75(b)	district director at	director of.
4.80(b)	district director	port director.
4.80a(d)	Carrier Rulings	Entry and Carrier Rulings.
4.80b(b)	Carrier Rulings	Entry and Carrier Rulings.
4.81(d) and (e)	district director	port director.
4.81(d)	district director at	director of.
4.82(b) and (d)	district director	port director.
4.85(a), (b), and (e)	district director at	director of.
4.85(a)–(d)	district director	port director.
4.87(b), (c), and (d)	district director	port director.
4.87(g)	district director at	director of.
4.88(a)	district director at	director of.
4.88(b)	district director	port director.
4.89(b) and (d)	district director	port director.
4.91	district director	port director.
4.91(a) and (b)	district director at	director of.
4.93(c)	district director at	director of.
4.94(c)	district director of Customs	port director.
.....	district director	port director..
4.94(d) form	District Directors	Port Directors.
.....	Customs district	Customs port.
.....	(Name of district or districts)	(Name of port or ports).
.....	(District Director of Customs)	(Port Director of Customs).
4.96(f) and (h)	district director	port director.
4.97(c) and (d)	district director at	director of.
4.98(a)(1) schedule	district to district	port to port.
.....	from another district	from another port.
4.98(d)	Customs district, but not for a permit to proceed to a port in the same district.	Customs port.
.....	from one district	from one port.

Section	Remove	Add
4.98(e)	to another such district Customs district, but not arriving from a port in the same district.	to another port. Customs port.
4.99(c)	in one district	at one port.
4.100(a)	another such district district director district director of the district in which are located.	another port. port director. directors of.
4.100(c)	district director	port director.
4.100(e)	district director in	port director at.
7.8(b)(1)	district director at	director of.
7.8(b)(1) and (2)	district director	port director.
10.1(b) and (d)	district director	port director.
10.3(a) introductory text	district director of Customs	port director.
10.3(c)(3)	district director	port director.
10.5(d) and (g)	district director at	director of.
10.5(e), (g), and (h)	district director	port director.
10.6	district director at	director of.
10.7(c)	district director's	port director's.
10.7(d)	district director at	director of.
10.8(b), (c), and (d)	district director	port director.
10.8a(c)	district director	port director.
10.9(b), (c) and (d)	district director	port director.
10.21	district director	port director.
10.24(b)–(e)	district director	port director.
10.31(a)(3)(ii) and (f)	district director	port director.
10.31(b)	district director of Customs	port director.
10.36(a)	district director	port director.
10.37	district director at Commercial Rulings district directors	director of. Tariff Classification Appeals. port directors.
10.38(a)	district director of Customs	port director.
10.38(g)	district director at	director of.
10.39(a), (b), and (d)(1) first sentence and (2)	district director	port director.
10.39(d)(1) second sentence, (e) introductory text, (e)(1)–(3), and (f).	district director	Fines, Penalties, and Forfeiture Officer.
10.39(h)	district director's regional commissioner of Customs	port director's. designated Headquarters official.
10.40(b)	district director	port director.
10.41a(a)(2) and (e)	district director	port director.
10.41a(e)	district director at	director of.
10.41b(h)	district director	port director.
10.43(a)	district director	port director.
10.48(c) and (d)	district director	port director.
10.49(b)	district director	port director.
10.49(d)	district director at	director of.
10.52	district director	port director.
10.53(e)(5)	district director of Customs	port director.
10.53(g)	district director	port director.
10.56(e)	district director	port director.
10.59(a)(3) and (e)	district director	port director.
10.59(e)	district director	for director of.
10.60(f) and (h)	district director	port director.
10.61	district director	port director.
10.62(c)(1) and (e)	district director of Customs	port director.
10.62(f)	regional commissioner of Customs	port director.
10.62a(b)	district director	port director.
10.64(a) introductory text, and (b)	district director	port director.
10.64(a) introductory text	district director at	director of.
10.65(c)(2)	district director of Customs	port director.
10.66(a)(3)	district director at	director of.
10.66(b) and (c)(1)	district director	port director.
10.67(a)(3) form	District No. _____ District Director's Office	Port Director's Office.
10.67(b) and (c)	district director	port director.
10.68(a)	district director district directors	port director. port directors.
10.70(a)	district director	port director.
10.71(c)	district director	port director.
10.71(e)	district director of Customs	port director.
10.75	district director	port director.
10.81(a)	in any district district director for the district	at any port. director of the port.

Section	Remove	Add
10.81(b)	in another district a port in the district in at which port	at another port. the other port at where.
10.83(a)	district director	port director.
10.84(d)	district director of Customs	port director.
10.84(e)	district director of Customs of the district	director of the port.
10.101(c) and (d)	district director	port director.
10.102(a)	district director	port director.
10.102(d)	regional commissioner of Customs	port director.
10.104	district director	port director.
10.107(b) and (c)	district director	port director.
10.108	district director	port director.
10.121(b)	district director of Customs district director of Customs at	port director. director of.
10.134	district director	port director.
10.151	district director	port director.
10.152	district director	port director.
10.172	the appropriate district director	port director.
10.173	district director	port director.
10.174	district director	port director.
10.175(d)(2)	district director	port director.
10.177(b)	appropriate district director	port director.
10.179(b)(1)	district director at	director of.
10.183(c)(1) and (2), (d)(2) text and form, and (e).	district director	port director.
10.183(c)(2)	district director at each district	director of each port.
10.183(c)(2) and (d)(2)	district director in the district	director of the port.
10.183(d)(2) form	in the district District Director	at the port. Port Director
10.192	appropriate district director	port director.
10.193(c)(2)	district director	port director.
10.194	district director	port director.
10.196(b)	appropriate district director	port director.
10.198(a)(1)(i) and (ii), (b), and (c)	district director	port director.
10.307(c), (e) introductory text, and (e)(2)	district director	port director.
10.309	district director	port director.
11.1(a)	district director	port director.
11.1(c)	the Customs inspector with a rubber stamp bearing the legend "U.S. Customs—American Goods Returned _____, Inspector." The inspector's initials shall appear in the space provided therefor.	Customs.
11.2(a)	district director of Customs	port director.
11.6	district director	port director.
11.12(b)–(f)	district director	port director.
11.12a(b)–(f)	district director	port director.
11.12b(b)–(f)	district director	port director.
11.13(c)	district director	port director.
12.8(b)	district director	port director.
12.9	district director	port director
12.11(a)	district director at	director of.
12.11(b)	district director	port director.
12.12	district director	port director.
12.14(a)	District directors	Port directors.
12.14	district director	port director.
12.16(b)	district directors	port directors.
12.16(c)	district director	port director.
12.17	district director	port director.
12.19	district director	port director.
12.20	district director	port director.
12.22	district director	port director.
12.23(a)	District directors	Port directors.
12.23(b)–(d)	district director	port director.
12.24(c)	district director	port director.
12.26 (e), (f), (h), and (l)	district director	port director.
12.28	district director of Customs	port director.
12.29(d)	district director	port director.
12.33(d)	district director	port director.
12.37(a)	district director	port director.
12.39(b)(3)	District directors	Port directors.
12.39(b)(3) and (d)(2)	district director	port director.
12.42(a), (b), and (c)	district director	port director.
12.42(e)	district directors	port directors.
12.43(c)	collector of customs	port director.

Section	Remove	Add
12.44	district director	port director.
12.45	district director	port director.
12.48(d)	district director	port director.
12.61(b)	district director	port director.
12.73(c)(2), (j), and (k)	district director	port director.
12.73(j)	District director of Customs	port director.
	district director for	director of.
112.80(b)(1), (b)(1)(iii), (d)–(f), and (h)	district director	port director.
12.85(c)(1), (c)(6), (d)(7), (e)(1) and (2), and (f)	district director	port director.
12.85(e)(2)	district director for	director of.
12.91(c)	district director of Customs	port director.
12.91(d) and (f)	district director	port director.
12.91(d)	district director for	director of.
12.99(c)(2)	an inspector or other	a.
12.103	district director of Customs	port director.
12.104c(a)–(c)	district director	port director.
12.104d	district director	port director.
12.104e(a) introductory text	district director	port director.
12.107	district director of Customs	port director.
12.108	district director	port director.
12.109(a)	district director	port director.
12.113(a)	district director of Customs at	director of.
12.113	district director	port director.
12.113(b)	district director at	director of.
12.114	district director of Customs	port director.
	district director	port director.
12.115	district director of Customs	port director.
	district director	port director.
12.116	district director of Customs	port director.
	district director	port director.
12.117(a)	district director of Customs	port director.
12.117(b)	district director	port director.
12.121(a) introductory text	district director at	director of.
12.122(a) introductory text, and (b) introductory text.	district director at	director of.
12.122(b)(1) and (2), (c), and (d)	district director	port director.
12.123(a), (b), (c) introductory text, and (c)(2)	district director	port director.
12.124(b) introductory text	district director	port director.
12.125 introductory text	district director	port director.
12.126	district director	port director.
12.130(g) and (h)	district director	port director.
12.131	district directors	port directors.
12.132(a)(3)	district director	port director.
18.1(b)	appropriate area director	port director.
18.2(b)	district director of Customs	port director.
18.2(d)	district director	port director.
18.3(a)	district director of Customs	port director.
18.3(b)	district director	port director.
	district director at	director of.
18.4(a)(2)	district director of Customs	port director.
18.4(a)(2) and (f)	district director	port director.
18.4a(c)	district director of Customs	port director.
18.4a(d)	district director at	director of.
18.5(b)	district director of Customs at	director of.
18.5(c), (d), and (f)	district director at	director of.
18.6(b)	district director	port director.
18.7(a) and (b)	district director	port director.
18.7(c)	district directors	port directors.
18.8(d)	district director	Fines, Penalties, and Forfeiture Officer.
18.8(e)(2) first sentence and (e)(3)	district director	port director.
18.8(e)(2) last sentence	district director	Fines, Penalties, and Forfeiture Officer.
18.10(b)	district director	port director.
18.10a	district director	port director.
18.11(b)	district director of Customs	port director.
18.11(c)	district director of customs for	director of.
18.11(c), (e), and (h)	district director	port director.
18.12(d)	district director of customs	port director.
18.12(e)	district director at	director of.
	district director	port director.
18.13(a) form	district director of customs	port director.
	district director at	director of the port of.
18.13(b)	district director at	director of.
18.20(a)	district director of Customs	port director.
18.20(a) and (b)	district director	port director.

Section	Remove	Add
18.21(c)	district director	port director.
18.22(b)	district director	port director.
18.23(a)	district director at	director of.
18.24(a)	district director of Customs	port director.
	district director	port director.
18.25(a) and (e)	district director	port director.
18.26(a)	district director of Customs at	director of.
18.26(d)	district director	port director.
18.27	district director	port director.
18.42	district director of Customs	port director.
	district director	port director.
18.43(b) and (c)	district director	port director.
18.45	district director of Customs at	director of.
19.1(a)(1) and (4)	district director	port director.
19.2(a) and (e)-(g)	district director	port director.
19.3(a)	within the same district	at a port.
	district director of the district	director of the port.
19.3(b)-(f)	district director	port director.
19.3(f) and (g)	Regional Commissioner	Assistant Commissioner, Office of Field Operations or designee.
19.4	district director	port director.
19.6(a), (b)(1), (d)(1)(iv), (d)(2), and (e)	district director	port director.
19.7(b)	district director	port director.
19.8	district director	port director.
19.9(a) and (c)	district director	port director.
19.10	district director	port director.
19.11(c), (d), (f), and (h)	district director	port director.
19.12(a)(3), (6), and (8), (b)(6)	district director	port director.
19.12(a)(3)	of the district	of the port.
19.12(a)(5)	Regional Director	Field Director.
19.13(a) and (d)	district director	port director.
19.13(b)	district director for	director of.
19.14(c) and (e)	district director	port director.
19.14(c) form	District Director	Port Director.
19.15(f) legend	district director at	director of.
19.15(j)	district director	port director.
19.17(a)	district director of the district in	director of the port nearest.
19.17(c), (e), and (g)	district director	port director.
19.17(g)	Regional Director	Field Director.
	in whose district	at whose port.
19.19(a)	district director of Customs for the district in	director of the port nearest.
	district director of Customs	port director.
19.19(b)	Regional Director	Field Director.
	for the district in	of the port nearest.
19.23	district director at	director of.
	district director for each district	director of each other port.
	in a given district	nearest a given port.
19.32(b)	district director	port director.
19.34	District directors	Port directors.
	for the district concerned	
19.35(d)	district director's	port director's.
19.35(f) and (g)	district director	port director.
19.36(a)-(d) and (g)	district director	port director.
19.37(a), (b), and (d)	district director	port director.
19.39(a)(2), (b)(2), (c)(2) and (5), (d), and (e)	district director	port director.
19.40(a)	district director	port director.
19.40(b)	within the same district	at a port.
	district director of the district	director of the port.
19.43	district director	port director.
19.45	district director	port director.
19.46	district director	port director.
19.47	district director	port director.
19.48(a) introductory text, (b), and (c)	district director	port director.
24.1(a)(3)(i) and (ii)	district director	port director.
24.2	District directors in charge of ports of entry	Port directors.
	district director	port director.
24.3a(c)	Customs National Finance Center	Customs Accounting Services.
24.4(a)	district director of each district in	director of each port at.
24.4(a)-(d)(1) and (h)(3)(i)	district director	port director.
24.4(b)	in a Customs district	to a Customs port.
	district director of such district	port director.
	in such district	
24.4(c)(1)	in that district	at that port.
	in the district and	at.

Section	Remove	Add
24.4(c)(2) declaration	or ports for which filed	any port director.
24.4(h)(2)	district director in any other district	director of any other port.
24.4(h)(2) and (3) introductory text	district director of all other districts	Customs ports.
24.5(f)	Customs districts	any port.
24.11(b)	any district	Accounting Services—Accounts Receivable.
24.12(c)	National Finance Center—Revenue Branch	port director.
24.13(c)	district director	port director.
24.13(d)	district director	port director.
24.13(f) heading	district directors	director of the port.
24.13(f)	district director for the Customs district	Port director.
24.13a(g)	District director	port director.
24.14(c)	district director	port directors.
24.16(a) and (c)(1)	district directors	Assistant Commissioner, Field Operations.
24.16(c)(1) and (2)	Director, Office of Cargo Enforcement and Facilitation.	1301 Constitution Avenue, NW.,
24.17(a) introductory text	1301 Constitution Avenue, NW.,	port director's.
24.17(d)(4)	district director's	port director.
24.22(b)(3), (c)(3), and (e)(2)	district director	port director.
24.22(b)(3)	district director of Customs	port directors.
24.22(d)(3)	district directors	port director.
24.22(i)(2)	district director	Accounting Services—Accounts Receivable, which.
24.23(a)(1) and (3)	Regional Commissioner who	Accounting Services.
24.24(b)(1) table note	district or	Accounting Services—Accounts Receivable.
24.24(c)(8)(i)	National Finance Center	Accounting Services—Accounts Receivable.
24.24(g)	National Finance Center, Revenue Branch	Accounting Services—Accounts Receivable.
24.36(c), (d) introductory text, and (e)(1)	National Finance Center, Attn: Revenue Branch.	port director.
24.36(d) introductory text	district director	Office of Finance, U.S. Customs Service, Headquarters.
24.36(d)(9)	Users Fee Task Force, U.S. Customs Service, Room 4112, 1301 Constitution Ave. NW.	Office of Finance, U.S. Customs Service, Headquarters.
24.36(e)(2)	;tel. 202-566-8648	Accounting Services—Accounts Receivable.
24.70(c)	U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW.	of Accounting Services.
24.72	National Finance Center, Attn: Billings and Collections.	port director.
54.5(b)	, National Finance Center,	port directors.
54.6(c) introductory text	district director	port directors'.
54.6(c)(4)	district directors	port.
101.0	district directors'	port director.
101.4(a) and (b) introductory text	Customs district	Accounting Services Division, Accounts Receivable Group, Indianapolis, Indiana.
101.4(b) introductory text and (d)	appropriate regional commissioner of Customs.	port director.
101.4(d)	regional commissioner	port director.
101.5 table	regional commissioner	port director.
101.6(c)	Director National Finance Center	director of.
103.0	district director	port director.
103.5(b)(1)	district director	director of.
103.5(d)(1)	district director at	port director.
103.5(b)(2)	district director	ports of entry, service ports.
103.5(d)(2) heading	regions, districts, and ports of entry	director of the port.
103.5(d)(2)	district director for the district	port director.
103.5(b)(1)	district director	a port.
103.5(d)(1)	any district	Port Director.
103.5(d)(2)	Regional Commissioner	port director shall.
103.5(b)(2)	appropriate district director shall, with the approval of the regional commissioner of Customs.	a disclosure law officer, the director of a service port.
103.5(d)(1)	either the Chief, Regulations and Disclosure Law Branch, United States Customs Service, Washington, DC 20229, the Public Information Office at Headquarters, the appropriate regional commissioner of Customs.	at the appropriate service port.
103.5(d)(2)	in the appropriate Customs regional office	Disclosure Law Officer.
103.5(b)(1)	Regulations and Disclosure Law Branch	Disclosure Law Officer, U.S. Customs Service, Headquarters.
103.5(d)(1)	Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW.	FOIA Appeals Officer.
103.5(d)(2) heading	Director, Office of Regulations and Rulings	Service ports.
103.5(d)(2)	Regional offices	director of the service port at.
103.5(d)(2)	regional commissioner of Customs of the region in.	

Section	Remove	Add
	The addresses of the regional commissioners are listed in § 103.1.	
103.6(a)(1) heading	Regional offices	Service ports.
103.6(a)(1)	regional commissioner of Customs	director of a service port.
103.6(a)(2)	or Comptroller, as appropriate,	
103.7(a), (b)(6), and (c)	Director, Office of Regulations and Rulings	FOIA Appeals Officer at Headquarters.
103.7(c)	Director	FOIA Appeals Officer.
103.8(a) introductory text	Director, Office of Regulations and Rulings	FOIA Appeals Officer.
103.8(a)(3)	Public Affairs Office	Office of Congressional & Public Affairs.
103.10(d)(3)	Director, Office of Regulations and Rulings	FOIA Appeals Officer.
	Director	FOIA Appeals Officer.
103.14(d)(1)(iii) and (2)(iii)	Regulations and Disclosure Law Branch	Disclosure Law Officer.
103.14(e)(2)	National Finance Center, Revenue Branch	Accounting Services—Accounts Receivable.
103.16	district directors of Customs	port directors.
	district director of Customs	port director.
111.3(b)(1) and (2)	district director	port director.
111.11(b)(2)	in the customs district	at the customs port.
111.11(c)(3)	in the customs district in which	at the customs port where.
111.12(a)	district director of the district in which	director of the port where.
	within the district	at a port.
	district director's	port director's.
111.12	district director	port director.
111.15	district director	port director.
	in his district	at his port.
111.16(a)	district in	port at.
111.19(b) heading	districts	ports.
111.19(b)	in an additional Customs district	at additional customs ports.
	Customs district to the district director of that district.	port to the director of that port.
	all districts	all ports
	in an additional district	at additional customs ports.
	district director	director of that port.
111.19(d)	within the district for which	at the port where.
	district director	port director.
	district director of	port director in.
	Office of Trade Operations	Trade Compliance Division.
	, through the appropriate regional commissioner.	
111.22(b) introductory text, (b)(2), and (c)	district director	port director.
111.22(e)	regional commissioner for the region	director of the port.
111.23(a)(1)	within the Customs district to which they relate.	at the port.
111.23(b) and (b)(1)	district director for the district in	director of the port at.
111.23(b)(5)	Regional Director,	Field Director,.
111.23(d)	district director in	port director at.
111.23(e)(2)	regional commissioner responsible for the region in which the centralized records are to be maintained.	Office of Field Operations, Headquarters.
111.23(f)	regional commissioner for the region in which a broker has given notification pursuant to paragraph (e) of this section.	Office of Field Operations, Headquarters,.
111.24	Regional Director	Field Director.
111.27	Regional Director	Field Director.
	district director	port director.
111.28(b)(1)-(3) and (c)	district director	port director.
111.28(b)(1)	in that district	at that port.
111.30(a)	district director for the district in which	director of the port where.
111.30(b)	each district director of the districts in which	each port director where.
111.30(d)	Office of Trade Operations	Trade Compliance Division.
111.54	district director	port director.
	the assistant district director	another Customs officer.
	an assistant district director as appropriate officer of the Customs, the Commissioner.	a Customs officer, Headquarters.
	one of the assistant district directors	a Customs officer.
111.55	director of the appropriate district	director of the port.
111.56	district director	port director.
111.57	district director	port director.
111.59(a) and (b) introductory text	district director	port director.
111.60	district director	port director.
111.61	district director	port director.
111.62(e)	district director	port director.
111.63 (a) introductory text, (a)(3), (a)(4), (b) introductory text, (b)(3), and (b)(4).	district director	port director.
111.64(a)	district director	port director.

Section	Remove	Add
111.67(d)	district director	port director.
111.72	district director	port director.
111.78	the regional Commissioner or the district director, with the approval of the regional Commissioner.	Headquarters or the port director, with the approval of Headquarters.
111.91	appropriate Customs officer	Customs Service.
111.92	appropriate Customs officer	Customs Service.
111.94	district director	port director.
111.95	appropriate Customs officer	Customs Service.
111.96(a) and (c)	appropriate Customs officers	Customs Service.
111.96(c)	district director	Fines, Penalties, and Forfeiture Officer.
112.11(a)	appropriate Customs officer	Customs Service.
112.12(a), (b) introductory text, and (b)(4)(ii)	district director	port director.
112.12(b)(3)	district director in the Customs district	port director.
112.13 introductory text	Customs districts	director of the port.
112.14	district director for one of the districts	Customs ports.
112.21	district director for each additional district	director of one of the ports.
112.22(a)	district director	director of each additional port.
112.22(a)(1), (a)(3), (b)(1), (b)(2), and (c)	district director	port director.
112.23	district director of the district	port director.
112.24 introductory text	district director	director of the port.
112.27(c)	district director	port director.
112.29	district director	port director.
112.30(a) introductory text, (a)(7), (a)(8), (a)(10), (b), (c), (d)(2), and (e)	district director	port director.
112.41	district director	port director.
112.42	district director	port director.
112.44	district director	port director.
112.45 introductory text	district director	port director.
112.46	district director	port director.
112.48(a) introductory text, (b), (c), (d)(2), and (e)	district director	port director.
112.49	district director	port director.
113.1	district director	port director.
113.11	district director in a single Customs district	at one Customs port.
113.12 (a), (b) introductory text, and (b)(2)	district director of the district in which	director of that port where.
113.13(b) and (d)	one district	one port,
113.13(c)	district director	port director.
113.14	regional commissioner	drawback office.
113.15	district director	port director.
113.23(d)	district director or regional commissioner	port director or drawback office.
113.24(a) introductory text	district directors and regional commissioners	port directors and drawback offices.
113.24(b)	district or region	port or drawback office.
113.26(e)	district or regional commissioner	port director or drawback office.
113.27(a)	district director	port director.
113.27(b)	Commercial Rulings	Tariff Classification Appeals.
113.32(a)(1)	district director	port director.
113.33(c)	district office	port.
113.33(d)	district director or regional commissioner	port director or drawback office.
113.35(a), (c)(2), (d), and (e)	in whose district or region	where
	district or regional office	port or drawback office.
	district director in whose district the bond was approved or regional commissioner.	director of the port where the bond was approved or appropriate drawback office.
	district director, or regional commissioner	port director, or drawback office.
	district director, or regional commissioner	port director or drawback office.
	district director or regional commissioner	port director or drawback office.
	district director	port director.
	district director	port director.

Section	Remove	Add
113.35(b)(4)	Customs district in which	port where.
113.35(c)(1)(ii)	Customs district	port.
113.37(a)	district directors	port directors.
113.37(f) form	District Director (Regional Commissioner)	Port Director (Drawback Office).
113.37(g)(1)(iii)	District(s) in which	Port(s) where.
113.37(g)(4)	district	port.
113.37(g)(5)	district(s)	port(s).
113.38(c)(1)	district director	port director.
113.38(c)(1) and (4)	Commercial Rulings	Tariff Classification Appeals.
113.38(c)(2)	district directors and regional commissioners .	port directors.
113.38(c)(6)	, (2), and (3)	and (2).
113.39 introductory text, (a), and (a)(5)	district director or regional commissioner	port director.
113.39(a) introductory text	Commercial Rulings	Tariff Classification Appeals.
113.40(a)	district director	port director.
113.40(b) and (c)	district director or regional commissioner	port director or other appropriate Customs of- ficer.
113.43(a) and (b)	district director	port director.
113.53(b)	district director	port director.
113.55(a)(1), (c)(2), (c)(3), and (d)	district director	port director.
113.62(a)(3)	district director	port director.
114.25	district director of Customs at	director of.
114.26(a)	district director	port director.
114.26(b)	district director of customs	port director.
114.34(a) and (b)	district director	port director.
118.1	district director	port director.
118.2	district director	port director.
118.4(f), (g), and (k)	district	port.
118.5	district director	port director.
118.11(b) and (h)	district director	port director.
118.12	district director	port director.
118.13	district director	port director.
118.21(a) introductory text, and (b) introductory text.	district director	port director.
118.22	Regional Commissioner having jurisdiction over the district director who signed the no- tice.	Assistant Commissioner, Office of Field Oper- ations.
118.23	district director	port director.
122.1(c)(2)	Regional Commissioner	Assistant Commissioner, Office of Field Oper- ations.
122.3	district director	port director.
122.5(b)	district director at	director of.
122.11(a)	district directors	port directors.
122.12(d)	District directors	Port directors.
122.14(a)(1)	in any particular district or area	in any port.
122.14(a)(2)	, rather than a general area or district	
122.14(a)(3)	Customs district	Customs port.
122.14(a)(3)(ii) and (e)	regional commissioner, or his representative, of the region in which.	director of the port, or his representative, where.
122.14(e)	district director at	director of.
122.25(a), (b), and (d)(4)(iv)	regional commissioner	port director.
122.31(b)	district director	port director.
122.31(c)	district director	port director.
122.31(f)	district director	port director.
122.35(b)(1)	Customs officer	Customs Service.
122.37(c)	nearest port entry	nearest port of entry.
122.38(d)	district director	port director.
122.38(e) and (f)	district director for the district in which	port director for the airport where.
122.49(a)(1), (b)(1), (d), and (e)(1)	district director	port director.
122.54(f) and (g)	district director	port director.
122.54(g)	district director at	director of.
122.63(b)	district director	port director.
122.64	, unless some other place is designated by the district director at that port.	
122.65	district director at the Customs	director of the.
	, unless some other place is designated by the district director.	
	district director	port director.

Section	Remove	Add
122.71(a)(1)	district director nearest the departure place	director of the port of departure.
122.73(a)(2)	the district director	Customs.
122.73(b)(2)	the district director or	Customs at.
122.74(a)(1)	district director in the port of departure	Customs at the departure airport.
122.74(b)(2)	district director	port director.
122.76(a)(1)	district director at	port director of.
122.76(a)(2)	district director	port director.
122.77(a)	district director	port director.
122.77(b)	at the port by the district director at	by the director of.
122.79(b)	district director	appropriate port director.
122.82	district director at	director of.
122.92(a)(3) and (a)(3)(v) <i>Item 8</i>	district director	port director.
122.92(a)(3)(v) <i>Item 1 and Item 3</i>	district/	
122.93(a) heading and text	district director	port director.
122.102(a)	district director	port director.
122.114(d)	district director at	director of.
122.118(a)	district director	port director.
122.119(a)	district	
122.119(d)(1) introductory text, (d)(1)(ii), and (d)(2).	district director at	director of.
122.120(b)(1) and (k)	district director at	director of.
122.132(b)(2) and (c)	district director	port director.
122.134(a) and (c)	district director	port director.
122.135(b), (c), and (e)	district director	port director.
122.143(b)	district director	port director.
122.144(b)	district director	port director.
122.153	Regional Commissioner of Customs, Miami, Florida.	Assistant Commissioner, Office of Field Operations, Customs Headquarters.
122.162(a)(2) and (a)(4)	district director	port director.
122.163(c) introductory text, and (c)(2)	district director	port director.
122.165(b)	Carrier Rulings	Entry and Carrier Rulings.
122.173(a) and (b)	Inspection and Control	Field Operations.
122.175	district director	port director.
122.176(a) and (b)	Inspection and Control	Field Operations.
122.181	district director of Customs	port director.
122.182(b)-(g)	district director	port director.
122.183	district director	port director.
122.183(d)	district director's	port director's.
122.184	district director	port director.
122.185	district director	port director.
122.186	district director	port director.
122.187(a) introductory text, (a)(4), (b)-(d), and (f).	district director	port director.
122.188(a), (b), and (d)	district director	port director.
123.1(a)(1)-(3)	appropriate district director	Commissioner of Customs, or his designee.
123.1(b)	district director of the district in which the station is located.	Commissioner of Customs, or his designee.
123.1(d)	appropriate district director	port director.
	district director	port director.
	in the Customs district	in the Customs port.
123.4(b)	district director	port director.
123.8(a), (b)(1) and (2)	district director of Customs	port director.
123.8(b)(2)	district director	port director.
123.9(b)(1) and (2), and (d)(1)(iv) and (v)	district director	port director.
123.14(b)	district director	port director.
123.24(c)	district director of Customs	port director.
123.25(a)	district director	port director.
123.34 certification	district director of Customs	port director.
123.72	District directors	Port directors.
125.11(b)	district director	port director.
125.11(c)	from the appropriation "Salaries and Expenses; Bureau of Customs."	by Customs.
125.12	district director	port director.
125.13	district director	port director.
125.14	district director	port director.
125.23	district director	port director.
125.33(c)	district director	port director.
125.35	district director	port director.
125.36	district director	port director.
125.42	district director	Fines, Penalties, and Forfeiture Officer.
127.1 introductory text, and (c)-(e)	district director	port director.
127.12(b)(1)	district director	port director.
127.13(a)	district director	port director.
127.21	district director	port director.

Section	Remove	Add
127.25	district director	port director.
127.27	district director	port director.
127.28(c), (d), (g), and (h)	district director	port director.
127.29	district director	port director.
127.35	district director	port director.
127.36(a) and (c)	district director	port director.
128.1(d) and (e)	district director	port director.
128.11(a), (b)(7)(iv), and (c)	district director	port director.
128.12(a) and (c)	district director	port director.
128.12(c)	district director's	port director's.
128.23(b)(3)	district director	port director.
128.24(c)	district director of Customs	port director.
132.11a(c)	district director	port director.
132.12(a)	district director	port director.
132.13(a)(1)	district director	port director.
132.14(a)(4)(i), (a)(4)(i)(D), (a)(4)(ii), and (a)(4)(ii)(C)	district director	port director.
132.23(a)	district director at	director of.
132.23(a), (b), and (d)	district director	port director.
132.25	district director	port director.
133.23(b)(2) and (c)(2)	district director	port director.
133.24	district director	port director.
133.42(c)	district director	port director.
133.43(a), (b) introductory text, (b)(2), (c) introductory text, (c)(1), (c)(1)(i), (c)(1)(ii), and (c)(2)	district director	port director.
133.44	district director	port director.
133.46	district director at	director of.
133.47	district director	Fines, Penalties, and Forfeiture Officer.
134.3(b) introductory text, and (b)(2)	district director	port director.
134.25(a) and (c)	district director	port director.
134.26(a) and (c)	district director	port director.
134.34(a) introductory text, and (b)	district director	port director.
134.51	district director	port director.
134.51(a)	district director's	port director's.
134.52(a)	District directors	Port directors.
134.52(b)–(e)	district director	port director.
134.53(a)(2)	district director	port director.
134.54(a)	district director	port director.
134.54(b) and (c)	district director	Fines, Penalties, and Forfeiture Officer.
141.5	district director	port director.
141.11(a)(2)	District directors	Customs officers.
141.11(a)(5)	within the district	at the port.
141.13	district director	port director.
141.15(a)	district director	port director.
141.16	district director	port director.
141.20(a)(1) and (2)	district director	port director.
141.35	district director	port director.
141.38	district director	port director.
141.44 heading	Customs districts	Customs ports.
141.44	in all Customs districts	at all Customs ports.
	of each district in which	of each port where.
	district director	port director.
	to each district in which	to each port where.
	his district	his port.
	districts to the appropriate districts	ports as appropriate.
141.46	district director	port director.
141.52 introductory text, and (i)	district director	port director.
141.54(a)	district director	port director.
141.54(c) certification	district director of Customs	port director.
141.55	district directors	port directors.
141.56	District directors	Port directors.
141.61(e)(2), (e)(2)(ii), and (e)(4)	district director	port director.
141.62(a)	district director in the district	director of the port.
141.63(a) introductory text, and (b)	district director	port director.
141.63(c)	district director at	director of.
141.69(b) and (c)	district director	port director.
141.83(c)(2)	district director	port director.
141.84(c)	district director	port director.
141.85 form	District Director of Customs	Port Director.
141.86(a)(11)	district director	port director.
141.88	district director	port director.
141.90(a)	district director	port director.
141.91(a) and (d)	district director	port director.

Section	Remove	Add
141.92(a) introductory text, and (b)(4)	district director	port director.
141.103	district director	port director.
141.105	district director	port director.
141.105 form	District Director of Customs	Port Director.
141.112(b)-(d), (g), and (h)	district director	port director.
141.113(a)-(d), (f), and (h)	district director	port director.
142.2(a)	district director	port director.
142.3(c)	district director	port director.
142.3a(c) and (d)	district director	port director.
142.4(c)(1) and (2)	district director	port director.
142.6(a)(4)	district director	port director.
142.7	district director	port director.
142.11(b)	district director	port director.
142.13(a) heading and introductory text	district director	port director.
142.14(a)	regional commissioner of Customs for the re- gion. in that region	port director. at that port.
142.14(b) heading	in any Customs region	port.
142.14(c)	region	at each Customs port.
142.15	in each Customs region	port director.
142.17(a) introductory text	district director	port director.
142.17a(a) introductory text	district director	port director.
142.18(a) introductory text	district director	port director.
142.19(b)(2)	district director	port director.
142.21(a), (e)(1) and (2), and (f)(1) introductory text.	district director	port director.
142.21(f)(1)(ii)	The district	The port.
142.24(a)	district director	port director.
142.25(a) heading and introductory text	district director	port director.
142.26(a)	regional commissioner of Customs for the re- gion. in that region	director of the port.
142.26(b) heading	in all Customs regions	at all Customs ports.
142.26(c)	region	port.
142.27	in all Customs regions	at all Customs ports.
142.28(a) introductory text	district director	port director.
142.42 introductory text	district director	port director.
142.42(a)	District Director	port director.
142.42(c)	District or port	Port.
142.43(a) heading	districts	ports.
142.43	District	Port.
142.43(c)	District Director	port director.
142.44	in another district	at another port.
142.45 (a) and (c)	in his district	at his port.
142.48(c)	Management	and Technology.
142.49	District Director	port director.
142.49(b)	in the district	at the port.
142.50	District Director	port director.
142.51	district director	port director.
142.52 heading	District-wide and multiple district	Port-wide and multiple port.
142.52(a) heading	District-wide	Port-wide.
142.52(a)	a District Director	the port director.
142.52(b) heading	in the district	at the port.
142.52(b)	Multiple district	Multiple port.
142.52(b)	in one district	at one port.
142.52(b)	in another district	at another port.
142.52(b)	District Director of the other district	port director of the other port.
142.52(b)	in all districts, a District Director	at all ports, a port director.
142.52(b)	in a district	at his port.
143.2 introductory text	district director	port director.
143.3(a) introductory text and (b)	Management	and Technology.
143.3(b)	Management	and Technology.
143.5	district director	port director.
143.6	Office of Automated Commercial Systems	User Support Services Division.
143.6(b)	ACS	User Support Services Division.
143.7(a)	Commercial Operations	Information and Technology.
143.7(a)	Trade Operations	Trade Compliance.
143.7(b)	ACS	User Support Services Division.
143.7(c)	Commercial Operations	Information and Technology.

Section	Remove	Add
143.8	Commercial Operations Trade Operations ACS	Information and Technology. Trade Compliance. User Support Services Division.
143.11(a) introductory text, and (b)	district director	port director.
143.22	district director	port director.
143.23 introductory text	district director	port director.
143.37 (c) and (d)	Commercial Operations	Field Operations.
144.11(b)	district director	port director.
144.12	district director	port director.
144.13	district director	port director.
144.34(a)	district director	port director.
144.36 (c) and (h)	district director	port director.
144.37(a), (d)–(f), and (h)(2) (ii) and (v)	district director	port director.
144.37(b)(3)	district director at	director of.
144.38(d)	district director	port director.
144.41(b)	district director	port director.
144.41(h)	district	
144.42(b)(3)	district director	port director.
145.4(b)	district director	Fines, Penalties, and Forfeiture Officer.
145.4(c)	district director at	director of.
145.4(d)	district director at	Fines, Penalties, and Forfeiture Officer having jurisdiction over.
145.12 (a)(1) and (c)	district director	port director.
145.14(b)	district director	port director.
145.22(a)	since a copy of the entry will have to be obtained from the Regional Commissioner of Customs, New York, N.Y., before the entry can be amended.	
145.22(b)	district director	port director.
145.23	district director	port director.
145.24	district director	port director.
145.25	the Regional Commissioner	Customs.
145.31	district director	port director.
145.32	district director	port director.
145.35	district director	port director.
145.36	district director	port director.
145.41	district director	port director.
145.42	district director	port director.
145.54(c) introductory text, and (c)(3)	district director	port director.
146.1(b)(2)	district director	port director.
146.2 heading	District director	Port director.
146.2	district director in whose district	port director where.
146.3(b)	district director	port director.
146.4(g)	district director	port director.
146.4(h)	district boundaries	port limits.
146.6(a)	district director of the district in which	port director geographically nearest to where.
146.6(a), (c), and (d)	district director	port director.
146.6(e)	district director's	port director's.
146.7	district director	port director.
146.8	district director	port director.
146.9	district director	port director.
146.10	district director	port director.
146.13	district director	port director.
146.21(b)	district director	port director.
146.22(b)	district director	port director.
146.23(c)	district director	port director.
146.25 (a) and (c)	district director	port director.
146.26	district director	port director.
146.31(a)	District directors district directors	Port directors. port directors.
146.32(a), (b)(5), (c) introductory text, (c)(3), and (d)(2)(i).	district director	port director.
146.34 (a) and (b)	district director	port director.
146.35(b), (d), and (e)	district director	port director.
146.36	district director	port director.
146.37(b), (c)(1), and (d)	district director	port director.
146.38	district director	port director.
146.39(b), (c) introductory text, (d), and (e)	district director	port director.
146.39(d)	district director's	port director's.
146.40(a)(2), (5), and (7), and (c)(1), (2), (3)(i), and (4).	district director	port director.
146.41(a), (c), and (d)	district director	port director.
146.42(c)	district director	port director.

Section	Remove	Add
146.44(c)(2)	district director	port director.
146.51	district director	port director.
146.52(a)–(d)(1) and (e)	district director	port director.
146.53(a) introductory text, (a)(3), (b)–(d)	district director	port director.
146.61	district director	port director.
146.62(c)	district director	port director.
146.63(c)(1)	district director	port director.
146.64(c)	district director	port director.
146.65(b)(3) and (c)	district director	port director.
146.66(a)	district director	port director.
146.67(d)	district director	port director.
146.68	district director	port director.
146.69 (b) and (c)	district director	port director.
146.70 (b) and (c)	district director	port director.
146.71	district director	port director.
146.81(b)	district director	port director.
146.82(a) introductory text, and (b)(1)	district director	port director.
146.82(b)(2)	regional commissioner of the region in which the zone is located.	Assistant Commissioner, Office of Field Oper- ations, or designee,
146.82(b)(3) heading	regional commissioner	Assistant Commissioner.
146.82(b)(3)	regional commissioner	Assistant Commissioner, Office of Field Oper- ations, or designee,
146.83(a)	district director	port director.
146.83(a)	Commercial Rulings	Tariff Classification Appeals.
146.95(a)(3)(i)	district director	port director.
147.1(d)	which is in the same Customs district as the fair.	
147.3	district director	port director.
147.13(b)	district director	port director.
147.14(a)	district director	port director.
147.32	district director	port director.
147.33	district director	port director.
147.41	district director	port director.
148.6(b)	district director	port director.
148.8(d)	district director at	director of.
148.25(b)	district director	port director.
148.32(b)	district director	port director.
148.37(a)	district director	port director.
148.39(b)	district director	port director.
148.46(b)	district director	port director.
148.52(b) and (d)	district director	port director.
148.54(c)	district director	port director.
148.63(a) introductory text	district director	port director.
148.66(b)(2)	district director	port director.
148.77(a)	District directors	port directors.
148.77(c)(1) and (2)	district director	port director.
148.84(a)(2)	district director	port director.
148.90(a)	District directors	Port directors.
148.90(b)	district directors	port directors.
148.90(c), (d)(1)(ii), (d)(2)(i), and (d)(2)(iii)	district director	port director.
148.105(a)	Commercial Operations	Field Operations.
148.115(e)	district director	port director.
151.1	district director	port director.
151.2(a)(1)	District directors	port directors.
151.2(a)(2)	district director	port director.
151.4(b) introductory text, and (c)(1) and (2)	district director	port director.
151.6	district director	port director.
151.7 introductory text, (a), (b), and (d)	district director	port director.
151.7(a)	under control of a Customs officer	under the control of Customs.
151.7(c)	a Customs officer	Customs.
151.7(d)	in charge of a Customs officer	under the control of Customs.
151.8(b) and (c)	district director	port director.
151.9	district director	port director.
151.10	where a Customs officer is stationed	under the control of Customs.
151.11	district director	port director.
151.11	a Customs officer	Customs.
151.13(a) introductory text	district director	port director.
151.13(a) introductory text, (b)(9) form, (d)–(f), (g)(2), (h), (j), (k), and (l)(2).	that District Director	that the port director.
151.13(b)(9) form	District Director	port director.
151.15(a), (b) introductory text, and (d)	Office of laboratories and	Laboratory &.
151.13(b)(9) form	district director	port director.
151.15(a), (b) introductory text, and (d)	district director	port director.

Section	Remove	Add
151.15(c)	District directors	port directors.
151.15(d)	district director's	port director's.
151.26	district director	port director.
151.28	district director	port director.
151.42(a)(1)-(3) and (c)	district director	port director.
151.42(a)(3)	Office of laboratories and	Laboratory &.
151.44(a) and (c)	district director	port director.
151.51(b)	district director	port director.
151.52(c)	district director	port director.
151.54 introductory text	district director	port director.
151.55	district director	port director.
151.65	district director	port director.
151.68(c)	district director's	port director's.
151.69(b)	district director	port director.
151.70	district director	port director.
151.71(a)-(c)	district director	port director.
151.71(c)	district director's	port director's.
151.73(b) and (c)	district director	port director.
151.73(b)	district director's	port director's.
151.74 heading	district director's	port director's.
151.74	district director	port director.
151.75	district director	port director.
151.76(a) and (b)	district director	port director.
151.76(c)	district director's	port director's.
151.84	district director	port director.
151.85	district director	port director.
152.1(c)	district director's	port director's.
152.2	district director	port director.
152.13(a), (c)(1), (c)(3), and (d)	district director	port director.
152.16(c)	district director	port director.
152.26 introductory text, (b), and (e)	district director	port director.
152.26(b) heading, and (d)	district director's	port director's.
152.101(c) and (d)	district director	port director.
152.103(a)(5)(iii), (d), (l)(1), (l)(2)(iii), and (m) ...	district director	port director.
152.105(i)(2)	district director	port director.
152.106(f)(2)	district director	port director.
158.1(b) introductory text	district director	port director.
158.3	district director	port director.
158.5(a)	district director	port director.
158.6	district director	port director.
158.11(a), and (b)(1) and (3)	district director	port director.
158.12(a)	district director	port director.
158.13(a) and (b)	district director	port director.
158.13(a)(1)	district director's	port director's.
158.14	district director	port director.
158.24	district director at	director of.
158.25	district director	port director.
158.27(b)	district director at	director of.
158.28	district director	port director.
158.29	district director	port director.
158.30 heading, and (a) text	district director's	port director's.
158.30	district director	port director.
158.42(b)	district director at	director of.
158.42(c) and (d)	district director	port director.
158.43(a), (c), and (e)	district director	port director.
158.44(a)	Custom Service	Customs Service.
158.44(c)	district director	port director.
159.7(a) introductory text	in the district	at the port.
159.7(b)	in the district in which	at the port where.
159.7(c)	district director	director.
159.12(a)(1) introductory text, (a)(1)(ii), (b)-(e) .	district director	port director.
159.22(d)(2)	district director	port director.
159.36(b)-(d)	district director	port director.
159.38	district director	port director.
159.44	district director	port director.
159.58	district director	port director.
161.3	district director	port director.
161.16	district director	port director.
162.1d(b)	district director (area director New York re- gion).	port director.
162.3(b)	district director	port director.
162.21(b)	district director	port director.

Section	Remove	Add
162.32(a) and (c)	district director	port director.
162.42	district director	port director.
162.44(a)	district director for the district in which	director of the port where.
162.44(b) and (c)	district director	port director.
162.45(a)(3) and (4) and (c)	district director	port director.
162.45a	appropriate Regional Commissioner of Customs. Regional Commissioner	port director.
162.46(c) and (d)	district director	port director.
162.46(c)(2) heading	district	port.
162.46(c)(2) introductory text	in such other Customs district	at such other Customs port.
162.46(c)(2)(ii)	in another Customs district	at another Customs port.
162.47(a), (d), and (e)	district director	port director.
162.48(a)	district director	port director.
162.49(a)	district director	port director.
162.50(a)	district director	port director.
162.52(b)(2) and (4)	district director	port director.
162.64	district director in whose district	director of the port where.
162.65(c), (d), (e) introductory text, and (e)(1)	district director	port director.
162.71(e)(4)	district director	port director.
162.72(a)	district director	port director.
162.74(a), (b)(4), (c), (h), and (j)	district director	port director.
162.74(c), (d)(3), (d)(4)(i), and (e)(1)	Enforcement	Investigations.
162.75(a), (c), (d)(1), (d)(2), (d)(2)(i), and (d)(3)	district director	port director.
162.76(a)	district director	port director.
162.77(a)	district director	port director.
162.78(a), (b), and (d)	district director	port director.
162.79(a) and (b)(1)	district director	port director.
162.79b	district director	port director.
162.80(a)(1), (a)(2)(i), and (a)(2)(iii)	district director	port director.
171.12(a)	district director for the district in which	Fines, Penalty, and Forfeiture Officer for the port where.
171.12(e)	district director	Fines, Penalty, and Forfeiture Officer.
171.15(a) introductory text, (a)(4), and (a)(7)	district director	Fines, Penalty, and Forfeiture Officer.
171.21	district director	Fines, Penalty, and Forfeiture Officer.
171.22	district director	Fines, Penalty, and Forfeiture Officer.
171.31	district director	Fines, Penalty, and Forfeiture Officer.
171.33(a) introductory text, (b)(1), (b)(2), and (c).	district director	Fines, Penalty, and Forfeiture Officer.
171.33(b)(1)	regional commissioner of the region in which the district lies.	designated higher level official.
171.52(d)	district director for the district in which	Fines, Penalty, and Forfeiture Officer for the port where.
Part 171 Appendix A: III, 9.	district director having jurisdiction over district director or area director	Fines, Penalty, and Forfeiture Officer for. Fines, Penalty, and Forfeiture Officer.
Part 171 Appendix B: (C)(1)(a), (b), and (d), and (C)(2)(a) and (b).	Regional Counsel of Customs Regional Counsel	Chief Counsel representative in the field. Chief Counsel representative.
Part 171 Appendix B: (C)(2)(b)	Miscellaneous district director	port director.
Part 171 Appendix B: (D)(1), (5), and (6)	within that district districts	at the port. ports.
Part 171 Appendix B: (D)(6)	district director regional counsel district director's Commercial Fraud and Negligence Penalties Branch at. Commercial Fraud and Negligence Penalties Branch, Headquarters, Customs Service.	Fines, Penalty, and Forfeiture Officer. Chief Counsel representative in the field. Fines, Penalty, and Forfeiture Officer's. Penalties Branch. Penalties Branch, Customs Headquarters.
Part 171 Appendix C: I.A., I.D. and Note to I.D	district director	Fines, Penalty, and Forfeiture Officer.
Part 171 Appendix C: I.D. Note and I.G	Regulatory Procedures and Penalties	International Trade Compliance.
Part 171 Appendix C: I.G.	District Director	Fines, Penalty, and Forfeiture Officer.
172.2	district director	Fines, Penalty, and Forfeiture Officer.
172.12(a)	district director of Customs for the district in which.	Fines, Penalty, and Forfeiture Officer for the port where.
172.12(b)(1)	district director	Fines, Penalty, and Forfeiture Officer.
172.21 heading	district director of Customs	Fines, Penalty, and Forfeiture Officer.
172.21	district director	port director.
172.22 heading, and (b)(3)(ii)	district director of Customs	Fines, Penalty, and Forfeiture Officer.
172.22(a)	District directors	Fines, Penalty, and Forfeiture Officers.
172.22(b)(3), and (d)(2) and (4)	district director	Fines, Penalty, and Forfeiture Officer.
172.22(c), (d)(1), and (e)	district director	port director.
172.31(a)	district director the regional commissioner of	Fines, Penalty, and Forfeiture Officer.

Section	Remove	Add
172.33(a) introductory text, (b)(1) (b)(1)(ii), (b)(2), and (c)(1).	district director	Fines, Penalty, and Forfeiture Officer.
172.33(b)(1)	regional commissioner of the region in which the district lies.	designated Headquarters official.
172.33(b)(1)(i)	regional commissioner	designated Headquarters official.
173.1	District directors, or in the New York Customs Region, the Regional Commissioner of Customs,.	Port directors.
173.2 introductory text	district director	port director.
173.3(a)	district director	port director.
173.4(a)	district director	port director.
173.4(c)	district director at	director of.
	, or in the New York Customs Region, the Regional Commissioner of Customs,.	
173.4a	district director	port director.
173.5	district director	port director.
173.6	district director	port director.
174.0	district director	port director.
174.1	terms	term.
174.3(b)(1), (c), and (d)	district director	port director.
174.11 introductory text	district director	port director.
174.12(b) and (d)	district director	port director.
174.12(d)	except that, when the entry underlying the decision protested is filed at a port other than the district headquarters, the protest may be filed with the port director of that port.	
174.13(b)	in any district	at any port.
	, as well as the ports of entry where they may not coincide,	
174.14(e)	district director or	
174.15(b)(2)	district director	port director.
174.16	district director	port director.
174.21	district director	port director.
174.22(a), (c), and (d)	district director	port director.
174.23	district director	port director.
174.24 introductory text	district director	port director.
174.24(a)	in any district	at any port
174.26(a), and (b) introductory text	district director	port director.
174.26(b)(2)	the regional commissioner of Customs or his designee for the region in which the district lies. Such designee shall be a Customs officer.	a designee of the port director.
174.27	district director	port director.
174.29	district director	port director.
174.30(b) and (c)	district director	port director.
175.25(a)	district director for	director of.
	district director	port director.
175.25(b)	district director	director.
176.1	district director for each Customs district in which.	director of each port where.
177.1(d)(3)	field office (port, district or region)	port office.
177.2(a)	Regional Commissioner of Customs, New York Region.	Director, National Commodity Specialist Division, U.S. Customs.
	Area or District	service port.
177.2(b)(2)(ii)(A)	Area or District	service port.
177.2(b)(2)(ii)(B)	New York Region or by other Area or District offices.	Director, National Commodity Specialist Division, or any service port office.
177.2(b)(2)(ii)(C)	Commercial Rulings	Tariff Classification Appeals.
	New York Region and other Area and District Offices.	Director, National Commodity Specialist Division, and any service port office.
	New York Region or other Area or District offices.	Director, National Commodity Specialist Division, or any service port office.
177.22(c)	Director	Assistant Commissioner.
191.2(d)	Regional commissioners of Customs	Drawback offices.
191.2(f)	regional commissioner	drawback offices.
191.10(a)	regional Regulatory Audit Division under the jurisdiction of the regional commissioner in whose region.	director at whose port.
	in the same region	at the same port.
191.10(b)	in one region	at one port.
	in another region, the regional commissioner .	at another port, the port director.
	regional commissioners in whose regions	port directors at whose ports
191.10(d)	Deputy Assistant Regional Commissioner (Regulatory Audit).	port director.

Section	Remove	Add
191.10(e)(1)(i), (e)(1)(ii), and (e)(2)	regional commissioner	port director.
191.10(e)(1)(i)	Entry Rulings	Entry and Carrier Rulings.
191.10(e)(1)(iii)	appropriate regional commissioner	port director.
191.21(c)	regional commissioner	appropriate drawback offices.
191.21(d)	regional commissioner	drawback office.
191.21(e) heading	regions	drawback offices.
191.21(e)	regional office	drawback office.
191.22(d)	regional commissioner	drawback office.
191.23(a)	regional commissioner	proper drawback office.
191.23(b) heading	regions	drawback offices.
191.23(b)	regional commissioner	drawback office.
191.24	appropriate regional commissioner	drawback office.
191.25(b)(1) and (2) introductory text	appropriate regional commissioner	drawback office which approved the original contract.
191.26	applicable regional commissioner	applicable drawback office.
	regions	drawback offices.
	regional commissioner who	drawback office that.
	appropriate regional commissioner	drawback office.
191.42(b) introductory text	regional commissioner	drawback office.
	him	it.
191.43	regional commissioner	drawback office.
191.44	applicable regional commissioner	drawback office.
191.53(b)	regional commissioner	drawback office.
	, unless in cases of merchandise the subject of same condition drawback, the regional commissioner has delegated authority to approve requests to a district director. In that circumstance, the request shall be made with the district director.	
191.53(c)	regional commissioner, or the district director, if applicable in the case of merchandise the subject of same condition drawback,	port director.
	he	it.
191.53(d)	regional commissioner	drawback office.
191.53(e)(3)	regional commissioner with whom drawback claims are filed.	drawback office.
191.56	regional commissioner	drawback office.
191.57	district director	drawback office.
191.62(a)(1) and (2) introductory text	district director	drawback office.
191.62(a)(3) heading	regions	drawback offices.
191.62(a)(3)	in a region	at a drawback office.
	regional commissioner with whom	drawback office where.
	regional commissioner	drawback office.
191.64	regional commissioner	appropriate drawback office,
191.65(a)	regional commissioner	drawback office.
191.66(e)	regional commissioner	drawback office.
191.67(a)(1)	district director at	director of.
	, or the regional commissioner for the region where the drawback claim is liquidated,	
191.67(e)(1)	regional commissioner through the district director.	requiring Customs authority.
	regional commissioner	requiring Customs authority.
191.67(e)(2)	district director	port director.
191.71(d) and (f)	regional commissioner	drawback office.
191.72(b) and (c)	regional commissioner	drawback office.
191.72(c)	regional commissioner who	drawback office that.
191.82(d)(2)	regional commissioner	drawback office.
191.83(b)(2)(vi) and (b)(3)	Customs region	Drawback office.
191.84(a)	regional commissioner of Customs	Customs drawback office.
191.84(b)(9)	Customs region	Drawback office.
191.84(d)	in another region	at another drawback office.
	regional commissioner of Customs	drawback office.
	regional office	drawback office.
	regional commissioner	drawback office.
191.85	regional commissioner	drawback office.
191.93(a)	district director at the port of lading	drawback office.
191.93(c)(5)	Customs region	Drawback office.
191.93(d), (e)(2) and (4), (h), and (j)(4)	district director	drawback office.
191.93(g)	district director at the port of lading	drawback office.
191.93(i) and (j)	regional commissioner	drawback office.
191.93(j)(4) heading	District Director's	Drawback office's.
191.133(a), (c), and (d)(2)	district director	appropriate Customs office.
191.134	district director	drawback office.
191.134(b)	district director at	Customs office at.

Section	Remove	Add
191.136(d)	regional commissioner, through the district director,	drawback office.
	regional commissioner	drawback office.
	he	such office.
	Headquarters, U.S. Customs Service	the Office of Field Operations, Customs Headquarters.
191.136(e)	Regional commissioners	Drawback offices.
191.138	regional commissioner	drawback office.
191.141(b)(1)	regional commissioner, or the district (area) director, or port director, if authority has been delegated to that official by the regional commissioner,	drawback office.
191.141(b)(2)(i)	regional commissioner or the district (area) director, or port director, if authority has been delegated to that official by the regional commissioner,	drawback office.
191.141(b)(2)(ii)	regional commissioner, or the district (area) director or port director, if authority has been delegated to that official by the regional commissioner.	drawback office.
191.141(d)	regional commissioner, or the district (area) director, if authority has been delegated to that official by the regional commissioner,	drawback office.
191.141(f)(1)	regional commissioner, or the district (area) director or port director, if authority has been delegated to that official by the regional commissioner,	drawback office.
191.141(f)(2)	district director or his designee	any Customs officer.
191.141(g)(1)	in the region or districts as determined by the regional commissioner.	by the applicable drawback office.
191.142(b) (1) and (3)	district director	drawback officer.
191.142(b)(3)	he	it.
191.142(b)(4)	district director or other appropriate Customs official.	drawback office.
191.142(b)(5)	district director who	drawback office that.
191.153(b)	district director	drawback office.
191.156(b)	district director	drawback office.
191.158	district director	drawback office.
191.163 (b)(2), and (c)	district director	drawback office.
191.164 (b) and (c)	district director	drawback office.
191.165 (b) and (c)	district director	drawback office.

George J. Weise,
Commissioner of Customs.

Approved: September 11, 1995.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.
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September 27, 1995

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks
for Late-Season Migratory Bird Hunting
Regulations; Final Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 20**

RIN 1018-AC79

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: This rule prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 1995-96 migratory bird hunting season. These late seasons include most waterfowl seasons, the earliest of which generally commence on or about October 1, 1995. The effects of this final rule are to facilitate the selection of hunting seasons by the States to further the annual establishment of the late-season migratory bird hunting regulations. State selections will be published in the Federal Register as amendments to §§ 20.104 through 20.107 and § 20.109 of title 50 CFR part 20.

EFFECTIVE DATE: September 27, 1995.

ADDRESSES: Season selections from States are to be mailed to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received are available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1995

On March 24, 1995, the Service published for public comment in the Federal Register (60 FR 15642) a proposal to amend 50 CFR part 20, with comment periods ending July 21 for early-season proposals and September 4 for late-season proposals. Due to some unforeseen and uncontrollable publishing delays in the proposed early- and late-season regulations frameworks, the Service extended the public comment period to July 31 for early seasons and September 7 for late seasons. These regulations were proposed for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae

(doves and pigeons), Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). These species are designated as "migratory game birds" in conventions between the United States and several foreign nations for the protection and management of these birds. All other birds designated as migratory (under 10.13 of Subpart B of 50 CFR Part 10) in the aforementioned conventions may not be hunted. On June 16, 1995, the Service published for public comment a second document (60 FR 31890) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. On June 22, 1995, a public hearing was held in Washington, DC, as announced in the March 24 and June 16 Federal Registers, to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 21, 1995, the Service published in the Federal Register (60 FR 37754) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1995-96 season. On August 3, 1995, a public hearing was held in Washington, DC, as announced in the March 24, June 16, and July 21 Federal Registers, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 28, 1995, the Service published a fourth document (60 FR 44463) which dealt specifically with proposed frameworks for the 1995-96 late-season migratory bird hunting regulations. The fifth document in the series, published August 29, 1995 (60 FR 45020), contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1995-96. On August 31, 1995, the Service published in the Federal Register (60 FR 45628) a sixth document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons. This document, which establishes final frameworks for late-season migratory bird hunting regulations for the 1995-96 season, is the seventh in the series.

Review of Comments and the Service's Response

Public-hearing and written comments received through September 7, 1995, relating to proposed late-season

frameworks are discussed and addressed here. Seven individuals presented statements at the August 3, 1995, public hearing. Individuals and the organizations represented were: Lloyd Alexander, Delaware Division of Fish and Wildlife; Bruce Barbour, National Audubon Society; Richard Elden, Michigan Department of Natural Resources; Mike Harris, Maryland Guide Association; Dr. Rollin Sparrowe, Wildlife Management Institute and The Trumpeter Swan Society; Scott Sutherland, Ducks Unlimited; and George Vandell, Central Flyway Council. The Service received 105 written comments that specifically addressed late-season issues. These late-season comments are summarized and discussed in the subject order used in the March 24, 1995, Federal Register. Only the numbered items pertaining to late seasons for which comments were received are included. Flyway Council recommendations shown below include only those involving changes from the 1994-95 late-season frameworks. For those topics where a Council recommendation is not shown, the Council supported continuing the same frameworks as in 1994-95.

General

Written Comments: The Citizens Committee for the Right to Keep and Bear Arms requested that the Service give greater consideration to the traditions and heritage of hunting when formulating the annual regulations. Specifically, the Committee cited the costs of hunting, the lack of standardized opening days, the lack of considerations for youth, education of the public, and the financial rewarding of landowners for their stewardship of public wildlife as areas where a lack of concern has contributed to the erosion of hunting.

The Humane Society of the United States (Humane Society) expressed concern that the public was not well represented in the regulations-establishment process and requested establishment of a system directly involving the non-hunting public. In addition, they recommended that the Service undertake efforts to obtain population estimates for all hunted species.

An individual from Wisconsin expressed support for the existing shooting hours of one-half hour before sunrise to sunset. He also opposed the requirement for steel shot and urged the development of non-toxic alternatives. The Andover Sportsmen's Club and the Concerned Coastal Sportsmen's Association, both of Massachusetts, also expressed support for the existing

shooting hours. Further, the clubs requested that the Service initiate regulations for waterfowl guides and provide more educational information regarding safety, conservation, and regulations.

Service Response: The regulations-development process is a well-established system directly involving the Flyway Councils, the States, non-governmental organizations and the public. When the preliminary proposed rulemaking document was published in the Federal Register on March 24, 1995, the Service gave notice that the process of promulgating hunting regulations "must, by its nature, operate under time constraints". Ample time must be given to gather and interpret survey data, consider recommendations and develop proposals, and to receive public comment. Scheduled dates and meetings were set to give the greatest possible opportunity for public input to the process given the time constraints. The Service is obligated to, and does, give serious consideration to all information received as public comment. Further, the Service believes that any party that wishes to become directly involved in the current process can do so through any number of available opportunities.

Regarding population estimates for hunted species, the long-term objectives of the Service include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Annually, the status of populations are evaluated and the potential impacts of hunting are considered. While the Service recognizes that some population estimates are better than others, the Service has no reason to believe that the hunting seasons provided herein are inconsistent with the current status of waterfowl populations and long-term population goals.

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length and Bag Limits, (D) Zones and Split Seasons, and (E) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

A. General Harvest Strategy

Public-Hearing Comments: Mr. Bruce Barbour supported the Adaptive Harvest Management (AHM) process used in selecting this year's liberal package and

specified species restrictions. He indicated that increased hunting opportunity will occur on all species under the liberal option, and efforts should be initiated to cooperatively develop harvest approaches for each of these species.

Dr. Rollin Sparrowe commended the Service and State cooperators for their commitment toward implementing the AHM approach to duck hunting and to distance the process from political influence. He supported partial adoption of the AHM approach this year which recognized goals established in the North American Waterfowl Management Plan. He was pleased that after years of concern about the status of ducks, more liberal seasons could be offered.

Mr. Scott Sutherland also expressed support for AHM and the regulatory matrix proposed by the Service this year which resulted in the liberal package recommendation. Under full implementation of AHM, however, Mr. Sutherland expressed a desire to modify the framework packages allowing a consideration of longer seasons with smaller daily bag limits.

Mr. George Vandel supported the proposed use of flexible framework opening and closing dates for duck seasons in the Central Flyway, the liberal regulatory package, and the AHM process that was used in this interim year prior to its full implementation. He thanked the Service for the assistance with communication efforts on behalf of AHM, but pointed out that continuing efforts will be necessary for successful implementation in future years. He then strongly suggested that the Service work closely with the Flyway Councils in developing regulatory packages for next year. He believed that this cooperation will be especially crucial for further implementation by facilitating ownership and support for full implementation of AHM in 1996.

Written Comments: The Pennsylvania Game Commission expressed support for the proposed regulations strategy as an interim approach for 1995 only. They continue to be concerned that the process relies on mid-continent mallards as a basis for regulatory changes in the Atlantic Flyway.

Likewise, the Delaware Department of Fish and Wildlife generally endorsed the concept of regulatory packages but remained concerned that the process was linked to the mid-continent populations of mallards and prairie-wetland conditions.

The Illinois Department of Conservation also expressed support for the AHM process but were concerned that there had been insufficient time to

properly educate the public. They also felt that the set of regulatory options offered may be too limited, particularly with regard to bag limits.

The South Dakota Department of Game, Fish and Parks expressed support for AHM and the interim steps proposed for the 1995-95 hunting season. Additionally, they supported the idea of expanding the status of duck breeding populations and habitat used in AHM from mallards and prairie-Canada ponds to include other duck species and ponds in the Dakotas and Montana.

The Montana Department of Fish, Wildlife, and Parks expressed support for the development and implementation of AHM. They continued to stress, however, the need for additional communications efforts relative to the status of duck populations and the implementation of more liberal regulations. They also believed that failure to renew the 1995 Farm Bill poses one of the greatest threats to continued recovery and maintenance of duck populations.

The Utah Division of Wildlife Resources commended the Service for their efforts in the cooperative development of AHM and supported implementation of this strategy in 1995 to the extent possible. Although they see a need for further refinement of the regulatory options, particularly for pintails, they supported the proposed option for 1995.

The Texas Parks and Wildlife Department supported 1995-96 as the transition year to full implementation of AHM for establishing duck seasons and bag limits in 1996-97. Texas believed that the Service Regulations Committee (SRC) must improve the input process for the four Flyway Councils if AHM is to gain the understanding and support needed to assure its longevity in setting duck seasons. In addition, Texas states that the SRC and the Service Director should utilize Flyway Consultants early in the 1996-97 regulations process to facilitate communications between the Flyway Councils and the Service with consultants functioning in a role similar to that played this year by the AHM Task Force in working with the AHM Technical Working Group to facilitate and strengthen Federal/Flyway communications in AHM regulation package development. Texas believed that early involvement by the Consultants would help assure improved coordination and explanation of the various regulation packages with the States and Flyway Councils before and during the March council meetings.

The National Rifle Association agreed that the approach to setting duck hunting regulations is in need of

improvement and applauded the adoption of AHM for the 1995-96 season. They are concerned, however, that management strategies for North American duck populations would be implemented without species-specific population information. In particular, they are concerned about how and when the AHM process will be implemented for species other than mallards.

The California Waterfowl Association commended the Service for moving forward with AHM. They did express concern, however, for the potential of a season closure in California, the AHM terminology regarding regulations packages, and the use of only mid-continent mallards and prairie-habitat conditions in the AHM process.

Individuals from Mississippi, Oklahoma, Arkansas, and Tennessee expressed support for the AHM process and the Service's proposed regulatory packages. However, one individual from Arkansas stated that future AHM criteria should be adjusted to be more conservative. Another individual from New York expressed dissatisfaction and strong concern over the AHM regulatory packages citing the North American Waterfowl Management Plan goal of 100 million birds in the fall flight, the use of mid-continent population data, the appearance of moving too far too fast, and the increased crippling rate associated with higher bag limits. An individual from Illinois expressed concern that the proposed liberalizations in duck hunting regulations were not consistent with the goal of 100 million ducks in the fall flight.

Service Response: The Service appreciates the broad support expressed for the concept of AHM, which is designed to increase objectivity and efficiency in the setting of waterfowl hunting regulations. Often in the past, the regulations-setting process was characterized by a lack of agreement among managers on the best approach to regulating harvest. The Service believes that this lack of agreement was because: (1) harvest-management objectives were not always clearly stated or agreed upon; (2) a large number of regulatory options hindered assessment of their effects; and (3) there was disagreement among technical experts on the degree to which hunting affects duck populations. AHM improves upon the current approach using clearly defined harvest-management objectives, a limited set of regulatory options, and new data-assessment procedures to resolve disagreement about the effects of hunting.

The decision criteria for the 1995-96 hunting season were based on the status

of mid-continent mallards and their breeding habitat, the mallard population goal of the North American Waterfowl Management Plan (i.e., 8.1 million mallards in the surveyed area), and 4 potential regulatory options (i.e., closed, restrictive, moderate, and liberal). The harvest "prescriptions" call for liberal duck-hunting regulations if the mallard population is high (relative to the Plan goal), breeding-habitat conditions are exceptionally good, or both. Restrictive regulations or a closed season would be needed when population status and habitat conditions are relatively poor. Moderate regulations would be appropriate under intermediate population levels and pond numbers. This year's estimates of 8.3 million mallards and 3.9 million ponds in Prairie Canada allow for the liberal option, which contains season lengths and bag limits similar to those last used during 1980-84. After information is available from population surveys next spring, managers will evaluate what they have learned about the effects of hunting. That information will then influence the harvest prescriptions next year. This annual process of feedback is repeated year after year, ensuring that managers improve their understanding of the effects of regulations on waterfowl populations and make adjustments to harvest strategies accordingly.

The Service recognizes that 1995 represents a transition year with respect to implementation of AHM and that further refinement is needed. In particular, the set of potential regulatory options will be reviewed and necessary adjustments made based on the following criteria: (1) options should differ sufficiently so that differences in harvest levels and their impacts on duck populations can be detected with current monitoring programs; (2) the set of options should produce enough variation in harvest rates to permit identification of optimal harvest strategies; and (3) regulatory options should reflect the needs of law enforcement and the desires and abilities of hunters. The set of options can be reduced or expanded as the need arises, but it is important to use the same options long enough to identify patterns in harvest rates under each regulatory option.

With respect to the North American Waterfowl Management Plan (Plan), the Service appreciates support for linking the objectives of harvest management with the population goals of the Plan. The Service recognizes, however, that further consideration is needed regarding how much emphasis to place on hunting opportunity when

populations are below Plan goals and how to best incorporate goals for species other than mallards. There appears to be a misunderstanding about Plan goals. The 100 million fall flight includes areas in Canada and the USA that lie outside the annual survey area. If estimated duck abundance in unsurveyed areas is included, the continental fall flight of ducks this year should be well over 100 million.

The Service recognizes the limitations imposed by relying solely on the status of mid-continent mallards for setting basic season lengths and bag limits. It is important to note, however, that duck regulations always have been based primarily on the status of mid-continent mallards. This is because they are the most abundant duck in the harvest and because mallards are good indicators of how many other species are doing. For this year, the Service continues to make special provisions within the basic frameworks for some species (e.g., pintails, black ducks, canvasbacks, wood ducks). During the next year, the Service, in cooperation with the Flyway Councils and others, intends to develop a conceptual framework and timetable for expanding AHM to other populations of mallards and to other duck species.

The Service also recognizes that its prescription for closed seasons under some combinations of population and pond numbers is a source of concern. By law, however, the Service is mandated to consider closed seasons (in fact, seasons remain closed unless action is taken to open them). For the purpose of the 1995 regulations, only four options (closed, restrictive, moderate, and liberal) were considered in the assessment, with the recognition that closed or even restrictive seasons likely would not be needed this year. Even if resource conditions deteriorated dramatically, a closed season would not necessarily be needed; the Service would first determine if more restrictive regulations than those in the proposed restrictive option would be compatible with resource status.

Though substantial progress has been made in communicating AHM to the professional community, many conservation groups and the public-at-large remain uninformed about the approach. Because AHM represents a significant change in the approach to setting regulations, it is important that this change be communicated to the public in a timely fashion. Outreach efforts now are ongoing through the Service Public Affairs Office, and State conservation agencies continue to play an important role in educating non-governmental organizations and the

media. Successful implementation of AHM will require continued consensus building, not only among traditional decision-makers, but also among the broader group of stakeholders who are concerned about the conservation of waterfowl.

B. Framework Dates

Council Recommendations: The Atlantic Flyway Council recommended framework dates of October 1 to January 20.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended framework dates of September 28 to January 23.

The Central and Pacific Flyway Councils recommended framework dates of the Saturday nearest October 1 (September 30) to the Sunday nearest January 20 (January 21).

Written Comments: The South Dakota Department of Game, Fish and Parks opposed a fixed framework opening date, while an individual from Mississippi expressed support for a January 31 framework closing date.

The Humane Society recommended that all seasons open at noon on Wednesdays in order to reduce the high level of harvest associated with traditional Saturday season openings. They further recommended that season openings be delayed by two weeks in all breeding areas in order to allow ducks time to leave natal marshes before being subjected to hunting pressure.

Service Response: Traditional framework opening and closing dates have been oriented to the period October 1 - January 20, either as fixed calendar dates or "floating" dates, using as a guideline the Saturday nearest October 1 and the Sunday nearest January 20 to select opening and closing dates annually. In recent years, the Service has established fixed calendar dates of October 1 - January 20 for all Flyways. The fixed calendar dates of September 28 - January 23 recommended for the Mississippi Flyway this year would provide consistently wider frameworks over the years than the fixed October 1 - January 20 dates recommended for the Atlantic Flyway and the floating dates recommended for the Central and Pacific Flyways. To maintain consistency among Flyways in the procedures for selecting framework dates, and because floating dates have been recommended annually for the Mississippi Flyway in recent years, the Service proposes to return to the traditional procedure using fixed calendar dates for the Atlantic Flyway and floating dates for the Mississippi,

Central, and Pacific Flyways, all oriented to the October 1 - January 20 period. However, the Service reiterates its previously stated policy to retain the option of using framework dates as a harvest-management tool.

Regarding the Humane Society's recommendation for Wednesday season openings, the Service notes that States have the option of adjusting season opening and closing dates and shooting hours within the framework limits to correspond with particular days and/or times.

C. Season Length and Bag Limits

Council Recommendations: The Atlantic Flyway Council recommended a 50-day season with a 5-bird daily bag limit, including no more than 1 black duck, 1 hen mallard, 1 pintail, 1 canvasback, 2 wood ducks, 2 redheads, and no harlequin ducks. Further, the Council recommended that States maintain a 40-percent reduction in the harvest of black ducks from the 1977-81 base period.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended a 50-day season with a 5-bird daily bag limit, including no more than 4 mallards (no more than 1 of which may be a hen), 1 black duck, 1 pintail, 1 canvasback, 2 wood ducks, and 2 redheads.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended a 50-day season with a 5-bird daily bag limit, including no more than 4 mallards (no more than 1 of which may be a hen), 3 mottled ducks, 1 black duck, 1 pintail, 1 canvasback, 2 wood ducks, and 2 redheads.

The Central Flyway Council recommended a 60-day season (83 days in the High Plains Mallard Management Unit with the last 23 days of the season taken no earlier than the Saturday closest to December 10) with a 5-bird daily bag limit, including no more than 1 hen mallard, 1 mottled duck, 1 pintail, 1 canvasback, 2 wood ducks, and 1 redhead. Furthermore, the Council recommended reinstating the point-system option for establishing the daily bag limit for ducks in 1995. The Council also would like to work with the Service in another cooperative review of its point-system policy.

The Pacific Flyway Council recommended a 93-day season (100 days in the Columbia Basin Management Unit) with a 6-bird daily bag limit, including no more than 1 hen mallard, 2 pintails, 1 canvasback, and 2 redheads.

Written Comments: Two local organizations in Massachusetts and

individuals from Arkansas and Georgia expressed support for the proposed 50-day season and 5-bird daily bag limit. Individuals from Tennessee, Virginia, Wisconsin, and Iowa and two people from Minnesota expressed support for the proposed increase in season length but were against the proposed bag limit increase. An individual from Wisconsin expressed support for a 70-day season. Another individual from Wisconsin and two people from Illinois supported a 50-day season and a 4-bird daily bag limit, while an individual from Tennessee supported a 40-day season and a 4-bird daily bag limit. One person from Virginia requested a 73-day season.

An individual from Illinois expressed general concern over the proposed regulatory package and a person from Michigan was against any increase in the daily bag limit. Individuals from Louisiana and Minnesota were opposed to a 50-day season and 5-bird daily bag limit and a person from Iowa was opposed to a 40- to 50-day season with the proposed 5-bird daily bag limit. Two people from Illinois and one person from Minnesota recommended maintaining last year's regulations of a 40-day season and a 3-bird daily bag limit, while another individual from California expressed support for a 4-bird daily bag limit. An individual from Illinois recommended a 30-day season and a 2-bird daily bag limit. One individual from Kentucky expressed general support for low limits, and an individual from Georgia was against any lengthening of the season.

An individual from Minnesota stated that increasing the season length and bag limits would encourage overharvest and wanton waste, while a person from Illinois suggested keeping the bag limits low until the populations were more secure and then gradually increasing both season length and bag limits.

The National Wildlife Federation, in accordance with the significantly increased duck populations, concurred with the Service's proposal to expand duck hunting opportunities.

The Humane Society opposed the proposed liberalization of season length and bag limits, believing that it was an unwarranted and unwise action on the basis of only 2 years of good duck production.

Service Response: In reference to reinstating the point system, the Service, with input from the Flyway Councils, completed a comprehensive review of the point system in 1990, and established a policy that the point system should be restricted to a maximum daily bag limit no greater than that allowed under the conventional daily bag limit. In 1994,

the Flyway Councils asked the Service to review this policy. The Service's review was completed in July 1994 and sent to all Flyway Councils. The 1990 review indicated that (1) there was little evidence that the point system was more effective than the conventional bag limit at redirecting harvest, (2) major problems remained with determining appropriate species- and sex-specific point values, (3) species closures eliminated the bird-in-hand identification advantage of the point system, (4) reordering of point values in the field was an incentive under the point system and enforceability remained a major concern, and (5) most problems with the point system were in application and not concept.

In the 1994 review, the Service considered additional information that had been gathered since the 1990 review, and concluded that the point-system alternative to the conventional bag limit should be discontinued. Over the years, the Flyway Councils and States have had substantial opportunity to provide input into the review of scientific studies and analysis of this information. The completion of the 1990 and 1994 reviews and the decision to discontinue the point system have considered input from all entities.

Regarding the recommendations for shorter seasons and smaller bag limits, the Service has reviewed the current status of populations and evaluated the potential impacts of the proposed frameworks. The Service believes that the frameworks provided herein are consistent with the improved status of ducks and long-term population goals.

D. Zones and Split Seasons

Written Comments: The Central Flyway Council and the Nebraska Game and Parks Commission recommended that the Service eliminate its policy that States may not zone and/or use a 3-way split season simultaneously within a special management unit and the remainder of the State when establishing duck hunting zones.

An individual from Virginia requested a continuous season with no splits, while the Humane Society urged the Service to discontinue all split and special seasons and recommended that any State establishing such seasons reduce the total number of hunting days by a minimum of 10 days.

Service Response: The Service will continue to utilize the guidelines that were established for the use of duck zone/split seasons published in the September 21, 1990, Federal Register (55 FR 38898). These guidelines contain specific limitations on special management units, including the High

Plains Mallard Management Unit in Nebraska. The original justification and objectives established for the High Plains Mallard Management Unit provided for additional days of hunting opportunity at the end of the regular duck season. In order to maintain the integrity of the management unit, current guidelines prohibit simultaneous zoning and/or 3-way split seasons within a management unit and the remainder of the State. Removal of this limitation would allow additional proliferation of zone/split configurations and compromise the original objectives of the management unit.

In regard to the recommendation that split and special seasons be discontinued, the Service notes that States always have the option of selecting a continuous season with no splits. Furthermore, the Service is not aware of any information that split seasons are causing detrimental impacts to populations.

The Service also reminds the Central Flyway Council that the report on the High Plains Mallard Management Unit should be completed. The Service did not receive the report by the Central Flyway Council's target completion date of June 1995 and requests additional information as to its status, including an updated target completion date.

G. Special Seasons/Species Management

i. Canvasbacks

Written Comments: An individual from Wisconsin supported the proposed opening of the canvasback season.

Service Response: Results of the May Breeding Waterfowl and Habitat Survey this year indicate that habitat conditions and the size of the canvasback population are sufficient to open the season on canvasbacks. Therefore, the Service is offering a bag limit of 1 canvasback per day during the 1995-96 regular duck season.

ii. Redheads

Council Recommendations: The Mississippi Flyway Council recommended a bag limit of 2 redheads per day, an increase from the bag limit of 1 redhead per day proposed by the Service.

Public-Hearing Comments: Mr. Richard Elden stated that, based on the status of redheads this year, liberalization of the daily bag limit for this species was warranted and biologically supported, and requested that the Service reconsider its proposal and increase the number of redheads in the daily bag limit from 1 to 2 birds in the Mississippi Flyway.

Dr. Rollin Sparrowe questioned why the Service did not consider adding an additional redhead to the bag limit in the Mississippi and Central Flyways when populations seemed appropriate and urged the Service to reexamine this aspect before frameworks were finalized.

Written Comments: The Texas Parks and Wildlife Department, in letters dated June 6 and September 6, 1995, requested a bag limit of 2 redheads per day in the Central Flyway. They believe that a daily bag limit of 2 redheads per day should have been part of both the moderate and liberal packages for the 1995-96 hunting season based on the recent increases in the breeding population. Further, they state that the current population and harvest data substantiate the biological justification for a daily bag limit of 2 redheads in both the Central and Mississippi Flyways.

Service Response: The Service prefers that proposals for changes in species- or population-specific regulations be based on more long-term strategies rather than in response to short-term changes in population estimates. The Service believes that such strategies should include the following: (1) an assessment of how the population responds to harvest and environmental conditions, (2) criteria that prescribe when regulations should be changed (i.e., become more restrictive or more liberal), (3) the range of regulatory options that will be considered (e.g., ranges of season lengths and bag limits), and (4) considerations for determining the efficacy of the harvest strategy. The proposals to permit a bag limit of 2 redheads per day were received in late July, and were based primarily in response to the estimated size of the redhead population during spring 1995. Due to the timing of the requests, analyses of biological data sufficient to address the four criteria above could not be conducted. Further, additional harvest opportunities on redheads in all Flyways will result from increases in season lengths proposed for this year. The Service recommends that MBMO and the Flyways cooperatively develop protocols and strategies for addressing species- and population-specific limits within the context of the AHM Initiative, and believes the AHM Working Group is the appropriate forum for this endeavor.

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the regular season on the Atlantic

Population of Canada geese be suspended; except for West Virginia, the Southern James Bay Population harvest areas of Pennsylvania, and a newly created New England Zone [Maine, New Hampshire, Rhode Island, Vermont (excluding the Lake Champlain Zone), Massachusetts (excluding the Western Zone), and Connecticut (excluding Litchford and Hartford Counties)]. In the New England Zone, the Council recommended a 30-day season, with a framework of October 1 through November 30, with a 1-bird daily bag limit. The Atlantic Flyway Council also recommended that, in light of the decision to suspend the regular season on migrant Canada geese flyway-wide, the Service should immediately begin a review of framework dates for resident Canada goose seasons to determine whether dates could be expanded to increase harvests.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended several changes in Canada goose quotas, season lengths, etc., based on population status and population management plans and programs.

The Central Flyway Council recommended several changes for west-tier dark geese: (1) an increase in the aggregate bag limit from 3 to 4 birds, (2) an extension of the framework closing date from January 31 to the Sunday nearest February 15 (February 18) for the Western Goose Zone of Texas, and (3) an increase in the dark goose bag limit from 2 to 4 birds in Sheridan County, Montana.

The Pacific Flyway Council recommended that the bag limit for Canada geese in central Montana, western Wyoming, and southeastern Idaho be increased from 3 to 4 birds. The Council also recommended that the daily bag limit for cackling Canada geese in the quota zones of western Oregon and western Washington be increased from 1 to 2 birds.

Public-Hearing Comments: Mr. Lloyd Alexander supported the Service's proposal to close the Canada goose season throughout the Atlantic Flyway. He stated that existing data do not support a limited season in the New England States and that survival rates on birds migrating through the Maritime Provinces of Canada are actually lower than those breeding in northern Quebec, to delineate this population, he suggested that better data was needed. He also encouraged the Service to contact the Canadian Wildlife Service and request that the sport harvest on Atlantic Population Canada Geese be suspended in Quebec and Ontario by

emergency closure this year. Further, he asked the Service to work with representatives of the native communities to reduce subsistence harvest in northern Quebec and to ask the Canadian Wildlife Service to review the harvest and consider restrictions on Canada geese in the Maritime Provinces.

Mr. Bruce Barbour recommended that further restrictions on the Atlantic and Southern James Bay Population of Canada geese and the dusky subspecies should be sought for their recovery.

Mr. Mike Harris commented that Canada geese have changed their movement patterns in recent years and no longer migrate north in the spring, as they once did. Rather, he believes they remain as resident birds and breed locally. He maintains that although these geese are in good numbers, early seasons on these birds should not be allowed, because it reduces the overall numbers of geese available during the regular season. He claims that it is difficult to stay in business and suggests that if the hunting season is closed on Canada geese, the guides and outfitters should receive some financial assistance from the Federal Government. He recommended that a 30-day season with a 1-bird daily bag limit be offered until the changing patterns of resident geese could be reviewed.

Dr. Rollin Sparrowe commended the Service and the Atlantic Flyway Council for proposing the closure on Canada goose hunting in the Atlantic Flyway, urged the Service to request the Canadian Wildlife Service take similar action in Canada, and expressed support for initiating research to better understand the problem.

Written Comments: The Maine Department of Inland Fisheries and Wildlife, the Massachusetts Division of Fisheries and Wildlife, the Connecticut Department of Environmental Protection, and the Rhode Island Division of Fish and Wildlife, expressed support for the suspension of the 1995-96 regular Canada goose season throughout most of the Atlantic Flyway, but opposed the Service's proposal to extend the season closure into several New England States. They strongly urged the Service to adopt the Atlantic Flyway Council's recommendation to provide a reduced 30-day season, between October 1 and November 30, with a 1-bird daily bag limit for States in the newly created New England Zone. They argued that migrant Canada geese harvested in this Zone are derived from Maritime Canada and believed that the status of this group of geese is better than that of geese breeding in Northern Quebec. Further, they believed a limited season is necessary to control the

rapidly growing resident population of Canada geese and to reduce the number of nuisance complaints. The New York State Division of Fish and Wildlife also requested that the western half of Long Island be considered for inclusion into the New England Zone, based on band recovery data, and be permitted a limited season as outlined above.

In Massachusetts, the Town of Yarmouth and two local sportsmen organizations urged the Service to reconsider the Atlantic Flyway Council's proposal for a 30-day season, 1-bird daily bag limit to control numbers of non-migratory geese. Several individuals from Massachusetts also complained about the growing public nuisance problem with resident geese and stressed the need for an open regular season to control their numbers. Special seasons on resident geese in September and late January have not been an effective population-control mechanism. Another individual from New York commented that resident geese will explode as a result of the season closure on migrant Canada geese and that farmers' fields will be eaten bare. He recommended a 30-day season with a 2-bird daily bag limit, which would also increase the income from Duck Stamp sales.

The Susquehanna River Waterfowler's Association of Pennsylvania also requested that the Service consider a greatly reduced season of 30 days with a 1-bird daily bag limit rather than a complete closure. They believe that once the season is closed, it will be difficult to reopen because of opposition from anti-hunting groups. Another individual from Maryland also worried that the season may not reopen when the goose population rebuilds because of the strong anti-hunting forces. He further objected to the late notice of the closure and stated that hunting leases were, in many cases, already paid to the landowners.

Individuals from Massachusetts, Connecticut, Rhode Island, New York, and Pennsylvania expressed opposition to the season closure on Canada geese, suggesting that migrant geese have changed their migratory behavior and now breed locally. Thus, there are actually great numbers of geese available to hunters. Individuals from Pennsylvania and New York commented that local Cree Indians in Canada were responsible for taking too many eggs and killing the birds on the nests on the breeding ground in Canada. They suggested that the Service consider the economic impacts of a closed goose season on farmers and those sportsman who pay for leases.

They further requested that the Service should reimburse them for their losses.

Several individuals from Connecticut supported the season closure on Canada geese breeding in Northern Quebec, but commented that the Maritime Canada goose population was stable. They believed that a limited season in the New England area is justified because the hunting season on the Maritime population in Canada was not closed. In addition, five petitions containing 302 signatures were received from residents of New York and Connecticut opposed to the closing of the Canada goose season in New York and Connecticut. Another individual from Massachusetts was critical of the Service and State wildlife biologists for not making a bigger effort in previous years to reduce the season length and bag limits.

Several individuals from Maine expressed their disappointment with the season closure on Canada goose hunting and asked the Service to reconsider a limited 26-day season with a 1-bird daily bag limit. This would allow Maine hunters to hunt resident geese while having a negligible effect on the migratory goose populations.

In Maryland, the Queen Anne's County Chamber of Commerce requested that a moratorium on all Canada goose hunting be in effect during the 1995-96 season rather than allowing some seasons to occur on resident geese. They added that these seasons have the potential of increasing the harvests of migratory geese as well. Because of the traditional and economic importance of goose hunting in their area, they maintain that a total ban on Canada goose hunting would be the quickest way to rebuild the population and reopen the hunting season.

Two individuals from Massachusetts, complained that migratory geese have been declining for years due to over-harvesting, and as a result, many were remaining to breed locally as resident geese. They were glad that the Service finally recognized the problem, but felt that jeopardizing the non-consumptive user because of benefits to hunters was unconscionable.

The National Wildlife Federation expressed support for the Service's proposal to suspend the Canada goose season throughout the Atlantic Flyway for the 1995-96 hunting season. Furthermore, they urged the Service to set goose hunting regulations that would increase the harvest of nonmigratory resident geese in those few Atlantic Flyway areas that would not be closed.

An individual from the Eastern Shore of Maryland expressed support for the closure of the regular Canada goose season for as long as it takes to rebuild

the population to the levels of the mid-1980s. Other individuals from Maine and New York supported the suspension of the Canada goose season on the East Coast and one person from Maryland requested a five-year moratorium on the hunting of migratory Canada geese.

The Humane Society expressed support for the proposed closure on Canada geese and further urged that the Service close the season on Canada geese throughout the Atlantic Flyway with no exceptions.

An individual from Minnesota recommended a season opening no earlier than October 7 and closing no earlier than November 20 for the Lac Qui Parle Zone in Minnesota. He further recommended that the quota be set at 7,500 Canada geese.

In the Pacific Flyway, an individual from Washington urged additional protection for the dusky Canada goose population wintering along the Chehalis River.

Service Response: Based on the continuing decline in the number of breeding pairs of Atlantic Population (AP) Canada geese, the Service endorses the Atlantic Flyway Council's recommendation to suspend the 1995-96 regular Canada goose season in the Chesapeake and Mid-Atlantic regions of the Atlantic Flyway, with exceptions for West Virginia and a portion of Pennsylvania. The substantial drop in numbers of AP Canada geese (27 percent from 1994 and 75 percent from 1988) has continued despite harvest restrictions imposed in 1992. However, the Service does not support the recommendation to provide a 30-day season between October 1 and November 30, with a 1-bird daily bag limit, for States in the New England Zone. The AP Canada geese are currently managed under an approved Flyway Management Plan as a single population unit, including both Northern Quebec and Maritimes breeding areas. The Service will continue to manage geese on a population basis, guided by cooperatively developed management plans.

The information available to separate these populations into two units, as the basis for the New England Zone, is currently very limited. Survival rates, based on limited bandings, are actually lower for the Maritimes component of the population than for geese in the area where the Flyway Council recommended a complete season closure. Also, productivity information, which would help assess the differences in survival rates, is very limited. In addition, only 2 years of population-

survey data are available for Canada geese breeding in the Maritimes, and these are too inconclusive to indicate whether numbers of breeding pairs are stable or declining. The Service does not oppose the delineation of a Maritime unit of AP Canada geese, if warranted, but believes that more information is needed before beginning a harvest strategy different from that for the component breeding in Quebec.

Therefore, the Service encourages the Flyway Council to work cooperatively with the Canadian Provinces during the coming year to gather more data, review the key population parameters involving the Maritime component of AP Canada geese, update its AP Canada goose management plan, and make recommendations regarding an appropriate harvest strategy for this group of geese.

The Service recognizes the recreational and economic hardships to hunters and the non-hunting public that will result from suspending the regular hunting season on AP Canada geese this year in the Atlantic Flyway. However, recent breeding pair surveys indicates that this population has undergone a dramatic decline over the past few years and the Service agrees with the Atlantic Flyway Council that very stringent harvest control measures are needed to prevent further declines from occurring. Also, regulatory restrictions taken in 1992 to reduce the harvest were ineffectual and further declines in the population have continued. Canada, in response to these dramatic declines, has joined the Service in imposing season closures during the 1995-96 hunting season. Thus, the Service wishes to minimize further risk to the breeding population that would result from offering a limited hunting season and to focus attention towards rebuilding the population. The Service will continue to work closely with Canada, and the Atlantic Flyway Council to closely monitor and annually reevaluate the population status of AP Canada Geese.

Regarding special early-season framework dates, the Service concurs with the Atlantic Flyway Council that the special circumstances associated with the Flyway-wide closure of the regular Canada goose season warrant a reevaluation of the special early Canada goose season framework dates throughout the Atlantic Flyway. The Service agrees to work with the Atlantic Flyway Council during the coming year to determine if further changes to the special early-season framework dates can be accommodated without adverse impacts to migratory Canada geese in the Atlantic Flyway.

Regarding the Lac Qui Parle Zone in Minnesota, the Service only establishes the frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed. The State of Minnesota selects the actual season dates. This year, Federal frameworks allow for a 30-day season, or when 16,000 birds have been harvested (whichever occurs first), between the Saturday nearest October 1 and January 31. In addition, the State may split the seasons into two segments.

Regarding the Central Flyway Council's request to increase the dark-goose aggregate bag limit from 3 to 4 for the west-tier States, the Service concurs with the requested increase for Canada geese. Additionally, the Service is encouraged by the efforts of the Central Flyway Council to begin the process of revising dark-goose management plans with a target completion date in 1997. In the interim, current Cooperative Management Plans would allow for the proposed increase in Canada goose bag limits in the West-Tier States. Comments specific to white-fronted geese are addressed under Item 5. White-fronted Geese.

Regarding the Pacific Flyway Council's request to increase bag limits on Canada geese in portions of Idaho, Montana, and Wyoming, and limits on cackling Canada geese in portions of Oregon and Washington, the Service concurs.

C. Special Late Seasons

Council Recommendations: The Atlantic Flyway Council recommended a new experimental late season for resident Canada geese in New York, and additional days and area modifications for existing seasons in New Jersey, South Carolina, and Georgia. In addition, because of the high harvest of migrant Canada geese, the Council recommended suspension of the special late season in the Coastal Zone of Massachusetts.

The Pacific Flyway Council recommended revision of the Canada goose season framework in Cowlitz County south of the Kalama River and Clark County, Washington, to allow a special late season. The season would be subject to the following conditions: (1) season dates would be February 5 through March 10, (2) bag limits and checking requirements would be the same as the regular season, except that the season on cackling Canada geese would be closed, (3) the season would end upon the attainment of a quota of 5 dusky Canada geese (this quota would be taken from the total of 90 allocated under the regular season), and (4) fields

selected for the season would not have more than 10 percent dusks in the flocks using the fields. Additionally, the season would be contingent upon an operational hazing program in place in the hunt area, administered by the U.S. Department of Agriculture, Animal Damage Control (ADC) in Washington. ADC would identify fields receiving depredation and contact hunters from a list supplied by the Washington Department of Fish and Game (WDFG). WDFG would evaluate season effectiveness and estimate harvest, subspecies composition, hunter participation, and report band recoveries.

Service Response: The Service concurs with the above recommendations.

5. White-fronted Geese

Council Recommendations: The Central Flyway Council recommendations regarding dark geese involve white-fronted geese. See item 4. Canada Geese. Specifically pertaining to white-fronted geese, the Council recommended an increase in the season length in the Eastern Goose Zone of Texas from 72 to 86 days.

The Pacific Flyway Council recommended several changes to white-fronted goose frameworks. The Council recommended that special bag-limit restrictions on whitefronts be removed by placing them within the overall dark goose limits except in the primary whitefront harvest areas in Alaska; the Counties of Lake, Klamath, and Harney in Oregon; and in the Northeastern and Balance-of-State Zones in California. In Oregon, the Council recommended that all whitefront seasons be concurrent with dark goose seasons. In California, the Council recommended that the whitefront season be extended by two weeks in the Sacramento Valley special goose closure portion of the Balance-of-State Zone.

Written Comments: The Texas Parks and Wildlife Department recommended that the Service's proposed bag limit of 5 dark geese, which could contain no more than 1 white-fronted and 4 Canada geese, be modified to allow no more than 2 white-fronted geese within a 4-dark goose aggregate bag in the Western Goose Zone of Texas. Texas indicated that a 2-bird daily bag limit on whitefronts would maintain harvests at about current levels (3,500) in the Western Goose Zone of Texas.

An individual from Texas recommended maintaining the existing white-fronted goose daily bag limit in the Western Goose Zone of Texas at 3 birds. He further questioned the Service's mid-winter survey data and

argued that if the Service wanted to limit the harvest of whitefronts until better data was available then the Service should increase the dark-goose aggregate daily bag limit to 4 birds, of which no more than 3 could be whitefronts.

Service Response: While the Service concurs with the Central Flyway Council's request to increase the daily bag limit from 3 to 4 Canada geese in the dark-goose aggregate bag limit for the West-Tier States (see Item 4. Canada Geese), the Service believes that it is not appropriate for white-fronted geese. Limits for white-fronted geese in the aggregate bag limit have in the past been more liberal in the western portion of the Central Flyway, which includes the West-Tier States and the Western Goose Zone in Texas, because whitefronts were relatively scarce and occurred almost incidentally in the harvest. However, biologists have recently identified a large group of wintering whitefronts in the Western Goose Zone in Texas, which are believed to be part of the Western Segment of the Mid-Continent Population of greater white-fronted geese. Further, the annual harvest of whitefronts in the Western Goose Zone of Texas has averaged over 3,500 during the past 3 years, which is substantially higher than that occurring in the rest of the western portion of the Flyway. Because of the large number of whitefronts now known to winter in the Western Goose Zone in Texas, the Service believes that the whitefront limits should be more in line with the remainder of those areas in the range of the Western Segment Population of Mid-continent Population of greater white-fronted geese. The Service also believes that the limits should be similar throughout the western portion of the Flyway. Therefore, the frameworks that follow include a daily bag limit of no more than 1 white-fronted goose in the aggregate bag limit for the West-Tier States, including the Western Goose Zone in Texas. The Service is encouraged by progress initiated by the Central Flyway Council to revise dark-goose management plans, including those for the Mid-Continent white-fronted goose population. The target completion date, during 1997, should allow for additional data-collection efforts on this group of whitefronts wintering in the Western Goose Zone in Texas.

Regarding the Pacific Flyway Council's recommended changes in frameworks governing the hunting of white-fronted geese, the Service concurs and notes that the changes are in accordance with the harvest strategy

developed by the Council, Native groups in Alaska, and the Service.

7. Snow and Ross's Geese

Council Recommendations: The Atlantic Flyway Council recommended extending the framework closing date for snow geese to March 10.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework closing date for light geese be extended to March 10 and the daily bag limit be increased to 10 birds.

The Central Flyway Council recommended that the framework closing date for east- and west-tier light geese be extended to March 10.

Public-Hearing Comment: Mr. Lloyd Alexander commended the Service for extending the framework closing date on greater snow geese to March 10, but asked the Service to consider the option of allowing states to split their seasons into 3 segments. He believed that the requested option is needed to allow more flexibility in helping farmers deal with crop-depredation problems.

Written Comments: The Pennsylvania Game Commission recommended that the State of Pennsylvania be included in those wintering States offered an extended framework closing date of March 10. They stated that increasing the framework would allow farmers to deal with depredation problems and provide additional hunting opportunity to Pennsylvania hunters.

The Nebraska Game and Parks Commission requested that the 17 Rainwater-Basin counties proposed by the Service to be excluded from the area where the framework closing date for snow goose hunting would be extended to March 10 be included in the March 10 framework-closing-date area. Further, they request that Burt, Washington, and Douglas Counties north of Interstate 80 be added to the March 10 framework-closing-date area. They also request that in lieu of Interstate 80, the Platte and North Platte Rivers be the boundary separating the two areas with different framework closing dates. They state that the reasons for these recommendations are to increase the harvest of snow geese and the primary concentration of late-winter snow geese in Nebraska is in the Rainwater-Basin counties and along the Missouri River.

Service Response: The Service concurs with the requests to extend the framework closing date for light geese to March 10 in the Atlantic, Mississippi, and Central Flyways, but believes that this extension should be limited to the primary wintering range of light geese in each Flyway. For the 1995-96 hunting

season, Interstate Highway 80 will be the northern boundary of this extension in the Central and Mississippi Flyways, with the exception of Nebraska. In Nebraska, the Platte River will serve as the boundary. In the Atlantic Flyway, the extension will be limited to the States of Delaware, Maryland, Pennsylvania, New Jersey, North Carolina, South Carolina, and Virginia.

Regarding Nebraska's recommendation to include the Rainwater-Basin Counties and three counties north of the Platte River in the late-hunt area, the Service does not agree with the recommendation. The Counties north of the Platte River were not considered primary wintering areas for light geese. The Rainwater Basin is an important spring staging area for many species of migratory birds, and biologists believe that hunting activities in March could be disruptive, increase potential for disease outbreaks, and be incompatible with other uses.

The Service concurs with the recommendation to use the Platte River as the boundary for the March 10 extension of the framework closing date in Nebraska. If there is a need to refine this boundary, the Service requests input from the two Flyway Councils to establish biological criteria for such a refinement. These criteria should include at a minimum the number of geese using an area and the frequency among years an area is used for wintering. In the absence of defined criteria, the Service will continue to use Interstate 80 and the Platte River in Nebraska as the boundary in the Central and Mississippi Flyways. The Service also reminds States that additional areas proposed for inclusion in the late-hunt region should be submitted to their respective Flyway Council for consideration. The Service will work with the Flyway Councils to develop specific criteria for use in the 1996-97 hunting season.

8. Swans

Council Recommendations: The Pacific Flyway Council reiterated its recommendations for a swan season in portions of Montana, Utah, and Nevada (see the June 16, 1995, Federal Register), except that the period should be 3 years instead of 5 years and the trumpeter swan quota allocation was made. Features of the Council's recommendation include: (1) changing ending framework dates in all three States from the Sunday closest to January 20 to December 1 for Montana, Sunday closest to December 15 for Utah, and the Sunday following January 1 for Nevada; (2) changing the hunt area in

Montana by deleting those portions of Pondera and Teton Counties west of U.S. Highways 287-89 but including all of Chouteau County; (3) reduce Utah's statewide season to just the Great Salt Lake Basin, defined as those portions of Box Elder, Weber, Davis, Salt Lake, and Tooele counties lying south of State Highway 30 and Interstate 80/84, west of Interstate 15, and north of Interstate 80. Number of swan permits would remain unchanged for Montana (500) and Nevada (650) but would be increased from 2,500 to 2,750 for Utah. A trumpeter swan quota of 20 birds would be allocated, with 15 to Utah and 5 to Nevada, with the season being closed either by the framework date or attainment of the quota, whichever occurs first. All hunters in Utah and Nevada would be required to participate in a mandatory parts check at designated sites within 72 hours of harvest for species determination; and hunters in Montana would continue to participate in a voluntary bill-measurement card program. The States would continue to monitor harvest composition, swan population during the hunt, and collect related harvest data. This information would be reported to the Service in a preliminary report by March 31 and a final report by June 30, 1996.

The Council offered the proposed frameworks in an attempt to forward trumpeter swan range expansion efforts throughout the western states and to cooperate with the Trumpeter Swan Society in their efforts with this species. The quota on trumpeter swans is believed to be biologically insignificant and estimated to be less than 1 percent of the population. The combined sport and subsistence harvest of Western Population tundra swans has averaged about 10 percent of the midwinter index during the past 10 years without negative impact to population status. In Utah, 26 percent of the swan harvest has occurred after December 1 and 15 percent after December 15, with December harvests as high as 57 percent in 1993. The Council believed that until December hunts can be demonstrated to threaten trumpeter swans they should be allowed to continue. Between 1962-94, upwards of 98 percent of the Utah harvest occurred in the Great Salt Lake area; therefore, closing of other areas will mainly remove local opportunity but not have a great effect on the overall harvest. The 250 (10 percent) increase in permits for Utah is requested to replace opportunity and harvest lost through area and season closures. Nevada biologists have no data suggesting that State's season is having any impact on

trumpeter migration between the Tristate area and wintering areas in California. The Council offered these recommendations in an effort to integrate Western Population tundra swan and Rocky Mountain Population trumpeter swan management programs and to move ahead and evaluate various aspects of both programs.

Public-Hearing Comment: Mr. Bruce Barbour indicated that both the Eastern and Western Populations of tundra swans are stable and of no management concern. The National Audubon Society supports efforts to restore trumpeter swans throughout their former range, and believes that issues related to the incidental take of trumpeter swans during tundra swan seasons have been adequately addressed in this year's proposal.

Dr. Rollin Sparrowe was supportive of the ongoing efforts to restore and redistribute the Rocky Mountain Population of trumpeter swans within the Tristate Area. He spoke of the conflict between range expansion efforts and waterfowl hunting programs in the Pacific Flyway, including tundra swan seasons in Montana, Utah, and Nevada. However, The Trumpeter Swan Society was satisfied with the Service's proposal to allow significantly modified swan seasons in those three States, which should enhance the likelihood for successful range expansion by trumpeter swans. He thanked the Pacific Flyway Council, the States of Montana, Utah, Nevada, and Oregon, and the Service for successfully developing a compromise that meets everyone's needs.

Written Comments: Ms. Ruth E. Shea, a wildlife biologist associated with research and management of Rocky Mountain Population trumpeter swans since 1976, by letter of July 29, 1995, described a proposal by her and Dr. Rod Drewien which was the foundation of recommendations from The Trumpeter Swan Society and the Pacific Flyway Council included herein. The Shea-Drewien proposal incorporated two primary strategies: (1) increasing protection of migrant trumpeter swans by tightly focusing tundra swan hunts in time and place; and (2) authorizing a small quota of trumpeter swans within each tundra swan hunt area in order to eliminate the liability of the otherwise legitimate tundra swan hunters who accidentally shoot a trumpeter swan, with mandatory check of birds to adequately implement a quota system. She attributes the vulnerable status of this population to a diminished tendency to migrate and to a winter distribution that is largely in overcrowded, less favorable sites. She believes building a migration

southward from eastern Idaho, to the fall staging area of the Bear River Delta in Utah would be an important step in restoring a secure winter distribution. To enhance survival of those few trumpeters that currently migrate into Utah and Nevada, Shea and Drewien proposed focusing tundra swan hunting only in areas and at times where tundra swans are abundant and trumpeters are less likely to be present or have access to suitable security areas. She deemed an ending date of "plus or minus" December 1, in Utah to be the single most important feature of their proposal. Rationale for using this date included: (1) in most years security areas on the Bear River Migratory Bird Refuge freeze around Thanksgiving, potentially forcing swans to use non-secure habitats; and (2) Service and Pacific Flyway efforts to assist in winter distribution includes hazing swans from overcrowded areas, as early as practical in November, which when coupled with shrinking habitat with the onset of winter has potential for pushing swans into the Great Salt Lake Basin by late November. She said that a December 1 closure would still give Utah swan hunters about 45 days of opportunity and would provide future opportunity to translocated trumpeters from Idaho to the Bear River Migratory Bird Refuge vicinity during December. She believes trumpeter swan restoration efforts have been stymied by real or perceived conflicts with the swan hunt, but believes their recommended approach would meet the very different management needs for two species of swans.

The Trumpeter Swan Society (TTSS), again urged the Service to adopt a closing date of December 1 (see the June 16, 1995, Federal Register) or the first Sunday in December, if there is a tradition of ending seasons on a Sunday, for the tundra swan hunting season in Utah to provide additional protection for migrating Rocky Mountain Population trumpeter swans. With the exception of the closing date in Utah, TTSS is in agreement with the Pacific Flyway Council's recommendations as reported in the Federal Register of June 16, 1995. Because these trumpeter swans winter in marginal habitat in the Tristate region of Montana, Idaho, and Wyoming, and have a poor tradition for migrating elsewhere, they will suffer a die-off in a severe winter. TTSS believes a rapid redistribution to better winter habitat is critical to the population's survival. TTSS had previously endorsed a 5-year experimental plan proposed by Drewien and Shea [see comments from TTSS and Shea elsewhere in this

document]. Of the numerous recommended changes, the most critical feature of the plan was modification of hunting seasons in Utah to increase survival of migrating swans. The Great Salt Lake Basin is in the most likely migration path for trumpeters from the Tristate area. The December 1 date is favored because: (1) it coincides with the average date for freezeup of many lakes in the Tristate area which could force trumpeters south, (2) it is about the time that many wetlands within Bear River Migratory Bird Refuge would also freeze which could increase the vulnerability of trumpeters that have migrated to the refuge, and (3) it anticipates increased trumpeter migrations and not past accidental shootings. TTSS does not object to a quota system that would allow a take of trumpeter swans if other conditions of their proposal are met, including modification of seasons and boundaries for swan hunting and of management on the Bear River Migratory Bird Refuge. The quota system is not intended to protect trumpeters but to protect hunters from liability if they accidentally shoot a trumpeter. TTSS regrets the potential loss of hunting opportunity that the December 1 closing date would have on tundra swan hunters but believes it may be the only way to provide adequate protection to migrating trumpeters.

The Humane Society requests that the Service close all swan hunting seasons and contends that tundra swan hunting impedes, if not prevents, winter range expansion and recovery of trumpeter swans. The Humane Society says the Pacific Flyway Council's recommendation for increased permits in Utah and a quota on trumpeter swans in exchange for season modifications should be denied.

The Utah Division of Wildlife Resources, did not support the proposed frameworks for tundra swan hunting in Utah. They believed that the proposed closing date of the first Sunday in December was arbitrary, overly restrictive, likely without benefits to trumpeter swans, and will inhibit the ability to learn and make informed management decisions in the future. They contended that changing the ending date from December 15 was a breach in understanding that changes in frameworks would be driven by data gathered by the mandated State-monitoring programs. Because no trumpeters were detected by Utah's monitoring program, they questioned the validity of the proposed changes and the utility of costly and burdensome monitoring programs if the resulting information was not used. Additionally,

Utah believes that state-support for trumpeter range expansion within the Pacific Flyway and other Flyways may wane if the tundra swan season was not as recommended by the Pacific Flyway Council.

Montana Department of Fish, Wildlife, and Parks, was generally supportive of the changes in swan hunting to further range expansion of trumpeter swans but believed that the earlier season ending dates would preclude learning of the effects, if any, of tundra swan hunting on trumpeter swans. Montana supported continuation of Utah's season ending date to December 15 and suggested that the 15-trumpeter quota allocated to Utah be partitioned for the December period, with the season being closed should more than 5 trumpeters be taken during the first 2 weeks of December and the ending date adjusted the following year. Montana questioned why the Service objects to Utah's use of "collection barrels" as a means of obtaining parts for species classification of the harvest.

Mr. William A. Molini, Chairman of the Pacific Flyway Council, said that the Service's decision to further reduce season lengths was contrary to the commitment toward AHM, that the Council's two swan subcommittees and Study Committee had addressed identifiable conflicting strategies, and that there was unanimous agreement among biologists within those groups that further restrictions on tundra swan hunting could not be justified. He recognized the Service's obligation to consider concerns of non-hunting groups but that obligation should be tempered by the best data available. Then, on behalf of the State of Nevada, he supported Utah's request for a December 15 season closure, as initially recommended by the Council, and asked that various information be considered before finalizing the frameworks. He notes that: of the more than 850 swans checked in Montana, Utah, and Nevada, during the 1994 season, only 1 was a trumpeter and that was taken in Montana during November; 50 percent of Utah swan hunters reported hunting during that portion of the season that is proposed to be closed; that RMP has displayed an average annual growth rate of 7 percent, notwithstanding 33 years of hunting tundra swans; the early closure precludes data collection to determine if seasons dates are a factor contributing to the incidental take of trumpeters; data review is currently provided to adjust seasons as appropriate to afford extra protection to trumpeter swans; the quota of less than 1 percent was designed to provide adequate protection to

migrating trumpeters; and in certain years as much as 57 percent of Utah's harvest occurs after the first of December.

Ms. Ruth E. Shea, letter of August 26, 1995, responding to comments from Robert G. Valentine (above), said the rationale for the recommended December 1 closure related to the average annual date of freezing of security areas on Bear River Migratory Bird Refuge and of habitats in the Yellowstone region, and the resulting reduction of secure habitat options for trumpeters. She reported that in the winter of 1994-95 at least 46 trumpeters were in Utah, with 20 in the Bear River Refuge. She also believed that some successful hunters observed hunting at Bear River Refuge did not report their take, and observed 2 swans illegally taken. She believed those changes in management to resolve the hunter liability issue while protecting migrant trumpeters and increasing their numbers before the population experiences significant winter losses was prudent. While she finds no merit in an open season on trumpeter swans, she believes the trumpeter swan quota was necessary to protect tundra swan hunters so that the Council's subcommittee would then begin to take effective action to solve the trumpeter swan range problems. She believes that the proposed changes will result in public acceptance of swan hunting for more years than otherwise would have been possible and that the proposed frameworks both resolve a legal dilemma and provide a proactive stance toward managing a rare look-a-like species while providing swan hunting opportunity. Lastly, she urges the Pacific Flyway Council to demonstrate its leadership and commitment to restoring RMP trumpeters to a secure distribution.

The Fund for Animals Inc., objected to allowing tundra swan hunting in Utah and Nevada because it adversely impacts trumpeter swans. They referenced comments made to the Service by D. J. Schubert in 1994 regarding this same issue. The quota of 20 trumpeter swans, less than 1 percent of the population, is without analysis, unacceptable, arbitrary, and capricious. They believe that use of a "quota" with a potential loss of 20 or more trumpeter swans would cause severe adverse impacts to range expansion and recovery efforts and provide no additional protection to those swans that could die during the experimental period. They noted that the proposed rule neither distinguishes between accidental and incidental take nor limits the take to incidental shooting. In Utah,

it would have been more appropriate to close counties in the Salt Lake City area than the areas proposed for closure. An earlier season closing date is required to allow necessary range expansion of trumpeters and protection in the event of an early freeze in the Tristate area. They said that authorizing the take of trumpeter swans is inconsistent with Migratory Bird Treaty Act responsibilities to conserve that species.

The Arizona Game and Fish Department supported a later closing date for Utah's swan season and believed that the Service's proposed earlier date was contradictory to efforts related to implementing adaptive harvest management and the Harvest Information Program. They believed that the Council's overall proposal, including season closure should the quota be attained, was reasonable and that the harvest monitoring program would provide definitive data on trumpeter harvest during the tundra swan season.

Service Response: The Service commends all parties, particularly the Pacific Flyway Council, The Trumpeter Swan Society, and Ruth E. Shea for seeking common ground for ways to enhance RMP trumpeter swan range expansion while retaining most aspects of tundra swan hunting. The various recommendations were not made without obvious sacrifices. These recommendations and various reports by the affected states provided the basis for the Service's Environmental Assessment (EA) "Proposal to establish general swan hunting seasons in parts of the Pacific Flyway for the 1995-99 seasons" (August 1995) which compares various alternative strategies for reconciling conflicting swan management strategies.

With the exceptions of The Humane Society's and The Fund for Animals Inc.'s recommendations for no swan hunting and the various recommendations for the season closing date in Utah, the Service believes most recommendations are similar. The Council, Utah, Nevada, Montana, and Arizona recommend a closing date for Utah that would be the Sunday closest to December 15, which would range between December 12 and 18; TTSS recommends a closing date of December 1, but believes there could be latitude to accommodate Sunday closing as is traditional in most Western states; Shea recommends a date of about December 1; and The Fund for Animals Inc. recommended, should a season be allowed, some unspecified earlier date than that proposed by the Service.

The Service supports the basic recommendations from both the Council

and the TTSS regarding number of permits, areas open to hunting, and a quota on trumpeter swans and these are reflected in the frameworks. However, considering the significance of the general swan season, the Service will establish a season ending date of the first Sunday in December. This would allow the ending date to range between December 1 and 7, with the season ending on December 3 this year and, if changes are not deemed essential, December 1 in 1997, etc.

There is nothing biologically or phenologically precise about a swan season ending date of the "first Sunday in December"; but the same can be said for ending dates of "Sunday closest to December 15", "the Saturday closest to January 20", or "the first Sunday in January" as Utah typically selected prior to 1994. The earlier closing date is intended to minimize, not prevent, the likelihood of trumpeter swans that might be forced because of freezing to move from closed areas in Utah or from the Tristate area into areas where they could be shot. Considering the vagaries of weather and habitat, it would be impossible to pick a date that would for each year either optimize hunting or avoid trumpeters moving into hunt areas. Rather than either some earlier or later ending dates, the Service believes the "first Sunday in December" provides a reasonable balance between safeguards for the population of trumpeter swans and opportunity for hunters.

The changes in frameworks are not intended to keep swan hunting opportunity and harvest success unchanged from that which occurred prior to 1994. Opportunity as measured by "hunter days" may be reduced, but some hunters will undoubtedly redirect their activity to earlier in the season and, therefore, offset that reduction to some unknown extent. Opportunity as measured by "number of hunters" will increase in Utah with the 250 additional permits. Average success may also increase over previous years because hunter effort will be focused in the area and at the time of peak tundra swan abundance.

The potential loss of hunting opportunity resulting from the changes in frameworks may not be as great as suggested by data on harvest and effort occurring after November 30. For example, in Utah, during the 1994 season when the season ended on December 15, which was 19 days earlier than the 1969-93 average ending date of January 3, when 4 counties had been closed to swan hunting, and when there was no increase in number of permits issued, hunters killed an estimated 888

swans. This harvest was more than twice that of the preceding year, the third highest harvest in 11 years, and only 7 percent below the average harvest during 1969-93 when also only 2,500 permits were authorized. Utah's hunter-days were unchanged between 1994 (9,948) and the 1969-93 average (9,958).

The Service believes the use of a season ending date and a quota that limits potential take of trumpeter swans are complementary means of providing adequate protection to the trumpeter population during this trial period. Regarding the biological appropriateness of a "1 percent" quota on RMP trumpeter swans, experience with Arctic-nesting tundra swans suggests that a harvest rate upwards of 10 percent for the Western Population allows for a stable to slightly increasing population while a harvest rate of about 3 percent for the Eastern Population allows a growth averaging about 2-3 percent per year.

Timely classification of swans and a high degree of hunter compliance are important if the trumpeter quota is to be used effectively. Because in 1994, only about 63 and 87 percent, respectively, of the estimated number of successful Utah and Nevada swan hunters submitted birds for classification, the Service must insist upon assurances from Utah and Nevada that swans or determinant swan parts will be examined by biologists and that maximum compliance with reporting be sought. Because each State differs in administering controlled hunts and obtaining hunter compliance of hunt requirements, the Service does not specify how this should be done. However, it seems reasonable that speciation could be accomplished within 3 working days of a swan being taken and the rate of compliance be at least as high as that for controlled big-game hunts.

The need or lack of need for Montana to have a season without a quota or to use a different method of reporting harvest will be reviewed annually. Departure from the requirements in Utah and Nevada will likely be contingent upon the continued healthy status of that segment of the trumpeter swan population that has the most potential for be impacted by the Montana season.

The "adaptive management process" was suggested as a means of determining the effects of swan hunting, if any, on range expansion of trumpeter swans within the traditionally longer and later-closing tundra swan season. Those involved with the process for duck hunting know that it has taken 3 years to get to where we are today, with

concerns remaining about managing various stocks of mallards much less other species. Evaluation of a management action or "data driven" management is indeed a key aspect of the adaptive management process, but the process entails more than simply "learning by doing." The adaptive management process among many things requires an explicit statement of the objective, an effective means of measuring results of the action, and consideration being given to "risks" and "constraints." Adaptive management could include reducing risk of an action on one resource while forgoing opportunity with another or making self-imposed restrictions in order to limit fiscal costs to monitoring programs. The States' comments suggest a strategy that places a lopsided emphasis at minimizing the risk to swan hunting rather than reducing the risk to trumpeter range expansion. The frameworks reflect constraints that reduce the risk to late-winter, pioneering swans which are valuable because of their potentially learned trait of moving out of problem sites in the Tristate area and the costs incurred by the Service and the States of Idaho, Wyoming, and Oregon in the restoration efforts. If monitoring costs are prohibitive, consideration should be given to either increasing permit fees or having fewer hunt days in a week so as to reduce costs of operating check stations as is commonly done in several States that conduct controlled goose or crane hunts.

The Service acknowledges and appreciates the efforts of the Council's Study Committee and several swan subcommittees in developing species and population management plans and annually collecting, reporting, and analyzing information on the status and harvest of swans and commends them for it. Information that they and others provide will be considered by the Service each year, with the possibility of season modifications should circumstance warrant; however, the intent would be to make few if any changes during the 5-year trial period.

Lastly, the Service encourages the Pacific Flyway Council and all member States to actively participate in the cooperative efforts to enhance the status and distribution of RMP trumpeter swans.

23. Other

Written Comments: The Andover Sportsmen's Club and the Concerned Coastal Sportsmen's Association, both local organizations in Massachusetts, requested compensatory days for those States that prohibit Sunday hunting.

The Humane Society expressed support for Sunday hunting closures.

Service Response: As the Service has stated numerous times, there is no biological basis for prohibiting hunting on Sundays; therefore, the Service neither promotes nor condones prohibition of Sunday hunting. Sunday-hunting closures are established by State or local law. While the Service has previously stated in the September 24, 1993, Federal Register (58 FR 50188) that it believes this problem is an individual State issue and can best be resolved by each State removing its self-imposed restrictions, the Service has recently committed to work with the Atlantic Flyway Council to review and better clarify the issue of compensatory days for those States prohibiting Sunday hunting.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the Federal Register on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options were considered in the Environmental Assessment, "Waterfowl Hunting Regulations for 1995," which is available upon request. In addition, the Service prepared an Environmental Assessment, "Proposal to Establish General Swan Hunting Seasons in Parts of the Pacific Flyway" to reconcile conflicting strategies for managing two swan species in the Pacific Flyway by establishing for a trial period a general swan season in portions of Montana, Nevada, and Utah. The Environmental Assessment is available upon request.

Endangered Species Act Consideration

In August 1995, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions

resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species (room 432) and the Office of Migratory Bird Management (room 634), Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act; Executive Order 12866; and the Paperwork Reduction Act

In the Federal Register dated March 24, 1995 (60 FR 15642), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing an Analysis of Regulatory Effects and an updated Final Regulatory Impact Analysis (FRIA), and publication of a summary of the latter. Although a FRIA is no longer required, the economic analysis contained in the FRIA was reviewed and the Service determined that it met the requirements of E.O. 12866. In addition, the Service prepared a Small Entity Flexibility Analysis, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), which further documented the significant beneficial economic effect on a substantial number of small entities. This rule was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

These final regulations contain no information collections subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). However, the Service does utilize information acquired through other various information collections in the formulation of migratory game bird hunting regulations. These information collection requirements have been approved by OMB and assigned clearance numbers 1018-0005, 1018-0006, 1018-0008, 1018-0009, 1018-0010, 1018-0015, 1018-0019, and 1018-0023.

Authorship

The primary author of this final rule is Ron W. Kokel, Office of Migratory Bird Management.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for

public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703-711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the Federal Register a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1995-96 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1995-96 hunting season are authorized under 16 U.S.C. 703-711, 16 U.S.C. 712, and 16 U.S.C. 742 a—j.

Dated: September 20, 1995.

George T. Frampton, Jr.,
Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 1995-96 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 1995, and March 10, 1996.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Definitions: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese - Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese - snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: 50 days and daily bag limit of 5 ducks, including no more than 1 hen mallard, 1 black duck, 1 pintail, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 1 canvasback.

Closures: The season on harlequin ducks is closed.

Sea Ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Maryland, North Carolina, Rhode Island, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts,

New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone; while Florida, Georgia, and South Carolina may split their Statewide seasons into two segments.

Canada Geese

Season Lengths, Outside Dates, and Limits: The Canada goose season is suspended throughout the Flyway except as noted below. Unless specified otherwise, seasons may be split into two segments.

Connecticut: A special experimental season may be held in the South Zone between January 15 and February 15, with 5 geese per day.

Georgia: In specific areas, a 15-day experimental season may be held between November 15 and February 5, with a limit of 5 Canada geese per day.

Massachusetts: In the Central Zone, a 16-day season for resident Canada geese may be held during January 21 to February 5, with 5 geese per day.

New Jersey: An experimental special season may be held in designated areas of Northeast, Northwest, and Southeast New Jersey from January 27 to February 10, with 5 geese per day.

New York: A special experimental season may be held between January 21 and February 15, with 5 geese daily in Westchester County and portions of Nassau, Orange, Putnam, and Rockland Counties.

Pennsylvania: Erie, Mercer, and Butler Counties - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Crawford County - 35 days between October 1 and January 20; with 1 goose per day.

An experimental season may be held in the Susquehanna/Juniata Zones from January 20 to February 5 with 5 geese per day.

South Carolina: A 12-day special season may be held in the Central Piedmont, Western Piedmont, and Mountain Hunt Units during November 15 to February 15, with a daily bag limit of 5 Canada geese per day.

West Virginia: 70 days between October 1 and January 20, with 3 geese per day.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and February 10, with 5 geese per day, except closing dates may be extended to March 10 in

New Jersey, Delaware, Maryland, North Carolina, Pennsylvania, South Carolina, and Virginia. States may split their seasons into two segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between October 1 and January 20, with 2 brant per day. States may split their seasons into two segments.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest October 1 (September 30) and the Sunday nearest January 20 (January 21).

Hunting Seasons and Duck Limits: 50 days with a daily bag limit of 5 ducks, including no more than 4 mallards (no more than 1 of which may be a female), 3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback, and 1 redhead.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Minnesota and Mississippi, the season may be split into two segments.

In Arkansas, the season may be split into three segments.

Pymatuning Reservoir Area, Ohio: The seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania (Northwest Zone).

Geese

Split Seasons: Seasons for geese may be split into two segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (September 30) and January 31, and 107 days for light geese between the Saturday nearest October 1 (September 30) and February 14, except in those States and portions of States south of Interstate Highway 80 in Iowa,

Illinois, Indiana, and Ohio, where seasons for light geese may extend until March 10. The daily bag limit is 10 geese, to include no more than 3 Canada geese, 2 white-fronted geese, and 2 brant. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: In the SJBZ Goose Zone, the season for Canada geese may not exceed 35 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Zone and 14 days in the West Zone. In both zones, the season may extend to February 15. The daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

Illinois: The total harvest of Canada geese in the State will be limited to 172,600 birds. Limits are 3 Canada geese daily and 10 in possession.

(a) North Goose Zone - The season for Canada geese will close after 93 days or when 22,014 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first.

(b) Central Goose Zone - The season for Canada geese will close after 93 days or when 35,168 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first.

(c) South Goose Zone - The harvest of Canada geese in the Southern Illinois and Rend Lake Quota Zones will be limited to 62,691 and 17,830 birds, respectively. The season for Canada geese in each zone will close after 89 days or when the harvest limit has been reached, whichever occurs first. In the Southern Illinois Quota Zone, if any of the following conditions exist after December 20, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

1. 10 consecutive days of snow cover, 3 inches or more in depth.

2. 10 consecutive days of daily high temperatures less than 20 degrees F.

3. Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

4. Starvation or a major disease outbreak resulting in observed mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

In the remainder of the South Goose Zone, the season may extend for 89 days or until both the Southern Illinois and Rend Lake Quota Zones have been closed, whichever occurs first.

Indiana: The total harvest of Canada geese in the State will be limited to 98,000 birds.

(a) Posey County - The season for Canada geese will close after 65 days or when 7,200 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Remainder of the State - The season for Canada geese may extend for 70 days in the respective duck-hunting zones, except in the SJBZ Zone, where the season may not exceed 35 days. The daily bag limit is 3 Canada geese, except in the SJBZ Zone, where the daily bag limit is 2.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky:

(a) Western Zone - The season for Canada geese may extend for 65 days (80 days in Fulton County), and the harvest will be limited to 34,500 birds. Of the 34,500-bird quota, 22,425 birds will be allocated to the Ballard Reporting Area and 6,555 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 65-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 65 days (80 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 3 Canada geese.

(b) Pennyroyal/Coalfield Zone - The season may extend for 35 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State - The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit for Canada and white-fronted geese is 2, no more than 1 of which may be a Canada goose. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 99,500 birds.

(a) North Zone - The framework opening date for all geese is September 23 and the season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(c) South Zone

(1) Allegan County GMU - The season for Canada geese will close after 51 days or when 2,500 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU - The season for Canada geese will close after

54 days or when 700 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU - The season for Canada geese will close after 51 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(4) Tuscola/Huron GMU - The season for Canada geese will close after 51 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(5) Remainder of South Zone -

(i) East of U.S. Highway 27/127 - The season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose.

(ii) West of U.S. Highway 27/127 - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose during the first 30 days, and 2 Canada geese during the remaining 10 days, which may begin no earlier than November 23.

(d) Southern Michigan GMU - An experimental special Canada goose season may be held between January 6 and February 4. The daily bag limit is 2 Canada geese.

Minnesota:

(a) West Zone

(1) West Central Zone - The season for Canada geese may extend for 30 days. In the Lac Qui Parle Zone, the season will close after 30 days or when 16,000 birds have been harvested, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Southeast Zone - The season for Canada geese may extend for 70 days, except in the Twin Cities Metro Zone and Olmsted County, where the season may not exceed 80 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(e) Fergus Falls/Alexandria Zone - An experimental special Canada goose season of up to 10 days may be held in December. During the special season, the daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri:

(a) Swan Lake Zone - The season for Canada geese will close after 40 days or when 5,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Schell-Osage Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(c) Central Zone - The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese. An experimental special season of up to 10 consecutive days prior to October 15 may be selected in addition to the regular season. During the special season, the daily bag limit is 3 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBZ Zone, where the season may not exceed 30 days and the daily bag limit is 1 Canada goose. In the Pymatuning Reservoir Area, the seasons, limits, and shooting hours for all geese shall be the same as those selected in the adjacent portion of Pennsylvania.

Tennessee:

(a) Northwest Zone - The season for Canada geese will close after 76 days or when 12,900 birds have been harvested, whichever occurs first. The season may extend to February 15. All geese harvested must be tagged. The daily bag limit is 3 Canada geese.

(b) Southwest Zone - The season for Canada geese may extend for 61 days, and the harvest will be limited to 1,500 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone - The season for Canada geese will close after 50 days or when 1,800 birds have been harvested, whichever occurs first. All geese harvested must be tagged. The daily bag limit is 2 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 118,400 birds.

(a) Horicon Zone - The framework opening date for all geese is September 23. The harvest of Canada geese is limited to 71,700 birds. The season may not exceed 80 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone - The framework opening date for all geese is September 23. The harvest of Canada geese is limited to 1,900 birds. The season may not exceed 65 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone - The framework opening date for all geese is September 23. The harvest of Canada geese is limited to 40,300 birds, with 500 birds allocated to the Mississippi River Subzone. The season may not exceed 86 days and the daily bag limit is 2 Canada geese. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 39,800 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois, and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Swan Lake Zone in Missouri, the Northwest and Kentucky/Barkley Lakes Zones in Tennessee, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks, Mergansers, and Coots

Outside Dates: Between September 30 through January 21.

Hunting Seasons and Duck Limits:

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 83 days and a daily bag limit of 5 ducks, including no more than 1 female mallard, 1 mottled duck, 1 pintail, 1 redhead, 1 canvasback and

2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 9).

(2) Remainder of the Central Flyway: 60 days and a daily bag limit of 5 ducks, including no more than 1 female mallard, 1 mottled duck, 1 pintail, 1 redhead, 1 canvasback, and 2 wood ducks.

Merganser Limits: The daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), and South Dakota (Low Plains portion) may select hunting seasons by zones.

In Montana, Nebraska (Low and High Plains portions), New Mexico, North Dakota (Low Plains portion), Oklahoma (Low and High Plains portions), South Dakota (High Plains portion), and Texas (Low Plains portion), the season may be split into two segments.

In Colorado, Kansas (Low and High Plains portions), North Dakota (High Plains portion), and Wyoming, the season may be split into three segments.

Geese

Season Lengths, Outside Dates, and Limits: States may select seasons not to exceed 107 days; except for dark geese, which may not exceed 86 days in Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas. For dark geese, outside dates for seasons may be selected between the Saturday nearest October 1 (September 30) and January 31, except in the Western Goose Zone of Texas, where the closing date is the Sunday nearest February 15 (February 18). For light geese, outside dates for seasons may be selected between the Saturday nearest October 1 (September 30) and the Sunday nearest February 15 (February 18), except in Colorado, Kansas, Nebraska (south of, and including, the North Platte and Platte Rivers, except for Adams, Butler, Clay, Fillmore, Franklin, Gosper, Hall, Hamilton, Harland, Kearney, Nuckolls, Phelps, Polk, Saline, Seward, Thayer, and York Counties) New Mexico, Oklahoma, and Texas, and Wyoming (south of I-80) where the closing date is March 10. Seasons may be split into two segments.

Daily bag limits in States in goose management zones within States, may be as follows:

Colorado: The daily bag limit is 5 light and 5 dark geese, including no more than 1 white-fronted and 4 Canada geese.

Kansas: The daily bag limit is 10 light and 2 dark geese, including no more than 1 white-fronted goose.

Montana: The daily bag limit is 5 light and 5 dark geese, including no more than 1 white-fronted and 4 Canada geese.

Nebraska: The daily bag limit is 10 light and 2 dark geese, including no more than 1 white-fronted goose.

New Mexico: For the Middle Rio Grande Valley Zone, the daily bag limit is 10 light and 5 dark, including no more than 1 white-fronted and 4 Canada geese.

For the remainder of the State, the daily bag limit is 5 light and 5 dark geese, including no more than 1 white-fronted and 4 Canada geese.

North Dakota: The daily bag limit is 10 light and 2 dark geese.

Oklahoma: The daily bag limit is 10 light and 2 dark geese, including no more than 1 white-fronted goose.

South Dakota: The daily bag limit is 10 light and 2 dark geese, including no more than 1 white-fronted goose.

Texas: For the Western Goose Zone, the daily bag limit is 5 light and 5 dark geese, including no more than 1 white-fronted and 4 Canada geese.

For the Eastern Goose Zone, the daily bag limit is 10 light and 2 dark geese, including no more than 1 white-fronted goose.

Wyoming: The daily bag limit is 5 light and 5 dark, with no more than 1 white-fronted and 4 Canada geese.

Pacific Flyway

Ducks, Mergansers, Coots, and Common Moorhens

Hunting Seasons and Duck Limits: Concurrent 93 days and daily bag limit of 6 ducks, including no more than 1 female mallard, 2 pintails, 2 redheads and 1 canvasback.

In the Columbia Basin Mallard Management Unit, the seasons may be an additional 7 days. The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 93 days.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest October 1 (September 30) and the Sunday nearest January 20 (January 21).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments either Statewide or in each zone.

Colorado, Montana, New Mexico, and Wyoming may split their duck seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 1), and the Sunday nearest January 20 (January 21), and the basic daily bag limits are 3 light geese and 3 dark geese.

Brant Season - A 16-consecutive-day season may be selected in Oregon and Washington, and a 30-consecutive day season may be selected in California. In only California, Oregon, and Washington, the daily bag limit is 2 brant and is additional to dark goose limits, and the open season on brant in those States may differ from that for other geese.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway. The States of California, Oregon, and Washington must include a statement on the closure for that subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese is 2 geese.

California:

Northeastern Zone - White-fronted geese and cackling Canada geese may be taken only during the first 23 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose.

Colorado River Zone - The seasons and limits must be the same as those selected in the adjacent portion of Arizona (South Zone).

Southern Zone - The daily bag and possession limits for dark geese is 2 geese, including not more than 1 cackling Canada goose.

Balance-of-the-State Zone - A 79-day season may be selected, except that white-fronted geese and cackling Canada geese may be taken during only the first 65 days of such season. Limits may not include more than 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2, provided that they are Canada geese other than cackling Canada geese for which the daily limit is 1.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese must end on or before December 14, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23.

Colorado: The daily bag limit for dark geese is 2 geese.

Idaho:

Northern Unit - The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit - The daily bag limit on dark geese is 4.

Montana:

West of Divide Zone and East of Divide Zone - The daily bag limit on dark geese is 4.

Nevada:

Clark County Zone - The daily bag limit of dark geese is 2 geese.

New Mexico: The daily bag limit for dark geese is 2 geese.

Oregon: Except as subsequently noted, the dark goose limit is 4, including not more than 1 cackling Canada goose.

Harney, Lake, Klamath, and Malheur Counties Zone - The season length may be 100 days. The dark goose limit is 4, including not more than 2 white-fronted geese and 1 cackling Canada goose.

Western Zone - In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 210 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 3, including not more than 2 cackling Canada goose.

Utah: The daily bag limit for dark geese is 2 geese.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese.

West Zone - In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 90 dusky Canada geese. See section on quota zones.

Wyoming: The daily bag limit is 4 dark geese. In Lincoln, Sweetwater, and Sublette Counties, the combined special

September Canada goose seasons and the regular goose season shall not exceed 100 days.

Quota Zones: Seasons on Canada geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late Canada goose season, and any extended falconry season, combined, must not exceed 107 days and the established quota of dusky Canada geese must not be exceeded. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of Aleutian Canada geese. The daily bag limit of Canada geese may not include more than 2 cackling Canada geese.

In the designated areas of the Washington Quota Zone, a special late Canada goose may be held between February 5 and March 10. The daily bag limit may not include either Aleutian or cackling Canada geese.

Swans

In designated areas of Utah, Nevada, and the Pacific Flyway portion of Montana, an open season for taking a limited number of swans may be selected. Permits will be issued by States and will authorize each permittee to take no more than 1 swan per season. The season may open no earlier than the Saturday nearest October 1 (September 30). The States must implement a harvest-monitoring program to measure the species composition of the swan harvest. In Utah and Nevada, the harvest-monitoring program must require that all harvested swans or their specie-determinant parts be examined by either State or Federal biologists for the purpose of species classification. All States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination or, in the case of Montana, reporting bill-measurement and color information. All States must provide to the Service by June 30, 1996, a report covering harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas. These seasons will be subject to the following conditions:

In Utah, no more than 2,750 permits may be issued. The season must end no later than the first Sunday in December (December 3) or upon attainment of 15

trumpeter swans in the harvest, whichever occurs earliest.

In Nevada, no more than 650 permits may be issued. The season must end no later than the Sunday following January 1 (January 7) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In Montana, no more than 500 permits may be issued. The season must end no later than December 1.

Tundra Swans

In Central Flyway portion of Montana, and in New Jersey, North Carolina, North Dakota, South Dakota, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.

—The season may be 90 days, must occur during the light goose season, but may not extend beyond January 31.

—In New Jersey, no more than 200 permits may be issued.

—In North Carolina, no more than 6,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—The season may be 107 days and must occur during the light goose season.

—In the Central-Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,000 permits may be issued.

—In South Dakota, no more than 1,500 permits may be issued.

Area, Unit and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I-95.

South Zone: That portion of the State south of I-95.

Maine

North Zone: Game Management Zones 1 through 5.

South Zone: Game Management Zones 6 through 8.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont border on I-91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I-95 to U.S. 1, south on U.S. 1 to I-93, south on I-93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I-195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from Maine border in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I-95 (New Hampshire Turnpike) in Hampton, and south along I-95 to the Massachusetts border.

Inland Zone: That portion of the State north and west of the above boundary.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York border in Raritan Bay and extending west along the New York border to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware border in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania border in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk

County, that area of Westchester County southeast of I-95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, and south along I-81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, south along I-81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I-87, north along I-87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I-80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I-80 to U.S. 220, Route 220 to I-180, I-180 to I-80, and I-80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

West Virginia

Zone 1 : That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I-64; I-64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I-79, I-79 north to U.S. 48; U.S. 48 east to the Maryland border; and along the border to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I-280 to I-80, then east along I-80 to the Indiana border.

Central Zone: That portion of the State between the North and South Zone boundaries.

South Zone: That portion of the State south of a line extending east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along County 12 to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, then east along I-70 to the Indiana border.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I-80 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: That portion of the State west of a line extending north from the Tennessee border along Interstate Highway 65 to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along U.S. Bypass 60 to U.S. Highway 231, then north along U.S. 231 to the Indiana border.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

South Zone: That portion of the State south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and east and south along the south shore of, Stony Creek to Webster Road, east and south on Webster Road to Stony Lake Road, east on Stony Lake and Garfield Roads to Michigan Highway 20, east on Michigan 20 to U.S. Highway 10B.R. in the city of Midland, east on U.S. 10B.R. to U.S. 10, east on U.S. 10 and Michigan 25 to the Saginaw River, downstream along the thread of the Saginaw River to Saginaw Bay, then on a northeasterly line, passing one-half mile north of the Corps of Engineers confined disposal island offshore of the Carn Power Plant, to a point one mile north of the Charity islands, then continuing northeasterly to the Ontario border in Lake Huron.

Middle Zone: The remainder of Michigan.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border along Interstate Highway 70 to U.S. Highway 54, south along U.S. 54 to U.S. 50, then west along U.S. 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border along Missouri Highway 34 to Interstate Highway 55; south along I-55 to U.S. Highway 62, west along U.S. 62 to Missouri 53, north along Missouri 53 to Missouri 51, north along Missouri 51 to U.S. 60, west along U.S. 60 to Missouri 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to Missouri 32, south along Missouri 32 to Missouri 97, south along Missouri 97 to Dade County NN, west along Dade County NN to Missouri

37, west along Missouri 37 to Jasper County N, west along Jasper County N to Jasper County M, west along Jasper County M to the Kansas border.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: The Counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking (excluding the Buckeye Lake Area), Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof.

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Ohio River Zone: The Counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries, including the Buckeye Lake Area in Licking County bounded on the west by State Highway 37, on the north by U.S. Highway 40, and on the east by State 13.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State 35 to State 25, north along State 25 to U.S. Highway 10, east along U.S. 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains: That area west of U.S. 283.

Low Plains: That area east of U.S. 283.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland, and Yellowstone.

Zone 2: The Counties of Big Horn, Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure, and Wibaux.

Nebraska

High Plains: West of Highways U.S. 183 and U.S. 20 from the northern State

line to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the southern State line.

Low Plains: East of the High Plains boundary.

Zone 1: Those portions of Burt, Dakota, and Thurston Counties north and east of a line starting on NE 51 on the Iowa border to U.S. 75, north on U.S. 75 to U.S. 20, west on U.S. 20 to NE 12; west on NE 12 to the Boyd County line; to include those portions of Cedar, Dakota, Dixon, and Knox Counties north of NE 12; all of Boyd County; Keya Paha County east of U.S. 183. Where the Niobrara River forms the southern boundary of Keya Paha and Boyd Counties, both banks of the river shall be included in Zone 1.

Zone 2: The area bounded by designated highways and political boundaries starting on NE 2 at the State line near Nebraska City; west to U.S. 75; north to U.S. 34; west to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14; south to U.S. 34; west to NE 2; south to I-80; west to U.S. 34; west to U.S. 136; east on U.S. 136 to NE 10; south to the State line; west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; northwesterly to NE 91; west to U.S. 281, north to NE 91 in Wheeler County; west to U.S. 183; north to northerly boundary of Loup County; east along the north boundaries of Loup, Garfield, and Wheeler Counties; south along the east Wheeler County line to NE 70; east on NE 70 from Wheeler County to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east to the State line; and south and west along the State line to the point of beginning.

Zone 3: The area, excluding Zone 1, north of Zone 2.

Zone 4: The area south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: The Central-Flyway portion of New Mexico north of I-40 and U.S. 54.

South Zone: The remainder of the Central-Flyway portion of New Mexico.

North Dakota

High Plains: That portion of North Dakota west of a line extending north from the South Dakota border on U.S. 83 and I-94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 8, north to U.S. 2, west to U.S. 85, north to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains: Beaver, Cimarron, and Texas Counties.

Low Plains

Zone 1: That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I-40, I-40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I-35, I-35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Kansas border.

Zone 2: The remainder of the Low Plains portion of Oklahoma.

South Dakota

High Plains: West of highways and political boundaries starting at the State line north of Herreid; U.S. 83 and U.S. 14 to Blunt, Blunt-Canning Road to SD 34, a line across the Missouri River to the northwestern corner of the Lower Brule Indian Reservation, the Reservation Boundary and Lyman County Road through Presho to I-90, and U.S. 183 to the southern State line.

Low Plains

North Zone: That portion of northeastern South Dakota bounded by the following highways: starting at the North Dakota border, U.S. 83 south to U.S. 212, U.S. 212 east to I-29, I-29 north to SD 15, SD 15 east to Hartford Beach, due east of Hartford Beach to the Minnesota border.

South Zone: Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, East on Geddes Highway to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to the Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I-29.

Middle Zone: The remainder of the Low Plains portion of South Dakota.

Texas

High Plains: West of highways U.S. 183 from the northern State line to Vernon, U.S. 283 to Albany, TX 6 and TX 351 to Abilene, U.S. 277 to Del Rio, and the Del Rio International Toll Bridge access road.

Low Plains: The remainder of Texas.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 11, 12B, 13B, and 14-45.

North Zone: GMUs 1-5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 10, 12A, and 13A.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road

46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I-5 at the town of Weed; south along I-5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following counties or portions of counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those

portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Ada, those portions of Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except that portion within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Clark County Zone: All of Clark County.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Statewide, except Deschutes, Klamath, and Lake Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: Deschutes, Klamath, and Lake Counties.

Utah

Zone 1: All of Box Elder, Cache, Davis, Morgan, Rich, Salt Lake, Summit, Utah, Wasatch, and Weber Counties and that part of Toole County north of I-80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

Same zones as for ducks.

Georgia

Special Area for Canada Geese: Statewide.

Massachusetts

Same zones as for ducks.

New Hampshire

Same zones as for ducks.

New Jersey

Special Area for Canada Geese

Northeast - that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with the Pennsylvania State boundary; then north along the Pennsylvania boundary in the Delaware River to its intersection with the New York State boundary.

Northwest - that portion of the State within a continuous line that runs east from the Pennsylvania State boundary at the toll bridge in Columbia to Route 94; then north along Route 94 to Route 206; then north along Route 206 to the Pennsylvania State boundary in the Delaware River to the beginning point. Hereafter this proposed expansion of the hunt area will be referenced to as the northwestern area.

Southeast - that portion of the State within a continuous line that runs east from the Atlantic Ocean at Ship Bottom along Route 72 to the Garden State Parkway; then south along the Garden State Parkway to Route 9; then south along Route 9 to Route 542; then west along Route 542 to the Mullica River; then north (upstream) on the Mullica River to Route 206; then south on Route 206 to Route 536; then west on route 536 to Route 55; then south on Route 55 to Route 40; then east on Route 40 to Route 557; then south on Route 557 to Route 666; then south on Route 666 to Route 49; then east on Route 49 to route 50; then south on Route 50 to Route 631; then east on Route 631 to Route 623; then east on Route 623 to the Atlantic Ocean, then north to the beginning point.

New York

Special Area for Canada Geese:

Westchester County and portions of Nassau, Orange, Putnam and Rockland Counties—See State regulations for detailed description.

Pennsylvania

Erie, Mercer, and Butler Counties: All of Erie, Mercer, and Butler Counties. Susquehanna/Juniata—See State regulations for detailed description.

South Carolina

Canada Goose Area: The Central Piedmont, Western Piedmont, and Mountain Hunt Units. These designated areas include: Counties of Abbeville, Anderson, Berkeley (south of Highway 45 and east of State Road 831), Cherokee, Chester, Dorchester,

Edgefield, Fairfield, Greenville, Greenwood, Kershaw, Lancaster, Laurens, Lee, Lexington, McCormick, Newberry, Oconee, Orangebird (south of Highway 6), Pickens, Richland, Saluda, Spartanburg, Sumten, Union, and York.

Virginia

Back Bay Area—Defined for white geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

East Zone: Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff Counties.

West Zone: Baxter, Benton, Boone, Carroll, Cleburne, Conway, Crawford, Faulkner, Franklin, Fulton, IZard, Johnson, Madison, Marion, Newton, Pope, Searcy, Sharp, Stone, Van Buren, and Washington Counties, and those portions of Logan, Perry, Sebastian, and Yell Counties lying north of a line extending east from the Oklahoma border along State Highway 10 to Perry, south on State 9 to State 60, then east on State 60 to the Faulkner County line.

Illinois

North Goose Zone: Same as for ducks.

Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Goose Zone: That portion of the State between the North and South Goose Zone boundaries.

Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and

those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Goose Zone: That portion of the State south of a line extending east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along County 12 to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I-70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I-70, then east along I-70 to the Indiana border.

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Indiana

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, Lake, LaPorte, Newton, Porter, Pulaski, Starke, and Steuben Counties.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the state west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I-24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: That portion of the state between the Western Zone and a line described as follows: From the Indiana border south along U.S. Highway 231 to the Green River Parkway, southeast along the Green River Parkway to Interstate Highway 65,

then south along I-65 to the Tennessee border.

Michigan

Same zones as for ducks, but in addition:

South Zone

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bayport Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly 1/2 mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I-196 in Casco Township, then northerly along I-196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I-69, westerly along I-69 to Michigan Highway 21, westerly along Michigan 21 to I-96, northerly along I-96 to I-196, westerly along I-196 to Lake Michigan Drive (M-45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Minnesota

West Zone: That portion of the state encompassed by a line beginning at the junction of U.S. Highway 71 and the Iowa border, then north along U.S. 71 to Interstate Highway 94, then north and west along I-94 to the North Dakota border.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to County Road 70 in Lac qui Parle County, west along County 70 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac qui Parle Zone: That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Northwest Zone: That portion of the state encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH

92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Zone: The Counties of Anoka, Carver, Chisago, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Isanti, Mower, Olmsted, Ramsey, Rice, Scott, Steele, Wabasha, Washington, and Winona.

Special Canada Goose Seasons
Fergus Falls/Alexandria Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 55 and STH 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

Missouri

Same zones as for ducks but in addition:

North Zone

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Central Zone: Boone County and that portion of Callaway County west of U.S. Highway 54.

Middle Zone

Schell-Osage Zone: That portion of the State encompassed by a line extending east from the Kansas border along U.S. Highway 54 to Missouri Highway 13, north along Missouri 13 to Missouri 7, west along Missouri 7 to U.S. 71, north along U.S. 71 to Missouri 2, then west along Missouri 2 to the Kansas border.

Ohio

Same zones as for ducks but in addition:

North Zone

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Lake Erie SIBP Zone: That portion of the state encompassed by a line extending south from the Michigan border along Interstate Highway 75 to I-280, south along I-280 to I-80, and east along I-80 to the Pennsylvania border.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

Wisconsin

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to U.S. Highway 16, westerly along U.S. 16 to Weyh Road, southerly along Weyh Road to County Highway O, southerly along County O to the west boundary of Section 31, southerly along the west boundary of Section 31 to the Sauk/Columbia County boundary, southerly along the Sauk/Columbia County boundary to State 33, easterly along State 33 to Interstate Highway 90/94, southerly along I-90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern Railway and the Illinois border in Grant County and extending northerly along the Burlington Northern Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois border and Interstate Highway 90 and extending north along I-90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois border.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I-25 from the Wyoming border south to I-70; west on I-70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming border.

South Park Area: Chaffee, Custer, Fremont, Lake, Park, and Teller Counties.

San Luis Valley Area: Alamosa, Conejos, Costilla, and Rio Grande Counties and the portion of Saguache County east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Remainder: Remainder of the Central-Flyway portion of Colorado.

Kansas

Light Geese

Unit 1: That portion of Kansas east of KS 99.

Unit 2: The remainder of Kansas.

Dark Geese

Marais des Cygne Valley Unit: The area is bounded by the Missouri border to KS 68, KS 68 to U.S-169, U.S. 169 to KS 7, KS 7 to KS 31, KS 31 to U.S. 69, U.S. 69 to KS 239, KS 239 to the Missouri border.

South Flint Hills Unit: The area is bounded by Highways U.S. 50 to KS 57, KS 57 to U.S. 75, U.S. 75 to KS 39, KS 39 to KS 96, KS 96 to U.S. 77, U.S. 77 to U.S. 50.

Central Flint Hills Unit: That area southwest of Topeka bounded by Highways U.S. 75 to I-35, I-35 to U.S. 50, U.S. 50 to U.S. 77, U.S. 77 to I-70, I-70 to U.S. 75.

Southeast Unit: That area of southeast Kansas bounded by the Missouri border to U.S. 160, U.S. 160 to U.S. 69, U.S. 69 to KS 39, KS 39 to U.S. 169, U.S. 169 to the Oklahoma border, and the Oklahoma border to the Missouri border.

Montana (Central Flyway Portion)

Sheridan County: Includes all of Sheridan County.

Remainder: Includes the remainder of the Central-Flyway portion of Montana.

Nebraska

Dark Geese

North Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81.

East Unit: The area east of a line beginning at U.S. 183 at the northern State line; south to NE 2; east to U.S. 281; south to the southern State line, excluding the North Unit.

West Unit: All of Nebraska west of the East Unit.

Light Geese

North Unit: The area north of the waters of the North Platte River from the Wyoming line to the confluence of the South Platte River near North Platte, then eastward along the Platte River to the Iowa border.

South Unit: The area south of the North Unit, excluding the Rainwater Basin Counties of Adams, Butler, Clay, Fillmore, Franklin, Gosper, Hall, Hamilton, Harland, Kearney, Nuckolls, Phelps, Polk, Saline, Seward, Thayer, and York Counties.

New Mexico (Central Flyway Portion)

Light Geese

Middle Rio Grande Valley Unit: The Central-Flyway portions of Socorro and Valencia Counties.

Remainder: The remainder of the Central-Flyway portion of New Mexico.

North Dakota

Dark Geese

Missouri River Zone: That area encompassed by a line extending from the South Dakota border north on U.S. 83 and I-94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 37, south to ND 1804, south approximately 9 miles to Elbowoods Bay on Lake Sakakawea, south and west across the lake to ND 8, south to ND 200, east to ND 31, south to ND 25, south to I-94, east to ND 6, south to the South Dakota border, and east to the point of origin.

Statewide: All of North Dakota.

Texas

West Unit: That portion of the State lying west of a line from the international toll bridge at Laredo; north along I-35 and I-35W to Fort Worth; northwest along US 81 and US 287 to Bowie; and north along US 81 to the Oklahoma border.

East Unit: Remainder of State.

Wyoming (Central Flyway Portion)

Area 1: Albany, Campbell, Converse, Crook, Johnson, Laramie, Natrona, Niobrara, Sheridan, and Weston Counties, and Carbon County east of the Continental Divide.

Area 2: Platte County.

Area 3: Big Horn, Fremont, Hot Springs, Park, and Washakie Counties.

Area 4: Goshen County.

Pacific Flyway

Arizona

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I-5 at the town of Weed; south along I-5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the

town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Area: That area bounded by a line beginning at Willows in Glenn County proceeding south on I-5 to Hahn Road north of Arbuckle in Colusa County; easterly on Hahn Road and the Grimes Arbuckle Road to Grimes on the Sacramento River; southerly on the Sacramento River to the Tisdale Bypass to O'Banion Road; easterly on O'Banion Road to CA 99; northerly on CA 99 to the Gridley-Colusa Highway in Gridley in Butte County; westerly on the Gridley-Colusa Highway to the River Road; northerly on the River Road to the Princeton Ferry; westerly across the Sacramento River to CA 45; northerly on CA 45 to CA 162; northerly on CA 45-162 to Glenn; westerly on CA 162 to the point of beginning in Willows.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

San Joaquin Valley Area: That area bounded by a line beginning at Modesto in Stanislaus County proceeding west on CA 132 to I-5; southerly on I-5 to CA

152 in Merced County; easterly on CA 152 to CA 165; northerly on CA 165 to CA 99 at Merced; northerly and westerly on CA 99 to the point of beginning.

Colorado (Pacific Flyway Portion)

Browns Park Area: The Browns Park portion of Moffatt County.

Delta/Montrose Area: All of Delta and Montrose Counties.

Gunnison/Saguache Area: Gunnison County and that portion of Saguache County west of the Continental Divide.

Dolores/Montezuma Area: All of Dolores and Montezuma Counties.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I-84, and south and west of I-84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I-84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada border to Shoshone,

northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific-Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific-Flyway portion of Montana.

Nevada

Clark County Zone: Clark County.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific-Flyway portion of New Mexico located north of I-40.

South Zone: The Pacific-Flyway portion of New Mexico located south of I-40.

Oregon

Western Oregon: All counties west of the summit of the Cascades, excluding Klamath and Hood River Counties.

Northwest Oregon General Zone: Those portions of Multnomah, Clackamas, Marion, Linn, and Lane Counties outside the Northwest Oregon Special Permit Zone; except that, that portion of Lane County west of Highway 101 is closed to all Canada goose hunting.

Northwest Oregon Special Permit Zone: That portion of western Oregon west and north of a line starting at the Columbia River at Portland, south on I-5 to OR 22 at Salem, east on OR 22 to the Stayton Cutoff, south on the Stayton Cutoff to Stayton and straight south to the Santiam River, west (downstream) along the north shore of the Santiam River to I-5, south on I-5 to OR 126 at Eugene, west on OR 126 to Greenhill Rd, south on Greenhill Rd to Crow Rd, west on Crow Rd to Territorial Hwy, north on Territorial Hwy to OR 126, west on OR 126 to OR 36, north on OR 36 to Forest Road 5070 at Brickerville, west and south on Forest Road 5070 to OR 126, west on OR 126 to the Pacific Coast.

Northwest Oregon Early-Season Canada Goose Zone: All of Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Oregon General Zone: Coos, Curry, Douglas, Josephine, and Jackson Counties, except that those portions of Coos, Curr, and Douglas Counties west of US 101 are closed to all Canada goose hunting.

Eastern Oregon: All counties east of the summit of the Cascades, including all of Klamath and Hood River Counties.

Harney, Klamath, Lake and Malheur Counties Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Remainder of Eastern Oregon Counties Zone: Eastern Oregon, excluding Harney, Klamath, Lake and Malheur Counties.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Eastern Washington: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Area 1: Lincoln, Spokane, and Walla Walla Counties; that part of Grant County east of a line beginning at the Douglas-Lincoln County Line on WA 174, southwest on WA 174 to WA 155, south on WA 155 to US 2, southwest on US 2 to Pinto Ridge Rd, south on Pinto Ridge Rd to WA 28, east on WA 28 to the Stratford Rd, south on the Stratford Rd to WA 17, south on WA 17 to the Grant-Adams county line; those parts of Adams County east of State Highway 17; those parts of Franklin County east and south of a line beginning at the Adams-Franklin County line on WA 17, south on WA 17 to US 395, south on US 395 to I-182, west of I-182 to the Franklin-Benton county line; those parts of Benton County south of I-182 and I-82; and those parts of Klickitat County east of U.S. Highway 97.

Area 2: All of Okanogan, Douglas, and Kittitas counties and those parts of Grant, Adams, Franklin, and Benton counties not included in Eastern Washington Goose Management Area 1.

Area 3: All other parts of eastern Washington not included in Eastern Washington Goose Management Areas 1 and 2.

Western Washington: All areas west of the East Zone.

Area 1: Skagit, Island, and Snohomish Counties.

Area 2: Clark, Cowlitz, Pacific, and Wahkiakum Counties.

Area 3: All parts of western Washington not included in Western Washington Goose Management Areas 1 and 2.

Lower Columbia River Early-Season Canada Goose Zone: Beginning at the Washington-Oregon border on the I-5 Bridge near Vancouver, Washington; north on I-5 to Kelso; west on Highway 4 from Kelso to Highway 401; south and west on Highway 401 to Highway 101 at the Astoria-Megler Bridge; west on Highway 101 to Gray Drive in the City of Ilwaco; west on Gray Drive to Canby Road; southwest on Canby Road to the North Jetty; southwest on the North Jetty to its end; southeast to the Washington-Oregon border; upstream along the Washington-Oregon border to the point of origin.

Wyoming (Pacific Flyway Portion):
See *State Regulations*.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota: Brown, Campbell, Clark, Codington, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Marshall, McPherson, Potter, Roberts, Spink, and Walworth.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287-89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box, Elder, Weber, Davis, Salt Lake, and Toole Counties lying south of State Hwy 30, I-80/84, west of I-15, and north of I-80.

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