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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 630 and 890

RIN 3206–AH 10

Family and Medical Leave

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations on family and medical leave consistent with Title II of Family and Medical Leave Act of 1993. The final regulations provide covered Federal employees a total of 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs. The employee may continue health benefits while he or she is on leave and is entitled to be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: For information on the Family and Medical Leave Act of 1993, contact Jo Ann Perrini (202) 606–2858, or FAX (202) 606–0824. For information on the Federal Employees Health Benefits Program, contact Margaret Sears, (202) 606–0004.

SUPPLEMENTARY INFORMATION: On July 23, 1993, the Office of Personnel Management (OPM) published interim regulations (58 FR 39596) to implement the requirements set forth in sections 6381 through 6387 of title 5, United States Code, as added by Title II of the Family and Medical Leave Act of 1993 (FMLA) (Public Law 103–3, February 5, 1993). The FMLA became effective on August 5, 1993. The FMLA provides eligible Federal employees a total of 12 administrative workweeks of unpaid leave during any 12-month period for (a) the birth of a son or daughter and care of the newborn; (b) the placement of a child with the employee for adoption or foster care; (c) the care of the employee's spouse, son, daughter, or parent with a serious health condition; or (d) a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position. OPM's regulations implementing the FMLA are found in subpart L of part 630 of title 5, Code of Federal Regulations.

Title I of the FMLA covers non-Federal employees and certain Federal employees not covered by Title II. The Secretary of Labor issued final regulations implementing Title I of the FMLA in 29 CFR part 825 (60 FR 2180, January 6, 1995). The Department of Labor's final regulations became effective on April 6, 1995. OPM's final regulations, as set forth below, are, to the extent appropriate, consistent with the final regulations issued by the Department of Labor (DOL), as required by 5 U.S.C. 6387. In the discussion that follows, we have noted those provisions that were revised to be consistent with DOL's final regulations.

The House Committee Report for Titles I and II of the Family and Medical Leave Act of 1993 (Rept. No. 103–8, 103d Cong., 1st Sess., Parts 1 and 2, February 2, 1993) (hereinafter referred to as the ''legislative history'') provides additional information on the intent of Congress in enacting the FMLA. In some cases where the language of the FMLA is not determinative, we have drawn from the legislative history for guidance in developing the regulations.

During the comment period, OPM received comments from 14 Federal agencies, 4 labor organizations, 2 professional associations, and 3 individuals, for a total of 23 comments. A summary of the comments received and a description of the revisions made in the regulations as a result of the comments are presented below.

Employees Covered

Three agencies commented on the scope of employees covered by OPM's regulations. In the interim regulations, OPM delegated responsibility for issuing regulations to implement sections 6381 through 6387 of title 5, United States Code, to the Secretary of Veterans Affairs for physicians, dentists, and nurses in the Veterans Health Administration appointed under section 7401(1) of title 28, United States Code. The Department of Veterans Affairs noted that the scope of 38 U.S.C. 7401(1) has been expanded to cover other occupations in addition to those currently listed in §§ 630.1201(b)(1)(ii)(B) and 630.1201(b)(3)(i). The agency requested that the regulations be modified to include all employees in the Veterans Health Administration of the Department of Veterans Affairs who are appointed under 38 U.S.C. 7401(1). OPM agrees and has revised the regulations to be consistent with 38 U.S.C. 7401(1).

In addition, since employees of the Library of Congress are covered under 5 U.S.C. 6301(2) and Title II of the FMLA, DOL has revised its regulations in 29 CFR 825.109 to exclude employees of the Library of Congress from coverage under Title I of the FMLA. However, effective 1 year after transmission to the Congress of a study required under Public Law 104–1, Section 230, dated January 23, 1995, the coverage of the employees of the Library of Congress for purposes of FMLA leave will be made in accordance with Public Law 104–1, section 202.

An agency recommended that temporary and intermittent service should be deemed creditable toward the 12-month service requirement for coverage under Title II of the FMLA if the employee later receives a permanent appointment. However, under 5 U.S.C. 6381(1)(B), temporary and intermittent service is specifically excluded as creditable service for determining the 12-month service requirement. Therefore, the recommendation cannot be adopted.

Definitions

The following definitions were revised, deleted, or added in the final regulations:

Continuing treatment by a health care provider. The term was deleted as a separate definition because it was incorporated in the expanded definition of ''serious health condition'' in the final regulations. This is consistent with DOL's final regulations.

Essential functions. The Equal Employment Opportunity Commission recommended that the citation used in defining essential functions be revised to reference only the applicable provisions—i.e., 29 CFR 1630(n), rather

than the whole section—i.e., 29 CFR 1630. We agree. In addition, the revised definition states that if an employee must be absent from work to receive medical treatment for a serious health condition, the employee is considered to be unable to perform the essential functions of the position during the absence for treatment. This is consistent with DOL's regulations.

Foster care. This term was clarified by adding a statement that removal of a child from parental custody must be the result of State action even if the placement for foster care is with relatives. This is consistent with DOL's regulations.

Health Care Provider. Several commenters recommended revising the definition to include health care providers who are recognized by the Federal Employees Health Benefits Program or health care providers who are licensed by a State. OPM agrees and has revised the regulations to include health care providers who are recognized by the Federal Employees Health Benefits Program or who are licensed or certified under Federal or State law to provide the service in question.

Two agencies recommended that the definition of ''health care provider'' be broadened to include traditional healing practitioners—i.e., healer, shaman, or medicine man—who are recognized by Native American traditional religious leaders to perform traditional healing methods. The agencies were concerned that denial of leave under the FMLA for purposes of traditional healing could give rise to complaints of discrimination based on race or religion or litigation based on a perceived violation of the Native American Religious Freedom Act. The Act states that it ''shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the[ir] traditional religions . . . , including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rights.''

Under 5 U.S.C. 6381(2)(B), OPM is authorized to designate any other health care provider who is determined by OPM to be capable of providing health care services. In response to these comments, OPM has revised the definition of ''health care provider'' to include a Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders and who practices traditional healing methods as believed, expressed, and exercised and in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with the Native American Religious Freedom Act.

In addition, the definition of ''health care provider'' has been expanded to include health care providers who practice in a country other than the United States. This change ensures coverage under the FMLA for an employee or his or her spouse, son, daughter, or parent who becomes eligible for leave under the FMLA while abroad or residing in a foreign country. This is consistent with DOL's final regulations.

One commenter suggested that the definition of ''health care provider'' should provide more specificity as to who is an acceptable health care provider. We believe that the broad scope of the revised definition of ''health care provider'' should minimize the need for an exhaustive listing of health care providers.

Incapacity. A definition of ''incapacity'' was added because the term is used within the expanded definition of ''serious health condition'' in the final regulations. ''Incapacity'' means the inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.

Intermittent leave or reduced leave schedule. An agency noted that the interim regulations state that intermittent leave may include time periods of less than 1 hour. The agency stated that this would obligate agencies to grant leave in increments of less than 1 hour, even though the agency's policy for granting all other leave is in increments of full hours. The regulations have been revised to permit agencies to grant leave under the FMLA in the same increments as all other leave is granted. Leave under the FMLA may be taken for a period of less than 1 hour if agency policy provides for a minimum charge for leave of less than 1 hour.

Parent, Son or Daughter, and Spouse. Four commenters stated that the definition of ''family'' in OPM's interim regulations is too narrow and does not reflect the reality of today's family arrangements. The commenters recommended that the definition of ''family'' be broadened to include individuals in other than traditional nuclear families. One commenter suggested adopting the definition of ''family member'' used in the Voluntary Leave Transfer Program.

Under 5 U.S.C. 6382 and in the legislative history, Congress specifically defined ''family'' to include only a spouse, son or daughter, and parent. Accordingly, the recommendation to broaden the definition of ''family'' cannot be adopted. This is consistent with DOL's final regulations.

An agency requested that the citation used in defining ''disability'' in the definition of ''son or daughter'' be changed to 29 CFR 1630.2(h), instead of 29 CFR 1630.2(g). The agency stated that paragraph (g), ''disability,'' includes individuals who have ''a record of such an impairment'', but who may not be affected currently by the impairment. Paragraph (h), ''physical or mental impairment,'' limits the coverage to those individuals with *actual* disabilities and omits individuals who have a record of or are regarded as individuals with disabilities. The citation has been revised as suggested to restrict coverage to individuals with actual disabilities who *require* assistance or supervision to provide daily self-care. This is consistent with DOL's final regulations.

The same agency pointed out that the use of the term ''child'' in the definition of ''parent'' may be perceived as connoting a lack of maturity, is not appropriate for individuals over 18 years old who are disabled, and may reinforce negative stereotypes about individuals with disabilities. In the final regulations, the definition of ''parent'' has been revised to include the term ''son or daughter.'' This is consistent with DOL's final regulations.

A commenter requested that the definition of ''parent'' be revised to allow the claim of *in loco parentis* only if the individual has served in this capacity for a major portion of the employee's childhood. Section 6381(3) of title 5, United States Code, specifically defines the term ''parent'' to mean ''the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter'' and does not include any such limitation. Therefore, no change was made in the definition.

The definition of ''spouse'' has been revised to be consistent with the definition of ''spouse'' in the Defense of Marriage Act (Public Law 104–199, September 21, 1996). The Act defines ''marriage'' as ''a legal union between one man and one woman as husband and wife'' and ''spouse'' as ''a person of the opposite sex who is a husband or a wife.''

Serious Health Condition. Three commeters suggested extending the qualifying period of incapacity from ''more than 3 calendar days'' to 5 days or longer. They contended that 3 days of incapacity is normal for very minor

health conditions and that such conditions should be covered under the rules and remedies related to short-term absences because of illnesses. One commenter suggested that Congress had very serious health conditions in mind and that the term ''serious health condition'' was not intended to cover short-term conditions for which treatment and recovery are very brief and it is expected that such conditions will fall within the scope of an agency's normal sick leave policy. Another commenter noted that the serious nature of the condition should be stressed by presenting some specific examples, such as cancer treatment and kidney dialysis. One commenter opposed relying on the provisions in 5 U.S.C. 8117 relating to workers' compensation programs to support the requirement of ''more than 3 calendar days'' of incapacity because the rationale and application of these two programs are different.

Conversely, three organizations remarked that although duration may be a factor in determining whether a condition is a serious health condition, there cannot be a threshold duration in order to qualify for leave. The organizations expressed the view that seriousness and duration do not necessarily correlate, particularly for individuals with disabilities for whom a health condition may be considered serious long before a similar health condition would be considered serious for the average person.

The organizations also stated that although OPM's definition of ''serious health condition'' includes chronic or long-term health conditions that require treatment to prevent longer-term illness or injury or a more severe disability, it does not cover acute or episodic conditions of shorter duration, which also require immediate treatment to prevent aggravation into a long-term injury or illness.

The legislative history states that the term ''serious health condition'' is not intended to cover short-term conditions for which treatment and recovery are very brief. Sick leave policies should address minor illnesses that last only a few days and surgical procedures that typically do not involve hospitalization and require only a brief recovery period. We believe the established duration period clarifies congressional intent within the regulations. In addition, DOL has concluded that the ''more than 3 days'' test continues to be appropriate. However, we have revised the regulations to specify that ''more than 3 days'' means ''more than 3 consecutive calendar days.'' This revision is consistent with DOL's final regulations.

An agency recommended adding a paragraph to the definition stating that cosmetic or other treatments that are not medically necessary are not to be covered unless overnight inpatient hospital care is required. Others recommended that conditions that are not considered serious health conditions should be specifically included in the regulations. We agree and have added a paragraph at the end of the definition of ''serious health condition'' to address those treatments and conditions that are not considered a serious health condition. For example, the common cold, the flu, earaches, upset stomach, headaches (other than migraines), routine dental or orthodontia problems, etc., are not serious health conditions unless complications arise. In addition, a regimen of continuing treatment involving the taking of over-the-counter medications, bed-rest, exercises, and other similar activities that can be initiated without a visit to the health care provider is not, by itself, sufficient to meet the definition of continuing treatment for purposes of FMLA leave.

An agency questioned the need for OPM's supplemental guidance on the treatment of substance abuse. The agency stated that it believes the guidance is inappropriate, especially in assuming that an employee's drug abuse problems may affect his or her job performance. However, OPM believes the guidance is appropriate to acknowledge concerns expressed by many agencies about the treatment of substance abuse as a serious health condition, as well as the interplay between the various rules concerning adverse actions, performance-based actions, and reasonable accommodation. We restate that the treatment of substance abuse may be included as a condition covered by the FMLA, but absence because of the employee's use of the substance, without treatment, does not qualify for leave under the FMLA. Also, the exercise of an employee's right to take leave under the FMLA for treatment of substance abuse does not prevent an agency from taking action against the employee, provided the agency complies with the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), where appropriate.

Consistent with DOL's final regulations, the definition of ''serious health condition'' has been significantly revised. The criteria used to determine whether a condition may be considered a serious health condition have been grouped into two major categories—i.e., inpatient care or continuing treatment by a health care provider. A major change is the addition of chronic conditions, such as asthma, diabetes, and epilepsy, that continue over an extended period of time (i.e., from several months to several years), often without affecting day-to-day activities, but may cause episodic periods of incapacity of less than 3 days.

Another change is the addition of serious health conditions that are not ordinarily incapacitating (at least at the current state of the patient's condition), but for which multiple treatments are being given because the condition would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy or radiation for cancer dialysis for kidney disease, physical therapy for severe arthritis, or multiple treatments for restorative surgery after an accident or other injury). The definition of long-term, chronic conditions such as Alzheimer's or a severe stroke has been modified to delete the reference to the condition being incurable and to require instead that the condition involve a period of incapacity that is permanent or long-term and for which treatment may not be effective. Other changes involve clarifying terms and providing information on the types of conditions that are not considered serious health conditions.

Leave Entitlement

Section 630.1203(a)(4) of the interim regulations provides that an employee is entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position. A commenter suggested revising § 630.1203(a)(4) to extend the determination of whether an employee is able to perform the essential functions of his or her position to include whether an employee is able to perform in an available alternative position or to be detailed to a temporary light duty assignment. The statute does not provide for placing an employee in an alternative or light-duty position in lieu of his or her entitlement under the FMLA. Therefore, the regulations were not revised.

An agency should not confuse an employee's entitlement to leave under the FMLA with its ongoing obligation to provide reasonable accommodation under the Rehabilitation Act of 1973. While an agency cannot require an employee to accept an alternative position offer, an employee continues to maintain the right to request light duty

assignment in lieu of unpaid leave under the FMLA.

Section 630.1203(a) has been clarified to state that an employee is eligible to take FMLA leave because of a serious health condition if he or she is unable to perform *any one or more* of the essential functions of his or her position. This revision is consistent with DOL's final regulations.

Three organizations objected to requiring an employee to conclude FMLA leave taken for the birth or placement of a child within 12 months after the birth or placement. The organizations recommended revising the regulations to provide that an employee must commence FMLA leave, but not complete it, within 1 year of the birth or placement. Section 6382(a) states that the entitlement to leave for a birth or placement for adoption or foster care expires at the end of the 12-month period beginning on the date of such birth or placement. In addition, the legislative history states that in cases of birth or placement of a child, family leave *must be taken within* 12 months following the event. DOL, in its final regulations, also upholds that FMLA leave ''must conclude within one year of the birth or placement.''

In the interim regulations, § 630.1203(c) provides that the 12-month period of entitlement to FMLA leave begins on the date an employee first takes FMLA leave and continues for 12 months. In addition, § 630.1203(d)(1) and (d)(2) provides that an employee may begin FMLA leave prior to the date of birth or placement for adoption or foster care and that FMLA leave must be concluded within 12 months after the date of birth or placement.

An agency commented that these two provisions read together may imply that a new 12-month period with a new 12-week entitlement cannot begin until 12 months after the date of the birth or placement, even if the employee begins FMLA leave prior to the date of birth or placement. The agency believed this provision could be discriminatory and potentially in violation of the Pregnancy Discrimination Act (Pub. L. 95–555, October 31, 1978). Another agency believed that the provisions covering the entitlement to FMLA leave for a birth or placement implied that the employee may be entitled to more than 12 weeks of unpaid leave.

The legislative history clearly states that it was not the committee's intent *to require* that FMLA leave because of a birth or placement for adoption or foster care begin on the date of the birth or placement. Congress recognized that employees may need to begin FMLA leave prior to a birth or placement. At the same time, 5 U.S.C. 6382(a)(2) states that entitlement to a total of up to 12 workweeks of FMLA leave based on a birth or placement expires at the end of the 12-month period beginning on the date of such birth or placement. The result of combining these provisions is that the time period in which an employee may use FMLA leave because of a birth or placement for adoption or foster care may extend into a succeeding 12-month period.

For example, if an employee invokes his or her entitlement to FMLA leave before the birth or placement for adoption or foster care, the 12-month period begins on that date and ends 12 months later (e.g., June 2, 1996, through June 1, 1997). In addition, the statutory entitlement to FMLA leave for 1-year after the actual birth or placement may permit an employee to use some FMLA leave in a second 12-month period for the birth or placement (e.g., June 14, 1996, through June 13, 1997). The second 12-month period begins immediately after the expiration of the first 12-month period. The employee may use up to a total of 12 weeks of FMLA leave during the first 12-month period for the birth or placement. During the second 12-month period, the employee would be entitled to use FMLA leave for care of the newborn or adopted child but only for the time period between the end of the first 12-month period and the expiration of the 12-month period after the date of birth or placement (e.g., June 2, 1997, through June 13, 1997). During any 12-month period an employee may use no more than 12 weeks of FMLA leave. The final regulations have been clarified to state that leave taken for the birth of a child or placement for adoption or foster care may begin prior to or on the actual date of birth or placement.

Four commenters recommended changes that would place limitations on the rights of an employee under the FMLA. One commenter suggested that leave without pay not formally requested under the FMLA, but granted for purposes appropriate under the FMLA, should count against the FMLA entitlement, especially if the same condition or situation prompted both the non-FMLA and FMLA leave requests. Another commenter stated that a limitation should be placed on foster care benefits because participating in foster care programs may result in individuals becoming foster care parents for numerous children over the years. The commenter believes this would permit individuals to invoke FMLA leave year after year, placing a terrible hardship on the agency, especially when such individuals are employed in critical positions (e.g., health care occupations). Finally, a commenter expressed concern that an agency's missing could be disrupted seriously because the beginning and ending dates of the 12-month period of entitlement would allow the ''stacking'' of FMLA leave. The agency recommended adopting a provision that would not allow, or at least minimize, the possibility of stacking one 12-week period onto a second 12-week period.

The legislative history clearly states that the 12 workweeks of unpaid leave under the FMLA is a new entitlement in addition to any annual leave, sick leave, or other leave or compensatory time off available to an employee. An employee may choose to take FMLA leave in combination with any other available leave. However, an employee must obtain approval and/or meet statutory and regulatory requirements to take additional leave or other periods of paid time off. Under 5 U.S.C. 6382(a)(1)(b), an employee is entitled to FMLA leave for the placement of a son or daughter with the employee for adoption or foster care. This entitlement does not limit the number of times an employee may invoke FMLA leave for foster care.

Another commenter requested that the regulations requiring the employee to take only the amount of family leave and medical leave that is necessary to manage the circumstances that prompted the need for FMLA leave should not apply to a birth or adoption, since these purposes should not be limited to a subjective definition of what is necessary. We believe an employee must be responsible for taking only the amount of family and medical leave that is necessary for any of the purposes for which FMLA leave may be taken.

We have not adopted any of these recommendations. We believe a leave program built on open communication between managers and employees should alleviate many of the concerns that have been expressed. The regulations acknowledge that the manager and the employee have responsibilities and obligations in preparing and planning for FMLA leave, as well as in following procedures for invoking and taking FMLA leave.

Three of the organizations and two individual commenters were concerned that many agencies have not fully informed their employees of their entitlements and responsibilities under the FMLA. In addition, it is apparent from the numerous telephone inquiries and letters received by OPM that many employees are not aware of the provisions of the FMLA. In response, we have clarified § 630.1203(g) to *require*

agencies to inform employees of their entitlements and responsibilities under the FMLA. To meet this requirement, agencies may wish to provide employees access to the FMLA and OPM's implementing regulations or agency policies or guidance on implementing the FMLA. Also, agencies may provide employees access to OPM's fact sheet and brochure, *''Federal Employee Entitlements Under the Family and Medical Leave Act of 1993''* or *''Family-Friendly Leave Policies for Federal Employees.''* These publications are available on OPM's Mainstreet and PayPerNet electronic bulletin boards. In addition, these final regulations will be posted on OPM's World Wide Web site at www.opm.gov in the near future.

Consistent with all other Federal leave programs and policies, an employee who chooses to take leave under the FMLA must initiate the action to take such leave. Therefore, to eliminate misunderstandings between supervisors and employees, § 630.1203(b) has been clarified to state that an employee must invoke his or her entitlement to family and medical leave, subject to the notification and medical certification requirements in §§ 630.1206 and 630.1207. An employee may *not* retroactively invoke his or her entitlement to leave under the FMLA for a previous absence from work. The legislative history establishes an intent to authorize the use of leave ''to be taken'' under the FMLA on a prospective basis. In addition, both the law and OPM's regulations require that if the need for leave is foreseeable, the employee must provide the employing agency with not less than 30 days notice, before the date the leave is to begin, of the employee's intention to take family and medical leave. If the need for leave is not foreseeable, the employee must provide such notice as is practicable. We believe the employee remains responsible for providing his or her agency as much notice as is practicable to allow the agency ample opportunity to plan the work during the employee's absence.

Intermittent Leave or Reduced Leave Schedule

Section 630.1204(b) states that if an employee takes leave intermittently or on a reduced leave schedule for planned medical treatment or recovery, the agency may place the employee in an available alternative position. A commenter recommended that OPM add that an alternative position is not required to have duties that are equivalent to those of the employee's original position. We agree and have added this statement, consistent with DOL's final regulations.

Section 630.1204(f) has been clarified to state that only the amount of leave taken intermittently or on a reduced leave schedule, as these terms are defined in § 630.1202, can be subtracted from the total of 12 weeks of FMLA leave available to the employee. This will ensure that FMLA leave is subtracted from the total 12-week entitlement in the same increments that it is taken, consistent with the revised definition of ''intermittent leave or reduced leave schedule'' in § 630.1202.

Another commenter requested that the term ''reduced leave schedule'' be changed to ''reduced work schedule,'' because the hours of work are reduced and supplemented by FMLA leave. ''Reduced leave schedule'' is the term used in the statute, and we do not believe it is necessary to make this change. ''Reduced leave schedule'' means a work schedule under which the usual work per workday or workweek of an employee is reduced. The number of hours by which the daily or weekly tour of duty is reduced are counted as FMLA leave.

In response to numerous calls, we restate that an employee must obtain approval from his or her employing agency to take FMLA leave on an intermittent basis or reduced leave schedule for the birth of a child or for placement for adoption or foster care.

Substitution of Paid Leave

Section 630.1205(b)(1) states that an employee may elect to substitute annual or sick leave for unpaid leave under the FMLA, ''consistent with current law and regulations governing the granting and use of annual and sick leave.'' Three organizations believe the legislative history of the FMLA shows that Congress intended that employees would be entitled to substitute their accrued or accumulated sick leave for any or all of the 12 weeks of unpaid FMLA leave to care for a family member. Other commenters recommended that unlimited sick leave be allowed for bonding following childbirth or adoption and for the care of a family member.

Under 5 U.S.C. 6382(d), an employee may elect to substitute ''accrued or accumulated annual or sick leave'' for unpaid leave under the FMLA, ''except that nothing in this subchapter shall require an employing agency to provide paid sick leave in any situation in which such employing agency would not normally provide any such paid leave.'' On December 2, 1994, OPM issued final regulations on the use of sick leave for Federal employees (59 FR 62266). The final regulations expand the use of sick leave by permitting most full-time employees to use a total of up to 104 hours (13 workdays) of sick leave each leave year to provide care for a family member as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment. In addition, OPM issued interim and final regulations on the use of sick leave for adoption-related purposes (59 FR 62272 and 60 FR 26977). Under § 630.401(a)(6), sick leave may be used for purposes relating to the adoption of a child—e.g., appointments with adoption agencies, court proceedings, and required travel. Sick leave may be granted for any period during which an adoptive parent is ordered or required by the adoption agency or by a court to be absent from work to care for the adopted child. However, sick leave may *not* be used either by birth or adoptive parents who voluntarily choose to be absent from work to bond with a birth or adopted child.

If an employee chooses to substitute paid sick leave for unpaid leave under the FMLA, he or she may do so, but only in those situations where the use of sick leave would otherwise be permitted by law or regulation. OPM has addressed comments on the issue of unlimited substitution of sick leave for unpaid leave under the FMLA in its final sick leave regulations published on December 2, 1994 (59 FR 62266), and the final regulations on sick leave for adoption published on May 22, 1995 (60 FR 26977). In addition, OPM agrees with DOL's assessment that the legislative history does not support the idea that Congress intended unlimited substitution of paid sick leave for unpaid leave under the FMLA. (Also, see DOL's final regulations published on January 6, 1995 (60 FR 2180).) There is nothing in the FMLA or its legislative history that would allow agencies to permit the use of paid sick leave for the care of a family member in any situation in which the agency would not otherwise permit the use of such paid sick leave.

Several commenters requested additional clarification on the substitution of paid leave for leave without pay under the FMLA. Specifically, the commenters questioned whether the substitution of paid leave can be done retroactively and whether an agency may deny an employee's request to substitute annual leave for leave without pay.

The substitution of paid leave must be consistent with current law and regulations for granting and using annual and sick leave. Once an

employee has invoked his or her entitlement to FMLA leave and has provided all the necessary notifications and certifications for agency approval, an agency may not deny an employee's request to substitute annual leave. However, an employee cannot substitute any more annual leave than he or she has available. Likewise, an agency may not deny the employee's request to substitute sick leave if the use of sick leave is consistent with current law and regulations.

The right to substitute paid leave for leave without pay under the FMLA applies only to leave that is to be taken in the future. The legislative history provides an intent to authorize the use of leave ''to be taken'' under the FMLA. Therefore, the substitution of paid leave for unpaid FMLA leave can be accomplished only on a prospective basis. Section 630.1205(e) has been clarified to state than an employee who has invoked his or her entitlement to FMLA leave may *not* retroactively substitute paid leave for any leave without pay previously taken under the FMLA.

Several commenters requested an explanation of the relationship between the FMLA and the voluntary leave transfer and leave bank programs. We provide the following example:

Example: An employee invokes his entitlement to FMLA leave as a result of a medical emergency. The employee does not have any paid leave available and therefore applies for donated leave under his agency's leave transfer program. Approximately 2–3 weeks later, the employee is approved as a leave recipient and receives donated annual leave. Under the voluntary leave transfer and leave bank programs, the employee may retroactively substitute paid leave for leave without pay beginning on the date the emergency began, consistent with §§ 630.906(d) and 630.1009(d). The 12-month period and the 12-week entitlement to leave under the FMLA begins on the date the employee first invoked FMLA leave. The employee receives the benefits and protections of both the FMLA and the voluntary leave transfer program simultaneously.

A commenter stated that an agency should be allowed to apply the same requirements for requesting annual and sick leave to requests for leave under the FMLA; e.g., agency policy may require medical certification for sick leave of more than 6 weeks to be used in connection with a pregnancy. Section 630.1207 already permits an agency to request a medical certification for the serious health condition of the employee—e.g., pregnancy or illnesses related to pregnancies. Therefore, we do not believe additional changes are needed.

In its final regulations, DOL addressed the issue of permitting the substitution of compensatory time off under the Fair Labor Standards Act (FLSA) for unpaid leave under the FMLA. DOL stated that the use of compensatory time off is severely restricted under the FLSA in ways that are not compatible with the substitution of paid leave provisions under the FMLA. Compensatory time off is not a form of accrued paid leave mentioned in the FMLA or legislative history for purposes of substitution of leave. Rather, it is an alternative form of payment for overtime hours worked. An agency's right to deny an employee's request for compensatory time off under the FLSA, if it would be unduly disruptive to the agency's operations, is inconsistent with the provision in the FMLA authorizing the employee to elect to substitute paid leave for unpaid leave under the FMLA. An agency may not simultaneously charge the FLSA compensatory time hours taken against the employee's separate FMLA leave entitlement. DOL states that ''to do so would amount to charging (debiting) two separate entitlements for a single purpose.''

We believe DOL's argument applies to any compensatory time off earned under 5 U.S.C. 5543. Similarly, we believe this restriction should also apply to any credit hours accrued under a flexible work schedule under 5 U.S.C. 6122. Therefore, § 630.1205 has been revised to state that only annual leave, sick leave, and advanced annual leave and sick leave may be substituted for leave without pay under the FMLA. An employee may continue to use earned compensatory time off and credit hours in addition to his or her entitlement to leave under the FMLA.

Notice of Leave

Section 630.1206(d) of the interim regulations provides that when leave is foreseeable, and the employee fails to give 30 days' notice with no reasonable excuse for the delay of notification, the agency may delay the taking of FMLA leave until at least 30 days after the date the employee provides notice of his or her need for FMLA leave. Three organizations believe an agency should be allowed to penalize an employee only if the agency has been adversely affected. This is to guard against employers denying leave on mere technicalities and penalizing employees for failure to give timely notice.

The legislative history states that an employee who intends to take leave for the birth or placement of a child *shall* provide 30 days' notice, or such notice as is practicable, of his or her intention to take such leave. If the employee intends to take leave to care for a family member with a serious health condition, the employee, subject to the approval of the health care provider, *must* make a reasonable effort to schedule treatment so as not to unduly disrupt the operations of the agency and must provide 30 days notice, or such notice as is practicable, of his or her intention to take such leave.

Congressional intent clearly indicates that the responsibility to give notice abides with the employee, and with that, the accountability for fulfilling the notification requirement. DOL has stated, ''[A]s this is an affirmative responsibility of the employee it would be inappropriate to require the employer to show any prejudice resulting from an employee's failure to provide adequate notice.''

Another organization believes strict interpretation of the regulation would result in undue hardships for employees in circumstances where leave must be taken sooner than 30 days after the date of notification, without regard to whether the need for leave is foreseeable. The commenter recommended mandatory exceptions from the waiting requirement in circumstances where leave cannot reasonably be delayed for 30 days.

We believe the regulations already accommodate situations in which 30 days notice for unforeseen medical emergencies is not possible. In cases where leave is foreseeable, we believe it is appropriate to require an employee to provide notice 30 days prior to the date leave is to begin or such notice as is practicable. Therefore, the regulations have not been revised.

A commenter requested that employees to required to keep supervisors informed of their intentions on the kinds and amounts of leave planned if extended absence is likely either before or after beginning FMLA leave. The regulations require a 30-day notice of intent to take FMLA leave and allow an agency to require an employee to report periodically on his or her status and intention to return to work. Also, the regulations allow agencies to require periodic recertification of a serious health condition. We do not believe any additional requirements are necessary.

Section 630.1206(c) requires that if the need for leave is not foreseeable and an employee cannot provide 30 days notice, he or she must provide notice within a reasonable period of time appropriate to the circumstances involved. One commenter suggested that a time limit for such notification be established similar to the time limit set by DOL—i.e., 1 or 2 working days after

learning of the need for leave. Agencies are responsible for the administration of the FMLA and may establish such time limitations in their agency policies. Therefore, the regulations have not been changed.

An agency requested guidance on the appropriate documentation to support a request for FMLA leave for a birth, adoption, or foster care. Section 630.1206(f) has been revised to permit agencies to require an employee to provide evidence that is administratively acceptable to the agency in support of his or her intent to use FMLA leave for the birth of a child or placement of a child for adoption or foster care.

Medical Certification

A commenter asked what information may be submitted for the medical certification to be considered sufficient to justify leave taken under the FMLA. Section 6838 of title 5, United States Code, lists what information is sufficient in determining the appropriateness of the medical certification. The law also provides for action to be taken if an agency doubts the validity of the certification by permitting agencies to request a second and a third opinion. To prevent a stalemate from happening, the opinion of the third health care provider is deemed binding. To assist agencies and employees, OPM's regulations have been revised to permit a health care provider representing the agency to contact the health care provider of the employee, *with the employee's permission*, to clarify medical information pertaining to the condition. The information on the medical certification must relate only to the serious health condition for which the current need for family and medical leave exists. No additional personal or confidential information may be requested. This is consistent with DOL's regulations.

An agency objected to OPM's exception in § 630.1207(d), which permits an agency to designate, for the second opinion, a health care provider employed or under the administrative oversight of the agency in areas where access to health care is extremely limited. This provision is an important and reasonable alternative in rural areas and overseas locations where it may be extremely difficult to locate a health care provider that is not employed or under the administrative oversight of the agency. However, an agency's suggestion that, given tight budgets, it would be reasonable to permit agencies to use a health care provider with whom the agency had developed a relationship cannot be adopted because such a change is prohibited by law. Permitting an agency to designate for the second opinion a health care provider employed or under the administrative oversight of the agency in areas where access to health care is extremely limited is consistent with DOL's regulations.

Other commenters stated that the guidance presented in OPM's Supplementary Information on provisional leave was incorrect in stating that if an employee does not submit the required medical certification, an agency should charge the employee's appropriate paid leave account. In the Supplementary Information, OPM was restating guidance from the legislative history. Section 630.1207(h) specifically states that if an employee is unable to provide the requested medical certification after leave has commenced, the agency may charge the employee as absent without leave (AWOL) or allow the employee to request that the provisional leave be charged as leave without pay or to the employee's annual and/or sick leave account, as appropriate.

A commenter questioned the need to provide information to the health care provider on the essential functions of the employee's position. Although appropriate in some cases, the commenter stated that, in many instances, the need for leave will be based on an employee's need for treatment or continuous medical supervision and not on his or her inability to perform the essential functions of the position. We believe the health care provider must first determine that the condition or illness qualifies as a serious health condition. Secondly, the health care provider must be aware of the essential functions of the employee's position in order to make a determination that if treatment or supervision is not provided, the employee cannot perform the essential functions of his or her position. If an employee must be absent from work to receive medical treatment for a serious health condition, the employee is considered to be unable to perform the essential functions of the position during the absence for treatment.

The regulations require that the written medical certification include the date the serious health condition commenced, the probable duration of the serious health condition, and the appropriate medical facts within the knowledge of the health care provider. However, in the situations described, the dates of treatment and duration are unknown. In response to these comments, we have revised the regulations to permit the health care provider to specify that the serious health condition is a chronic or continuing condition with an unknown duration. The health care provider must also specify whether the patient is currently incapacitated and the likely duration and frequency of episodes of incapacity.

Section 630.1207(i) has been revised to provide that an agency may waive the requirement for an initial medical certification in a subsequent 12-month period if leave for a serious health condition is for the same chronic or continuing condition. Also, the regulations have been revised to stipulate that for most serious health conditions (excluding pregnancy, chronic conditions, or permanent or long-term conditions under the continuing supervision of a health care provider), if the health care provider has specified on the medical certification a minimum duration of the period of incapacity, the agency may not request recertification until that minimum duration has passed. Section 630.1207(i) continues to permit agencies to require more frequent medical recertification if an employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the agency receives information that casts doubt upon the continuing validity of the medical certification. These revisions are consistent with DOL's final regulations.

A commenter suggested that OPM incorporate DOL's provision that an employee must submit a medical certification within the time frame set by the employer (i.e., allowing at least 15 days for an employee to do so). We believe the establishment of time limitations is at an agency's discretion. Therefore, this change was not made.

Four agencies requested that OPM develop a standardized, user-friendly medical certification form that can be used Governmentwide. Three organizations recommended that OPM not adopt DOL's medical certification form because it is unnecessarily detailed and confusing. In the Supplementary Information accompanying its interim regulations, OPM suggested that agencies use DOL's medical certification form or develop their own form for obtaining medical certification from a health care provider. DOL has extensively revised its medical certification form. The new form design is easier to use. Agencies have had experience using DOL's medical certification form or their own medical certification form for more than 3 years. We do not believe it would be cost-

effective to develop a duplicate medical certification form for use by Federal agencies. We will, however, make the DOL medical certification form available to agencies on OPM electronic bulletin boards. OPM Mainstreet may be reached on (202) 606–4800, and PayPerNet may be reached on (202) 606–2675. The medical certification form will also be posted on OPM's World Wide Web site at www.opm.gov.

Protection of Employment and Benefits

One commenter recommended that the regulations include a statement that restoration to an ''equivalent position'' does not extend to intangible, unmeasurable aspects of the job, such as perceived loss of potential for future promotional opportunities.'' We agree that an ''equivalent position'' does not extend to intangible, unmeasurable aspects of the job and have revised § 630.1208(b)(5) to include this statement. However, additional clarification may be needed. There may be significant aspects of a previous position that an ''equivalent position'' must retain—e.g., if the previous position was a supervisory or team leader position or had an established career ladder. Although an ''equivalent position'' must have the same career-ladder promotion potential, an employee returning from FMLA leave enjoys no greater privileges or protections than other employees and must still meet the agency's requirements for receiving a promotion.

Several commenters asked for clarification and guidance in dealing with probationary employees, adverse actions, and performance-based actions and questioned whether agencies can proceed with such actions if an employee invokes FMLA leave.

If an employee is in an LWOP status during the probationary period, the probationary period will be extended by the amount of LWOP in excess of 22 days. Therefore, depending upon the duration of the LWOP, the length of an employee's probationary period could be extended by the FMLA leave. If so, the employee would still be in a probationary status upon his or her return to work. However, an employee who invokes his or her entitlement to leave under the FMLA is not protected from termination during probation if the agency decides to terminate the individual's employment during probation. For example, if an agency notified a probationary employee with 10 months of service that he or she was to be removed due to misconduct, and the employee invoked his or her FMLA entitlement, the agency would not need to wait until the FMLA leave was exhausted (and the employee completed probation) before taking action.

Pending adverse actions or performance-based actions may be taken and made effective even if the employee is taking FMLA leave. For example, if an employee was unsuccessful in improving his or her performance during an opportunity period to improve and invoked his FMLA entitlement immediately following the opportunity period, the agency may issue the proposal and decision notices for removal based on unacceptable performance and effect the action just as if normally would. There is no obligation to wait until the employee has returned from FMLA leave in order to proceed with an otherwise valid adverse or performance-based action. Of course, agencies cannot remove or otherwise discipline an employee based on his or her use of leave under the FMLA.

In response to the comments and numerous inquiries on the appropriate application of the FMLA in these matters, § 630.1208(k) has been added to state that an employee's request for and/or use of leave under the FMLA does not prevent an agency from taking appropriate action under 5 CFR part 432 or 5 part CFR 752. Also it remains the case that an employee who invokes his or her entitlement to FMLA leave is not immune from the impact of a reduction in force before, during, or after the period of FMLA leave.

Medical Certification to Return to Work

OPM received written and telephone comments from several agencies that advocated requiring medical certification to return to work when an employee's serious health condition represented a danger to the employee or coworkers. The commenters strongly objected to OPM's interim regulations limiting medical certification to return to work only to those employees who occupy a position that has medical standards or physical requirements. The agencies believe this restriction is in conflict with 5 U.S.C. 6384(d). In addition, an agency commented that in any other situation where there is a question as to whether an employee's presence at work may present a danger to the employee or to others, or when an employee appears to be too ill to work, management has the right to request medical documentation to ascertain whether it is appropriate to allow the employee to return to work. The agency does not believe the intent of the FMLA is to relieve management of this right.

Section 6384(d) of title 5 states, ''As a condition of restoration * * *, the employing agency may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work.'' After careful analysis and review of the law and legislative history, OPM agrees that Congress intended to provide agencies the authority to establish a uniform policy to require medical certification to return to work from each employee who invokes FMLA leave for his or her own serious health condition. Therefore, § 630.1208(h) has been revised to permit agencies to establish a uniformly applied practice or policy that covers *all similarly-situated employees (e.g., same occupation, same serious health condition, or same duration of absence from work)* to obtain medical certification from the health care provider of the employee that the employee is able to perform the essential functions of his or her position. The information on the medical certification to return to work must relate only to the serious health condition for which FMLA leave was taken.

The statute permits an agency to require an employee to provide medical certification from his or her health care provider that the employee is able to resume work. In most circumstances, an agency must return to work an employee who has provided a completed medical certification. An agency may not require a second or third opinion on the medical certification to return to work. If an employee submits medical certification but an agency believes that the employee is not fully recovered when he or she returns to work, may be a danger to himself or herself or others, or is a disruptive force in the worksite, the agency may take action under 5 CFR part 752 or other appropriate authority. If the agency believes that additional medical documentation would be helpful in determining appropriate action, the agency may offer a medical or psychiatric examination under 5 CFR 339.302.

If an employee returns to work without the required documentation, an agency may delay the return of an employee until acceptable medical certification is provided. During this period of delay, an agency may grant the employee's request for appropriate leave. If the employee refuses to request leave until the medical certification is provided, or does not provide the required medical certification, the agency may use the procedures provided under 5 CFR part 752 to place the employee on enforced leave,

suspend the employee, or remove the employee, as appropriate.

One commenter disagreed with OPM's requirement that agencies notify employees before leave commences of the employee's obligation to provide medical certification to return to work. The agency noted that this requirement under the FMLA is not appropriate where employees are already on a standing notice that all absences due to illness of a certain duration will require a medical certification to return to work. The statute and legislative history specify the medical certification that may be required under the FMLA. If an agency's policy requiring medical certification, including certification to return to duty, is more stringent than that required under the FMLA, the agency may not apply its own policy to an employee invoking leave under the FMLA. However, to accommodate situations in which the need for leave is not foreseeable—e.g., a medical emergency—§ 630.1208(i) has been revised to state that an agency must notify an employee of the requirement to provide medical certification to return to work before the leave commences, or to the extent practicable in emergency medical situations.

A commenter objected to the requirement that the agency must pay for the medical certification to return to work. Since the request for medical certification to return to work is at the discretion and direction of the agency, the agency assumes the responsibility to pay for the expenses.

Relationship to Other Entitlements

Nothing in the FMLA modifies or affects any Federal law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability. An agency must comply with whichever statute provides the greater rights to the employee.

For example, in the case of an employee with a serious health condition under the FMLA who is also qualified individual with a disability under the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), the FMLA and the Rehabilitation Act are to be applied simultaneously and in a manner that assures the most generous provisions of both Acts for the employee. Satisfying the requirements under the FMLA by granting 12 weeks of leave and restoring the employee to the same or equivalent position does not absolve an agency of any potential responsibilities to that employee under the Rehabilitation Act.

If an employee is a qualified individual with a disability under the Rehabilitationn Act, the agency must make reasonable accommodations, etc., barring undue hardship. The Equal Employment Opportunity Commission has advised DOL that employers may consider FMLA leave already taken when deciding whether granting leave in excess of 12 weeks as an accommodation under the Rehabilitation Act poses an undue hardship. This does not mean, however, that more than 12 weeks of leave automatically poses an undue hardship under the Rehabilitation Act. Agencies must apply the full undue hardship analysis under the Rehabilitation Act to each individual case to determine whether leave in excess of 12 weeks poses an undue hardship.

An employee's right to be returned to the same or equivalent position under the FMLA applies to the position held at the time the employee commences FMLA leave. If an employee is unable to perform the essential functions of the same or equivalent position because of a disability, even with reasonable accommodation, the Rehabilitation Act may require the agency to make a reasonable accommodation when the employee returns. An agency may not change the essential functions of an employee's position in order to deny an employee's rights under the FMLA. However, an employee may voluntarily accept an alternative position (e.g., ''light-duty'' position) rather than use leave under FMLA. Additional questions on the Rehabilitation Act should be addressed to the Equal Employment Opportunity Commission.

An employee may receive workers' compensation and be absent from work due to an on-the-job illness or injury that also qualifies as a serious health condition under the FMLA. The absence on workers' compensation and FMLA leave may run concurrently. At some point, the health care provider managing care pursuant to the workers' compensation injury may certify that the employee is able to return to work in a ''light duty'' position. If the agency offers such a position, the employee is permitted, but not required, to accept the position. If the employee refuses the offer, the employee *may* no longer qualify for payments under the workers' compensation program, but the employee is entitled to continue on unpaid FMLA leave up to a total of 12 administrative workweeks as long as the employee is affected by a serious health condition that makes the employee unable to perform the essential functions of his or her position. If the employee returning from the workers' compensation injury is a qualified individual with a disability, he or she has certain rights under the Rehabilitation Act. For additional information on workers' compensation benefits, agencies are encouraged to contact the Office of Workers' Compensation, Department of Labor.

Federal Employees Health Benefits Program

On July 22, 1996, OPM issued interim regulations in the Federal Register (61 FR 37807) that reorganized 5 CFR 890.502 (Employee withholdings and contributions) and made conforming changes in the paragraph on direct payment of premiums during periods of LWOP status in excess of 365 days. The conforming changes were based on policy changes previously published in the Federal Register. On December 27, 1994, OPM issued final regulations in the Federal Register that delegated from OPM to Federal agencies the authority to reconsider disputes about coverage and enrollment issues. On June 1, 1995, OPM issued final regulations in the Federal Register that eliminated the requirement for the use of certified mail, return receipt requested, when notifying certain enrollees that their enrollment will be terminated because of nonpayment of premiums unless the payments is received within 15 days. The interim regulations published on July 22, 1996, reflected both of these policy changes, and the pertinent paragraph is reproduced in these final regulations.

Greater Leave Entitlement

Some commenters asked about the effect of FMLA on current agency leave policies and collective bargaining agreements—e.g., whether leave under the FMLA is considered to be the minimum within the labor-management agreement or is in addition to an existing contract provision already available through the labor-management agreement. Agencies must observe any employment policies or collective bargaining agreements that provide greater family or medical leave rights to employees than those established under the FMLA. Conversely, the rights established by the Act may not be diminished by any agency leave policies or collective bargaining agreement. However, nothing in the FMLA prevents an agency from amending existing leave and entitlement benefit programs, provided the changes comply with the FMLA. We have revised § 630.1210(a) to clarify this point.

One commenter suggested adding references to ''reasonable accommodation'' and ''offers of assignment'' to § 630.1210(d). Since the intent of § 630.1210(d) is to cover all possible discriminatory acts, we believe

a broad statement is required, such as is currently provided in § 630.1210(d)—i.e., ''any Federal law prohibiting discrimination.'' Nonetheless, the FMLA is not intended to modify or affect the Rehabilitation Act of 1973, as amended.

Other Changes

On December 29, 1995, OPM issued final regulations to revise the format of certain regulatory provisions in title 5, United States Code, relating to Federal employees' compensation so that all definitions of terms are listed in alphabetical order, consistent with the format preferred by the Office of the Federal Register. In these regulations, the designation for paragraph (a) of § 630.201 was removed, and the paragraph was erroneously placed within the alphabetical listing. We have reinstated paragraph (a) and in paragraph (b) listed the definitions that pertain to subparts B through G of part 630.

Section 630.401(3) has been revised to permit the use of sick leave by an employee to provide care for a family member *who is incapacitated* as the result of physical or mental illness, injury, pregnancy, or childbirth or who receives medical, dental, or optical examination or treatment. The purpose of this change is to clarify the circumstances in which an employee is entitled to use sick leave.

In addition, we are adding § 630.911(h) and § 630.1010(d) to the Voluntary Leave Transfer and Voluntary Leave Bank regulations to make it clear that when a leave recipient elects to buy back annual leave as a result of a claim for an employment-related injury approved by the Office of Workers' Compensation Programs (OWCP), and the annual leave was leave donated under the voluntary leave transfer or leave bank programs, the amount of annual leave brought back by the leave recipient must be restored to the leave donor or returned to the leave bank as provided in § 630.911 and § 630.1010. We are also using this opportunity to make a clarifying amendment to § 630.1210(c) and correct typographical and grammatical errors in § 630.905 and § 630.907(d)(2) respectively.

Reports and Records

We received many requests from agencies to revise the SF–71, Application for Leave, and the SF–1150, Record of Leave Data. As a result, OPM has established an interagency working group that has volunteered to assist in revising the leave forms. This work is in progress. We will provide agencies information on the availability of any revised leave forms through OPM's electronic bulletin boards and OPM's World Wide Web site at www.opm.gov.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

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

List of Subjects

5 CFR Part 630

Government employees.

5 CFR 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, the interim rule amending parts 630 and 890 of title 5 of the Code of Federal Regulations, which was published at 58 FR 39596, is adopted as a final rule with the following changes:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 102–25, 105 Stat. 92; and subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23.

Subpart B—Definitions and General Provisions for Annual and Sick Leave

2. Section 630.201 is revised to read as follows:

§ 630.201 Definitions.

(a) In section 6301(2)(iii) of title 5, United States Code, the term *temporary employee engaged in construction work at an hourly rate* means an employee hired on a temporary basis solely for the purpose of work on a specific construction project and paid on an hourly rate.

(b) In subparts B through G of this part:

Accrued leave means the leave earned by an employee during the current leave year that is unused at any given time in that year.

Accumulated leave means the unused leave remaining to the credit of an employee at the beginning of the leave year.

Employee means an employee to whom subchapter I of chapter 63 of title 5, United States Code, applies.

Family member means the following relatives of the employee:

(1) Spouse, and parents thereof;

(2) Children, including adopted children and spouses thereof;

(3) Parents;

(4) Brothers and sisters, and spouses thereof; and

(5) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Health care provider has the meaning given that term in § 630.1202.

Leave year means the period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year.

Medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.

Uncommon tour of duty means a tour of duty that exceeds 80 hours of work in a biweekly pay period, including hours of actual work plus hours in a standby status for which the employee is compensated by annual premium pay under 5 U.S.C. 5545(c)(1) and part 550 of this chapter.

United States means the several States and the District of Columbia.

Subpart D—Sick Leave

3. In § 630.401, paragraph (a)(3) is revised to read as follows:

§ 630.401 Grant of sick leave.

(a) * * *

(3) Provides care for a family member who is incapacitated as the result of physical or mental illness, injury, pregnancy, or childbirth or who receives medical, dental or optical examination or treatment;

* * * * *

Subpart I—Voluntary Leave Transfer Program

§ 630.905 [Amended]

4. In § 630.905, paragraph (c) is amended by removing the term *party-time* and inserting in its place *part-time*.

5. In § 630.907, paragraph (d)(2) is revised to read as follows:

§ 630.907 Accrual of annual and sick leave.

* * * * *

(d)* * *

(2) The employee shall continue to accrue annual leave while in a shared leave status to the extent necessary for the purpose of reducing any indebtedness caused by the use of annual leave advanced at the beginning of the leave year.

* * * * *

6. In § 630.911, paragraph (h) is added to read as follows:

§ 630.911 Restoration of transferred annual leave.

* * * * *

(h) If a leave recipient elects to buy back annual leave as a result of claim for an employment-related injury approved by the Office of Workers' Compensation Programs under 20 CFR 10.202 and 10.310, and the annual leave was leave transferred under § 630.906, the amount of annual leave bought back by the leave recipient shall be restored to the leave donor(s).

Subpart J—Voluntary Leave Bank Program

7. In § 630.1010, paragraph (d) is added to read as follows:

§ 630.1010 Termination of medical emergency.

* * * * *

(d) If a leave recipient elects to buy back annual leave as a result of a claim for an employment-related injury approved by the Office of Workers' Compensation Programs under 20 CFR 10.202 and 10.310, the amount of annual leave withdrawn from the leave bank that is bought back by the leave recipient shall be restored to the leave bank.

Subpart L—Family and Medical Leave

8. In § 630.1201, paragraphs (b)(1)(ii)(B) and (b)(3)(i) are revised to read as follows:

§ 630.1201 Purpose, applicability, and administration.

* * * * *

(b)* * *

(1)* * *

(ii)* * *

(B) An employee in the Veterans Health Administration of the Department of Veterans Affairs who is appointed under section 7401(1) of title 38, United States Code.

* * * * *

(3)* * *

(i) An employee in the Veterans Health Administration of the Department of Veterans Affairs who is appointed under section 7401(1) of title 38, United States Code, shall be governed by the terms and conditions of regulations prescribed by the Secretary of Veterans Affairs;

* * * * *

9. In § 630.1202, the definition of *Continuing treatment by a health care provider* is removed; the definition of *Incapacity* is added in alphabetical order, and the definitions of *Essential functions*, *Foster care*, *Health care provider*, *Intermittent leave or leave taken intermittently*, *Parent*, *Serious health condition*, *Son or daughter*, and *Spouse* are revised to read as follows:

§ 630.1202 Definitions.

* * * * *

Essential functions means the fundamental job duties of the employee's position, as defined in 29 CFR 1630.2(n). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

* * * * *

Foster care means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family to take the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

Health care provider means—

(1) A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this subpart;

(2) Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question;

(3) A health care provider as defined in paragraph (2) of this definition who practices in a country other than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of his or her practice as defined under such law;

(4) A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or

(5) A Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with Public Law 95–314, August 11, 1978 (92 Stat. 469), as amended by Public Law 103–344, October 6, 1994 (108 Stat. 3125).

* * * * *

Incapacity means the inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.

Intermittent leave or leave taken intermittently means leave taken in separate blocks of time, rather than for one continuous period of time, and may include leave periods of 1 hour to several weeks. Leave may be taken for a period of less than 1 hour if agency policy provides for a minimum charge for leave of less than 1 hour under § 630.206(a).

* * * * *

Parent means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter. This term does not include parents ''in law.''

* * * * *

Serious health condition. (1) Serious health condition means an illness, injury, impairment, or physical or mental condition that involves—

(i) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

(ii) Continuing treatment by a health care provider that includes (but is not limited to) examinations to determine if there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists. Continuing treatment by a health care provider may include one or more of the following—

(A) A period of incapacity of more than 3 consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves—

(*1*) Treatment two or more times by a health care provider, by a health care provider under the direct supervision of the affected individual's health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

(*2*) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition).

(B) Any period of incapacity due to pregnancy, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that—

(*1*) Requires periodic visits for treatment by a health care provider or by a health care provider under the direct supervision of the affected individual's health care provider,

(*2*) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(*3*) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). The condition is covered even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

(D) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's, severe stroke, or terminal stages of a disease).

(E) Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity or more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease).

(2) (Serious health condition does not include routine physical, eye, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed-rest, exercise, and other similar activities that can be initiated without a visit to the health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop; or an absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health conditions. Allergies, restorative dental or plastic surgery after an injury, removal of cancerous growth, or mental illness resulting from stress may be serious health conditions only if such conditions require inpatient care or continuing treatment by a health care provider.)

Son or daughter means a biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing *in loco parentis* who is—

(1) Under 18 years of age; or

(2) 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the ''activities of daily living'' (ADL's) or ''instrumental activities of daily living'' (IADL's). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephones and directories, using a post office, etc. A ''physical or mental disability'' refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR 1630.2 (h), (i) and (j).

Spouse means an individual who is a husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriage between one man and one woman in States where it is recognized.

* * * * *

10. In § 630.1203, paragraphs (a)(4), (b), (c), (d), (g), and (h) are revised to read as follows:

§ 630.1203 Leave entitlement.

(a) * * *

(4) A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of his or her position.

(b) An employee shall invoke his or her entitlement to family or medical leave under paragraph (a) of this section, subject to the notification and medical certification requirements in §§ 630.1206 and 630.1207. An employee may take only the amount of family and medical leave that is necessary to manage the circumstances that prompted the need for leave under paragraph (a) of this section.

(c) The 12-month period referred to in paragraph (a) of this section begins on the date an employee first takes leave for a family or medical need specified in paragraph (a) of this section and continues for 12 months. An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of family or medical leave. (This may include a continuation of a previous situation or circumstance.)

(d) The entitlement to leave under paragraphs (a) (1) and (2) of this section shall expire at the end of the 12-month period beginning on the date of birth or placement. Leave for a birth or placement must be concluded within this 12-month period. Leave taken under paragraphs (a) (1) and (2) of this section, may begin prior to or on the actual date of birth or placement for adoption or foster care, and the 12-month period, referred to in paragraph (a) of this section begins on that date.

* * * * *

(g) Each agency shall inform its employees of their entitlements and responsibilities under this subpart, including the requirements and obligations of employees.

(h) An agency may not subtract leave from an employee's entitlement to leave

under paragraph (a) of this section unless the agency has obtained confirmation from the employee of his or her intent to invoke entitlement to leave under paragraph (b) of this section. An employee's notice of his or her intent to take leave under § 630.1206 may suffice as the employee's confirmation.

11. In § 630.1204, paragraphs (d) introductory text and (f) are revised to read as follows:

§ 630.1204 Intermittent leave or reduced leave schedule.

* * * * *

(d) For the purpose of applying paragraph (c) of this section, an alternative position need not consist of equivalent duties, but must be in the same commuting area and must provide—

* * * * *

(f) Only the amount of leave taken intermittently or on a reduced leave schedule, as these terms are defined in § 630.1202, shall be subtracted from the total amount of leave available to the employee under § 630.1203 (e) and (f).

12. In § 630.1205, paragraph (b) is amended by revising the introductory text, removing paragraphs (b)(4) and (b)(5), adding the word ''and'' to paragraph (b)(2) after the semicolon and removing the semicolon after the word ''chapter'' in paragraph (b)(3) and adding a period in its place; and paragraphs (c), (d), (e) are revised to read as follows:

§ 630.1205 Substitution of paid leave.

* * * * *

(b) An employee may elect to substitute the following paid leave for any or all of the period of leave without pay to be taken under § 630.1203(a)—

* * * * *

(c) An agency may not deny an employee's right to substitute paid leave under paragraph (b) of this section for any or all of the period of leave without pay to be taken under § 630.1203(a), consistent with current law and regulations.

(d) An agency may not require an employee to substitute paid leave under paragraph (b) of this section for any or all of the period of leave without pay to be taken under § 630.1203(a).

(e) An employee shall notify the agency of his or her intent to substitute paid leave under paragraph (b) of this section for the period of leave without pay to be taken under § 630.1203(a) prior to the date such paid leave commences. An employee may not retroactively substitute paid leave for leave without pay previously taken under § 630.1203(a)

13. In § 630.1206, paragraph (f) is revised to read as follows:

§ 630.1206 Notice of leave.

* * * * *

(f) An agency may require that a request for leave under § 630.1203(a) (1) and (2) be supported by evidence that is administratively acceptable to the agency.

14. In § 630.1207, paragraphs (a), (b)(2), (b)(5), (b)(6), (c), and (i) are revised to read as follows:

§ 630.1207 Medical certification.

(a) An agency may require that a request for leave under § 630.1203(a) (3) or (4) be supported by written medical certification issued by the health care provider of the employee or the health care provider of the spouse, son, daughter, or parent of the employee, as appropriate. An employee shall provide the written medical certification to the agency in a timely manner. An agency may waive the requirement for an initial medical certificate in a subsequent 12-month period if the leave under § 630.1203(a) (3) or (4) is for the same chronic or continuing condition.

(b) * * *

(2) The probable duration of the serious health condition or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity;

* * * * *

(5) For the purpose of leave taken under § 630.1203(a)(4), a statement that the employee is unable to perform one or more of the essential functions of his or her position or requires medical treatment for a serious health condition, based on written information provided by the agency on the essential functions of the employee's position or, if not provided, discussion with the employee about the essential functions of his or her position; and

(6) In the case of certification for intermittent leave or leave on a reduced leave schedule under § 630.1203(a) (3) or (4) for planned medical treatment, the dates (actual or estimates) on which such treatment is expected to be given, the duration of such treatment, and the period of recovery, if any, or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

(c) The information on the medical certification shall relate only to the serious health condition for which the current need for family and medical leave exists. The agency may not require any personal or confidential information in the written medical certification other than that required by paragraph (b) of this section. If an employee submits a completed medical certification signed by the health care provider, the agency may not request new information from the health care provider. However, a health care provider representing the agency, including a health care provider employed by the agency or under administrative oversight of the agency, may contact the health care provider who completed the medical certification, with the employee's permission, for purposes of clarifying the medical certification.

* * * * *

(i) For leave taken for the purposes of pregnancy, chronic conditions, or long-term conditions under the continuing supervision of a health care provider, as these terms are defined in § 630.1202 in the definition of ''serious health condition'' under paragraphs (2)(ii), (iii), and (iv), the agency may require, at the agency's expense, subsequent medical recertification from the health care provider on a periodic basis, but not more than every 30 calendar days. For leave taken for all other serious health conditions and including leave taken on an intermittent or reduced leave schedule, if the health care provider has specified on the medical certification a minimum duration of the period of incapacity, the agency may not request recertification until that period has passed. An agency may require subsequent medical recertification more frequently than every 30 calendar days, or more frequently than the minimum duration of the period of incapacity specified on the medical certification, if the employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the agency receives information that casts doubt upon the continuing validity of the medical certification.

* * * * *

15. In § 630.1208, paragraphs (b)(5), (h), and (i) are revised, and paragraph (k) is added to read as follows:

§ 630.1208 Protection of employment and benefits.

* * * * *

(b) * * *

(5) The same or equivalent opportunity for a within-grade increase, performance award, incentive award, or other similar discretionary and non-discretionary payments, consistent with

applicable laws and regulations; however, the entitlement to be returned to an equivalent position does not extend to intangible or unmeasurable aspects of the job;

* * * * *

(h) As a condition to returning an employee who takes leave under § 630.1203(a)(4), an agency may establish a uniformly applied practice or policy that requires all similarly-situated employees (i.e., same occupation, same serious health condition) to obtain written medical certification from the health care provider of the employee that the employee is able to perform the essential functions of his or her position. An agency may delay the return of an employee until the medical certification is provided. The same conditions for verifying the adequacy of a medical certification in § 630.1207(c) shall apply to the medical certification to return to work. No second or third opinion on the medical certification to return to work may be required. An agency may not require a medical certification to return to work during the period the employee takes leave intermittently or under a reduced leave schedule under § 630.1204.

(i) If an agency requires an employee to obtain written medical certification under paragraph (h) of this section before he or she returns to work, the agency shall notify the employee of this requirement before leave commences, or to the extent practicable in emergency medical situations, and pay the expenses for obtaining the written medical certification. An employee's refusal or failure to provide written medical certification under paragraph (h) of this section may be grounds for appropriate disciplinary or adverse action, as provided in part 752 of this chapter.

* * * * *

(k) An employee's decision to invoke FMLA leave under § 630.1203(a) does not prohibit an agency from proceeding with appropriate actions under part 432 or part 752 of this chapter.

16. § 630.1210, paragraphs (a) and (c) are revised to read as follows:

§ 630.1210 Greater leave entitlement.

(a) An agency shall comply with any collective bargaining agreement or any agency employment benefit program or plan that provides greater family or medical leave entitlements to employees than those provided under this subpart. Nothing in this subpart prevents an agency from amending such policies, provided the policies comply with the requirements of this subpart.

* * * * *

(c) An agency may adopt leave policies more generous than those provided in this subpart, except that such policies may not provide entitlement to paid time off in an amount greater than that otherwise authorized by law or provide sick leaved in any situation in which sick leave would not normally be allowed by law or regulation.

* * * * *

17. In § 630.1211, paragraph (b)(3) is revised to read as follows:

§ 630.1211 Records and reports.

* * * * *

(b) * * *

(3) The number of hours of leave taken under § 630.1203(a), including any paid leave substituted for leave without pay under § 630.1205(b); and

* * * * *

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

18. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913, § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

19. In § 890.502, paragraph (e) is revised to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(e) *Direct payment of premiums during periods of LWOP status in excess of 365 days.*

(1) An employee who is granted leave without pay under subpart L of part 630 of this chapter which exceeds the 365 of continued coverage under section 890.303(e) must pay the employee contributions directly to the employing office on a current basis.

(2) Payment must be made after the pay period in which the employee is covered in accordance with a schedule established by the employing office. If the employing office does not receive the payment by the date due, the employing office must notify the employee in writing that continuation of coverage depends upon payment being made within 15 days (45 days for employees residing overseas) after receipt of the notice. If no subsequent payments are made, the employing office terminates the enrollment 60 days (90 days for enrollees residing overseas) after the date of the notice.

(3) If the enrollee was prevented by circumstances beyond his or her control from making payment within the timeframe specified in paragraph (e)(2) of this section he or she may request reinstatement of the coverage by writing to the employing office. The employee must file the request within 30 calendar days from the date of termination and must include supporting documentation.

(4) The employing office determines whether the employee is eligible for reinstatement of coverage. If the determination is affirmative, the employing office reinstates the coverage of the employee retroactive to the date of termination. If the determination is negative, the employee may request a review of the decision from the employing agency as provided under § 890.104.

(5) An employee whose coverage is terminated under paragraph (e)(2) of this section may register to enroll upon his or her return to duty in a pay status in a position in which the employee is eligible for coverage under this part.

* * * * *

[FR Doc. 96–30810 Filed 12–4–96; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV96–989–3 FIR]

Raisins Produced From Grapes Grown in California; 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 establishing an assessment rate for the Raisin Administrative Committee (Committee) under Marketing Order No. 989 for the 1996–97 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of raisins produced from grapes grown in California. Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Assistant, Marketing Order Administration

Branch, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209–487–5901; FAX 209–487–5906, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–9918; FAX 202–720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–2491, FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California raisin handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable raisins beginning August 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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 4,500 producers of raisins in the production area and approximately 20 handlers subject to regulation under the marketing order. 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 (from all sources) are less than $5,000,000. No more than eight handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining eight handlers have sales less than $5,000,000, excluding receipts from any other sources.

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

The Committee met on August 15, 1996, and unanimously recommended 1996–97 expenditures of $1,463,000 and an assessment rate of $5.00 per ton of California raisins. In comparison, last year's budgeted expenditures were $1,500,000. The assessment rate of $5.00 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year compared to those budgeted for 1995–96 (in parentheses) include: $485,000 for export program administration and related activities ($470,000); $412,000 for salaries and wages ($471,000); $95,000 for Committee and office staff travel ($70,000); $80,000 reserve for contingencies ($142,115); $54,000 for general, medical, and Committee member insurance ($64,385); $49,500 for rent ($43,000); $41,200 for group retirement ($23,000); $37,500 for membership dues/surveys ($15,500); $30,000 for office supplies ($30,000); $28,000 for equipment ($20,000); $28,000 for payroll taxes ($32,000); $22,000 for postage ($20,000); $15,000 for telephone ($15,000); $15,000 for miscellaneous expenses ($15,000); $12,000 for repairs and maintenance ($10,000); $12,000 for Committee meeting expenses ($7,500); $10,000 for research and communications ($23,000); and $5,000 for audit fees ($20,000). The Committee also recommended $15,000 for printing and $10,000 for software and programming for which no funding was recommended last year.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by the expected quantity of assessable California raisins for the crop year. This rate, when applied to anticipated acquisitions of 292,600 tons, will yield $1,463,000 in assessment income, which should be adequate to cover anticipated administrative expenses. Any unexpended assessment funds from the crop year are required to be credited or refunded to the handlers from whom collected.

An interim final rule regarding this action was published in the October 8, 1996, issue of the Federal Register (61 FR 52684). That rule provided for a 30-day comment period. No comments were received.

While this rule will impose some 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 by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

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

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. The Committee's 1996–97 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 crop year began on August 1, 1996, and the marketing order requires that the rate of assessment for each crop year apply to all assessable raisins handled during such crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided for a 30-day comment period; no comments were received.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

Note: This section will appear in the Code of Federal Regulations.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 61 FR 52684 on October 8, 1996, is adopted as a final rule without change.

Dated: November 29, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–30930 Filed 12–4–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–267–AD; Amendment 39–9844; AD 96–24–06]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 560 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 96–24–06 that was sent previously to all known U.S. owners and operators of certain Cessna Model 560 series airplanes by individual letters. This AD requires revising the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with limitations, operational procedures, and performance information to be used during approach and landing when residual ice is present or can be expected. This amendment is prompted by reports indicating that, while operating in icing conditions or when ice is on the wings, some of these airplanes have experienced uncommanded roll at a speed at (or slightly higher than) the speed at which the stall warning system is activated. The actions specified by this AD are intended to prevent uncommanded roll of the airplane during approach and landing when residual ice is present or can be expected.

DATES: Effective December 10, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 96–24–06, issued November 19, 1996, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before February 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Service information relating to this rulemaking action may be obtained from Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carlos Blacklock, Aerospace Engineer, Flight Test and Program Management Branch, ACE–117W, FAA Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4166; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: On November 19, 1996, the FAA issued priority letter AD 96–24–06, which is applicable to certain Cessna Model 560 series airplanes. That action was prompted by reports indicating that some of these airplanes, while operating in icing conditions or when ice is on the wings, have experienced uncommanded roll at a speed at, or slightly higher than, the speed at which the stall warning system is activated. (The speed at which the airplane's stick shaker is activated.)

Results of an FAA investigation, which involved extensive flight tests with simulated ice on protected and unprotected airplane surfaces, revealed that, as this airplane model approaches stalling speed under normal operating conditions, it exhibits a significant uncommanded rolling tendency that requires immediate and aggressive action by the pilot to prevent excessive deviation from the intended flight path. In addition, the tendency to roll and the magnitude of the roll are more pronounced at some flap settings than others. With no ice present, the FAA found that this rolling tendency normally occurs near aerodynamic stall and after activation of the stall warning.

The FAA also found that the stall warning system aboard the airplane may not compensate for increased stall speed resulting from accumulations of ice typically encountered. The lack of adequate stall warning margin has been verified by the FAA using the maximum accumulation defined in the Model 560 FAA-approved Airplane Flight Manual (AFM) for activation of the de-icing boots. In addition, the FAA has

determined that the approach and landing speeds specified in the AFM are not adequate for operating with ice accumulated on the airplane. The FAA also has determined that the AFM needs additional information to make the pilot more aware of the special characteristics of the airplane and procedures needed to operate during these conditions.

When any residual ice is present, the stall warning system may not activate at speeds high enough above stall speed. This condition, if not corrected, could result in an uncommanded roll.

Explanation of Relevant Service Information

The FAA reviewed and approved Cessna Citation Alert Service Letter SLA560–30–07, dated November 14, 1996, which describes procedures for revising the Limitations Section, Normal Procedures Section, and Performance Section of the FAA-approved Airplane Flight Manual (AFM) for this airplane model. These revisions provide limitations, operational procedures, and performance information to be used by the flightcrew during approach and landing when any residual ice is present or can be expected. These revisions include:

- a requirement to increase approach and landing speeds;
- procedures for using the de-icing system; and
- performance corrections for landing weight and distance.

For airplanes having serial numbers 560–0001 through 560–0259 inclusive, this information is contained in Temporary AFM Changes:

- 560FM TC–96–01, dated November 14, 1996;
- 560FM TC–96–02, dated November 14, 1996;
- 560FM TC–96–03, dated November 14, 1996; and
- 560FM TC–96–04, dated November 14, 1996.

For airplanes having serial numbers 560–0260 through 560–5000 inclusive, the information is contained in Cessna Model 560 Citation V Ultra (Unit -0260 and on) 56FMA–05, Revision 5, dated November 14, 1996.

Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued priority letter AD 96–24–06 to prevent uncommanded roll of the airplane during approach and landing when residual ice is present or can be expected. The AD requires revision of the Limitations Section, Normal Procedures Section, and Performance Section of the AFM to provide the flightcrew with limitations, operational procedures, and performance information to be used during approach and landing when residual ice is present or can be expected. The actions are required to be accomplished in accordance with the Temporary AFM Changes and Cessna Model 560 Citation V Ultra document previously described.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on November 19, 1996, to all known U.S. owners and operators of Cessna Model 560 series airplanes. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Interim Action

This is considered to be interim action. The manufacturer is currently developing a modification to the stall warning system which will increase the speed at which the stall warning is activated. In addition, the manufacturer is making permanent changes to the AFM (for airplanes with serial numbers 560–0001 through 560–0259 inclusive) which will provide revised limitations, operational procedures, and performance information to be used during approach and landing when residual ice is present or can be expected. Once the modification and permanent changes are developed, approved and available, the FAA may consider additional rulemaking.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ''ADDRESSES.'' All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–267–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–24–06 Cessna Aircraft Company: Amendment 39–9844. Docket 96–NM–267–AD.

Applicability: Model 560 series airplanes having serial numbers 560–0001 through 560–5000 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded roll of the airplane during approach and landing when residual ice is present or can be expected, accomplish the following:

Note 2: Cessna Citation Alert Service Letter A560–30–07, dated November 14, 1996, refers to the FAA-approved Airplane Flight Manual (AFM) revisions required by paragraphs (a) and (b) of this Priority Letter AD.

(a) For airplanes having serial numbers 560–0001 through 560–0259 inclusive: Within 10 days after receipt of this Priority Letter, revise the Limitations Section, Normal Procedures Section, and Performance Section of the AFM by inserting Temporary AFM Changes 560FM TC–96–01, dated November 14, 1996; 560FM TC–96–02, dated November 14, 1996; 560FM TC–96–03, dated November 14, 1996; and 560FM TC–96–04, dated November 14, 1996; which introduce limitations, procedures, and corrected performance information for approach and landing when residual ice is present or can be expected. Thereafter, operate the airplane in accordance with those limitations, procedures, and performance information.

Note 3: When these temporary changes have been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM and these temporary changes removed, provided the information contained in the general revisions is identical to that specified in Temporary AFM Changes 560FM TC–96–01, 560FM TC–96–02, 560FM TC–96–03, and 560FM TC–96–04.

(b) For airplanes having serial numbers 560–0260 through 560–5000 inclusive: Within 10 days after the receipt of this Priority Letter, revise the Limitations Section, Normal Procedures Section, and Performance Section of the AFM by inserting Cessna Model 560 Citation V Ultra (Unit –0260 and on) 56FMA–05, Revision 5, dated November 14, 1996, which introduces limitations, procedures, and corrected performance information for approach and landing when residual ice is present or can be expected. Thereafter, operate the airplane in accordance with those limitations, procedures, and performance information.

(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, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita 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.

(e) This amendment becomes effective on December 10, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 96–24–06, issued November 19, 1996, which contained the requirements of this amendment.

Issued in Renton, Washington, on November 29, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–30968 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 73

[Airspace Docket No. 96–AAL–30]

RIN 2120–AA66

Amendment to Using Agency for Restricted Area 2202B (R–2202B), Big Delta, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency for Restricted Area 2202B (R–2202B), Big Delta, AK, to reflect the current chain-of-command. Currently ''U.S. Army Cold Region Test Center, Ft. Greely, AK,'' is the designated using agency for this restricted area. The new using agency is ''U.S. Army, Commander, Cold Regions Test Activity, Fort Greely, AK.''

EFFECTIVE DATE: 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION

Background

As a result of a recent review of restricted airspace in Alaska, the U.S. military requested that the FAA take action to change the using agency for R–2202B, Big Delta, AK, to reflect the current chain-of-command.

The Amendment

This amendment to Title 14 of the Code of Federal Regulations part 73 (14 CFR part 73) changes the using agency for R–2202B, Big Delta, AK. There are no other changes to the boundaries, altitudes, times of designation, or activities effecting this restricted area. The FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.22 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8D dated July 11, 1996.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action is a minor administrative change amending the published using agency of a restricted area. There are no changes to air traffic control procedures or routes as a result of this action.

Therefore, this action is not subject to environmental assessments and procedures under FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 73.22 [Amended]

2. Section 73.22 is amended as follows:

R–2202B Big Delta, AK [Amended]

By removing the present using agency and substituting the following:

Using agency. U.S. Army, Commander, Cold Regions Test Activity, Fort Greely, AK.

Issued in Washington, DC, on November 22, 1996.

Harold W. Becker,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–30995 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 97

[Docket No. 28738; Amdt. No. 1767]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment established, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporates by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspected Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of the SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to party 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on November 29, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective January 2, 1997*

Houma, LA, Houma-Terrebonne, GPS RWY 12, Amdt 1
Rangeley, ME, Rangeley Muni, NDB OR GPS-A, Amdt 4
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 28, Amdt 11
Montague, MA, Turners Falls, VOR OR GPS-A, Amdt 3
Atlantic City, NJ, Atlantic City Intl, ILS RWY 13, Amdt 5
Salisbury, NC, Rowan County, ILS RWY 20, Orig
Durant, OK, Eaker Field, GPS RWY 30, Orig, CANCELLED
Philadelphia, PA, Philadelphia Intl, COPTER ILS RWY 17, Orig
Dallas, TX, Dallas Love Field, RADAR-1, Amdt 26
Winchester, VA, Winchester Regional, NDB OR GPS-A, Orig, CANCELLED

** * * Effective January 30, 1997*

Walnut Ridge, AR, Walnut Ridge Regional, GPS RWY 17, Orig
Walnut Ridge, AR, Walnut Ridge Regional, GPS RWY 35, Orig
Prescott, AZ, Ernest A. Love Field, VOR RWY 12, Amdt 2
Prescott, AZ, Ernest A. Love Field, ILS/DME RWY 21L, Amdt 3
Prescott, AZ, Ernest A. Love Field, GPS RWY 12, Orig
Prescott, AZ, Ernest A. Love Field, GPS RWY 21L, Orig
Prescott, AZ, Ernest A. Love Field, VOR/DME RNAV RWY 21L, Amdt 3
De Queen, AR, J. Lynn Helms Sevier County, NDB RWY 8, Amdt 5
De Queen, AR, J. Lynn Helms Sevier County, GPS RWY 8, Orig
Casa Grande, AZ, Casa Grande Muni, GPS RWY 5, Orig
Casa Grande, AZ, Casa Grande Muni, GPS RWY 23, Orig
Grand Canyon, AZ, Valle, GPS RWY 1, Orig
San Andreas, CA, Calaveras Co-Maury Rasmussen Field, GPS RWY 31, Orig
Brooksville, FL, Hernando County, GPS RWY 27, Orig
Naples, FL, Naples Muni, GPS RWY 5, Orig
Naples, FL, Naples Muni, GPS RWY 23, Orig
Claxton, GA, Claxton-Evans County, GPS RWY 9, Orig
Casey, IL, Casey Muni, GPS RWY 22, Orig
Greenville, IL, Greenville, GPS RWY 18, Orig
Pinckneyville, IL, Pinckneyville-Du Quoin, GPS RWY 18, Orig
Old Town, ME, Dewitt Fld, Old Town Muni, VOR/DME RWY 22, Amdt 5
Old Town, ME, Dewitt Fld, Old Town Muni, NDB OR GPS RWY 22, Amdt 5
Old Town, ME, Dewitt Fld, Old Town Muni, RADAR-1, Amdt 2
Old Town, ME, Dewitt Fld, Old Town Muni, GPS RWY 12, Orig
Old Town, ME, Dewitt Fld, Old Town Muni, GPS RWY 30, Orig
Portland, ME, Portland Intl Jetport, ILS/DME RWY 29, Orig-A, CANCELLED
Portland, ME, Portland Intl Jetport, ILS RWY 29, Orig
Mackinac Island, MI, Mackinac Island, GPS RWY 29, Orig
Romeo, MI, Romeo, GPS RWY 36, Orig
Athens/Albany, OH, Ohio University, GPS RWY 7, Orig
Athens/Albany, OH, Ohio University, GPS RWY 25, Orig
Lynchburg, VA, Lynchburg Regional/Preston Glenn Field, VOR/DME RWY 21, Amdt 8
Lynchburg, VA, Lynchburg Regional/Preston Glenn Field, ILS RWY 3, Amdt 14
Lynchburg, VA, Lynchburg Regional/Preston Glenn Field, GPS RWY 21, Orig
Pineville, WV, Kee Field, VOR RWY 25, Amdt 3
Marshfield, WI, Marshfield Muni, GPS RWY 16, Orig

** * * Effective Upon Publication*

Rock Springs, TX, Edwards County, VOR OR GPS RWY 14, Amdt 3.

[FR Doc. 96–31000 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28739; Amdt. No. 1768]

RIN: 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW.,

Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC, on November 29, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, DLA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV, § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective Upon Publication

FDC 6/8778 (PAH) Barkley Regional, Paducah, KY. ILS RWY 4, AMDT 7A

FDC 6/8804 (87I) Yazoo County, Yazoo City, MS. VOR/DME or GPS RWY 35, ORIG

FDC 6/8806 (PBI) Palm Beach Intl, West Palm Beach, FL. LOC BC RWY 27R, AMDT 12

FDC 6/8741 (MYR) Myrtle Beach Intl, Myrtle Beach, SC. RADAR–1, ORIG

FDC 6/8700 (ORL) Executive, Orlando, FL. LOC BC RWY 25, AMDT 19

FDC 6/8701 (MCO) Orlando Intl, Orlando, FL. ILS RWY 36R CAT II and CAT III, AMDT 5

FDC 6/8693 (CMX) Houghton County Memorial, Hancock, MI. ILS RWY 31 AMDT 12B

FDC 6/8721 (RDD) Redding Muni, Redding, CA. VOR OR GPS RWY 34 AMDT 10B

FDC 6/0456 (STL) Lambert-St Louis Intl, St Louis, MO. ILS RWY 12L, AMDT 3

FDC 6/8827 (Y31) West Branch Community, West Branch, MI. WOR RWY 27, ORIG–A

FDC 6/8821 (BNO) Burns Muni, Burns, OR. VOR or GPS RWY 31, AMDT 2

FDC 6/8778 /PAH/FI/P Barkley Regional, Paducah, KY. ILS RWY 4, AMDT 7A...Delete MM. MIN ALT DAREL INT TO CNG VORTAC/HABAN OM: 1700. This is ILS RWY 4, AMDT 7B.

FDC 6/8804 /87I/FI/P Yazoo County, Yazoo City, MS. VOR/DME OR GPS RWY 35, ORIG...MNM ALT ON CCLKWS 15 DME ARC R–049 to R–321 Increased from 2000 FT MSL to 2400 FT MSL. This becomes VOR/DME OR GPS RWY 35, ORIG–A.

FDC 6/8806 /PBI/ FI/P Palm Beach Intl, West Palm Beach, FL. LOC BC RWY 27R, AMDT 12...Change note to read: DME or radar and ADF required. This is LOC BC RWY 27R, AMDT 12A.

FDC 6/8741 /MYR/ FI/P Myrtle Beach Intl, Myrtle Beach, SC. RADAR–1, ORIG * * * Circling MDA 580/HAA 554 CAT C, Circling East of RWY 17–35 Not Authorized. This is RADAR–1, ORIG–A.

FDC 6/8700 /ORL/FI/P Executive, Orlando, FL. LOC BC RWY 25, AMDT 19 * * * ADF and radar required. This is LOC BC RWY 25, AMDT 19A.

FDC 6/8701 /MCO/FI/P Orlando Intl, Orlando, FL. ILS RWY 36R 'CAT II and CAT III' AMDT 5 ADF and radar required. This is ILS RWY 36R~ 'CAT II and CAT III' AMDT 5A.

FDC 6/8693 /CMX/FI/P Houghton County Memorial, Hancock, MI. ILS RWY 31 AMDT 12B * * * Delete all reference to middle marker. This is ILS RWY 31 AMDT 12C.

FDC 6/8721 /RDD/FI/P Redding Muni, Redding, CA. VOR OR GPS RWY 34 AMDT 10B DME MNMS circling CAT A MDA 920, * * * HAA 418. CHG ALT MNMS note to read: CATS A and B standard, CAT 800–2 1/4, CAT D 800 2 1/2. This is VOR OR GPS RWY 34 AMDT 10C.

FDC 6/0456 /STL/FI/P Lambert-St Louis Intl, St Louis, MO. ILS RWY 12L, AMDT 3 Eubie Int to Faris Int: 122.19. Faris Int to Greep Int: 122.19 FAC: 122.19. This is ILS RWY 12L, AMDT 3A.

FDC 6/8827 /Y31/FI/P West Branch Community, West Branch, MI. VOR RWY 27 Orig–A * * * Delete DME MNMS. Delete Note: *1560 When using Saginaw ALSTG. Delete BXZ VOR/DME 4 DME–1360*. This is VOR RWY 27 Orig-B.

FDC 6/8821 /BNO/FI/P Burns Muni, Burns, OR. VOR OR GPS RWY 30 AMDT 2 * * * Delete: Obtain Local ALSTG from Redmond Radio; When not available, PROC NA. Delete: Activate MIRL and VASI'S RWY 12/30 on UNICOM. Change missed approach to read ''Climbing right turn to 6000 in ILR VOR/DME Holding Pattern. ALTN MNMS Standard, CAT D 800–22¼. Chart: ASOS 135.525. This is VOR OR GPS RWY 30 AMDT 2A.

[FR Doc. 96–30999 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28740; Amdt. No. 1769]

RIN: 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPS contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on November 29, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Jan. 30, 1997.*

Naples, FL, Naples Muni, VOR or GPS RWY 5, Amdt 5 CANCELLED
Naples, FL, Naples Muni, VOR RWY 5, Amdt 5
Naples, FL, Naples Muni, VOR or GPS RWY 23, Amdt 6 CANCELLED
Naples, FL, Naples Muni, VOR RWY 23, Amdt 6
Taylorville, IL, Taylorville Muni, NDB or GPS RWY 18, Amdt 3 CANCELLED
Taylorville, IL, Taylorville Muni, NDB RWY 18, Amdt 3
Perkasie, PA, Pennridge, VOR or GPS RWY 8, Amdt 1 CANCELLED
Perkasie, PA, Pennridge, VOR RWY 8, Amdt 1
Houston, TX, Ellington Field, VOR/DME or TACAN or GPS RWY 22, Amdt 2 CANCELLED
Houston, TX, Ellington Field, VOR/DME or TACAN RWY 22, Amdt 2

[FR Doc. 96–30998 Field 12–4–96; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61, 63 and 70

[AD–FRL–5658–4]

Clean Air Act Final Interim Approval, Operating Permits Program; State of Alaska and Clean Air Act Final Approval in Part and Disapproval in Part, Section 112(l) Program Submittal; State of Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Interim Approval, and Final Approval in Part and Disapproval in Part.

SUMMARY: EPA grants final interim approval of the operating permits program submitted by the Alaska Department of Environmental Conservation for the purpose of complying with federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EPA also grants final approval in part and disapproval in part of the program submitted by the Alaska Department of Environmental Conservation for the purpose of implementing and enforcing the hazardous air pollutant requirements under section 112 of the Act.

EFFECTIVE DATE: December 5, 1996.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval, and the approval in part and disapproval in part, are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Office of Air Quality, OAQ–107, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; telephone (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Title V—Background

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

EPA must apply sanctions to a State 18 months after EPA disapproves the program. In addition, discretionary sanctions may be applied any time during the 18-month period following the date required for program submittal or program revision. If the State has no approved program two years after the date required for submission of the program, EPA will impose additional sanctions, where applicable, and EPA must promulgate, administer, and enforce a federal permits program for the State. EPA has the authority to collect reasonable fees from the permittees to cover the costs of administering the program.

On May 31, 1995, the Alaska Department of Environmental Conservation (referred to herein as ''ADEC,'' ''the Department,'' ''Alaska'' or ''the State'') submitted a title V program for EPA review and approval. EPA notified the State in writing on July 13, 1995, that the submittal was complete. The State submitted additional information to EPA to supplement its May 31, 1995, submittal on August 16, 1995, February 6, 1996, February 27, 1996, July 5, 1996, and August 2, 1996. EPA considered these supplemental submittals to be a material change to ADEC's May 31, 1995, program submittal and extended its official review period by 8 months to January 31, 1997. On September 18, 1996, EPA proposed to grant interim approval to Alaska's title V program. *See* 61 FR 49091. EPA received several comments on its proposal, which are discussed in section II below.

B. Section 112—Background

Section 112(l) of the Act established new, more stringent requirements for a State or local agency that wishes to implement and enforce a hazardous air pollutant program pursuant to section 112 of the Act. Prior to November 15, 1990, delegation of NESHAP regulations to State and local agencies could occur without formal rulemaking by EPA. However, the new section 112(l) of the Act requires EPA to approve State and local hazardous air pollutant rules and programs under section 112 through formal notice and comment rulemaking. Now State and local air agencies that wish to implement and enforce a federally-approved hazardous air pollutant program must make a showing to EPA that they have adequate authorities and resources. Approval is granted by EPA through the authority contained in section 112(l), and implemented through the federal rule found in 40 CFR part 63, subpart E, if the Agency finds that: (1) The State or local program or rule is ''no less stringent'' than the corresponding federal rule or program, (2) adequate authority and resources exist to implement the State or local program or rule, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the State or local program or rule is otherwise in compliance with federal guidance.

On May 17, 1995, the State requested delegation for all existing applicable 40 CFR parts 61 and 63 regulations as adopted by reference into 18 AAC 50.040. The State also requested authority to implement and enforce all future 40 CFR part 61 and 63 regulations which Alaska adopts by reference into State law. Finally, the State requested approval under the authority of 40 CFR 63.93 to substitute its State preconstruction review program regulations for the federal preconstruction review regulations in 40 CFR 63.5(b)(2)–(4) and 63.54, as these rules apply to newly constructed major affected sources or the construction of a new emission unit. The State amended its May 17, 1995 delegation request on February 27, 1996 and July 5, 1996 to include additional part 61 and part 63 regulations adopted by reference into 18 AAC 50.040.

In this notice, EPA is taking final action to promulgate interim approval of the operating permits program for the State of Alaska, and to approve in part and disapprove in part the Alaska program for implementing section 112 of the Act. EPA is also responding to comments received on the September 18, 1996, proposal.

II. Changes to Regulations and Response to Comments

A. Changes to Alaska's Regulations

On October 17, 1996, ADEC submitted a final version of the State's regulations which were adopted on September 17, 1996. These regulations included numerous editorial changes from the version that was submitted on August 2, 1996. EPA has reviewed this final version and finds, with the exceptions noted below in the response to public comment, that the editorial changes do not affect any of the preliminary decisions made in EPA's notice of proposed interim approval.

B. Response to Public Comment on Proposed Interim Approval of Alaska's Title V Program

Most of the comments EPA received on the September 18, 1996, Federal Register notice addressed EPA's proposed interim approval of Alaska's title V program. All of the comments supported interim approval of the program. EPA received comments from four oil and gas companies, two branches of the Department of Defense, a coalition of Alaska industries, and the Alaska Department of Environmental Conservation. The following summarizes the comments received and provides EPA's responses thereto.

1. Comments Relating to the State Implementation Plan

Several comments addressed regulations that do not relate to Alaska's title V program. Two commenters requested that EPA exclude 18 AAC 50.100(b) through (e) from approval under title V. EPA agrees that these provisions, which regulate sulfur dioxide emissions from nonroad engines, are not related to title V operating permits requirements and are not covered under this interim approval. These provisions will be acted on by EPA in a separate rulemaking if they are re-submitted by the State as a revision to the Alaska state implementation plan (SIP).

One commenter voiced opposition to the fuel restrictions for nonroad engines contained in 18 AAC 50.100(b) through (e). As discussed above, these provisions are not title V requirements and have not been proposed for approval by EPA as part of Alaska's title V program. Therefore, the comment is not germane to this action.

Similarly, one commenter voiced concern with respect to a change to the State's opacity standards and the State's new provisions for excess emissions due to routine operations like soot blowing, start-up, or shutdown. Again, these provisions are not title V requirements and have not been proposed for approval by EPA as part of Alaska's title V program. Therefore, the comment is not germane to this action.

2. Sources Subject to the Federally-Approved Program

One commenter requested that EPA clarify in its final action that operating permits required for the Anchorage Terminal bulk loading facility under 18 AAC 50.325(d) would not be considered federal title V operating permits but only State operating permits. EPA disagrees. Part 70 states, ''A State program with whole or partial approval under this part must provide for permitting of *at least* the following sources.'' 40 CFR 70.3(a) (emphasis added). Therefore, a State is authorized to include in its federally-approved title V program more sources than are required to be covered under 40 CFR 70.3. 18 AAC 50.325 sets forth the categories of sources that are required to obtain operating permits under State law and this entire section has been submitted to EPA as part of Alaska's title V submittal. There is nothing in the submittal from the State nor in the State's rules themselves that would distinguish sources listed in 18 AAC 325(d) from other sources required to obtain federal title V permits. (Compare, for example, the language of 18 AAC 50.325(d) to that of 50.325(c), which covers sources subject to parts C and D permits and which are also required to have title V permits under section 502(a) of the Act and 40 CFR 70.3.) Although the State could clearly amend its regulations and program submittal in the future to exempt from its title V program sources that are not required to have title V permits as a matter of federal law, EPA can only act on what has been formally submitted at this time. Therefore, until such time as the Alaska program is revised, all sources required to have operating permits under 18 AAC 50.325 are required to have federal operating permits under title.

3. Definition of ''Regulated Air Contaminant''

In the September 18, 1996, proposal, EPA stated that the Alaska definition of ''regulated air contaminant'' in AS 46.14.990(21) appeared to be narrower in scope than EPA's definition of ''regulated air pollutant'' in 40 CFR 70.2. *See* 61 FR 49094–49095. The State of Alaska questioned whether this issue is an ''applicability'' issue, the heading

EPA used for the discussion in the September proposal. EPA believes the State misunderstood EPA's use of the term ''applicability.'' EPA agrees that the difference in the two definitions does not affect the sources that are required to obtain a title V operating permit. The narrower scope of the Alaska definition, however, does impact the applicability of the requirements of Alaska's title V rules. As the State's own analysis shows, the applicability of certain requirements, specifically requirements for permit applications and off-permit changes, will be affected by the difference in the two definitions. Therefore, as discussed in the proposed interim approval, EPA still believes that the Alaska definition of ''regulated air contaminant'' is inconsistent with EPA's definition of ''regulated air pollutant'' and must be changed to receive full approval. EPA is clarifying, however, that this difference does not affect the sources required to have permits, but rather the applicability of certain requirements of the permitting program to sources required to have title V permits.

4. EPA-Issued Permits

One commenter requested clarification on EPA's discussion of the status of EPA-issued PSD permits. As discussed in the proposed interim approval, terms and conditions of EPA-issued PSD permits are applicable requirements which must be included in title V permits and the Alaska rules include the necessary provisions to ensure this occurs. *See* 61 FR 49093. The commenter expressed concern, however, that many terms and conditions of the old EPA-issued permits are obsolete, environmentally insignificant, or otherwise no longer appropriate, and requested clarification as to how such terms could be excluded from the title V permit or revised through the title V permitting process. EPA agrees that terms and conditions in some EPA-issued PSD permits and old preconstruction permits issued by States may no longer be appropriate or applicable, and therefore need not be included in a source's title V permit. As the commenter noted, EPA has issued guidance with respect to how sources and permitting authorities may utilize the title V permitting process to address this issue. See Section II.B.7 of the ''White Paper for Streamlined Development of Part 70 Permit Applications,'' from Lydia N. Wegman to Air Office Directors, dated July 10, 1995 (White Paper No. 1). This memorandum provides guidance on how to identify and address terms and conditions which are obsolete, environmentally insignificant, or otherwise no longer appropriate. White Paper No. 1 clearly states, however, that the title V permit issuance process cannot be used to revise terms and conditions that still clearly apply to the source. Such revisions must be made using revision procedures under the applicable new source review program, but may be done concurrently with the title V permit issuance process. EPA commits to working with the State and with sources in Alaska to identify provisions of EPA-issued PSD permits that are obsolete, environmentally insignificant, or otherwise no longer appropriate, and to act expeditiously on requests for permit revisions.

5. Authority to Implement Section 112 Requirements

In the September 18, 1996, Federal Register notice, EPA noted that Alaska lacked authority to implement several section 112(l) requirements, but believed that these deficiencies were not so serious as to warrant disapproval. 61 FR 49095. Alaska commented that the September 17, 1996, final version of the adopted State rules included the adoption by reference of 40 CFR 61.150 and 40 CFR 61.154 and asked that EPA remove the specific interim approval conditions related to these provisions. EPA agrees that the adoption of these two provisions remedies the deficiencies regarding implementation and enforcement of the asbestos NESHAP for waste disposal and active waste disposal sites.[1] Alaska has still not adopted, however, the provisions of 40 CFR part 61, subpart I (radionuclide NESHAP for facilities licensed by the Nuclear Regulatory Commission). Therefore, the State still lacks sufficient authority to implement all applicable section 112 requirements for title V sources in Alaska. As such, EPA concludes that the Alaska program must be granted interim rather than full approval because of this deficiency.

6. Insignificant Emission Units.

In the September 18, 1996, Federal Register notice, EPA raised two concerns with respect to Alaska's insignificant source regulations. *See* 18 AAC 50.335(m), 50.335(q)–(v), and 50.335(m). EPA received comments on both issues.

a. ''Director's discretion'' provision. EPA's first concern with Alaska's insignificant source regulations related to 18 AAC 50.335(u), which contains a list of sources that may be determined to be insignificant on a case-by-case basis. EPA stated that, before EPA could approve such a ''director's discretion'' provision, Alaska must demonstrate that each of the sources on the list would qualify as ''insignificant'' in all cases. 61 FR 49095. One commenter objected to this concern, stating that the list of sources in 18 AAC 50.335(u) narrowly defines the type and size of sources eligible for case-by-case exemption and that EPA's concern with over broad delegation was unwarranted. EPA continues to believe for the reasons discussed at 61 FR 49095 that 18 AAC 50.335(u), as submitted at the time of EPA's proposed action, was unapprovable. As the commenter notes, however, Alaska has since revised 18 AAC 50.335(u) and eliminated all but two of the sources eligible for case-by-case treatment as insignificant sources: (1) NPDES permitted ponds and lagoons used solely for settling solids and skimming oil and grease; and (2) coffee roasters with capacity of less than 15 pounds per day of coffee. *See* 18 AAC 50.335(u) (adopted September 17, 1996). EPA agrees that Alaska has adequately demonstrated that these two sources could qualify as insignificant sources in all cases. Therefore, the concern raised by EPA in the proposal regarding the scope of 18 AAC 50.335(u) has been resolved and is no longer a basis for interim approval.

b. Exemption from monitoring, recordkeeping, reporting, and compliance certification requirements. The second concern raised by EPA in the proposed interim approval was Alaska's express exemption of insignificant sources that are subject only to generally applicable requirements from the monitoring, recordkeeping, reporting, and compliance certification requirements set forth in 40 CFR 70.6. *See* 18 AAC 50.350(m)(3). In the proposal, EPA explained why it believes that part 70 does not allow such sources to be exempt from the monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6, but that part 70 instead provides only a limited exemption from some permit application requirements for insignificant sources. 61 FR 49096–49097.

EPA also discussed EPA's March 5, 1996, guidance document entitled ''White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program'' from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, to Regional Air Directors (''White Paper No. 2''), which specifically addresses how title V permits can address

[1] As discussed in section III.B.1. below, however, EPA has continuing concerns regarding the lack of training of ADEC staff who will be performing asbestos inspections.

insignificant emission units and activities subject to generally applicable requirements in a State implementation plan in a manner that minimizes the burden associated with the permitting of such emission units and activities. Briefly summarized, White Paper No. 2 makes clear that it is within the permitting authority's discretion to decide the extent to which additional monitoring (beyond that provided in the applicable requirement itself) will be required in the title V permit for insignificant emission units or activities subject to generally applicable requirements, based on the likelihood that a violation could occur from those emission units or activities. White Paper No. 2, however, in no way suggests that emission units and activities subject to applicable requirements can be exempted from compliance certification, even on a permit-by-permit basis. 61 FR 49096.

EPA also discussed in the September 18, 1996, proposal the effect of the recent Ninth Circuit decision addressing EPA's action on similar insignificant source regulations submitted as part of Washington's title V program. *Western States Petroleum Association* v. *EPA*, 87 F.3d 280 (9th Cir. 1996) (''*WSPA*''). The *WSPA* case concerned EPA's interim approval of the Washington State operating permits program, which also contains an exemption from monitoring, recordkeeping, reporting, and compliance certification requirements for insignificant emission units and activities subject to generally applicable SIP requirements.[2] *See* 60 FR 62992, 62996 (December 5, 1995) (final interim approval of Washington title V program based on exemption of insignificant emission units from certain permit content requirements); 60 FR 50166, 50171 (September 28, 1995) (proposed interim approval of Washington's title V program on same basis). The petitioners in the *WSPA* case challenged EPA's identification of this exemption as grounds for interim approval, asserting that such an exemption was allowed by part 70, and that EPA had acted inconsistently by approving other title V programs with similar exemptions. The Ninth Circuit did not opine on whether EPA's position on Washington's insignificant emission units regulations was consistent with part 70. The Court did, however, find that EPA had acted inconsistently in its title V approvals, and had failed to explain the departure from precedent the Court perceived in the Washington interim approval. The Court then ordered EPA to fully approve Washington's insignificant emission unit regulations. Since the September 18, 1996, proposal, the Ninth Circuit has denied EPA's request for rehearing on the remedy ordered by the Court.

In the Alaska proposal, EPA explained in detail why it believed its inconsistencies in approving State insignificant emission unit provisions in other title V permit programs were minimal. EPA first demonstrated that, of the eight title V programs cited by the *WSPA* Court as inconsistent with EPA's decision on Washington's regulations, four of them (Massachusetts, North Dakota, Knox County, Tennessee, and Florida) were in fact consistent with EPA's position that insignificant sources subject to applicable requirements may not be exempt from permit content requirements. EPA then stated that it was still evaluating for consistency the other four programs cited by the Court as inconsistent with EPA's decision on Washington's program (Hawaii, Ohio, North Carolina, and Jefferson County, Kentucky) and that these four programs may ultimately be determined to impermissibly exempt insignificant emission units from permit content requirements. EPA noted, however, that as of September 1996, EPA had given or proposed to give full or interim approval to 113 State and local title V programs, and that, at most, only Hawaii, Ohio, North Carolina, and Jefferson County, Kentucky, presented inconsistencies with EPA's proposed action on Alaska's insignificant source regulations. EPA concluded that these four potential inconsistencies represented a relatively minor set of deviations from EPA's normal policy as manifested in the vast majority of title V program approvals and in White Paper No. 2. 61 FR 69096–69097.

The commenter raised several issues with respect to EPA's proposal that Alaska eliminate the exemption from monitoring, recordkeeping, reporting, and compliance certification requirements for insignificant sources subject to generally applicable requirements. First, the commenter asserted that the Alaska insignificant source rules satisfy all applicable gatekeepers set forth in part 70 and incorporated by reference the positions stated in petitioners' briefs in the *WSPA* case regarding the criteria for EPA review of State and local title V programs. In essence, the commenter argued that part 70 allows a permitting authority to exempt insignificant sources subject to only generally applicable requirements from the monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6.

EPA has addressed at length its position that part 70 does not allow the exemption of insignificant sources subject to generally applicable requirements from the monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6 in its decisions on the Washington title V program, the Tennessee title V program, the proposal on the Alaska title V program and the United States briefs filed in the *WSPA* case. *See* 61 FR 49091 (proposed interim approval of Alaska title V program); 61 FR 39335 (July 29, 1996) (final interim approval of Tennessee title V program); 61 FR 9661 (March 11, 1996) (proposed interim approval of Tennessee title V program); 60 FR 62992 (final interim approval of Washington title V program); 60 FR 50166, 50171 (September 28, 1995) (proposed interim approval of Washington title V program).[3] EPA incorporates by reference the analysis set forth in those documents. In summary, EPA believes that 40 CFR 70.5 authorizes a permitting authority to grant certain relief for insignificant emission units from title V permit application requirements so long as no application omits any information necessary to determine the applicability of or to impose any applicable requirement or any required fee. Nothing in part 70, however, authorizes a permitting authority to exempt from the title V permit applicable requirements that apply to insignificant emission units; any monitoring, recordkeeping, or reporting necessary to assure compliance with those applicable requirements; and the requirement to certify compliance with all permit terms and conditions, including those that apply to insignificant emission units.

Next, the commenter disagreed with EPA's conclusion that EPA has approved programs that exempt insignificant emission units subject to applicable requirements from some or all permit content requirements in only a handful of cases. Specifically, the commenter argued that the plain language of the Massachusetts and Florida programs exempt insignificant emission units from permit content requirements and that EPA has since taken or proposed action on three additional programs that exempt insignificant emission units from permit content requirements. The commenter also stated that the majority of the 113 programs on which EPA has taken or proposed full or interim approval are silent on whether insignificant emission units must be regulated in title V

[2] The Alaska insignificant source provisions are modeled closely after the Washington provisions.

[3] The briefs filed by the United States in the *WSPA* case are in the docket.

permits and that the decision to exempt such units from monitoring, recordkeeping, reporting, and compliance certification will therefore be made at the time of permit issuance in most of those States.

EPA disagrees with the commenter's assertions. With respect to the Massachusetts and Florida title V programs, EPA acknowledged in the September 18, 1996, Federal Register notice that those programs do appear to exempt insignificant emission units from permit content requirements. That does not end the inquiry, however. In acting on the Massachusetts program, EPA carefully examined the list of exempt activities and determined that the listed activities either named activities that are not subject to applicable requirements or that any applicable requirement implicated by a listed activity was not designed to be implemented by addressing emission units in the permit (such as open burning activities). *See* 61 FR 49096 and ''Addendum to Technical Support Document for Proposed Action on Alaska Title V Program Insignificant Emission Units and Activities,'' dated August 22, 1996. With respect to Florida, EPA explained its view that, in order to remedy the deficiencies identified by EPA in the Florida interim approval notice, which included the State's failure to include gatekeeper language that assured the completeness of permit applications, the State would necessarily have to address the exemption created from permit content requirements. It follows that, to the extent Florida's regulations can be read as creating an exemption from permit content, this should also be considered grounds for EPA's interim approval of Florida's program. 61 FR 49097 and ''Addendum to Technical Support Document for Proposed Action on Alaska Title V Program Insignificant Emission Units and Activities,'' dated August 22, 1996. In short, EPA believes that its decisions on the Massachusetts and Florida title V programs are consistent with its position that part 70 does not allow insignificant emission units subject to applicable requirements to be exempted from monitoring, recordkeeping, reporting, or compliance certification requirements.

EPA also disagrees with the commenter's unsupported and unexplained assertion that EPA's final or proposed actions on the Michigan, New Hampshire, and South Coast Air Quality Management District (South Coast) programs demonstrate that EPA continues to give full approval to title V programs that exempt insignificant emission units from permit content requirements.[4] EPA has carefully reviewed the relevant portions of the regulations, Federal Register notices, and supporting dockets for each these three programs. Each of these programs does contain a limited exemption from certain permit application requirements or the requirement to list certain equipment in the permit. EPA is unaware of any provision in any of these State programs, however, that exempts insignificant emission units subject to applicable requirements from the permit content requirements of 40 CFR 70.6. For a more detailed discussion of EPA's conclusion that the Michigan, New Hampshire, and South Coast programs are consistent with EPA's action on the Alaska program, please refer to the ''Addendum to Technical Support Document for Final Action on Alaska Title V Program Insignificant Emission Units and Activities'' in the docket.

EPA agrees with the commenter that the majority of the 113 title V programs on which EPA has taken or proposed full or interim approval do not expressly state that insignificant emission units subject to applicable requirements are subject to permit content requirements. EPA vigorously disagrees with the inference drawn by the commenter from this fact, namely, that these title V programs implicitly or in practice exempt insignificant emission units from permit content requirements. EPA has made clear in the Federal Register notices acting on the Washington and Tennessee title V programs that part 70 does not allow the exemption of insignificant emission units subject to applicable requirements from the permit content requirements of 40 CFR 70.6. EPA also discussed this position at length in White Paper No. 2. EPA's approval of State and local title V programs has been based on the assumption that the State and local program regulations, which in many cases closely track the language in 40 CFR 70.6, will be interpreted in the same way that EPA has interpreted part 70. In addition, except perhaps in the handful of cases in which EPA may have approved programs which improperly exempt insignificant emission units with applicable requirements from permit content requirements, EPA has required that permits issued for insignificant emission units subject to applicable requirements comply with the requirements of section 70.6.

In short, where a State or local title V program does not specifically exempt insignificant emission units from permit content requirements, EPA has assumed that no such exemption will be inferred and has therefore not objected to this aspect of the program. Where EPA has been concerned that a State or local program could be interpreted to provide such an exemption from permit content requirements, EPA has clarified its expectation in the Federal Register notice acting on such programs that the permitting authorities must ensure that all permits issued ''assure compliance with all applicable requirements at the time of permit issuance.'' *See* 60 FR 32603, 32608 (June 23, 1995); 60 FR 44799, 44801 (August 29, 1995). If, during implementation of such programs, permits are issued which do not comply with the requirements of section 70.6 with respect to insignificant emission units subject to applicable requirements, EPA would consider this grounds for objecting to individual permits, 40 CFR 70.8(c)(1), as well as grounds for withdrawing approval of such State or local programs, 40 CFR 70.10(c)(1)(ii)(B).

In summary, EPA believes that there are only a handful of programs out of the more than 113 that EPA has acted or proposed action on as of this date that either have been confirmed to be inconsistent with part 70 or for which consistency is still an unresolved issue. These are Hawaii, Ohio, North Carolina, and Jefferson County, Kentucky.[5] In other cases, EPA believes that it has been consistent in acting in accordance with the part 70 regulations and EPA's stated policy, as evidenced in the Washington and Tennessee title V interim approvals and White Paper No. 2, of not giving full approval to title V programs that exempt insignificant emission units subject to applicable requirements from some or all permit content requirements.

EPA stated in its September 18, 1996, proposal on Alaska's program that EPA would determine which title V programs are in fact inconsistent with the part 70 requirements regarding inclusion of all applicable requirements in permits, and would act to either bring those programs into consistency with part 70 or to explain any departures. EPA has given further consideration to the treatment of insignificant emission units in title V permits in general since the September 18, 1996, proposal and

[4] The commenter did not explain the assertion that EPA's proposed action on the Alaska program was inconsistent with EPA's proposed or final action on the Michigan, New Hampshire, and South Coast programs. EPA is therefore left to guess at the commenter's concerns.

[5] This list excludes those programs where the inconsistency was identified as an interim approval issue.

plans to address the issue, as well as any potentially inconsistent programs, as follows. EPA intends to publish a notice of proposed rulemaking that will serve two purposes. First, it will propose to add clarifying language to 40 CFR 70.6 that will make clear EPA's position that insignificant emission units that are subject to applicable requirements may not be excluded from part 70 permits and permit content requirements. EPA believes this requirement is clear under the current part 70 regulations, but wishes to put to rest the continuing dispute over the meaning of the current regulations. In this regard, the notice will also reiterate the guidance EPA has provided in White Paper No. 2 regarding possibilities for streamlined treatment of insignificant emission units subject only to generally applicable requirements.

Second, the notice will solicit comment as to whether part 70 should be revised to allow for an approach similar to that taken in the State of Washington and Alaska. EPA believes at this time that it has answered the legitimate implementation concerns associated with this issue. However, some States continue to request additional flexibility. EPA believes these requests deserve a fair hearing, and so will request comments explaining exactly what implementation concerns remain, and how part 70 might be revised to address these concerns. EPA will also request comment on how, if part 70 were to be amended, rule language could be crafted to retain appropriate limitations and safeguards. Specifically, EPA will seek to understand how part 70 could be structured so that (1) excluded units would be truly small and (2) the flexibility to exclude subject units would be limited to requirements that are truly generic, that is, universally applicable.

EPA expects that this rulemaking will result in either the addition of clarifying language that confirms EPA's interpretation of the current part 70 regulations, or in revisions to part 70 that will allow a new level of flexibility for insignificant emission units subject to generally applicable requirements. In either case, programs that are inconsistent with part 70 as it stands at the conclusion of this forthcoming rulemaking will be required to submit program corrections within a specified time period. Although EPA has authority to require inconsistent programs to make corrections more expeditiously, EPA does not wish to make States conduct serial program adjustments on the same issue. Given the narrow scope of the forthcoming rulemaking, EPA believes it can be finalized relatively quickly.

EPA believes that it can best ensure the consistency required by the Ninth Circuit in the *WSPA* case by requiring Alaska to meet the same requirements under the current part 70 regulations that EPA has applied to all but perhaps a handful of title V programs, namely, that insignificant emission units subject to applicable requirements may not be exempted from the monitoring, recordkeeping, reporting or compliance certification requirements of 40 CFR 70.6. As discussed below, Alaska will have 18 months to address this and all other interim approval issues identified in this final interim approval. This should give EPA sufficient time to complete the forthcoming rulemaking discussed above for insignificant emission units and also give Alaska sufficient time to respond to this forthcoming rulemaking before expiration of the two year interim approval period.

c. Additional issues on insignificant emission units. One commenter raised several other concerns regarding EPA's proposed interim approval of Alaska's regulations for insignificant sources. The commenter stated that EPA incorrectly asserted that 18 AAC 50.335(m) requires the inclusion of emission data, such as monitoring data, for insignificant emission units in the final permit. EPA is uncertain of the language in the proposal that led to the commenter's concern. 18 AAC 50.335(m) requires a permit application to contain reasonable documentation consistent with the requirements of Alaska's title V regulations to verify the accuracy and adequacy of the information submitted in the permit application, including calculations on which the information is based. That provision also states that an application may not omit information needed to determine the applicability of or to impose any applicable requirement or to impose any fee, the so-called ''applicable requirements gatekeeper'' required by 40 CFR 70.5. EPA stated that this ''applicable requirements gatekeeper'' applied to insignificant sources, 61 FR 49095, and it is perhaps this language that concerned the commenter. EPA did not intend, by this statement, to imply that a permit application must contain all information identified by 18 AAC 50.335(m), such as emission data, for insignificant sources. Instead, EPA intended to emphasize that the requirement that an application may not omit information necessary to determine the applicability of or to impose an applicable requirement or a fee applies to insignificant sources as well as to other sources. This is made clear in 18 AAC 50.335(q)(2) through (4) as well.

The commenter also asserted that Alaska's regulations for insignificant sources adequately ensure that insignificant sources that increase emissions so as to cause them to fall outside of the regulatory definition of an insignificant source must then be treated as significant and be included in the operating permit. EPA agrees that the Alaska program is adequate to ensure that insignificant sources which increase emissions so as to be considered significant will be appropriately addressed in the operating permit.

The commenter next states that ''EPA's position is that a facility must forever verify that (insignificant sources) do not increase their emissions and violate SIP requirements.'' The commenter suggests that EPA's position that insignificant sources may not be exempt wholesale from monitoring, recordkeeping, reporting and compliance certification requirements means that sources will have to constantly monitor insignificant sources. EPA has never stated or implied that facilities must engage in constant and costly monitoring of insignificant sources. To the contrary, in acknowledgement of the legitimate concern raised by the commenter, EPA has given clear guidance on how insignificant sources subject to applicable requirements can be addressed in title V permits in a manner that minimizes the burden associated with the permitting of such sources. *See* White Paper No. 2.

The commenter next states that ''EPA would be satisfied if Alaska established a regulatory presumption that (insignificant sources) normally maintain emissions that are insignificant.'' The commenter appears to have misinterpreted some language in the September 18, 1996, proposal. EPA stated that a State could meet the monitoring, recordkeeping, and reporting requirements for insignificant sources subject to generally applicable requirements by establishing a regulatory presumption that no additional monitoring, recordkeeping, and reporting is necessary for such sources to assure compliance, so long as the State had the authority to impose such requirements on a case-by-case basis if necessary to ensure compliance. 61 FR 49096 n. 4. This is one method EPA has suggested by which a State can meet the monitoring, recordkeeping, and reporting requirements of 40 CFR 70.6 for insignificant sources in a

manner that imposes minimal burden on sources and the permitting agency.

The commenter also stated that the present Alaska program sufficiently prevents insignificant sources from violating applicable requirements. Enhancing and ensuring compliance is indeed a major goal of the title V program. Congress and EPA insisted on certain program elements, however, to achieve that goal. As discussed above, part 70 requires permits to contain terms and conditions necessary to assure compliance with all applicable requirements and requires sources to certify compliance with all permit terms and conditions. Part 70 contains no exemption for insignificant emission units subject to applicable requirements. The Alaska program contains such an exemption and therefore does not meet the requirements of part 70 for permit content.

7. Inspection and Entry Requirements

One commenter objected to EPA's concern that Alaska's entry and inspection requirements do not appear to meet the requirements of 40 CFR 70.6(c)(2). That provision states that all title V permits must contain ''(i)nspection and entry requirements that require that, upon the presentation of credentials and *other documents as may be required by law*, the permittee shall allow the permitting authority or an authorized representative'' to conduct specified entry, inspection, copying, and sampling functions (emphasis added).

The comparable provision of Alaska law requires title V permits to contain the following provision:

> The permittee shall allow an officer or employee of the department or an inspector authorized by the department, upon presentation of credentials and at reasonable times *with the consent of the owner or operator* to (conduct specified entry, inspection, copying, and sampling functions).

18 AAC 50.345(7) (emphasis added). *See also* AS 46.14.515 (statute authorizing inspections of air emission sources ''upon presentation of credentials and at reasonable times *with the consent of the owner or operator*) (emphasis added); AS 46.03.02(6) (same). Where an owner or operator does not grant consent, the permitting authority must obtain a warrant under AS 46.03.860.

In the September 18, 1996, Federal Register notice, EPA expressed concern that Alaska law explicitly required that owners or operators consent to an inspection or that the Department obtain a warrant. 61 FR 49097. EPA therefore proposed to require, as a condition of full approval, that Alaska demonstrate to EPA's satisfaction that its provisions for entry and inspection meet the requirements of part 70.

In objecting to EPA's proposal, the commenter stated that the ''other documents as may be required by law'' language of 40 CFR 70.6(c)(2) includes ''the requirement under state law to present a warrant prior to entry in cases where consent has been withheld by an owner or operator.'' The commenter further stated that Alaska law simply codifies the fundamental constitutional protections against unreasonable search and seizure.

The language in part 70 concerning authority for inspection and entry is almost identical to the language that has been required in EPA- and State-issued permits under the Clean Water Act, the Resource Conservation and Recovery Act (RCRA), and the Underground Injection Control (UIC) program since 1980. *See* 40 CFR 122.41(i); 144.51(i); 270.30(i); *see also* 45 FR 33290 (May 19, 1980). In responding to commenters' concerns in the promulgation of the Clean Water Act, RCRA, and UIC regulations that this language did not incorporate a requirement for the presentation of a warrant, EPA stated:

> Several commenters stated that the provision should incorporate the legal principles set forth in *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307 (1978), relating to the necessity for presentation of a warrant under appropriate circumstances. Some commenters feared that by including entry and inspection requirements as a permit condition, EPA might be requiring permittees to waive certain rights under the Fourth Amendment to the United States Constitution. It is not EPA's intent to deprive any permittee of its Fourth Amendment rights as interpreted by Supreme Court decisions. However, we have retained the general wording requiring ''presentation of credentials and such other documents as may be required by law'' because of the complexity and changing nature of this area of law, and the possibility that any particular formulation or citation could be inaccurate or inapplicable.

45 FR 33304–33305.

That the ''other documents as required by law'' language is included in EPA-issued permits issued under most EPA programs[6] makes clear that the relevant inquiry is what documents are required as a matter of Federal law as a condition of the right to enter and inspect a title V source and not, as the commenter asserts, what other documents may be required as a matter of State law. This is also clear from EPA's response to comments quoted above. EPA believes the same is true under 40 CFR 70.6(c)(2). The purpose of title V and part 70 is to set forth minimum requirements for approval of State programs. EPA's clear intent to set the Federal requirements for entry and inspection as the minimum standard in order to prevent States from imposing additional restrictions on the permitting authority's right to enter and inspect. Thus, for example, to the extent a State requires a warrant as a condition of entry where none is required as a matter of Federal law, EPA believes the State program would not qualify for full title V approval. Similarly, if a State imposes restrictions on obtaining a warrant that are more burdensome than the requirements for obtaining a warrant under Federal law, the State program would not qualify for full approval.

EPA does not necessarily agree that *Marshall* v. *Barlow's* precludes warrantless inspections under section 114 of the Clean Air Act. *See New York* v. *Burger*, 482 U.S. 691 (1987) (warrantless search of automobile junkyard conducted pursuant to a State statute authorizing inspection of such commercial property falls within exception to the warrant requirement for administrative inspections of pervasively regulated industries). EPA's long-standing policy in conducting inspections under the Clean Air Act, however, is to first seek the consent of the owner or operator before entering and inspecting a facility and, if such consent is denied, to obtain a warrant to confirm EPA's statutory authority to enter and inspect. *See* Memorandum entitled ''Effect of Supreme Court Decision in *Marshall* v. *Barlow's, Inc.*, on EPA Information Gathering Authority,'' from EPA General Counsel to Assistant Administrators, dated June 29, 1978 (hereinafter, ''*Barlow* OGC Memo''); Memorandum entitled ''Conduct of Inspections After the *Barlow's* Decision,'' from EPA Assistant Administrator for Enforcement to Regional Administrators, dated April 11, 1979 (hereinafter, ''*Barlow* OE Memo''). This is based on EPA's belief that it is less resource intensive in the long run to take the precautionary action of obtaining a warrant than it would be to litigate the issue under each of the environmental laws.

Although Alaska law, at first glance, appears consistent with EPA's policy, EPA remains concerned that Alaska law may be more restrictive than federal law. There are several areas where a right of warrantless entry clearly exists under federal law. For example, a warrantless inspection is permissible in emergencies, such as situations involving potential imminent hazards or

[6] The same language is also used in the regulation setting forth the requirements for title V permits issued by EPA under part 71. *See* 40 CFR 71.6(c)(2).

the potential destruction of evidence. *See Camera* v. *Municipal Court,* 387 U.S. 523 (1967); *see also Barlow* OGC Memo, p. 2, n. 4; *Barlow* OE Memo, p. 5. Furthermore, under the ''open fields'' and ''plain view'' doctrines, observations by inspectors of things that are able to be seen by anyone in lawful position or place to make such observations do not require a warrant. *See Dow Chemical Company* v. *United States,* 476 U.S. 227, 238 (1986); *Oliver* v. *United States,* 466 U.S. 170, 179 (1984); *Reeves Brothers, Inc.* v. *EPA,* No. 94–0053–L (W.D. Va. April 11, 1995); *see also Barlow* OE Memo, p. 6. The express requirement in AS 46.14.515 and 18 AAC 50.345(7) that an owner or operator consent to an inspection could be interpreted to constrain these clear exceptions to the warrant requirement. For example, Alaska law could be interpreted to require the consent of an owner or operator before a Department inspector enters property that would otherwise be classified as ''open fields'' and from which an inspector would be authorized under Federal law to gather information and conduct observations without a warrant. Moreover, as discussed above, warrants are not required for administrative searches of pervasively regulated industries under certain circumstances. *See New York* v. *Burger,* 482 U.S. 691. In addition, an Alaska Supreme Court case cited by the Alaska Attorney General as well as the commenter states that the protections afforded by the Alaska Constitution against warrantless entry are greater than provided by the Fourth Amendment. *See Woods and Rhode, Inc.* v. *Department of Labor,* 565 P.2d 138, 148 (Alaska 1977). EPA therefore continues to believe that Alaska must demonstrate to EPA's satisfaction, as a condition of full approval, that the restrictions on its authority to enter, inspect, copy records, and sample do not exceed the restrictions that apply as a matter of federal law under 40 CFR 70.6(c)(2).

8. Compliance Certification

In the proposal, EPA stated that Alaska's provisions regarding compliance certification do not appear to comply with the requirements of 40 CFR 70.6(c)(5), which requires compliance certification ''with terms and conditions contained in the permit, including emission limitations, standards, and work practice requirements.'' The Alaska regulations require compliance certification only with specified requirements. *See* 61 FR 49098. One commenter stated that the phrase ''including emission limitations, standards, or work practices'' in 40 CFR 70.6(c)(5) is an exclusive list of the conditions in a permit that require certification. EPA vigorously disagrees. The phrase must be read in context of the entire provision, which states that a permit shall contain ''Requirements for compliance certification with *terms and conditions contained in the permit,* including emission limitations, standards, or work practices.'' (emphasis added). The phrase ''terms and conditions contained in the permit'' is all inclusive and covers all applicable requirements and other provisions required by part 70 to be contained in a permit, not just emission limitations, standards, or work practices. For example, a requirement in 40 CFR part 60 that a source install, maintain, and operate continuous emission monitors in conformance with certain performance specifications is a monitoring requirement of an applicable requirement that requires a compliance certification. Similarly, compliance with ''gapfilling'' monitoring, recordkeeping, or reporting required under 40 CFR 70.6(a) is a part 70 requirement that requires certification.

In further support of its position, the commenter points to language in 40 CFR 70.6(c)(5)(iii)(A) stating that compliance certifications must include an ''identification of each term or condition of the permit *that is the basis of the certification.*'' The commenter believes this language implies that not all terms and conditions need be identified in the certification. Again, EPA disagrees. It would be both unreasonable and inconsistent with section 504(c) of the Act if a source was not required to certify compliance with otherwise applicable requirements and part 70 requirements contained in a title V permit. Therefore, EPA maintains that the Alaska provisions for compliance certification fail to comply with the requirements of 40 CFR 70.6(c)(5) and must be revised in order to receive full approval.

9. Affirmative Defense for Emergencies

In the proposal, EPA stated that Alaska's affirmative defense for unavoidable emergencies, malfunctions, and nonroutine repairs was broader than the affirmative defense allowed under part 70 for emissions in excess of technology-based standards due to emergencies under 40 CFR 70.6(g) for two reasons, the definition of technology-based standards and the reporting period. *See* 61 FR 49098. One commenter argued that Alaska's emergency provisions are consistent with 40 CFR 70.6(g), although the commenter addressed only one the definition of technology-based standard. Specifically, the commenter stated that the use of the word ''primarily'' in the Alaska definition of ''technology-based emission standard'' is consistent with part 70. EPA disagrees. EPA defines a technology-based standard as one for which the stringency of the standard is not based on considerations of air quality impacts of the source or source category in question, but instead based on a determination of what is technologically feasible. 59 FR 45530, 45559 (August 31, 1995). The Alaska definition, however, could allow many SIP emission limitations to be considered to be technology-based emission standards. The determination of emission limitations needed to ensure attainment and maintenance of NAAQS necessarily includes consideration of what is technologically feasible for sources contributing to the air quality problem, and in many cases the final emission limitations are based entirely on what is technologically feasible. However, such SIP emission limitations are considered to be health-based emission limitations and not technology-based emission standards since they are specifically established to ensure attainment and maintenance of the NAAQS. Furthermore, many emission limitations in PSD permits are set at levels equivalent to that of ''best available control technology'' (BACT) limits. However, emission limits in PSD permits whose purpose is to protect the NAAQS and PSD increments are considered health-based emission limitations, even if they are identical in stringency to the BACT limits. Therefore, EPA continues to believe that the Alaska emergency provisions are inconsistent with the requirements of 40 CFR 70.6(g) and must be revised in order to obtain full approval.[7]

10. Minor Permit Modification Procedures

One commenter requested clarification regarding EPA's finding that the State's provisions for minor permit modifications do not conform to EPA's requirements regarding changes to monitoring, reporting, and recordkeeping terms and conditions. EPA's regulations state that ''*every* relaxation of reporting or recordkeeping permit terms shall be considered significant,'' 40 CFR 70.7(e)(4), and must be processed as a significant permit modification. In contrast, the Alaska regulation requires only changes

[7] The commenter did not address EPA's concern that the Alaska regulations allow sources more time than allowed by part 70 to submit notice of an emergency to the permitting authority. *See* 61 FR 49098. This also remains as an interim approval issue.

that ''materially alter or reduce'' the frequency, accuracy, or precision of existing reporting requirements to be processed as a significant permit modification. EPA expressed concern that the Alaska program would allow a relaxation of reporting or recordkeeping requirements to be processed as a minor permit modification so long as the revision did not ''materially alter or reduce'' the frequency, accuracy, or precision of existing reporting requirements. *See* 61 FR 49099. The commenter asked how reporting or recordkeeping could be relaxed without materially altering or reducing the frequency, accuracy, or precision of existing requirements. The term ''materially'' is defined in the Random House Dictionary of the English Language as ''to an important degree; considerably.'' EPA therefore believes that not every change that alters or reduces the frequency, accuracy, or precision of existing requirements would be required to be processed as a significant permit modification under Alaska law. As a result, EPA continues to maintain that the Alaska procedures for minor permit modifications fail to comply with the provisions of 40 CFR 70.7(e) with respect to changes to reporting or recordkeeping requirements.

C. Response to Public Comment on Proposed Section 112 Approval in Part and Disapproval in Part

The only comments EPA received on its proposed actions under section 112 were from the State of Alaska. The State commented on EPA's belief that sources could ''net out'' of State preconstruction review requirements, but could not avoid preconstruction review under the federal program. *See* 61 FR 49102. The State appeared to agree with EPA's interpretation on ''net outs'' but disagrees with EPA's contention that 40 CFR 63.5(b) could be applicable to a source that does not have the potential to emit hazardous air pollutants (HAPs) in quantities greater than major source levels. Regarding the latter, EPA has reviewed this issue in further detail and has concluded that, at present, Alaska's interpretation is correct in that EPA has not set lower quantity cutoffs for defining a major source. Therefore, EPA believes this is no longer grounds for disapproval.

With respect to the fact that sources could ''net out'' of preconstruction review as a matter of State law, Alaska has requested that EPA grant partial approval under the authority of CAA section 112(l) and 40 CFR 63.93 to its rule substitution request in light of the fact that Alaska does not have adequate authority to administer 18 AAC 50.300 for all potential situations where 40 CFR 63.5(b)(3) is applicable. EPA is denying this request for two reasons: (1) Based on previous experience with partial delegations in the PSD program, EPA has found practical implementation of such a system to be cumbersome and one which may place added liability on a source should it fail to obtain approval from the proper agency. In this regard, in order to obtain approval to substitute its State rule, Alaska must amend 18 AAC 50.300 so that it does not allow newly constructed major HAP sources to ''net out'' of state preconstruction review. (2) EPA does not yet have the authority under section 112(l) of the CAA or 40 CFR part 63, subpart E, to approve partial delegation requests of this nature.

III. Final Action and Implications

A. Title V

EPA is promulgating final interim approval of the operating permits program submitted by Alaska on May 31, 1995, and supplemented on August 16, 1995, February 6, 1996, February 27, 1996, July 5, 1996, August 2, 1996, and October 17, 1996. The State must make the following changes to receive full approval.[8]

1. Applicability of Permit Program Requirements

The Alaska definition of ''regulated air contaminant'' in AS 46.14.990(21) is inconsistent with the EPA definition of the term ''regulated air pollutant'' in 40 CFR 70.2 in that it does not adequately cover pollutants required to be regulated under section 112(j) of the Act. As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its definition of ''regulated air contaminant'' is consistent with EPA's definition of ''regulated air pollutant'' in 40 CFR 70.2.

2. Applicable Requirements

The Alaska definition of ''applicable requirement'' does not include all of the EPA regulations implementing title VI (40 CFR part 82) but only subparts B and F. Although EPA has proposed to revise 40 CFR part 70 to limit the definition of ''applicable requirement'' to only those provisions promulgated under sections 608 and 609 of the Act (which EPA has promulgated in 40 CFR part 82, subparts B and F), this proposed revision is not yet adopted. Should EPA revise part 70 as proposed, Alaska's rules will be consistent and no revisions will be needed. However, if EPA does not revise part 70 as proposed, Alaska must adopt and submit appropriate revisions as a condition of interim approval.

3. Authority to Implement Section 112 Requirements

Alaska has not adopted by the requirements of 40 CFR part 61 subpart I (radionuclide NESHAP for facilities licensed by the Nuclear Regulatory Commission). EPA is requiring, as a condition of full approval, that Alaska update its incorporation by reference to include all of the NESHAP that currently apply to title V sources in Alaska.

4. Insignificant Emission Units

The Alaska program improperly exempts insignificant sources subject to applicable requirements from monitoring, recordkeeping, reporting, and compliance certification requirements. Alaska must eliminate this exemption as a condition of full approval.

5. Emissions Trading Provided for in Applicable Requirements

The Alaska program does not contain a provision implementing the part 70 requirement that the permitting authority must include terms and conditions, if the permit applicant requests them, for trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases without a case-by-case approval of each emissions trade. *See* 40 CFR 70.6(a)(10). As a condition of full approval, Alaska must ensure that its program includes the necessary provisions to meet the requirements of 40 CFR 70.6(a)(10).

6. Inspection and Entry Requirements

Part 70 requires each title V permit to contain a provision allowing the permitting authority or an authorized representative, upon presentation of credentials and other documents as may be required by law, to perform specified inspection and entry functions. *See* 40 CFR 70.6(c)(2). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its inspection and entry authority meets the requirements of 40 CFR 70.6(c)(2) and imposes no greater restrictions on the State's inspection authority than exist under federal law.

[8] See the discussion in EPA's proposed interim approval for a full discussion of EPA's findings as to why the Alaska program does not fully meet EPA's requirements in these respects. *See* 61 FR 49096–49100.

7. Progress Reports

The Alaska program does not require the submission of progress reports, consistent with the applicable schedule of compliance and 40 CFR 70.5(c)(8), to be submitted in accordance with the period specified in an applicable requirement. *See* 40 CFR 70.6(c)(4). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its program complies with the requirements of 40 CFR 70.6(c)(4).

8. Compliance Certification.

The Alaska program does not meet the requirements of part 70 that a permitting program contain requirements for compliance certification with terms and conditions contained in the permit, including emissions limitations, standards or work practices. *See* 40 CFR 70.6(c)(5). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its program complies with the requirements of 40 CFR 70.6(c)(5).

9. General Permits

The Alaska provisions for general permits fail to comply with the requirements of part 70 in one respect. The Alaska provisions do not require that applications for general permits which deviate from the requirements of 40 CFR 70.5 otherwise meet the requirements of title V. *See* 40 CFR 70.6(d)(2). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that applications for general permits meet the requirements of title V.

10. Affirmative Defense for Emergencies

The Alaska program does not comply with the requirement of part 70 with respect to the provisions for an affirmative defense to an action brought for noncompliance with a technology-based limitation in a title V permit. The Alaska regulations include a definition of ''technology-based standard'' which is broader than allowed by part 70 and the Alaska program gives a permittee up to one week after the discovery of an exceedence to provide ADEC with written notice rather than within two working days as required by 40 CFR 70.6(g)(3)(iv). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its emergency provisions are consistent with the requirements of 40 CFR 70.6(g).

11. Off-Permit Provisions

The Alaska program does not comply with the part 70 ''off-permit'' provisions which require the permittee to keep a record at the facility describing each off-permit change and to provide ''contemporaneous'' notice of each off-permit change to EPA and the permitting authority. *See* 40 CFR 70.4(b)(14). Although EPA has proposed to revise 40 CFR part 70 to eliminate the off-permit requirements, this proposed revision is not yet adopted. Should EPA revise part 70 as proposed, Alaska's rules will be consistent with part 70 in this respect and no revisions will be needed. However, if EPA does not revise part 70 as proposed, Alaska must ensure that its program requires notice and records for all off-permit changes as a condition of full approval.

12. Statement of Basis

The Alaska program does not require the permitting authority to provide and send to EPA, and to any other person who requests it, a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). *See* 40 CFR 70.7(a)(5). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its program satisfies the requirements of 40 CFR 70.7(a)(5).

13. Administrative Amendments

The Alaska program, which allows alterations in the identification of equipment or components that have been replaced with equivalent equipment or components to be made by administrative amendment, does not comply with the part 70 provisions which authorize States to allow certain ministerial types of changes to title V permits to be made by administrative amendment. *See* 40 CFR 70.7(d). As a condition of full approval, Alaska must revise 18 AAC 50.370(a)(5)(D) to expand the prohibition to include modifications and reconstructions made pursuant to 40 CFR parts 60, 61 and 63, or to eliminate 18 AAC 50.370(a)(5) from the list of changes that may be made by administrative amendment.

14. Minor Permit Modifications

The Alaska program does not comply with the part 70 provisions which require States to establish procedures for minor permit modifications which are substantially equivalent to those set forth in 40 CFR 70.7(e), for several reasons. First, the Alaska program does not ensure that ''every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms shall be considered significant.'' *See* 40 CFR 70.7(e)(4). Second, the Alaska program does not ensure that an application for a minor permit modification must include a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs. 40 CFR 70.7(e)(2)(ii)(A). Finally, the Alaska program fails to include provisions which allow minor permit modification procedures to be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA. *See* 70.7(e)(2)(B). As a condition of full approval, Alaska must demonstrate to EPA that its program includes the necessary provisions to meet the requirements of 40 CFR 70.7(e)(2)(B).

15. Group Processing of Minor Permit Modifications

The Alaska program does not conform with the provisions of part 70 which allow a permitting authority to process as a group certain categories of applications for minor permit modifications at a single source in that the Alaska program does not contain any thresholds for determining whether minor permit modifications may be processed as a group. *See* 40 CFR 70.7(e)(3). As a condition of full approval, Alaska must demonstrate that its group processing procedures are consistent with the requirements of 40 CFR 70.7(e)(3).

16. Significant Permit Modifications

The Alaska program does not address the part 70 requirement that a State provide for a review process that will assure completion of review of the majority of significant permit modifications within 9 months after receipt of a complete application. 40 CFR 70.7(e)(4)(ii). As a condition of full approval, Alaska must provide assurances that its program is designed and will be implemented so as to complete review on the majority of significant permit modifications within this timeframe.

17. Reopenings

The Alaska program provisions for reopenings fail to comply with part 70 in several respects. First, the Alaska program does not require reopening in the event that the effective date of a new applicable requirement is later than the permit expiration date and the permit has been administratively extended. *See* 40 CFR 70.7(f)(1)(i). Second, the Alaska program does not comply with part 70 in that the Alaska program merely authorizes ADEC to reopen a permit

under specified circumstances, where as part 70 requires that a permit be reopened if ADEC or EPA determine such circumstances exist. *See* 40 CFR 70.7(f)(2)(iii). Third, the Alaska program also fails to contain required procedures in the event of a reopening for cause by EPA. *See* 40 CFR 70.7(g)(2) and (4). Finally, the Alaska program does not include provisions assuring that reopenings are made as expeditiously as practicable. *See* 40 CFR 70.7(f)(2). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its provisions for reopenings comply with the requirements of 40 CFR 70.7(f) and (g).

18. Public Petitions to EPA

The Alaska program does not prohibit issuance of a permit if EPA objects to the permit after EPA's 45-day review period (i.e., in response to a petition). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that Alaska's provisions regarding public petitions to EPA comply with the requirements of 40 CFR 70.8(d).

19. Public Participation

The Alaska program does not conform to the part 70 requirement that the contents of a title V permit not be entitled to confidential treatment. *See* 40 CFR 70.4(b)(3)(viii). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that nothing in a title V permit will be entitled to confidential treatment.

This interim approval, which may not be renewed, extends until December 7, 1998. During this interim approval period, Alaska is protected from sanctions, and EPA is not obligated to promulgate, administer, and enforce a federal operating permits program in Alaska. Permits issued under a program with interim approval have full standing with respect to title V and part 70. In addition, the 1-year time period under State law for submittal of permit applications by subject sources and the 3-year time period for processing the initial permit applications begin upon the effective date of this interim approval.

If Alaska fails to submit a complete corrective program for full approval by June 5, 1998, EPA will start an 18-month clock for mandatory sanctions. If Alaska then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Alaska has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of Alaska, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that Alaska has come into compliance. In any case, if, six months after application of the first sanction, Alaska still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Alaska's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Alaska has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Alaska, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Alaska has come into compliance. In all cases, if, six months after EPA applies the first sanction, Alaska has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Alaska has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to Alaska program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for Alaska upon interim approval expiration.

This final interim approval of the Alaska title V program applies to all title V sources (as defined in the approved program) within all geographic regions of the State of Alaska, except within ''Indian Country'' as defined in 18 U.S.C. section 1151. *See* 61 FR 49092, 49101.

B. Authority for Section 112 Implementation

1. Delegation under Section 112

In its title V program submittal, Alaska has demonstrated adequate legal authority to implement and enforce section 112 (hazardous air pollutants (HAPS)) requirements through its title V operating permit process. All Alaska title V permit applications are required to cite and describe each source regulated by a federal emission standard adopted by reference in 18 AAC 50.040 and the standard that applies to the source (18 AAC 50.335(e)(2) and (6)). In addition, all title V permits issued by the State are required to include terms and conditions that assure compliance with the applicable requirements of 18 AAC 50.040 (18 AAC 50.350(d)(1)(A) and (d)(3)).

However, in regard to the delegation of 40 CFR 61.145, EPA is concerned that Alaska does not currently have inspection personnel trained to perform asbestos inspections. EPA believes that proper training is necessary if Alaska is to properly enforce and assure compliance with 40 CFR 61.145. In this regard EPA has requested Alaska to provide for adequate training of its staff who will be performing asbestos inspections. Although EPA is approving delegation of this portion of the asbestos program to Alaska, EPA plans to continually monitor Alaska's asbestos program to ensure that the staff are properly trained and that the program is being properly implemented and enforced.

2. Substitution of State Preconstruction Review Regulations

As stated above, Alaska seeks to replace the federal preconstruction review regulations of 40 CFR 63.5(b)(3) and 63.54 with comparable State-adopted regulations. Alaska adopted 40 CFR 63.5(b)(3), (d) and (e) into 18 AAC 50.040, but did not adopt 40 CFR 63.54. EPA has determined that the State preconstruction review requirements of AS 46.14.130 and 18 AAC 50.300 through 50.322 are less stringent than 40 CFR 63.5(b)(3) and 40 CFR 63.54 as these rules apply to newly constructed major sources of HAPs in an important respect. Unlike 40 CFR 63.5(b)(3), Alaska preconstruction review procedures allow newly constructed sources at an existing facility to ''net out'' of preconstruction review. *See* 61 FR 49102.

3. Section 112(l) Approval, Disapproval and Implications

In conjunction with the actions being taken in regard to Alaska's title V program submittal, EPA is approving the State of Alaska's delegation request of May 17, 1995, as amended on February 25, 1996, July 5, 1996, October 17, 1996, and November 21, 1996, for all existing applicable 40 CFR parts 61 and 63 regulations adopted by reference in 18 AAC 50.040, specifically, 40 CFR part 61 subparts A (except § 61.16), E, J, V, Y, FF, § 61.154 of subpart M, and § 61.145 of subpart M (along with other sections and appendices which are

referenced in § 61.145, as § 61.145 applies to sources required to obtain an operating permit under AS 46.14.130(b)(1)–(3) and 18 AAC 50.330); and 40 CFR part 63 subparts A (except § 63.6(g) and §§ 63.12 through 63.15), B (except §§ 63.50 and 63.54), D, M, N (as it applies to sources required to obtain an operating permit under AS 46.14.130(b)(1)–(3) and 18 AAC 50.330), R, Q, T, Y, CC, DD, II, JJ, and KK, and Appendices A and B.

EPA is also granting approval under the authority of section 112(l)(5) and 40 CFR 63.91 of a mechanism for receiving delegation of future section 112 standards that Alaska adopts unchanged from the federal standards. *See* section 5.1.2.b of EPA's ''Interim Enabling Guidance for the Implementation of 40 CFR part 63'', subpart E, EPA–453/R–93–040, November 1993. Under this streamlined approach, once Alaska adopts a new or revised NESHAP standard into State law, Alaska will only need to send a letter of request to EPA requesting delegation for the NESHAP standard. EPA would in turn respond to this request by sending a letter back to the State delegating the appropriate NESHAP standards as requested. No further formal response from the State would be necessary at this point, and if a negative response from the State is not received by EPA within 10 days of this letter of delegation, the delegation would then become final. Notice of such delegations will periodically be published in the Federal Register.

EPA is disapproving Alaska's request for delegation of authority for approving alternative non-opacity emission standards under 40 CFR 63.6(g) because such authority is reserved for the EPA Administrator and cannot be delegated to a State or local agency. In addition, because the State's request for approval of authority to implement and enforce 40 CFR parts 61 and 63 does not include implementation and enforcement for part 70 exempted sources, EPA will retain the responsibility for implementing and enforcing 40 CFR part 61, subpart M, for area source asbestos demolition and renovation activities, and 40 CFR part 63, subpart N, for area source chromium electroplating and anodizers operations which have been exempted from part 70 permitting in 40 CFR 63.340(e)(1). *See* 61 FR 27785, 27787 (June 3, 1996).

EPA is denying Alaska's request to implement and enforce its State-adopted preconstruction review regulations in 18 AAC 50.300 through 50.322 in place of 40 CFR 63.5(b)(3). EPA is retaining the authority to administer the federal preconstruction review program under 40 CFR 63.5(b)(3) as this rule applies to the construction of a new major affected source; therefore, owners and operators subject to 40 CFR 63.5(b)(3) are still required to obtain EPA approval prior to commencing construction.

Although EPA is delegating authority to Alaska to enforce the NESHAP regulations as they apply to affected sources, it is important to note that EPA retains oversight authority for all sources subject to these federal requirements. EPA has the authority and responsibility to enforce the federal regulations in those situations where the State is unable to do so or fails to do so.

4. Scope of Approval

This approval of the Alaska section 112(l) programs, as with Alaska's title V program, applies to all sources within all geographic regions of the State of Alaska, except within ''Indian Country,'' as defined in 18 U.S.C. section 1151.

Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval and final partial approval and partial disapproval, including the letters of public comment received and reviewed by EPA on the proposal, are contained in the Alaska title V docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final action. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Similarly, NESHAP rule or program delegations approved under the authority of section 112(l) of the Act do not create any new requirements, but simply confer federal authority for those requirements that Alaska is already imposing. Because this action does not impose any new requirements, EPA has determined it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

EPA has determined that the action promulgated today under section 502 and section 112(l) of the Act 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.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

F. Effective Date

An administrative agency engaging in rulemaking must comport with the requirement of section 553 of the Administrative Procedures Act. *See* 5 U.S.C. chapter 5. Section 553 requires an agency to allow at least 30 days from the date of publication before the effective date of a substantive rulemaking. If, however, good cause can be shown, then the agency may impose an effective date of less than 30 days after publication. Good cause exists to initiate an effective date of less than 30 days after publication when it is in the public interest and the shorter time period does not cause prejudice to those regulated by the rule. *British American Commodity Options Corp.* v. *Bagley*, 552 F.2d 482, 488–89 (2d Cir. 1977). An immediate effective date is in the public's interest for several reasons.

First, ADEC is statutorily prevented from collecting and expending permit fees until EPA has approved the State title V program. The Alaska Legislature has only authorized ADEC to expend a limited amount of EPA grant monies and other State revenues prior to EPA approval of the State's title V program. These revenues have now run out and the State agency is without funds to continue to pay salaries. Further delay in the effective date of EPA's approval risks the loss of trained air staff necessary to successfully implement the title V program when it is approved.

Second, the federal part 71 permitting program became effective in Alaska on July 31, 1996. 61 FR 34202 (July 1, 1996), *codified* at 40 CFR part 71. Under this federal permitting program, some title V sources are required to submit permit applications and permit fees to EPA by January 31, 1997. *See* 40 CFR 71.5(a) and 71.9(f)(3). EPA understands, however, that sources have not been preparing applications for the federal part 71 program, but have instead been anticipating that the State title V program would be approved prior to the first application submittal deadline of the federal part 71 program. Delaying the effective date of EPA's approval of the Alaska title V program could put sources at risk of having to file applications and pay fees under both the State part 70 and federal part 71 permitting programs. Moreover, the State has advised EPA that sources have delayed filing permit renewal applications under the current State operating permit program in anticipation of the imminent approval of the State's title V program. Such sources will be at risk of being in violation of current State law if interim approval of Alaska's title V program is delayed.

Although it is in the public's interest to make EPA's interim approval of Alaska's title V program effective on the date of publication, EPA must ensure that this action will not have any prejudicial effects upon the regulated community. *Rowell* v. *Andrus*, 631 F.2d 699, 702–703 (10th Cir. 1980). For example, EPA must ensure that the regulated community has sufficient notice of this rulemaking and ample opportunity to comment. EPA believes that all interested parties have had sufficient notice of this rulemaking and ample opportunity to comment. The State has advised EPA that it has contacted each of the parties that commented on the proposal and none object to having this rulemaking effective on the date of publication. The regulated community has worked closely with the State in the development of the State's title V program over the past several years. The State regulations that form the basis of the State's title V program were subject to notice and comment at the State level. EPA's proposed action on the State's title V program was also subject to 30 days public comment. Finally, under Alaska law, the State's operating permit regulations do not become effective until 30 days after the effective date of EPA approval. Because the program itself does not become effective as a matter of State law for 30 days, it can also have no effect as a matter of Federal law until that time. Therefore, the purpose of the 30-day effective date under the Administrative Procedures Act is met since sources will have 30 days notice prior to the Alaska title V program becoming effective as a matter of both State and federal law.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 22, 1996.

Chuck Clarke,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding the entry for Alaska in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Alaska

(a) Alaska Department of Environmental Conservation: submitted on May 31, 1995, as supplemented by submittals on August 16, 1995, February 6, 1996, February 27, 1996, July 5, 1996, August 2, 1996, and October 17, 1996; interim approval effective on December 5, 1996; interim approval expires December 7, 1998.

(b) (Reserved)

* * * * *

[FR Doc. 96–30865 Filed 12–4–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Listing Priority Guidance for Fiscal Year 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of final guidance.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces final guidance for assigning relative priorities to listing actions conducted under section 4 of the Endangered Species Act (Act) during fiscal year (FY) 1997. Highest priority will be processing emergency listing rules for any species determined to face a significant risk to its well being. Second priority will be processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority will be processing new proposals to add species to the lists and processing administrative findings on petitions to add species to the lists that are filed under section 4 of the Act. Processing of proposed or final designations of critical habitat and processing of proposed or final delistings and reclassifications from endangered to threatened status will be accorded lowest priority. Effective April 1, 1997, the Service will implement a more balanced listing program nationwide, which means that during the second half of FY 1997 the remaining listing appropriation will be apportioned among the processing of any emergency listing rules, the issuance of final listing determinations, the preparation of proposed listing rules for candidate species, and the processing of listing petitions. However, the lower priority accorded to rulemaking and petition processing activities for critical habitat designations and delisting (or downlisting) actions will be maintained throughout FY 1997.

DATES: The guidance described in this notice is effective December 5, 1996 and will remain in effect until September 30, 1997 unless modified by subsequent notice in the Federal Register.

ADDRESSES: Questions regarding this guidance should be addressed to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mailstop ARLSQ–452, Washington, D.C., 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703–358–2171 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The Service adopted guidelines on September 21, 1983 (48 FR 43098–43105) that govern the assignment of priorities to species under consideration for listing as endangered or threatened under section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Service adopted those guidelines to establish a rational system for allocating available appropriations to the highest priority species when adding species to the lists of endangered or threatened wildlife

and plants or reclassifying threatened species to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or equivalently, distinct population segments of vertebrates). However, this system does not provide for prioritization among different listing actions such as preliminary determinations, final listings, etc.

The enactment of P.L. 104–6 in April, 1995 rescinded $1.5 million from the Service's budget for carrying out listing activities through the remainder of fiscal year 1995. Public Law 104–6 prohibited the expenditure of the remaining appropriated funds for final determinations to list species or designate critical habitat which, in effect, placed a moratorium on those activities.

From October 1, 1995, through April 26, 1996, funding for the Service's endangered species programs, including listing of endangered and threatened species, was provided through a series of continuing resolutions, each of which maintained in force the moratorium against issuing final listings or critical habitat designations. The continuing resolutions also severely reduced or eliminated the funding available for the Service's listing program. Consequently, the Service reassigned listing program personnel to other duties. The net effect of the moratorium and reductions in funding was that the Service's listing program was essentially shut down.

The moratorium on final listings and the budget constraints remained in effect until April 26, 1996, when President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and exercised the authority that Act gave him to waive the moratorium. At that time, the Service had accrued a backlog of proposed listings for 243 species. Moreover, although the moratorium imposed by Public Law 104–6 did not specifically extend to petition processing or the development of new proposed listings, the extremely limited funding available to the Service for listing activities generally precluded these actions from October 1, 1995 through April 26, 1996. The Service continued to receive new petitions and accrued a backlog of petitions requiring issuance of either 90-day or 12-month findings for 57 species.

In anticipation of receiving a listing appropriation for the remainder of FY 1996, the Service issued and requested comment on interim listing priority guidance on March 11, 1996 (61 FR 9651). On May 16, 1996, the Service addressed all public comments received on the interim guidance and published final listing priority guidance for fiscal year 1996 activities (61 FR 24722). This guidance was extended (61 FR 48962; September 17, 1996) until the Service prepared the final guidance described herein.

When the moratorium was lifted and funds were appropriated for the administration of a listing program, the Service faced the considerable task of allocating the available resources to the significant backlog of listing activities. Since April 26, 1996, the Service focused its resources on processing existing proposals and issued final determinations for rules listing 89 species.[1] This level of performance is noteworthy considering the time needed to restart the listing program from a total shutdown and the need to consider factual developments related to proposed listing packages (e.g., changes in known distribution, status, or threats) that took place during the year-long moratorium. Despite the progress made in FY 1996, there is still a backlog of 151 proposed listings.

In addition to making final determinations on pending proposed rules, the Service also needs to make expeditious progress on determining the conservation status of the 184[2] species designated by the Service as candidates for listing in the most recent Candidate Notice of Review (61 FR 7596; February 28, 1996; see 16 U.S.C. 1533(b)(3)(B)(iii)(II)). The Service remains subject to various lawsuits that could result in court orders requiring it to process a variety of actions under section 4 of the Act.

On September 17, 1996, the Service published a notice in the Federal Register (61 FR 48962) announcing proposed listing priority guidance for FY 1997 and soliciting public comment on the proposed guidance. Since publication of that notice, the Department of the Interior has received its FY 1997 appropriation by way of the 1997 Omnibus Appropriations Act, Public Law 104–208. Public Law 104–208 appropriated $5 million for the endangered species listing activity. This appropriation is substantially less than the $7.483 million requested by the President.

The continuing (though reduced) backlog and the funding shortfall underscore the need to maintain program-wide biologically sound priorities to guide the allocation of limited resources. Absent such priorities, existing and threatened litigation could overwhelm the limited resources the Service received in FY 1997.

For example, in *Fund for Animals* v. *Babbitt,* Civ. No. 92–800 (SS) (D.D.C.), the District Court is considering plaintiff's motion to enforce the December 15, 1992 Settlement Agreement in that case and the Service's motion to modify that Agreement.

Resolution of the conservation status of the remaining 85 settlement species would require, for each species, publication of either a proposed listing rule or a notice stating reasons why listing is not warranted. The Agreement does not require final decisions on listings. Therefore, full compliance with the Agreement will not bring the full protection of the Act to any species, but rather would only somewhat advance the process toward listing.

Up to the time the funding for the listing program became severely constrained, the Service was on track to achieve full compliance with this Agreement. The Service had published, during the period covered by the Agreement, proposed listing rules for 359 candidate species.

Despite this progress, the Service is now left with the following dilemma. If it were to continue to spend scarce appropriated funds to move candidate species forward to the proposed listing stage in order to comply with the Settlement Agreement, it would deplete the entire $5 million listing appropriation available in FY 1997. Processing of proposed listing rules requires the investment of considerable time and resources. It involves substantial research, status review, coordination with State and local governments and other interested parties, and conducting public hearings and peer review. Furthermore, while only 41 of the 85 settlement agreement species have listing priority assignments of 1, 2, or 3, most of the 99 candidate species that are *not* subject to the terms of the Agreement have high listing priority number assignments (64 non-settlement, candidate species have priority numbers of 1, 2 or 3), the Service would, in order to be consistent with the 1983 listing priority guidelines, have to process all 184 candidate species (85 settlement, 99 non-settlement) if ordered to comply fully with the terms of the Settlement Agreement during FY 1997.

[1] The Service also withdrew the proposed rule to list the Barton Springs salamander and proposed listings for two plants, *Dudleya blochmanieae* ssp. *brevifolia* and *Corethrogyne filaginifolia* var. *linifolia.*

[2] Since publication of the last Candidate Notice of Review, the Service has added the U.S. population of the short-tailed albatross (*Diomedea albetrus*) and the Alabama sturgeon (*Scaphirhynchus suttkusi*) to the list of candidate species.

The Service's entire FY 1997 listing budget is insufficient to comply with the *Fund for Animals* Settlement Agreement. If it attempted to comply, it would devote no resources to making final listing decisions on the remaining 151 proposed species, the vast majority of which face high-magnitude threats. Though so close to receiving the full protection of the Act, these species would move no closer to that goal while all the Service's efforts would be bent toward deciding whether to move candidate species closer to proposed listing, where they receive some limited procedural protection (the Section 7 conference requirement, see 16 U.S.C. 1536(a)(4)), but not the full substantive and procedural protection afforded by final listing.

This course of action would also enlarge the backlog of proposed species awaiting final action to about 330. Meanwhile, the administrative records on many of the 151 other species pending final decision could require, due to the additional delay in the decision-making process, further public notice and comment proceedings in fiscal year 1998 because the scientific data they contain may no longer be current.

In short, enforcement of the *Fund for Animals* Settlement Agreement in FY 1997 would delay for at least one year the issuance of final listing rules and, in fiscal year 1998, would make the process of issuing final listing rules for the aging backlog of proposed species more time and labor intensive. Such action would entirely frustrate the objective of waiving the final listing moratorium in April, 1996. Further proceedings in District Court are expected. The Service is hopeful that the Court's final order will effect modifications to the Settlement Agreement that are consistent with biologically based priorities.

Given the large backlogs of proposed species pending final action, candidate species awaiting proposal, and petitions, it is extremely important for the Service to focus its efforts on actions that will provide the greatest conservation benefits to imperiled species in the most expeditious manner. In order to focus conservation benefits on those species in greatest need of the Act's protections, the Service believes that processing the outstanding proposed listings should receive higher priority than other actions authorized by section 4 such as new proposed listings, petition findings, and critical habitat determinations.

It has been long-standing Service policy that the order in which species should be processed for listing is based primarily on the immediacy and magnitude of the threats they face. The Service will continue to base decisions regarding the order in which species will be proposed or listed on the 1983 listing priority guidelines. These decisions will be implemented by the Regional Office designated with lead responsibility for the particular species.

The Service allocates its listing appropriation among its seven Regional Offices based primarily on the number of proposed and candidate species for which the Region has lead responsibility. The objective is to ensure that those areas of the country with the largest percentage of known imperiled biota will receive a correspondingly high level of listing resources. The Service's experience in administering the Act for the past two decades has shown, however, that it needs to maintain at least a minimal listing program in each Region in order to respond to emergencies and to retain a level of expertise that permits the overall program to function effectively over the longer term. In the past, when faced with seriously uneven workloads, the Service has experimented with reassigning workload from a heavily burdened Region to less-burdened Regions. This approach has proven to be very inefficient because the expertise developed by a biologist who works on a listing package will be useful for recovery planning and other activities and that expertise should be concentrated in the geographic area inhabited by the species. In addition, biologists in a Region are familiar with other species in that Region that interact with the species proposed for listing, and that knowledge may be useful in processing a final decision. For these reasons, the Service has found it unwise simply to reassign part of one Region's workload to personnel in another Region.

Because the Service must maintain a listing program in each Region, Regions with few outstanding proposed listings may be able to process Tier 3 actions (such as new proposed listings or petition findings), while Regions with many outstanding proposed listings will use most of their allocated funds on Tier 2 actions. For instance, workload variations will mean that the Great Lakes Region (Region 3), which only has two proposed species, could begin work on some Tier 3 actions under the final guidance described in this notice while the Pacific Region (Region 1), which still has 111 proposed species, will be primarily processing final decisions on proposed listings in FY 1997.

Since the number of pending proposed species is expected to be reduced to a manageable range of 90–110 taxa by April 1, 1997, the Service believes that a balanced listing program should be implemented nationwide on that date. Under a balanced listing program, the categories of listing activities covered by Tiers 1, 2, and 3 of this guidance will be treated as having the same relative priority. On April 1, 1997, all remaining listing appropriations for FY 1997 will be apportioned among the processing of any emergency listings, the issuance of final listing determinations, the preparation of proposed listing rules, and the processing of listing petitions. The 1983 listing priority guidelines will set the relative priority for the allocation of listing resources within each of these categories of listing activities.

Analysis of Public Comments

On September 17, 1996, the Service published a notice in the Federal Register (61 FR 48962) announcing proposed listing priority guidance for FY 1997 and solicited public comment on the proposed guidance. While the Department's FY 1997 appropriation provides the expected $5 million for the endangered species listing program, it differs from the assumptions upon which the proposed listing priority guidance was based in that it does not ''earmark'' funds for use in delisting or reclassifying endangered species to threatened status. In soliciting public comment, the Service specifically requested input as to, ''how it ought to prioritize such activities if no earmark emerges from the appropriations process'' (61 FR 48964; September 17, 1996). The Service received four letters of comment on the proposed guidance and an analysis of these comments follows.

Three of the four letters of comment were generally opposed to the proposed listing priority guidance. A summary of the issues raised, and the Service's response, follows.

Commenters' Issue 1—Under the proposed policy, there would be no enforceable deadlines. The Service cannot disregard the Act's mandated time frames and requirements to prioritize listing activities on the basis of biological need for the sake of administrative convenience gained by completing the listing process for outstanding proposed listings to the exclusion of all other listing actions.

Service Response—The listing priority guidance is the Service's attempt to implement the provisions of section 4 in a manner that best supports the purposes of the Act and maximizes conservation benefits within the constraints imposed by appropriations

limitations. The Service recognizes the implementation of such guidance as an extraordinary measure and emphasizes that the guidance will only remain in effect through September 30, 1997. Furthermore, effective April 1, 1997, the Service will implement a more balanced listing program that apportions all remaining listing funds among the processing of any emergency rules, the issuance of final listing determinations, the preparation of proposed listing rules, and the processing of listing petitions. Moreover, many of the Service's Regions will be operating in Tier 3 upon implementation of this final guidance.

As the Service has previously described, Congress has not appropriated sufficient funds to allow the Service to process all of its responsibilities under section 4 in a timely manner. This problem was then exacerbated by the imposition of the moratorium on final listings, which prevented the Service from issuing final listing decisions from April 1995 through April 1996, resulting in even more proposed listings that were in excess of the statutory deadline for making final decisions. On top of that, the backlog of overdue petition findings increased.

The Service acknowledges its responsibility to base listing decisions solely on the basis of the best available scientific and commercial information and does not believe that the proposed guidance in any way refutes that responsibility. What the proposed guidance would do is allow the Service to give highest priority to extending the full legal protections of the Act to species that have already been proposed for listing rather than expending scarce resources on issuing new proposed listings, an action that only provides minimal procedural protections (via the section 7 conference provisions) for the species involved, while adding to an already large backlog of proposed species. The Service believes that the listing priority guidance will maximize the conservation benefits from the limited listing appropriation and help the Service return soon to implementing its section 4 responsibilities across the board. The Service also emphasizes that this listing priority guidance will be effective on a temporary basis and it intends to return to a more normal administration of section 4 by the start of fiscal year 1998.

Commenters' Issue 2—The Service should not expend limited listing funds on withdrawal notices, delistings, or reclassifications of endangered species to threatened status.

Service Response—In the absence of a Congressional earmark for delistings and reclassifications, the Service generally agrees with this comment insofar as it addresses delistings and reclassifications. It has decided to assign these actions (including review of petitions seeking such actions) to the lowest priority tier under the final guidance described below.

The Service does not agree that it makes little sense to process withdrawal notices on proposed listings if that course of action is found to be appropriate based on a review of the proposed listing that was conducted in accordance with the listing priority guidance. The resolution of regulatory uncertainty that comes with a withdrawal notice, the fact that publication of the notice is a relatively small component of the total cost invested in the decision, and the fact that a withdrawal under section 4(b)(6)(A)(I)(IV) eliminates the legal liability under the time frames of section 4(b)(6)(A), all justify the placement of this activity within Tier 2.

Commenters' Issue 3—The listing priority for processing final decisions on proposed species with low listing priority assignments should not be elevated above the priority for species with higher listing priorities that have not yet been proposed for listing.

Service Response—More than two-thirds of the 151 proposed species pending final decisions face high magnitude threats. Most of the 41 proposed species that do not face high magnitude threats are included in multi-species listing packages that also include species facing high magnitude threats. Addressing lower priority proposed species as part of a multi-species listing approach provides a cost-effective means of addressing many species in one listing rule. The Service believes that it should continue using this approach even though it may mean that final listing decisions will be prepared for some species with listing priorities that are lower than some candidate species awaiting proposed listing. These facts show that the Service is not subverting the existing priority system. Furthermore, this course of action is responsive to the Act's direction that proposed listings be resolved in a timely fashion. Also, focusing attention on proposed species ahead of candidate species which face no statutory deadlines for final decisions is consistent with the concerns raised in Issue 1 above.

Commenters' Issue 4—The Service should place highest emphasis on listing species with high national importance and stop listing subspecies.

Service Response—Assuming threats of equal magnitude and immediacy, the 1983 listing priority guidelines provide higher listing priority for a full species than for a subspecies. However, by virtue of the Act's definition of species, the Service must consider listing subspecies of plants and animals where appropriate.

Commenters' Issue 5—Claims that designation of critical habitat provides only limited conservation benefits beyond a final listing are contradicted by the Act and real-life practice.

Service Response—The Service remains firm in its belief that designation of critical habitat generally provides limited additional conservation benefits beyond those provided by the consultation provisions of section 7 and the prohibitions of section 9.

Commenters' Issue 6—Purported lack of funds does not support the proposed listing priority policy because the courts have made clear that funding limitations do not excuse the Service from complying with mandatory duties to comply with the deadlines of the Act.

Service Response—The Service recognizes that it sometimes does not meet the timing constraints imposed by the Act (see Responding to Litigation section below). However, due to the circumstances described in detail in this notice and other notices on this topic, the number of pending listing actions that are out of compliance with the Act's deadlines are so numerous that it is literally impossible for the Service to address them all immediately. Therefore, the Service has instituted this guidance to provide a reasonable means for prioritizing actions. By such actions as this notice and explanation of the priority guidance, the Service hopes to promote public and judicial understanding of the bind in which the Service finds itself and the reasonableness of its approach.

Some courts have acknowledged the Service's predicament and granted relief accordingly. In a July 23, 1996 order entered by the U.S. District Court for the Eastern District of California in *Sierra Club* v. *Babbitt et al.* (Civ. No. S–95–299 EJG/GGH), Judge Garcia agreed to defer to the Service's listing priority guidance, finding that,

> Given that it would be ''impossible,'' *see Alabama Power, supra,* for defendants to discharge their § 1533 (6)(A) obligation as to all pending species within this fiscal year, the court finds that defendants' prioritization scheme, predicated upon biological need, is reasonable in light of the Endangered Species Act's purpose. Sporadic and disorganized judicial interference with defendants' priorities would result in a game of musical

chairs plainly disruptive to a thoughtful and reasoned allocation of defendants' limited resources.

Such decisions recognize that the Service did not receive sufficient funding in fiscal years 1996 or 1997 to allow it to comply with all mandated time frames under section 4 of the Act was legally prohibited from expending funds to accomplish certain of those activities for over a year, and as a result generated a rational system for setting priorities that is most consistent with the purposes of the Act and makes most efficient use of limited funding as the Service manages its way out of a significant listing backlog.

Commenters' Issue 7—The Service should not ''usurp'' public priority by relegating the petition process to Tier 3 or denying priority on the basis of litigation status.

Service Response—The Act does establish priorities for the various section 4 responsibilities and the Service does not consider the petition process to be inherently of a higher priority than other section 4 activities. However, the Service does recognize the value of the petition process and the Service's decision to assign processing of petition findings to Tier 3 is not made lightly. As mentioned previously, the Service expects each Regional Office to begin processing petition findings no later than April 1, 1997 and some of the Regional listing programs will begin processing petitions upon implementation of this guidance. Processing of petition findings is, however, a preliminary step in the listing process and, during the current period of fiscal constraint, should be accorded lower priority in favor of taking final actions on the proposed listings. This course of action would remove a litigation liability and either implement the full protections of the Act for imperiled species or resolve pending regulatory uncertainty for species found not to warrant listing.

The Service remains firm in its belief that litigation status should not be a criterion for assigning priority under this guidance. To the extent that the courts do not defer to this listing priority guidance, the Service is prepared to comply with any court order to process a section 4 listing action subject to any appeals that may be taken as determined on a case-by-case basis, to seek to overturn such a court order. The fact that the Service acknowledges its duty to comply with court orders should not, however, be interpreted to mean that it regards any court order as consistent with this guidance, without regard to how disruptive it may be to the Service's effort to make the most biologically sound use of its resources.

Final Listing Priority Guidance for Fiscal Year 1997

To address in the longer term the biological, budgetary, and administrative issues noted above, and in response to public comments received, the Service adopts the following revised listing priority guidance. As with the guidance issued May 16, 1996, this guidance supplements, but does not replace, the 1983 listing priority guidelines, which are silent on the matter of prioritizing among different types of listing activities.

As noted above, the Department of the Interior's FY 1997 appropriation provides $5 million for the Service's endangered species listing program.

The $5,000,000 available in the listing budget for all listing activities will fall far short of the resources needed to eliminate the backlog of proposed species and complete all listing actions required by the Act in FY 1997. Therefore, some form of prioritization is still necessary, and the Service will implement the following listing priority guidance in FY 1997. However, effective April 1, 1997 the Service will undertake activities in three of the four tiers. Activities assigned to Tier 4 as described below will remain a low priority until all other listing backlogs (candidate species, proposed listings, and petition findings) have been exhausted.

The following sections describe a multi-tiered approach that assigns relative priorities, on a descending basis, to listing actions to be carried out under section 4 of the Act. The 1983 listing priority guidelines will continue to be used to set priority among actions within tiers. The Service emphasizes that this guidance will be effective until September 30, 1997 unless extended or canceled by future notice, except that, effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3. The assignment of critical habitat designations and delistings or reclassifications to Tier 4 is expected to continue for the duration of FY 1997 and processing of these activities in FY 1997 should not be expected. Even though a more balanced program will be in place as of April 1, 1997, the FY 1997 listing appropriation is insufficient to support high-priority listing, candidate assessment, and petition processing activities unless critical habitat and delisting/downlisting activities are maintained as low-priority activities. The Service must focus its section 4 program on addressing proposed species, candidate species, and petition processing during the second half of FY 1997. A single critical habitat designation could consume up to ten percent of the total listing appropriation, thereby disrupting the Service's biologically based priorities.

Completion of emergency listings for species facing a significant risk to their well-being remains the Service's highest priority (Tier 1). Processing final decisions on pending proposed listings is assigned to Tier 2. Third priority is to resolve the conservation status of species identified as candidates and processing 90-day or 12-month administrative findings on petitions to list or reclassify species from threatened to endangered status. Preparation of proposed or final critical habitat designations, and preparation of proposed or final delistings and reclassifications are assigned lowest priority (Tier 4).

Tier 1—Emergency Listing Actions

The Service will immediately process emergency listings for any species of fish, wildlife, or plant that faces a significant risk to its well-being under the emergency listing provisions of section 4(b)(7) of the Act. This would include preparing a proposed rule to list the species. The Service will conduct a preliminary review of every petition that it receives to list a species or change a threatened species to endangered status in order to determine whether an emergency situation exists. If the initial screening indicates an emergency situation, the action will be elevated to Tier 1. If the initial screening does not indicate that emergency listing is necessary, processing of the petition will be assigned to Tier 3 below.

Tier 2—Processing Final Decisions on Proposed Listings

The vast majority of the unresolved proposed species face high-magnitude threats. The Service believes that focusing efforts on making final decisions relative to these proposed species would best comport with the overall purpose of the Act by providing maximum conservation benefits to those species that are in greatest need of the Act's protections. As proposed listings are reviewed and processed, they will be completed through publication of either a final listing or a notice withdrawing the proposed listing. While completion of a withdrawal notice may appear inconsistent with the thrust of the guidance, once a determination not to make a final listing has been made, publishing the notice withdrawing the proposed listing takes minimal time and

appropriations, and it is more cost effective and efficient to bring closure to the proposed listing, as compared to postponing action and taking it up at some later time.

Setting Priorities Within Tier 2

Most of the outstanding proposed listings deal with species that face high-magnitude threats, such that additional guidance is needed to clarify the relative priorities within Tier 2. Proposed rules dealing with taxa believed to face imminent, high-magnitude threats have the highest priority within Tier 2.

Proposed listings that cover multiple species facing high-magnitude threats have priority over single-species proposed rules unless the Service has reason to believe that the single-species proposal should be processed to avoid possible extinction.

Due to unresolved questions or the possible staleness of the scientific information in the administrative record, the Service may determine that additional public comment or hearings are necessary before issuing a final decision for Tier 2 actions. Proposed listings for species facing high-magnitude threats that can be quickly completed (based on factors such as few public comments to address or final decisions that are nearly complete) have higher priority than proposed rules for species with equivalent listing priorities that still require extensive work to complete.

Given species with equivalent listing priorities and the factors previously discussed being equal, proposed listings with the oldest dates of issue will be processed first.

Tier 3—Resolving the Conservation Status of Candidate Species and Processing Administrative Findings on Petitions to Add Species to the Lists or Reclassify Threatened Species to Endangered Status

As of this date, the Service has determined that 184 species warrant issuance of proposed listings. The Act directs the Service to make ''expeditious progress'' in adding new species to the lists. Issuance of new proposed listings is the first formal step in the regulatory process for listing a species. It provides some procedural protection in that all Federal agencies must ''confer'' with the Service on any actions that are likely to jeopardize the continued existence of proposed species.

Administrative findings for listing petitions that are not assigned to Tier 1 after initial screening will also be processed as a Tier 3 priority. As the Regional offices near completion of their pending Tier 1 and 2 actions, they will be expected to begin processing Tier 3 actions. Each Region should begin processing Tier 3 actions once all Tier 2 determinations are underway and near completion and then Tier 4 actions once Tier 3 actions are underway and near completion.

Setting Priorities Within Tier 3

The 1983 listing priority guidelines and the basic principle that species in greatest need of protection should be processed first are the primary bases for establishing priorities within Tier 3. Highest priority within Tier 3 will be processing of new proposed listings for species facing imminent, high-magnitude threats. If the initial screening of a petition suggests that the species probably faces imminent and high magnitude threats, processing that action will be accorded high priority.

Tier 4—Processing Critical Habitat Determinations and Processing Delistings or Reclassifications.

Designation of critical habitat consumes large amounts of the Service's listing appropriation and generally provides only limited conservation benefits beyond those achieved when a species is listed as endangered or threatened. Because the protection that flows from critical habitat designation applies only to Federal actions, it is rare for designation of critical habitat to provide additional protection beyond the ''jeopardy'' prohibition of section 7, which also applies to Federal actions. It is essential during this period of limited listing funds to maximize the conservation benefit of listing appropriations. The Service believes that the small amount of additional protection that may be gained by designating critical habitat for species already on the lists is greatly outweighed by the benefits of applying those same dollars to putting more species on the lists, where they would gain the protections included in sections 7 and 9. The Service has decided, in other words, to place higher priority on addressing imperiled species that presently have no or very limited protection under the Act, rather than devoting limited resources to the expensive process of designating critical habitat for species already protected by the Act.

Since the final appropriations law did not include dedicated funding for delistings or reclassifications of endangered species to threatened species, the Service does not believe that it would be consistent with the intent of this listing priority guidance to afford these activities high priority at this time. Processing reclassifications and delistings can provide regulatory relief and the Service regrets that such activities must be accorded Tier 4 priority due to the limited appropriations provided by Congress.

Addressing Matters In Litigation

Using this guidance and the 1983 listing priority guidelines, the Service will assess the status and the relative priority of all section 4 petition and rulemaking activities that are the subject of active litigation. The Service, through the Department of the Interior's Office of the Solicitor, will then notify the Justice Department of its priority determinations and request that appropriate relief be sought from each district court to allow those species with the highest biological priority to be addressed first. As noted in the guidance issued May 16, 1996, when the Service undertakes one listing activity, it inevitably foregoes another, and in some cases courts have ordered the Service to complete activities that are simply not, in the Service's expert judgment, among the highest biological priorities. However, to the extent that these efforts to uphold the Service's listing priority guidance and the 1983 listing priority guidelines do not receive deference in the courts, the Service will need to comply with court orders despite any conservation disruption that may result subject to any appeals that may be undertaken on a case-by-case basis. The fact that the Service acknowledges its duty to comply with court orders should not, however, be interpreted to mean that it acquiesces in the idea that all such court orders are consistent with this guidance without regard to how disruptive they may be to the Service's effort to make the most biologically sound use of its resources.

The Service will not elevate the priority of proposed listings for species under active litigation. To do so would let litigants, rather than expert biological judgments, set listing priorities. The Regional Office with responsibility for processing such packages will be responsible for determining the relative priority of such cases based upon this proposed guidance and the 1983 listing priority guidelines, and for furnishing supporting documentation that can be submitted to the relevant court to indicate where such species rank in the overall priority scheme.

National Environmental Policy Act

The Service does not consider the implementation of this guidance to be a major Federal action significantly affecting the quality of the human environment for purposes of the

National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*).

Further, the Department of the Interior's Departmental Manual (DM) categorically excludes from consideration under NEPA, ''Policies, directives, regulations, and guidelines of an administrative, financial, legal, technical or procedural nature or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.'' This guidance clearly qualifies as an administrative matter under this exclusion. The Service also believes that the exceptions to categorical exclusions (516 DM 2, Appendix 2) would not be applicable to such a decision, especially in light of the absence of environmental effects for such action.

Authority

The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: November 26, 1996.

John G. Rogers,

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

[FR Doc. 96–30946 Filed 12–4–96; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Final Decision on Identification of Candidates for Listing as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of final decision.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has decided to discontinue the practice of maintaining a list of species regarded as ''category-2 candidates.'' Future lists of species that are candidates for listing under the Endangered Species Act (Act) will be restricted to those species for which the Service has on file sufficient information to support issuance of a proposed listing rule. A variety of other lists describe ''species of concern'' or ''species in decline'' and the Service believes that these lists are more appropriate for use in land management planning and natural resource conservation efforts that extend beyond the mandates of the Act. The Service is committed to working closely with the State natural resource and natural heritage agencies, Territories and Tribes, other Federal agencies, and other interested parties to cooperatively identify new species that should be regarded as candidates for protection under the Act. The Service will continue to contract for, solicit, and accept information on the biological status and threats facing individual species on a continuing basis.

ADDRESSES: The complete record pertaining to this matter is available for inspection, by appointment, during normal business hours at the Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 452, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (telephone: 703/358–2171; facsimile: 703/358–1735) (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1996, the Service published a revised candidate notice of review in the Federal Register (61 FR 7596) that announced changes to the way the Service identifies species that are candidates for listing under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). The Service noted its intention to discontinue maintaining a list of species that were previously identified as ''Category-2 candidates.'' Category-2 candidates were species for which the Service had information indicating that protection under the Act may be warranted but for which it lacked sufficient information on status and threats to determine if elevation to ''category-1 candidate'' status was warranted.

In addition to soliciting biological information on taxa that are candidates for listing under the Act, the Service also solicited public comments of a general nature when it announced the revisions to the candidate identification process in the February 28, 1996, notice (61 FR 7596). The candidate notice specified no closing date for comments of either a general or a species-specific nature. On September 17, 1996, the Service published in the Federal Register (61 FR 48875) a notice announcing that it would consider all public comments on the matter of discontinuing the practice of identifying category-2 candidate species that were received on or before October 17, 1996. In the September 17, 1996, notice (61 FR 48875), the Service stated that it would publish a subsequent notice in the Federal Register addressing comments received and indicating a final decision on this issue and how the Service intends to identify species that are under consideration for possible addition to the list of endangered or threatened species.

As solicited in the Service's February 28, 1996, candidate notice (61 FR 7596), comments and information relating to the biological status and threats of particular taxa that are, or should be, regarded as candidates for protection under the Act may be submitted at any time to the Regional Director of the Region identified as having lead responsibility. Biological status and threat information for species that do not have a designated lead Region should be submitted to the Division of Endangered Species, Washington, D.C. (see **ADDRESSES** section).

When the Service first started publishing comprehensive lists of candidates and potential candidates, no comparable list existed because few organizations were tracking species of concern. Now, a number of agencies and organizations track species that may be declining, including State natural resource agencies and Natural Heritage Programs, Federal land-management agencies, the Biological Resources Division of the U.S. Geological Survey (USGS), professional societies, and conservation organizations. The added attention and wider range of focus means that there is vastly superior information available on species of concern than was maintained in the Service's list of category-2 species. Duplicative effort to maintain lists is not the best use of limited endangered species funding.

The quality of the information supporting the former category-2 list varied considerably, ranging from extremely limited or old data to fairly comprehensive assessments. It is the intent of the Service to work with all interested parties and to use scientifically credible sources of peer-reviewed information, when available, to identify new candidate species.

The need for a species of concern list extends beyond implementation of the Endangered Species Act. Using the old category-2 list as a ''species of concern'' list was inappropriate; it is widely believed that sensitive, rare, and declining species are more inclusive than those found in the old category-2 list. Many Divisions of the Fish and Wildlife Service, such as Migratory Birds, Refuges, Endangered Species, Habitat Conservation, Environmental Contaminants, and Fish and Wildlife Management Assistance will continue to work with partners to identify and protect species of concern.

The result of such collaboration should be a far more comprehensive and

reliable accounting of biological resources that are declining or otherwise at risk. This approach is consistent with the purposes of numerous Federal environmental policies and statutes, not just the Act.

Summary of Comments and Recommendations

The Service received 163 comment letters—one from a Federal agency, 10 from State agencies, and 152 from individuals or groups. One commenter supported the proposed action, 159 expressed concerns, and 3 were either neutral or expressed support and opposition equally. Comments received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into a number of general issues. These issues and the Service's response to each are discussed below.

Issue 1: Commenters noted that the category-2 list was a critically important tool for agencies, researchers, and other partners in land-use planning. Commenters claimed that elimination of the category-2 list will prevent land-use planners from easily identifying which species are at risk. Respondents also commented that the category-2 list provided greater certainty to private landowners by notifying them of species for which management actions might later be needed.

Service Response: While a list of species of concern is highly useful in conserving plant and wildlife species, it is important to recognize that this purpose is far broader than the purposes of the Act. The Act is meant to serve as a ''safety net,'' to identify species at risk of extinction and focus efforts to recover those species. There are numerous Federal laws, such as the National Forest Management Act and the Federal Land Management Planning Act, that have broad mandates to protect biodiversity. Limiting the application of these laws only to species under study for possible listing under the Act would be too narrowly focused.

The Service's former list of category-2 species was far from a thorough compilation of species of concern. In fact, the quality of the information supporting the category-2 list varied considerably, ranging from extremely limited or old data to fairly comprehensive assessments. When the Service first started publishing comprehensive lists of candidates and potential candidates, no comparable list existed because few groups were tracking species of concern. Now a number of groups track declining species, including State natural resource agencies and Natural Heritage Programs, Federal land-management agencies, the Biological Resources Division of the USGS, professional societies, and conservation organizations. Given the Service's budgetary constraints and ever-increasing workloads, the Service can no longer afford to duplicate these efforts and instead must be a partner in contributing to these various sources.

The Service will continue to take a proactive role in species conservation. The Service acknowledges that an effective program for the conservation of endangered species requires a means of addressing species that have not yet been listed but that face immediate, identifiable risks. Numerous Service programs are already actively working with partners and other knowledgeable individuals to identify species of concern, identify research needs, set priorities for developing the information, and determine how to accomplish the work needed to resolve the species' status. For example, the Service's Refuges program works to conserve many declining species, not merely those that are listed under the Act. The Migratory Bird Management Office identifies ''species of management concern'' to focus attention on declining bird species and the Division of Habitat Conservation works with private landowners across the nation to conserve species and habitats through the ''Partners for Wildlife'' program.

Federal agencies, consultants, permit applicants, and others routinely request lists of species from the Service to use during project planning and for other purposes. These requests are often associated with activities that could require consultations under section 7 of the Act or section 10 permits. The Service will continue to be responsive by providing information on candidate, proposed and listed species and proposed or designated critical habitat. Where possible, the Service will refer the requestor to other appropriate sources for information on species of concern or other environmental issues that may occur in or near the project area.

Many agencies, such as the USFS, BLM, and DOD, are working with The Nature Conservancy's (TNC) Heritage system to evaluate including all ''G1–G3'' species and ''T1–T3'' subspecies on their sensitive lists. Such efforts should lead to the shared interagency use of a more comprehensive list than the Service's former category-2 list.

The mandates of most Federal land-managing agencies exceed those of the Act in protecting biodiversity on their lands. The Act is a tool to be used when species decline despite these other mandates. To enhance interagency efforts to conserve candidates and other species of concern, the USFS, BLM, NPS, National Marine Fisheries Service, and the Service entered into a MOU that creates a framework for cooperation to conserve species and their habitats before they reach the point where listing may be necessary. Although the MOU was signed in January 1994, when the Service still maintained a category-2 list, compliance with the MOU is in no way dependent upon the existence of that list. The Service and these agencies remain committed to the concept of addressing conservation needs of both candidate species and other species of concern.

Issue 2: The Service should clarify the process it intends to use to identify potential candidate species. The commenters also asked for clarification on the mechanism the Service will use to determine which species need status reviews.

Service Response: The Service's Endangered Species Program will identify candidates for addition to the list of endangered or threatened species through a collaborative process among all Federal, State, Tribal, and private partners. The Service's Endangered Species staff will take an active role with these partners to identify species that should be candidates for listing under the Act, identify research needs, set priorities for developing the information and determine how to accomplish the work needed to resolve the conservation status of species.

Tools available to the Service and its partners for use as a foundation for identifying potential candidates include: the Natural Heritage Central Database of The Nature Conservancy (TNC) and the International Network of Natural Heritage Programs and Conservation Data Centres, the Service's list of Migratory Nongame Birds of Management Concern in the United States, species protected by State endangered species laws or identified by State agencies as rare or vulnerable, species identified by other Federal agencies as vulnerable or of management concern such as the USFS and BLM ''sensitive species,'' and species identified by professional scientific societies as rare or vulnerable (e.g., the American Fisheries Society and National Audubon Society/Partners in Flight).

One of the most comprehensive information sources on rare or imperiled species is the Natural Heritage Central Database, developed by TNC and the network of State Natural Heritage programs. This database ranks the conservation status of species at the

global, national, and state levels and is available from TNC and the State Heritage programs. At present, the Service regards the species ranked G1, G2, or G3, and subspecies ranked T1, T2, or T3, in the TNC database as a reasonable subset of species and subspecies from which to identify those that may be candidates for listing under the Act.

When all available information has been evaluated, the Service will determine whether a species, subspecies, or distinct population segment meets the information standards and status criteria for listing and should be placed on the candidate list. Recognized subspecies and species, as well as distinct population segments, will be recommended by the Regional Director to the Service's Director for addition to the candidate list. Other species may warrant further review or monitoring or not warrant further consideration for listing.

A status review is the act of reviewing all the available information on a species to determine whether it should be considered for candidate status. Status reviews are a required component of the listing process (section 4(b)(1)(A) of the Act). The mechanism for identifying species needing status reviews has not significantly changed. Service offices will continue to work with State and Federal biologists and other knowledgeable individuals to identify the highest priority species of concern, identify research needs, set priorities for developing the information and determine how to accomplish the work needed to resolve species status. The Service will maximize its limited resources through a stronger emphasis on a collaborative process between the Service and its partners to rank these species by their need for study and accomplish these studies cooperatively. State agencies, often using funds partially provided under section 6 of the Act, conduct status reviews on species of concern annually. The Biological Resources Division of the USGS annually requests proposals for research on species-at-risk, including status assessments. Because the Service is involved in the call for proposals, it can help focus such proposals on priority species. The Service believes that this is a more effective and efficient way to develop and compile the information needed to make biologically and ecologically sound, cost-effective decisions.

Non-candidate species under petition for listing will require initiation of a status review whenever the Service makes a finding that the petitioners presented substantial scientific data indicating that listing may be warranted. If the Service makes a 12-month finding of ''warranted'' or ''warranted but precluded,'' the species would then be considered as a candidate species.

The Service will publish an annual Notice of Review to provide an updated list of candidate species to advise other Federal agencies, State and Tribal governments, local governments, industry, and the public of those species that are candidates for a listing proposal under the Act. Publishing this list annually, rather than biennially as before, will ensure that an updated list is always available. This will allow resource managers to alleviate threats and thereby possibly remove the need to list these species. The annual revision to the candidate list will also serve as recycled petition findings until a final determination can be made on whether to publish a listing proposal for a particular candidate species.

Issue 3: Commenters stated that the regularly updated Notices of Review for candidates have provided a key source of public information and a process for public review, input, and refinement. The commenters were concerned that without a category-2 list maintained by the Service, that publicly available information source will no longer exist. They stated that the public will not know where to submit new information or research results on former category-2 species.

Service Response: The Service will continue to accept data and other information on all species. The Service's Notice of Review for candidate species, published annually, requests information on the species currently considered candidates as well as any other species that may warrant candidate status. The addresses of the Service's regional offices and the states for which they have jurisdiction are included in the Notice of Review.

The process of providing new information or research results to the Service has not changed. The Service will continue to receive such information for review and consideration. Under a current cooperative agreement with TNC, the Service shares information with TNC for incorporation into the Natural Heritage Central Database. A number of other currently available tools used to identify species of concern in order to focus research efforts and for planners to use in their decision-making process were listed under Issues 1 and 2.

Issue 4: Commenters noted that prior to the new candidate policy, category-2 species were considered in section 7 consultations and Habitat Conservation Plans (HCPs). They stated that excluding those species from section 7 consultations and HCPs may result in further declines in their status, in some cases to the point of requiring listing.

Service Response: The consideration of category-2 candidates in project planning was always discretionary because candidate species receive no statutory protection under the Act. The Service recognizes that the category-2 candidate list was used as a planning tool; however, more complete and more appropriate lists are now available for that purpose (as discussed in Issue 1).

Under both section 7 and 10, the Service will continue to encourage the protection of candidate species and species of concern, but the Act does not mandate protection for either group. For example, under section 10, the Service encourages applicants for incidental take permits to consider candidate species and other unlisted species. The Service's final HCP Handbook (completed in November 1996) provides that unlisted species, such as candidate species, former category-2 species, and other species of concern, may be included in HCPs for listed species. Furthermore, under section 7 and section 10, the Service will continue to aid in the identification of listed, proposed, and candidate species that may be in or near a project area. The Service will also refer the requestor to other appropriate sources for information on species of concern or environmental issues concerns that may occur in or near the project area (see Issue 1).

Issue 5: Commenters claimed that elimination of the category-2 candidate list is a major Federal action under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and requires preparation of an EIS. Furthermore, because other Federal agencies, such as USFS and BLM, have afforded protection to category-2 species and will no longer be compelled to do so, the commenters asserted that an EIS must be prepared to evaluate this and all other direct, indirect, and cumulative impacts associated with eliminating the category-2 list.

Service Response: The Service does not consider its decision to discontinue the maintenance of a list of category-2 candidate species in Notices of Review to be a major Federal action significantly affecting the quality of the human environment for purposes of NEPA. (See NEPA section of this notice below for a more detailed discussion.)

The purpose of the NEPA is to ensure that Federal agency planning and decisions consider environmental values. The Service recognizes that the

category-2 list was used as a planning tool by various Federal, State, and Tribal agencies but these management entities can and should avail themselves of other information sources (as described previously in Issue 1) to fill this need. Therefore, the discontinuance of the category-2 list is not a significant loss as characterized under NEPA. As stated above, other lists of species of concern are more accurate and comprehensive than the former category-2 list, and nothing in the Act requires Federal agencies to use or consider that specific list.

Issue 6: Commenters noted that limited financial resources should be concentrated on species of greatest concern in a cost-effective manner before very costly ''emergency room'' measures, such as captive breeding, are required. They were concerned that under the new candidate policy, prelisting (candidate conservation) funds will not be available for species of concern and that it will also become more difficult for Service offices to obtain badly needed section 6 (Cooperative Endangered Species Grants to States and Territories) proposals for such species.

Service Response: Funding for the endangered species program has fallen short of program needs. Therefore, it is important that appropriations under the Act be directed primarily toward species for which the Service has direct statutory responsibility under the Act. As such, expenditure of candidate conservation allocations must be limited to activities related to identifying candidate species and conserving candidate species. In fiscal year 1997 the Service will direct roughly four-fifths of its appropriations (for candidate conservation) to candidate conservation agreements and activities and one-fifth to status assessments for species of concern that may warrant candidate status. Clearly, such a policy achieves the stated goal of focusing funding on those species thought to be in gravest peril.

Section 6 funds allocated to State and Territorial fish and wildlife agencies may be used for status assessments for species that may warrant candidate status and for conservation and recovery of listed, proposed, and candidate species. Candidate status determination activities have often occurred through section 6 of the Act. The Service will continue to work closely with the States and Territories through existing cooperative agreements to determine the assessments that should have the highest priority for funding. The Service will also continue to work with States and Territories to strengthen or develop cooperative agreements for section 6 activities.

Issue 7: Commenters asserted that the evaluation of former category-2 species for possible inclusion on the February 28, 1996, Notice of Review was inadequate because Service Regional offices did not have enough time to properly evaluate over 4,000 category-2 species. In addition, commenters stated that the Service violated the public notice and comment requirements of the Act and the Administrative Procedure Act (APA) by putting its new policy on candidate species into effect on February 28, 1996, without requesting a public comment period and evaluating public comments.

Service Response: A Notice of Review is a snapshot of the species that the Service considers candidates at the time. Service staff will continue to evaluate species of concern and elevate to candidate status those that meet the appropriate criteria.

Service Field and Regional offices were provided sufficient advance notice to evaluate candidate lists for the February 28, 1996, Notice of Review. The data call for the update of the plant notice was issued in January 1995, with a response due in 90 days. An update of all plant and animal taxa that the Regions recommended for category-1 status was requested on May 17, 1995. In addition, Regional offices were asked on August 31, 1995, to provide comments or corrections on a draft notice of review.

In a notice published in the Federal Register on September 17, 1996 (61 FR 48875), the Service notified the public that the comment period for the new candidate policy would remain open until October 17, and that public comments would be taken into consideration in developing the final decision. All procedural requirements of the Act and the APA have been met.

Issue 8: A commenter requested clarification on a statement in the February 28, 1996, notice of review regarding whether species not known to exist in the wild could qualify for candidate status.

Service Response: Species not currently known to exist in the wild, captivity, or cultivation cannot be considered for candidate status. However, the Service has not, nor did it intend to, remove species from consideration for candidate status if they are believed to be extinct in the wild but known to be extant in captivity or cultivation. Species that are presently known only in captivity or cultivation, but that otherwise meet the criteria for listing established by section 4 of the Act, may be considered as candidates for possible listing.

Issue 9: Commenters stated that they do not believe that public confusion constitutes a reasonable basis for eliminating the category-2 list. Various commenters suggested changing the name of the list to ''watch list,'' ''species of concern,'' or ''species of uncertain status,'' rather than eliminating the list altogether.

Service Response: As discussed also in the Background section and Issue 1 above, the Service's decision to discontinue the category-2 list was based on numerous factors. The quality of the information for category-2 species was inconsistent and maintenance of such a list by the Endangered Species program is highly duplicative of other efforts. A combination of factors, including budgetary priorities, duplicative functions, uncertain data quality, and public confusion, forms the basis for the decision to discontinue maintenance of a list of category-2 species. The Service simply lacks the resources to continue such a list at a time of shrinking budgets, especially when mandatory section 4 demands are increasing and when non-Federal sources are providing a superior product.

Decision

After review of comments and further consideration, the Service discontinues the maintenance of a list of category-2 species. The Service's Endangered Species Program will identify candidates for addition to the list of endangered or threatened species through a collaborative process between the public and private sectors. The Service, through all its appropriate programs, will take an active role with its partners and other knowledgeable individuals to identify and conserve species of concern, identify research needs, set priorities for developing the information and determine how to accomplish the work needed to resolve the status of species.

Tools available to the Service and its partners for use as a foundation for identifying potential candidates include: the Natural Heritage Central Database of TNC and the International Network of Natural Heritage Programs and Conservation Data Centres, the Service's list of Migratory Nongame Birds of Management Concern in the United States, species protected by State endangered species laws or identified by State agencies as rare or vulnerable, species identified by other Federal agencies as vulnerable or of management concern (e.g., the USFS's and BLM's ''sensitive species''), and

species identified by professional scientific societies as rare or vulnerable (e.g., the American Fisheries Society and National Audubon Society/Partners in Flight). The most comprehensive single source of information on rare or imperilled species is the Natural Heritage Central Database, developed by TNC and the network of State Natural Heritage programs, which ranks the conservation status of species at the global, national, and state levels. This information is available from TNC and the State Heritage programs.

When all available information has been evaluated, the Service will determine if a particular species meets the information standards and status criteria for recognition as a candidate species, and if so, the Regional Director will recommend to the Service's Director that the species be added to the candidate list. Other species may warrant further review or monitoring or not warrant further consideration for candidate status at that time. Non-candidate species petitioned for listing will require initiation of a status review when the Service makes a 90-day finding of ''substantial information.'' If the Service makes a 12-month finding of ''warranted'' or ''warranted but precluded,'' the species would then become a candidate. The annual update of the candidate notice of review will serve as recycled petition findings until such time as a final determination can be made on whether a proposed listing rule should be published.

National Environmental Policy Act

As stated in the September 17, 1996, notice (61 FR 48875), the Service does not consider its decision to discontinue the maintenance of a list of category-2 species in Notices of Review to be a major Federal action significantly affecting the quality of the human environment for purposes of the NEPA.

Further, the Department of the Interior's Departmental Manual (DM) categorically excludes from consideration under NEPA, ''activities which are educational, informational, advisory or consultative to other agencies, public or private entities, visitors, individuals, or the general public'' (516 DM 2, Appendix 1, item 1.11). Notices of Review serve the purpose of informing Federal agencies, state agencies, and the general public of species that are candidates for possible addition to the lists of endangered or threatened wildlife and plants. They also serve as data-gathering tools to assist the Service in developing the best available scientific and commercial data on such species. There is no statutory or regulatory mandate on how to structure or when to publish these notices. Therefore, even if the Service's decision to discontinue maintenance of a list of category-2 species in Notices of Review were considered an ''action'' for purposes of the NEPA, this categorical exclusion would apply. The Service also believes that the exceptions to categorical exclusions (516 DM 2, Appendix 2) would not be applicable to this decision, especially in light of the absence of environmental effects for such action.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 27, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 96–30947 Filed 12–4–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961008282–6332–02; I.D. 092796A]

RIN 0648–AI97

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands; Red Hind Spawning Aggregations

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a regulatory amendment prepared by the Caribbean Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). The regulatory amendment adjusts the boundary of the existing red hind spawning aggregation seasonal/area closure in the EEZ off western Puerto Rico and adds two additional red hind spawning aggregation seasonal/area closures. The intended effect is to protect red hind spawning aggregations by prohibiting fishing in these areas during the spawning season. This rule also contains a technical change to the regulations to alter minimally the boundary of the mutton snapper spawning aggregation area off the southwest coast of St. Croix, U.S. Virgin Islands (USVI), to make it compatible with USVI regulations.

EFFECTIVE DATE: December 7, 1996.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of Puerto Rico and USVI is managed under the FMP. The FMP was prepared by the Council and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

The background and rationale for the measures in the regulatory amendment were included in the preamble to the proposed rule (61 FR 55127, October 24, 1996) and are not repeated here.

Comments and Responses

Comment: The Center for Marine Conservation (CMC) supports management measures to protect two additional spawning aggregations for red hind but is concerned about the reduction in the size of the existing spawning aggregation seasonal/area closure around Tourmaline Bank. CMC wants the Council to reconsider a rejected measure to prohibits the sale of red hind during the closed season. In addition, CMC notes the need for additional conservation measures, such as the establishment of marine reserves, to protect red hind critical habitat.

Response: NMFS agrees with CMC's assessment of the need for additional protective measures to address the continuing decline in red hind populations off Puerto Rico. Closed areas are one of the best ways to protect the spawning stocks and prevent overfishing. Puerto Rico is currently considering a series of marine reserves, including one in the Tourmaline Bank area, to protect reef fish, corals, and reef invertebrates in its waters (0 to 9 nautical miles offshore). The Council is working with the fishing industry to identify and establish closed areas in Federal waters throughout the U.S. Caribbean. The Council intends to reassess the need for a possible prohibition on the sale of red hind during the spawning season if the spawning area closures are unsuccessful in arresting population declines.

The decision to establish the original spawning aggregation closure off western Puerto Rico was based on the best information available at that time. New information now demonstrates that the area originally established includes habitat unsuitable for red hind, such as

hard sandy bottom. NMFS concurs with the Council's decision to reopen this area because it places an unfair burden on commercial fishermen with no specific benefit for conservation. NMFS and the Council continue to explore options for increased conservation of red hind and other reef fish in Puerto Rico, including additional gear restrictions and a proposed fish trap reduction program. NMFS welcomes CMC's advice and assistance in these efforts.

Classification

This final rule has been determined to be not significant under E.O. 12866.

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 the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (61 FR 55127, October 24, 1996) and are not repeated here. No comments were received concerning this certification.

The spawning season for red hind off Puerto Rico begins by early December. Existing regulations make the red hind spawning aggregation seasonal/area closure effective December 1 of each year. To ensure as soon as possible the conservation benefits of the revised red hind spawning aggregation seasonal/area closures, these closures should be implemented as soon as possible. Accordingly, the Assistant Administrator for Fisheries, NOAA, finds good cause, namely that it would be contrary to the public interest to delay the effectiveness of this rule for 30 days, and under 5 U.S.C. 553 (d)(3), makes this rule effective as of December 7, 1996. While this will provide fishermen with only a few days notice of the closure, the fishermen have had considerable notice through the Council public hearing process and the public comment period on the notice of proposed rulemaking that an early December closing was imminent. Therefore, given the relatively small area of the closures, it will be easy for fishermen to leave the area by the effective date of this rule.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 29, 1996.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.33, paragraph (a), paragraph (b) introductory text, and paragraph (b)(3) are revised to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) *Mutton snapper spawning aggregation area.* From March 1 through June 30, each year, fishing is prohibited in that part of the following area that is in the EEZ. The area is bounded by rhumb lines connecting, in order, the points listed:

Point	North latitude	West longitude
A	17°37.8′	64°53.0′
B	17°39.0′	64°53.0′
C	17°39.0′	64°50.5′
D	17°38.1′	64°50.5′
E	17°37.8′	64°52.5′
A	17°37.8′	64°53.0′

(b) *Red hind spawning aggregation areas.* From December 1 through February 28, each year, fishing is prohibited in those parts of the following areas that are in the EEZ. Each area is bounded by rhumb lines connecting, in order, the points listed:

* * * * *

(3) *West of Puerto Rico*—(i) *Bajo de Cico.*

Point	North latitude	West Longitude
A	18°15.7′	67°26.4′
B	18°15.7′	67°23.2′
C	18°12.7′	67°23.4′
D	18°12.7′	67°26.4′
A	18°15.7′	67°26.4′

(ii) *Tourmaline Bank.*

Point	North latitude	West Longitude
A	18°11.2′	67°22.4′
B	18°11.2′	67°19.2′
C	18°08.2′	67°19.2′
D	18°08.2′	67°22.4′
A	18°11.2′	67°22.4′

(iii) *Abrir La Sierra Bank.*

Point	North latitude	West Longitude
A	18°06.5′	67°26.9′
B	18°06.5′	67°23.9′
C	18°03.5′	67°23.9′
D	18°03.5′	67°26.9′
A	18°06.5′	67°26.9′

[FR Doc. 96–30970 Filed 12–4–96; 8:45 am]

BILLING CODE 3510–22–W

50 CFR Part 630

[Docket No. 960314073–6335–03; I.D. 112696C]

RIN 0648–AI23

Atlantic Swordfish Fishery; Drift Gillnet Emergency Closure

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

ACTION: Fishery closure and final rule.

SUMMARY: NMFS closes the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, from December 1, 1996, through May 29, 1997. NMFS has reinitiated consultation under the Endangered Species Act for Atlantic swordfish fisheries due to new information concerning the status of the northern right whale. This closure will ensure that no irreversible and irretrievable commitment of resources is made that has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures while the consultation on this fishery is pending.

EFFECTIVE DATES: The closure will be effective from December 1, 1996, through 2400 hours, local time, May 29, 1997. The amendment to part 630 will be effective November 29, 1996.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Because this is a Federally managed fishery, it is subject to the requirements of section 7 of the Endangered Species Act (ESA), which provides for a consultation to ensure that threatened or endangered species are not jeopardized. NMFS reinitiated consultation on the Atlantic swordfish fisheries on September 25, 1996, due to new information concerning the status of the northern right whale (*Eubaleana glacialis*).

During the winter of 1995–1996, an unprecedented number of right whale deaths (6–7) were reported from the Southeast right whale critical habitat/calving grounds off Georgia and Florida. Although these mortalities are not attributed to the driftnet fishery, this information changed the environmental baseline upon which all previous section 7 consultations had been conducted. Further, the Incidental Take Statement in the February 2, 1996, biological opinion has been exceeded for loggerhead turtles. Also, the Atlantic Offshore Cetacean Take Reduction Team submitted a draft take reduction plan to NMFS on November 25, 1996, which includes recommended measures to reduce incidental takes of strategic marine mammal stocks (including right whales) to below their Potential Biological Removal level within 6 months of implementation. Right whale entanglements have been documented in this fishery and the potential exists for entanglements to occur in the swordfish drift gillnet fishery during the winter months of December - April. The possibility of 15 driftnetters operating in the winter months may result in significant interactions with several species of whales including right and humpback whales, as well as ridley and loggerhead turtles. Given that this fishery has had documented interactions with right whales and that no measures have been implemented to reduce incidental takes of right whales, NMFS believes that a closure during the semiannual subquota period of December 1, 1996, through May 29, 1997, will ensure that no irreversible and irretrievable commitment of resources is made that has the effect of foreclosing the formulation or implementation of any prudent and reasonable alternative measures while the consultation is pending. Hence, NMFS is closing the directed drift gillnet fishery for the second semiannual subquota period. This closure will be effective through 2400 hours May 29, 1997, or until completion of the consultation with the issuance of a biological opinion on the swordfish drift gillnet fishery, whichever comes first. If consultation is not completed by May 3, 1997, NMFS will review the fishery and determine whether the quota can be adjusted in light of NMFS requirements pursuant to section 7(d) of the ESA.

Pursuant to this emergency closure: (1) No one aboard a vessel using or having on board a drift gillnet may fish for swordfish from the North Atlantic swordfish stock; and (2) no more than two swordfish per trip may be possessed on board a vessel using or having on board a drift gillnet in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5 degrees N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state. This closure has no effect on the swordfish quota in any other quota period.

Classification

This action is being issued as an emergency rule under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1855(c). The Assistant Administrator, NMFS, finds that, in order to ensure that no irreversible and irretrievable commitment of resources is made that has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures while consultation under section 7(a) of ESA takes place on this fishery, good cause exists to waive the requirement to provide prior notice and an opportunity for public comment, under authority at 5 U.S.C. § 553(b)(B), as such procedures would be contrary to the public interest. For the same reason, there is good cause, under authority at 5 U.S.C. § 553(d)(3), to waive the requirement for a 30-day delay in effectiveness. Finally, as notice and an opportunity for public comment are not required by 5 U.S.C. § 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, are inapplicable. This action is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: November 29, 1996.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.7, paragraph (aa) is added to read as follows:

§ 630.7 Prohibitions.

* * * * *

(aa) Notwithstanding any other provision of part 630, (1) no one aboard a vessel using or having on board a drift gillnet may fish for swordfish from the North Atlantic swordfish stock; (2) no more than two swordfish per trip may be possessed on board a vessel using or having on board a drift gillnet in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5 degrees N. lat.; and (3) no more than two swordfish per trip may be landed from a vessel using or having on board a drift gillnet in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

[FR Doc. 96–30932 Filed 11–29–96; 4:44 pm]

BILLING CODE 3510–22–F

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50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 120296A]

Fisheries of the Exclusive Economic Zone off Alaska; Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. This action is necessary because the 1996 Pacific halibut prohibited species catch (PSC) limit for trawl gear in the GOA has been caught.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), December 2, 1996, until 2400 hrs, A.l.t., December 31, 1996.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1996 Harvest Specifications of Groundfish for the GOA (61 FR 4304, February 5, 1996) established the 1996 Pacific halibut PSC limit for vessels using trawl gear at 2,000 metric tons (mt). The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.21(d)(7)(i), that vessels engaged in directed fishing for groundfish with trawl gear in the GOA

have caught the 1996 Pacific halibut PSC limit. Therefore, NMFS is closing the directed fishery for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock.

Classification

This action is taken under 50 CFR 679.21 and is exempt from OMB review under E.O. 12866.

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

Dated: December 2, 1996.

Gary Matlock,

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

[FR Doc. 96–30969 Filed 12–2–96; 2:05 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 235
Thursday, December 5, 1996

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–100–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospace Technologies of Australia, Nomad N22 and N24 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 85–21–06, which currently requires replacing the attachment fittings of the upper fin rear spar and the fin/horizontal stabilizer on all Aerospace Technologies of Australia (ASTA), Nomad N22 and N24 series airplanes. The proposed action would require removing the upper fin to stub fin forward attachment bolts, inspecting the attachment fittings for cracks, and, if no cracks are found, replacing the attachment bolts with bolts of improved design until the life limit of the attachment fittings is reached, at which time the attachment fittings would be replaced. If cracks are found, the proposed action would require replacing the attachment bolts and attachment fittings. Cracks found in the underhead radius and at the base of the thread of the bolt prompted the proposed AD action. The actions specified by the proposed AD are intended to prevent cracking in the upper fin and horizontal stabilizer attachment fittings, which if not corrected, could result in loss of control of the airplane.

DATES: Comments must be received on or before February 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–100–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from AeroSpace Technologies of Australia, Limited, ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Atmur, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (310) 627–5224; facsimile (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 should 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 that summarizes 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 No. 95–CE–100–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–100–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, recently notified the FAA that an unsafe condition may exist on ASTA Nomad N22 and N24 series airplanes. CASA advises that fatigue cracks have been found in the attachment bolt as well as the attachment fitting of the upper fin and horizontal stabilizer.

AD 85–21–06 mandated a life limit of 3,000 total hours time-in-service to these attachment fittings and at that time the attachment fittings should be replaced in accordance with ASTA Service Bulletin NMD–53–5, dated October 19, 1984. As a result of cracks being found during routine inspections prior to the life limit, ASTA advises that the attachment fittings may crack before that time because of increased fatigue caused by failure or partial failure of the attachment bolts. Therefore, the proposed action would supersede AD 85–21–06 by requiring replacement of the old attachment bolt with a bolt of improved design to assist in preventing cracks in the attachment fitting before reaching the life limit, at which time the attachment fittings would be replaced.

Applicable Service Information

ASTA has issued Nomad Alert Service Bulletin ANMD 55–23, Revision 1, dated July 11, 1991, which specifies inspecting the attach bolt for cracks and replacing the bolt if cracked, and continue to repetitively inspect until 3,000 hours time-in-service (TIS). Service Bulletin ANMD 55–23, Revision 1 then specifies accomplishment of Nomad Service Bulletin (SB) NMD–53–5 Rev. 2, dated December 6, 1995, which specifies inspecting the attachment bolts and attachment fittings for cracks, and replacing the attachment bolts and attachment fittings if cracked, or upon the accumulation of 3,000 hours TIS.

FAA's Conclusion

This airplane model is manufactured in Australia and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to

this bilateral airworthiness agreement, CASA has kept the FAA informed of the situation described above. The FAA has examined the findings of CASA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop in other ASTA Nomad N22 and N24 series airplanes of the same type design registered for operation in the United States, the proposed AD would supersede AD 85–21–06 with a new AD that would require removing the attachment bolt, part number (P/N) 2/N–00–43, and inspecting the attachment fitting for cracks using a dye penetrant method. If no cracks are found, the proposed AD would require replacing the bolt with a new bolt, P/N 3/N–00–43, and, at the accumulation of 3,000 total hours time-in-service (TIS), replacing the attachment fittings. If cracks are found, the proposed action would require replacing the attachment bolts and attachment fittings at the time of inspection and prior to further flight.

Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 workhours per airplane to accomplish the proposed inspection and bolt replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $236 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,740 or $716 per airplane. The cost of replacing the attachment fittings is not included in these figures because AD 85–21–06 previously accounted for the cost of the attachment fitting replacement.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 has been placed 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 85–21–06, Amendment 39–5152, and by adding a new AD to read as follows:

Aerospace Technologies of Australia (ASTA): Docket No. 95–CE–100–AD; Supersedes AD 85–21–06, Amendment 39–5152.

Applicability: Nomad N22 and N24 series airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless AD 85–21–06 or this AD has already been accomplished.

To prevent cracking in the upper fin and horizontal stabilizer attachment fittings, which if not corrected, could result in loss of control of the airplane, accomplish the following:

(a) Remove the attachment bolt (part number (P/N) 2/N–00–43, qty 2) and inspect the attachment bolt, vertical fin attachment fittings, and fin/horizontal stabilizer fittings for cracks, using a dye penetrant method, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section in Nomad Alert Service Bulletin (ASB) ANMD–55–23, Revision 1, dated July 11, 1991.

(1) If no cracks are found, prior to further flight, replace the attachment bolts (P/N 2/N–00–43, qty 2) with new attachment bolts (P/N 3/N–00–43, qty 2) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section in Nomad ASB ANMD–55–23, Revision 1, dated July 11, 1991.

(2) If cracks are found, prior to further flight, replace the attachment bolts in accordance with the ACCOMPLISHMENT INSTRUCTIONS section in Nomad ASB 55–23, Revision 1, dated July 11, 1991, and replace the vertical fin attachment fittings and fin/horizontal stabilizer fittings in accordance with Nomad Service Bulletin (SB) NMD–53–5, Revision 2, dated December 6, 1995.

(b) Upon the accumulation of 3,000 hours total TIS, unless previously accomplished in accordance with paragraph (a)(2) of this AD, replace the vertical fin attachment fittings and the fin/horizontal stabilizer fittings in accordance with the ACCOMPLISHMENT INSTRUCTIONS section in Nomad SB NMD–53–5, Revision 2, dated December 6, 1995.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, California, 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office. Alternative methods of compliance approved in accordance with AD 85–21–06 are considered approved as alternative methods of compliance for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request from AeroSpace Technologies of Australia, Limited, ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 85–21–06, Amendment 39–5152.

Issued in Kansas City, Missouri, on November 25, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–30798 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–118–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require the replacement of certain attachment screws on the leading edges of the left and right wings with longer screws. This proposal is prompted by reports indicating that these screws had become loose. The actions specified by the proposed AD are intended to prevent loosening or loss of the screws, which could lead to loosening or loss of the leading edge of the wing, and consequent reduced controllability of the airplane.

DATES: Comments must be received by January 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–118–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 Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2796; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–118–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. 96–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it has received reports indicating that attachment screws at leading edge 1 of the left and right wings have become loose; these discrepant screws were detected during maintenance checks. The length of the attachment screws is apparently too short to properly secure the leading edge to the wing. Should the leading edge become loose or detached during flight, due to the loosening or failure of the attachment screws, it could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–57–058, dated November 23, 1994, which describes procedures for replacing the attachment screws at leading edge 1 of the left and right wings with longer attachment screws having part number (P/N) NAS7303A5. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 95–044, dated January 30, 1995, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the attachment screws at leading edge 1 of the right and left wings with longer attachment screws having P/N NAS7303A5. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 9 Dornier Model 328–100 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed replacements, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,080, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would

accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have 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), 40113, 44701.

§ 39.13 [Amended]

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

Dornier: Docket 96–NM–118–AD.

Applicability: Model 328–100 series airplanes having serial numbers 3005 through 3019 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loosening or loss of the attachment screws, which could lead to loosening or loss of the leading edge of the wing, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 6 weeks after the effective date of this AD, replace the attachment screws for leading edge 1 of the left and right wings with longer attachment screws having part number NAS7303A5, in accordance with Dornier Service Bulletin SB–328–57–058, dated November 23, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 29, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–30966 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–114–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require modification of the electrical circuits for certain avionics by rewiring and adding electrical devices. This proposal is prompted by reports indicating that failure of an engine or direct current (DC) generator during takeoff and landing, coupled with an open DC tie, could cause the avionics to fail. The actions specified by the proposed AD are intended to prevent the failure of those avionics during takeoff and landing, which consequently could result in the inability of the flight crew to respond to and control the associated systems during these critical phases of flight.

DATES: Comments must be received by January 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–114–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 Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2796; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–114–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. 96–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it has received reports indicating that the failure of an engine or direct current (DC) generator during takeoff and landing, coupled with an open DC tie in the airplane's electrical system, could cause failure of the No. 2 primary flight and multiple function displays, or the autopilot/yaw damper servos. The failure of these avionics during takeoff and landing, if not prevented, could result in the inability of the flight crew to respond to and control the systems associated with these avionics during these critical phases of flight.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–24–062, Revision 1, dated June 27, 1995, which describes procedures for modification of the wiring that supplies power from the non-essential bus 2 to the bus 2 avionics circuit, and from the non-essential bus 1 to the bus 1 avionics circuit. This modification entails the rewiring of these circuits and the addition of certain electrical devices. This modification is intended to correct circuit logic and wiring design discrepancies that could cause these circuits to fail if the DC tie in the electrical system remains open during takeoff and landing. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 95–284, dated August 4, 1995, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the wiring that supplies power from the non-essential bus 2 to the bus 2 avionics circuit, and from the non-essential bus 1 to the bus 1 avionics circuit, by rewiring these circuits and adding electrical devices. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 9 Dornier Model 328–100 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 220 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $118,800, or $13,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have 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), 40113, 44701.

§ 39.13 [Amended]

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

Dornier: Docket 96–NM–114–AD.

Applicability: Model 328–100 series airplanes having serial numbers 3005 through 3024 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure, during takeoff and landing, of the No. 2 primary flight and multiple function displays, or the autopilot/

yaw damper servos, which consequently could result in the inability of the flight crew to respond to and control the systems associated with these avionics during these critical phases of flight, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the wiring that supplies power from the non-essential bus 2 to the bus 2 avionics circuit, and from the non-essential bus 1 to the bus 1 avionics circuit, in accordance with Dornier Service Bulletin SB–328–24–062, Revision 1, dated June 27, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 29, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–30967 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 73

[Airspace Docket No. 96–ASO–10]

Proposed Alteration and Revocation of Restricted Areas, R–3007A, B, C, D, E; Townsend, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to reconfigure Restricted Areas R–3007A, B, C, D, and E at Townsend Range, GA. Specifically, this action proposes to reduce the lateral size and increase the vertical limits of the subareas, and increase the time of designation for each of the revised subareas by 6 hours per day. These amendments are necessary to accommodate Department of Defense (DOD) training requirements and to eliminate those areas of the restricted airspace that are no longer required for military activity. Additionally, this action changes the name of the using agency for the reconfigured R–3007 subareas.

DATES: Comments must be received on or before January 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 96–ASO–10, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ASO–10.'' The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land-use aspects to: ANG/CEVP, 3500 Fetchet Avenue, Andrews AFB, MD 20331–5157, ATTN: Lt. Col. Kent Adams. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the Federal Aviation Administration, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to part 73 of Title 14 of the Code of Federal Regulations (14 CFR part 73) to reconfigure R–3007A, B, C, D, and E, in Townsend, GA, to accommodate DOD training requirements, and eliminate restricted airspace no longer required for military training activity.

This amendment would eliminate all restricted airspace currently designated as R–3007A and approximately one half of the restricted airspace currently designated as R–3007B. The remaining restricted airspace would be reconfigured into three subareas: R–3007A, B, and C. Subarea R–3007D would be redesignated as a new area directly above the revised R–3007A, B, and C. R–3007A would be revised to describe the circular surface target area currently designated as R–3007E. The designation R–3007E would be revoked. The entire subarea currently designated as R–3007D would be redescribed as R–3007B. The existing subarea R–3007C would be revised to retain its original area, plus incorporate the remaining portion of the former R–3007B subarea. The redesignated area, R–3007D, would extend from 13,000 feet above mean sea level (MSL) to flight level 250 (FL 250) in order to accommodate high-altitude, high-angle weapons delivery training. At the present time, the existing 13,000-foot MSL ceiling at Townsend Range precludes the conduct of this essential training at the range. This action also proposes a 6-hour per day increase in the time of designation for the revised Townsend Range complex from the current ''Monday-Friday, 0800–1700 local time. Other times by NOTAM at least 24 hours in advance'' to ''Monday-Friday, 0700–2200 local time; other times by NOTAM at least 24 hours in

advance.'' This proposed change would permit more flexible range utilization and accommodate increased night training requirements. It is estimated that use of the Townsend Range would average 8 hours daily. Although the range is currently authorized for use before 0800 or after 1700 local time through issuance of a NOTAM at least 24 hours in advance, the proposed increase in the normal operating time of the range would more accurately inform other National Airspace System users of time periods when the range may be in use as well as reduce NOTAM system workload. The proposed restricted areas would be returned to the controlling agency on a real-time basis when not required for military activities. All operations in the range will be subsonic. Additionally, the using agency name for the proposed reconfigured airspace subareas would be changed from ''Savannah Air National Guard Training Site, Garden City, GA'' to ''ANG, Savannah Combat Readiness Training Center, GA'' to reflect the current organizational name.

The coordinates for this airspace docket are based on North American Datum 83. Section 73.30 of part 73 of the Federal Aviation Regulations was published in FAA Order 7400.8D dated July 11, 1996.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to appropriate environmental impact analysis by the proponent and the FAA prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 73.30 [Amended]

2. Section 73.30 is amended as follows:

R–3007A Townsend, GA [Revised]

Boundaries. A circular area with a 1.5-mile radius centered at lat. 31°33′16″N., long. 81°34′44″W.

Designated altitudes. Surface to but not including 13,000 feet MSL.

Time of designation. Monday-Friday, 0700–2200 local time; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. ANG, Savannah Combat Readiness Training Center, GA.

R–3007B Townsend, GA [Revised]

Boundaries. Beginning at lat. 31°38′01″N., long. 81°28′59″W.; to lat. 31°37′31″N., long. 81°28′14″W.; to lat. 31°32′31″N., long. 81°27′29″W.; to lat. 31°26′16″N., long. 81°31′29″W.; to lat. 31°25′31″N., long. 81°35′59″W.; to lat. 31°27′26″N., long. 81°33′39″W.; to lat. 31°31′16″N., long. 81°31′59″W.; thence along a 1 NM radius arc clockwise of a point centered at lat. 31°32′26″N., long. 81°31′49″W.; to lat. 31°33′16″N., long. 81°31′14″W.; to the point of beginning.

Designated altitudes. 1,200 feet AGL to but not including 13,000 feet MSL.

Time of designation. Monday-Friday, 0700–2200 local time; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. ANG, Savannah Combat Readiness Training Center, GA.

R–3007C Townsend, GA [Revised]

Boundaries. Beginning at lat. 31°38′01″N., long. 81°46′59″W.; to lat. 31°42′31″N., long. 81°33′59″W.; to lat. 31°38′01″N., long. 81°28′59″W.; to lat. 31°33′16″N., long. 81°31′14″W.; thence along a 1 NM radius arc counterclockwise of a point centered at lat. 31°32′26″N., long. 81°31′49″W.; to lat. 31°31′16″N., long. 81°31′59″W.; to lat. 31°27′26″N., long. 81°33′39″W.; to lat. 31°25′31″N., long. 81°35′59″W.; thence west along the Altamaha River to the point of beginning; excluding R–3007A.

Designated altitudes. 100 feet AGL to but not including 13,000 feet MSL.

Time of designation. Monday-Friday, 0700–2200 local time; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. ANG, Savannah Combat Readiness Training Center, GA. R–3007D Townsend, GA [Revised]

Boundaries. Beginning at lat. 31°38′01″N., long. 81°46′59″W.; to lat. 31°42′31″N., long. 81°33′59″W.; to lat. 31°38′01″N., long. 81°28′59″W.; to lat. 31°37′31″N., long. 81°28′14″W.; to lat. 31°32′31″N., long. 81°27′29″W.; to lat. 31°26′16″N., long. 81°31′29″W.; to lat. 31°25′31″N., long. 81°35′59″W.; thence northwest along the Altamaha River to the point of beginning.

Designated altitudes. 13,000 feet MSL to FL 250. Time of designation. Monday-Friday, 0700–2200 local time; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. ANG, Savannah Combat Readiness Training Center, GA.

R–3007E Townsend, GA [Removed]

Issued in Washington, DC, on November 22, 1996.

Harold W. Becker,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–30997 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 73

[Airspace Docket No. 96–ANM–21]

Proposed Establishment of Temporary Restricted Area R–3203D; Orchard, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a temporary Restricted Area 3203D (R–3203D) at Orchard, ID, for the period June 1–22, 1997. The Idaho Army National Guard has requested that this temporary restricted area be established to support its annual training requirements. This temporary area would be established adjacent to the existing Restricted Area R–3203A.

DATES: Comments must be received on or before January 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 96–ANM–21, Federal Aviation Administration, 1601 Lind Avenue, S.W., Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, (ATA–400), Office of Air Traffic Airspace Management, Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3075.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ANM–21.'' The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land-use aspects to: The State of Idaho, Military Division, Headquarters Idaho Army National Guard, Boise Air Terminal, 4040 W. Guard Street, Boise, ID 83705–8048. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3075. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the Federal Aviation Administration, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to part 73 of Title 14 of the Code of Federal Regulations (14 CFR part 73) to establish temporary Restricted Area R–3203D, at Orchard, ID, adjacent to the existing Restricted Area R–3203A, to assist the Idaho Army National Guard in supporting its annual training requirements. The proposed restricted area would be in effect for the period June 1–22, 1997. Expansion in the number of gun batteries assigned to field artillery units, along with requirements that each assigned battery accomplish several moves per day to different surface firing points, has created the need to temporarily expand the available restricted airspace to provide for more effective training. All artillery firing would be directed into existing impact areas located approximately in the center of R–3203A. The temporary restricted area is needed to provide protected airspace to contain the projectiles during flight between the surface firing point and entry into the existing R–3203A. The proposed temporary restricted area would be utilized for Idaho Army National Guard Field Artillery firing and would be released to the FAA for public use during periods it is not required for military training.

The coordinates for this airspace docket are based on North American Datum 83. Section 73.32 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8D dated July 11, 1996.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to environmental review prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 73.32 [Amended]

2. Section 73.32 is amended as follows:

R–3203D Orchard Training Area, ID [New]

Boundaries. Beginning at lat. 43°14′00″N., long. 116°16′30″W.; to lat. 43°17′51″N., long. 116°16′25″W.; to lat. 43°19′02″N., long. 116°14′45″W.; to lat. 43°19′02″N., long. 116°06″36″W.; to lat. 43°15′58″N., long. 116°01′12″W.; to lat. 43°15′00″N., long. 116°01′00″W.; to lat. 43°17′00″N., long. 116°05′00″W.; to lat. 43°17′00″N., long. 116°12′00″W.; to the point of beginning.

Designated altitudes. Surface to and including 22,000 feet MSL.

Times of use. As scheduled by NOTAM 24 hours in advance for the period June 1–22, 1997, only.

Controlling agency. FAA, Boise ATCT.

Using agency. Idaho Army National Guard.

Issued in Washington, DC, on November 22, 1996.

Harold W. Becker,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–30996 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Status Reviews for the Alexander Archipelago Wolf and Queen Charlotte Goshawk

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Status Reviews.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces continuation of rangewide status reviews for the Queen Charlotte

goshawk (*Accipiter gentilis laingi*) and the Alexander Archipelago wolf (*Canis lupus ligoni*). The Service solicits any information, data, comments, and suggestions from the public, other concerned government agencies, the scientific community, industry, or other interested parties concerning the status of these species.

DATES: Comments and data from all interested parties must be received by January 21, 1997 to be included in the findings.

ADDRESSES: Comments and materials should be sent to Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 3000 Vintage Blvd., Suite 201, Juneau, Alaska 99801–7100.

FOR FURTHER INFORMATION CONTACT: Mr. John Lindell at the above address (907/586–7240).

SUPPLEMENTARY INFORMATION:

Background

The Service will issue separate petition findings under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.), on the Queen Charlotte goshawk and the Alexander Archipelago wolf.

Queen Charlotte Goshawk

The Queen Charlotte goshawk occurs in forested areas throughout coastal mainland and insular areas of British Columbia, Canada, and southeastern Alaska. On May 9, 1994, the Service received a petition to list the Queen Charlotte goshawk as endangered under the Act, from Mr. Peter Galvin of the Greater Gila Biodiversity Project, Silver City, New Mexico, and nine copetitioners including, the Southwest Center for Biological Diversity, the Biodiversity Legal Foundation, Greater Ecosystem Alliance, Save the West, Save America's Forests, Native Forest Network, Native Forest Council, Eric Holle, and Don Muller. On August 26, 1994, the Service announced a 90-day finding (59 FR 44124) that the petition presented substantial information indicating that the requested action may be warranted, and opened a public comment period until November 25, 1994. The Service extended the public comment period until February 28, 1995, through two subsequent Federal Register notices on January 4, 1995 (60 FR 425), and February 24, 1995 (60 FR 10344). The Service issued its 12-month finding on June 29, 1995 (60 FR 33784), indicating that listing the Queen Charlotte goshawk under the Act was not warranted.

On July 16, 1995, the petitioners filed a 60-day notice of intent to sue the Service over its 12-month finding, and on November 17, 1995, they filed suit in the United States District Court for the District of Columbia challenging the not warranted finding made by the Service. As a result of a recent court order the Service is reevaluating the status of the Queen Charlotte goshawk. The Service is requesting any information, data, comments, and suggestions from the public, other concerned government agencies, the scientific community, industry, or other interested parties concerning the status of this species. The public comment period specified in this notice may have to be shortened in order to comply with any deadline established in a future court ruling.

After considering the best available scientific and commercial data on the Queen Charlotte goshawk and its habitat, the Service will issue a new 12-month finding on the petition to list this subspecies.

Alexander Archipelago Wolf

The Alexander Archipelago wolf occurs in forested areas of insular and mainland southeast Alaska, from Dixon Entrance (US/Canada border) to Yakutat Bay, including all large islands of the Alexander Archipelago except Admiralty, Baranof, and Chichagof Islands. On December 17, 1993, the Service received a petition to list the Alexander Archipelago wolf as threatened under the Act, from the Biodiversity Legal Foundation, Eric Holle and Martin J. Berghoffen. 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 announced (59 FR 26476) and a status review was initiated on May 20, 1994. The public comment period was open between May 20 and October 1, 1994 (59 FR 26476 and 59 FR 44122). The Service announced its finding that listing the Alexander Archipelago wolf was not warranted on February 23, 1995 (60 FR 10056).

The petitioners issued a 60-day notice of intent to sue over the Service's not warranted finding on November 13, 1995. On February 7, 1996, they filed suit in the United States District Court for the District of Columbia challenging the not-warranted finding made by the Service. As a result of a recent court order the Service is reevaluating the status of the Alexander Archipelago wolf. The Service is requesting any information, data, comments, and suggestions from the public, other concerned government agencies, the scientific community, industry, or other interested parties concerning the status of this species. The public comment period specified in this notice may have to be shortened in order to comply with any deadline established in a future court ruling.

After considering the best available scientific and commercial data on the Alexander Archipelago wolf and its habitat, the Service will issue a new 12-month finding on the petition to list this subspecies.

Author

This notice was prepared by Ms. Teresa Woods, U.S. Fish and Wildlife Service, Alaska Region, 1011 E. Tudor Road, Anchorage, Alaska 99503.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

Dated: November 26, 1996.

David B. Allen,

Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 96–30939 Filed 12–4–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 656

[Docket No. 950915230–6327–04; I.D. 110196E]

RIN 0648–AH57

Atlantic Striped Bass Fishery; Withdrawal of Proposed Rule

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

ACTION: Proposed rule; withdrawal.

SUMMARY: NMFS withdraws the September 27, 1995, proposed rule to remove a Federal moratorium on the harvest or possession of Atlantic striped bass in the exclusive economic zone (EEZ), offshore from Maine to Florida, and the implementation of a minimum size limit for Atlantic striped bass possessed in the EEZ. The proposed rule is withdrawn because of specific recommendations not considered at the time of proposed rulemaking.

DATES: This proposed rule is withdrawn on December 4, 1996.

FOR FURTHER INFORMATION CONTACT: Tom Meyer, 301–427–2014.

SUPPLEMENTARY INFORMATION: A proposed rule was published on September 27, 1995 (60 FR 49821), under section 6 of the Atlantic Striped Bass Conservation Act (Striped Bass Act), Public Law 100–589, reproduced at 16 U.S.C. 1851 note, to: (1) Remove the current moratorium on the harvest and possession of striped bass in the EEZ, (2) prohibit the possession of striped bass in the EEZ of less than 28 inches (71.1 cm) total length, and (3) provide that state regulations apply to any striped bass being transported into a state's jurisdiction from the EEZ.

Comments received during the proposed rule comment period (ending October 27, 1995) at nine public hearings and from numerous letters indicated substantial public concern on the following: (1) The stock was not fully recovered and the Secretary of Commerce (Secretary) should wait until the 2-year transitional period is completed (January 1, 1997) before reopening the EEZ, (2) reopening the EEZ would create law enforcement loopholes, and (3) a large percentage of the public objected to any commercial fishing for striped bass in the EEZ. In addition, NMFS received specific recommendations from both the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (MAFMC) to delay removal of the moratorium in the EEZ until the ASMFC moved from the transitional fishery mortality rate (F) target of (F = 0.33) to a ''fully restored'' fishery (F = 0.40), which was scheduled to occur on January 1, 1997.

On May 29, 1996, the ASMFC's Striped Bass Stock Assessment Committee (SBSAC) presented preliminary data to the ASMFC's Striped Bass Management Board (Board) that suggests that, on a coast-wide basis, striped bass fisheries may be occurring at or above the prescribed transitional fishing mortality rate (F = 0.33) contained in Amendment 5 to the Interstate Fishery Management Plan for Atlantic Striped Bass (Plan). Based on these data, the SBSAC recommended to the Board that the transitional F (0.33) remain operable for at least 1 more year (until January 1, 1998). The Board unanimously adopted this recommendation and provided additional supplementary guidance to certain states, and to NMFS, directed at strengthening the regulatory regime.

On September 25, 1996, the Board approved a motion (nine to eight) to freeze the quotas for striped bass along the Atlantic coast, including the important spawning areas represented by Chesapeake Bay and other estuaries, until January 1, 1998. As a result of that vote, many of the technical issues placed before the Board by the Striped Bass Technical Committee were left unresolved. In an effort to resolve them, the Board met again on October 21, 1996, and decided to have ASMFC staff prepare an addendum to the Plan. Consequently, no determination will be made on possible quota increases for striped bass until January 1997, following public hearings.

In addition, the President signed into law the Sustainable Fisheries Act of 1996 (SFA) on October 11, 1996. The SFA added three new national standards to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). These new national standards were not considered at the time of proposed rulemaking. Regulations under the Striped Bass Act must be consistent with the national standards.

The Striped Bass Act provides authority to the Secretary to implement regulations that are necessary to ensure the effectiveness of state regulations to implement the ASMFC's Plan. The proposed rule was designed to complement the ASMFC's Plan while meeting this legal requirement. Based on the current uncertainty about the interim fishing mortality rate target (F = 0.33) being achieved, the ASMFC's action to postpone going to a full (F = 0.40) fishery until January 1, 1998, the ongoing work to identify and correct some potential enforcement loopholes, the ASMFC's decision to prepare an addendum to Amendment 5 to address the 1997 fishery, and the addition of three new national standards to the Magnuson-Stevens Act not considered at the time of proposed rulemaking, the Secretary is withdrawing the proposed rule to allow NMFS and the ASMFC additional time to address these concerns before considering reinitiation of rulemaking on or about January 1, 1998.

Authority: 16 U.S.C. 1851 note.

Dated: November 27, 1996.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–30973 Filed 12–4–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 235
Thursday, December 5, 1996

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. 96–086–1]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of public meeting and request for agenda topics.

SUMMARY: This is to notify producers of veterinary biological products, product users, and other interested persons that we will be holding the seventh annual public meeting to discuss regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. The agenda for this year's meeting is being planned and suggestions for topics of general interest to producers and other interested persons are requested.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in the Scheman Building at the Iowa State Center, Ames, IA, on Tuesday, April 15, and Wednesday, April 16, 1997, from 8 a.m. to approximately 5 p.m. each day.

FOR FURTHER INFORMATION CONTACT: For further information on agenda topics contact Dr. Frank Tang, Center for Veterinary Biologics, Licensing and Policy Development, Veterinary Services, APHIS, Suite 5B48, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–4833, FAX (301)734–8669, or e-mail ftang@aphis.usda.gov. For registration information contact Ms. Kay Wessman, Center for Veterinary Biologics, Inspections and Compliance, Veterinary Services, APHIS, 223 South Walnut, Ames, IA 50010, (515) 232–5785, FAX (515) 232–7120, or e-mail kwessman@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) holds an annual public meeting on veterinary biologics in Ames, IA. The meeting provides an opportunity for the exchange of information between APHIS representatives, producers of veterinary biological products, and interested persons on issues of common concern. APHIS is in the process of planning the agenda for the seventh annual public meeting on veterinary biological products to be held in Ames, IA, on April 15–16, 1997.

As yet, the agenda for the meeting is not complete. APHIS is seeking suggestions for meeting topics from producers, product users, and the interested public before finalizing the agenda. Topics that have been suggested include: (1) The Center for Veterinary Biologics; (2) program updates; (3) regulatory reform; (4) quality assurance initiatives; and (5) postmarketing surveillance.

Consistent with efforts to reinvent government and to improve how programs are delivered, we would like to invite licensed producers of veterinary biological products, product users, and other interested persons to present their ideas and suggestions concerning the licensing, manufacturing, testing, and distribution of veterinary biologics.

Please submit, on or before January 15, 1997, proposed titles for such presentations, the name(s) of the presenter(s), the approximate amount of time that will be needed for presentation(s), and any additional suggested meeting topics (for both breakout and general sessions) to the person listed under **FOR FURTHER INFORMATION CONTACT.**

After the agenda is finalized, APHIS will announce the schedule in the Federal Register.

Done in Washington, DC, this 29th day of November 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–30961 Filed 12–4–96; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Elsmere Canyon Proposed Solid Waste Management Facility; Notice of Withdrawal of Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of withdrawal of intent to prepare an environmental impact statement.

SUMMARY: The Angeles National Forest published a Notice of Intent to prepare an environmental impact statement for a non-significant amendment to the Angeles National Forest Land and Resources Management Plan in Volume 55, No. 173 Thursday, September 6, 1990 and a revised Notice of Intent in Volume 59, No. 221, Thursday, November 17, 1994.

This was in response to a proposal to exchange land for the purpose of development of a solid waste management facility in the Elsmere Canyon area of the Tujunga Ranger District, Angeles National Forest, Los Angeles County, California.

At the request of the project proponent, the Forest wishes to withdraw the Notice of Intent with the following information:

DECISION: The Forest Service was to decide whether or not to exchange 1643 acres of National Forest land currently within the boundaries of the Angeles National Forest for private lands within the boundaries of the Angeles National Forest. Other private lands within the boundaries of other National Forests within Southern California were also to be considered.

The Forest Service had completed a Draft Environmental Impact Statement in January, 1995 and issued the Draft Statement for public review, Comments were received and revisions were complete. In analyzing new information provided by commentors, it was determined that the project did not meet the requirements of the Angeles National Forest Land and Resources Management Plan.

Further, Public Law 104–333, the Omnibus Public Lands Bill of 1996, Section 812, prohibited the transfer of any lands owned by the United States and managed by the Secretary of Agriculture as part of the Angeles National Forest for the use of such land as a solid waste landfill. As a result of the legislation, the project proponent withdrew their application for the land exchange.

Angeles National Forest Land and Resources Management Plan

The Angeles National Forest Land and Resources Management Plan contains standards and guidelines regarding

consideration of forest lands when presented with proposals for landfills. These include criteria which must be met for exchange of lands for purposes of a landfill, as well as conditions which would exclude a landfill on Forest lands.

The Forest Service determined that the need for transfer of land from the National Forest to the private sector was not established in the analysis for the purpose of siting a landfill in Elsmere Canyon. This was based on the following:.

- Other potential in-county sites have potential for development.
- Existing in-county sites have the potential for expansion.
- Waste diversion has not been developed to its full potential.
- Exportation to out-of-county facilities has not been developed.
- Exportation to out-of-state facilities has not been developed.

Other factor found not to meet the requirements of the Forest Plan was:

- Forest exchange land contained riparian areas, resulting in a net overall loss of Riparian land thus not meeting the criteria set forth in the Plan.

PL 104–333—Omnibus Public Lands Bill of 1996

Congress passed PL 104–333 which included Section 812 entitled ''Prohibition on certain transfer of National Forest Lands''. This Act stated that the Secretary shall not transfer any lands owned by the United States and managed by the Secretary as part of the Angeles National Forest to any person unless the instrument of conveyance contains a restriction on the future use of such land prohibiting the use of any portion of such land as a solid waste landfill.

For the above reasons, the Forest Service would not have prepared a non-significant amendment to the Angeles National Forest Land and Resources Management Plan for the transfer or exchange of any lands within the boundaries of the Forest or the private sector for use as a solid waste landfill.

Dated: November 25, 1996.

Michael J. Rogers,

Forest Supervisor.

[FR Doc. 96–30986 Filed 12–4–96; 8:45 am]

BILLING CODE 3410–11–M

ARMS CONTROL AND DISARMAMENT AGENCY

Performance Review Board; Membership

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of membership of Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Arms Control and Disarmament Agency announces the appointment of Performance Review Board members.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Aderholdt, Director of Personnel, U.S. Arms Control and Disarmament Agency,Washington, DC 20451 (202) 647–2034.

The following are the names and present titles of the individuals appointed to the register from which Performance Review Boards will be established by the U.S. Arms Control and Disarmament Agency during the period beginning on the effective date of this notice and ending when a new register is published and becomes effective in approximately one year. Specific Performance Review Boards will be established as needed from this register.

These appointments supersede those in the announcement published in 1995.

Name	Title
Ralph Earle, II	Deputy Director.
Lisa Farrell	Chief of Staff.
Donald Gross	Counselor.
Thomas Graham, Jr.	Special Representative.
James Sweeney	Special Representative-CSA.
Robert Sherman	Director, Advanced Project.
Q. James Sheaks	Deputy Assistant Director, Intelligence, Verification and Information Management Bureau.
Sarah Mullen	Chief, Intelligence Technology and Analysis, Intelligence, Verification and Information Management Bureau.
Lawrence Scheinman	Assistant Director, Nonproliferation and Regional Arms Control Bureau.
Norman Wulf	Deputy Assistant, Director, Nonproliferation and Regional Arms Control Bureau.
Michael Rosenthal	Chief, Nuclear Safeguards and Technology Division, Nonproliferation and Regional Arms Control Bureau.
Donald Mahley	Deputy Assistant Director, Multilateral Affairs Bureau.
Michael Guhin	Associate Assistant Director, Multilateral Affairs Bureau.
Robert Mikulak	Chief, Chemical and Biological Policy Division, Multilateral Affairs Bureau.
Pierce Corden	Chief, International Security and Nuclear Policy Division Multilateral Affairs Bureau.
Michael Nacht	Assistant Director, Strategic and Eurasian Affairs Bureau.
R. Lucas Fischer	Deputy Assistant Director, Strategic and Eurasian Affairs Bureau.
Karin Look	Chief, Strategic Negotiations and Implementation Division, Strategic and Eurasian Affairs Bureau.
David Wollan	Chief, Theater and Strategic Defenses Division, Strategic and Eurasian Affairs Bureau.
Cathleen Lawrence	Director of Administration, Office of Administration.
Ivo Spalatin	Director of Congressional Affairs, Office of Congressional Affairs.
Mary Elizabeth Hoinkes.	General Counsel, Office of the General Counsel.
Joerg Menzel	Principal Deputy of the On-Site Inspection Agency.
Stanley Riveles	U.S. Standing Consultative Commission, Commissioner.

Cathleen Lawrence,

Director of Administration.

[FR Doc. 96–30976 Filed 12–4–96; 8:45 am]

BILLING CODE 6820–32–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110796I]

Taking of Endangered and Threatened Marine Mammals Incidental to Commercial Fishing Operations; Commonwealth of Massachusetts

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

ACTION: Notice of receipt of application for a small take authorization and application for incidental take authority; request for comments and information.

SUMMARY: NMFS has received a request from the Commonwealth of Massachusetts (Massachusetts) for a general incidental take permit under the Endangered Species Act (ESA) for northern right whales incidental to commercial fishing activities within Massachusetts' territorial waters, and a small take authorization for the same species and activity under the Marine Mammal Protection Act (MMPA).

At this time, NMFS is providing the public with an advance opportunity to review these applications. NMFS also is providing background information, issuing certain suggestions and preliminary determinations, and identifying important issues raised by these applications in an attempt to describe the issues accurately, efficiently and formally in the public forum.

DATES: Comments and information must be received no later than January 6, 1997.

ADDRESSES: Comments on the applications or related information should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–2337. A copy of the applications and/or Federal Register notices and other documents mentioned in this notice may be obtained by writing to this address or by telephoning the contact listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS (301) 713–2055.

SUPPLEMENTARY INFORMATION: The MMPA was amended on April 30, 1994 (Public Law 103–238). The amendments replaced the Interim Exemption for Commercial Fisheries, section 114 of the MMPA, with sections 117 and 118, which provide a long-term regime for governing interactions between commercial fishing operations and marine mammals. The objective of the new regime was to reduce incidental mortalities and serious injuries of marine mammals occurring in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate by the year 2001.

Pursuant to section 118, NMFS places each U.S. commercial fishery into Category I, II or III based on the level of serious injury and mortality of marine mammals incidental to commercial fishing operations. Fishers who participate in a Category I or II fishery must register in the Marine Mammal Authorization Program (MMAP). Generally, those fishers who register and who comply with the other provisions of the regulations in 50 CFR part 229 are exempt from the general prohibition on the taking of marine mammals incidental to commercial fishing. In addition to the registration requirement, participants in Category I and II fisheries must take and observer on board their vessel if requested, and must carry aboard the vessel documentation that indicates that they have registered in the MMAP. Participants in all categories of fisheries must report instances of mortality or injury to marine mammals that occur in their fishing activities. Fishers also are required to comply with emergency regulations and any applicable take reduction plans (TRPs) issued under section 118.

Section 118 of the MMPA requires that NMFS develop and implement a take reduction plans (TRP) designed to assist in the recovery, or prevent the depletion of each strategic stock which interacts with a commercial fishery classified as Category I or II under this section. The immediate goal of a TRP for a strategic stock of marine mammals is to reduce, within 6 months of its implementation, mortalities and serious injuries of those marine mammals incidentally taken in the course of commercial fishing operations to less than the potential biological removal (PBR) level for that stock. The long-term goal of the TRP is to reduce, within 5 years after implementation, serious injuries and mortalities to insignificant levels approaching a zero mortality and significant injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans.

With respect to the taking of marine mammals that are listed as endangered or threatened under the ESA, both sections 118 and 101(a)(5)(E) of the MMPA are applicable. Section 7(b)(4)(C) of the ESA provides that an incidental take statement may be issued under that section only if the take is also authorized pursuant to section 101(a)(5) of the MMPA. Prior to 1994 section 101(a)(5) did not exist; thus, an incidental take statement could not be issued for the incidental taking of endangered and threatened marine mammals in the course of commercial fishing operations. Section 101(a)(5)(E) was added in 1994, in part, to correct this technical oversight and provide a mechanism for authorizing these types of incidental takes.

Section 101(a)(5)(E)(i) of the MMPA requires NMFS to permit the taking of marine mammals listed as endangered or threatened under the ESA incidental to commercial fishing operations if NMFS determines that: (1) Incidental mortality and serious injury will have a negligible impact on the affected species or stock, (2) a recovery plan for that species or stock has been developed or is being developed, and (3) where required under section 118, a monitoring program has been established, vessels are registered, and a TRP has been developed or is being developed. Permits issued under section 101(a)(5)(E)(i) are valid for up to three consecutive years.

On August 30, 1995, NMFS published final regulations to implement section 101(a)(5)(E) and section 118 of the MMPA (60 FR 45086) codified at 50 CFR part 229. Those regulations and the associated notice of proposed rulemaking (60 FR 31666, June 16, 1995) indicated that, in addition to the authorization issued under section 118 of the MMPA, a separate determination and permit issued under 101(a)(5)(E) of the MMPA would be necessary for fishers to incidentally take marine mammals from stocks listed as endangered or threatened under the ESA.

Section 101(a)(5)(E)(ii) of the MMPA and 50 CFR 229.20(d) provide that vessels that are not registered under section 118 of the MMPA (those participating in category III fisheries) are not subject to MMPA penalties for the incidental taking of endangered or threatened marine mammals provided that any mortality or injury of such a marine mammal is reported to NMFS.

On August 31, 1995 (60 FR 45399), NMFS issued interim final permits to those fisheries with incidental interactions with certain marine mammal stocks listed as endangered or threatened under the ESA for which the appropriate determinations could be made under section 101(a)(5)(E)(i) of the MMPA. In making these determinations, NMFS referred to the definition of ''negligible impact,'' which under 50 CFR 216.103, means ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

NMFS also announced that, as a starting point, it would consider a total annual serious injury and mortality of not more than 10 percent of a stock's PBR level to be insignificant. NMFS also emphasized that such a criterion would

not be the only factor in evaluating whether a particular level of take could be considered negligible. The population abundance and fishery-related mortality information provided in the stock assessment reports has varying degrees of uncertainty, and factors other than PBR levels (e.g., population trend, reliability of abundance and mortality estimates) must also be considered.

The negligible impact determinations required that NMFS assess the available information both quantitatively and qualitatively. A finding of negligible impact made under section 101(a)(5)(E) indicates NMFS' best assessment that the estimated mortality and serious injury of endangered and threatened marine mammals incidental to commercial fishing operations will not adversely affect the species or stock through effects on annual rates of recruitment or survival. In addition, section 101(a)(5)(E)(i) also requires that in order to make a finding of negligible impact, a recovery plan under the ESA must either be in place or be under development, a monitoring program must be in place under section 118(d), and a TRP must be developed or in place for fisheries that impact that stock.

Based on the above, NMFS evaluated the best available information for stocks listed as endangered or threatened under the ESA and determined, on a stock-by-stock basis, whether the incidental mortality and serious injury from all commercial fisheries has a negligible impact on each marine mammal stock.

NMFS was unable to determine that the mortality and serious injury incidental to commercial fishing operations would have a negligible impact to the following stocks, and consequently, indicated that no take incidental to commercial fishing was allowed: (1) Fin whale, western North Atlantic stock; (2) humpback whale, western North Atlantic stock; (3) northern right whale, western North Atlantic stock; (4) sperm Whale, Western North Atlantic stock; (5) sperm whale, California/Oregon/Washington stock; (6) humpback whale, California/Oregon/Washington-Mexico stock; and (7) Hawaiian monk seal.

NMFS issued interim final permits to allow for the incidental, but not intentional, taking of three stocks of endangered or threatened marine mammals: (1) Humpback whale, central North Pacific stock; (2) Steller sea lion, eastern stock; and (3) Steller sea lion, western stock.

NMFS concluded that there was no documented evidence of fishery-related interactions for several other endangered and threatened marine mammal stocks. For further information, refer to the referenced Federal Register documents and the ''Assessment of Fishery Impacts on Endangered and Threatened Marine Mammals Pursuant to section 101(a)(5)(E) of the MMPA'' (NMFS August 31, 1995). Copies are available upon request (see **ADDRESSES**).

NMFS indicated on August 31, 1995, at 60 FR 45399 that it was issuing a single interim permit under section 101(a)(5)(E) to appropriate vessels for 1995, but that individual permits would be issued for 1996, 1997, and 1998 in conjunction with authorizations issued under section 118 of the MMPA. In 1996, NMFS issued individual permits, where appropriate, in association with the section 118 authorization certificates.

NMFS conducted a consultation under section 7 of the ESA on the issuance of permits under section 101(a)(5)(E) of the MMPA. NMFS concluded that issuing these permits would not jeopardize the continued existence of endangered or threatened species under NMFS jurisdiction. NMFS issued an incidental take statement for each stock of endangered or threatened marine mammal where takes were authorized. A copy of the consultation and incidental take statement is available to reviewers (see **ADDRESSES**).

Issues To Be Addressed

With respect to the new regime for governing interactions between commercial fishing operations and marine mammals, several issues should be emphasized. Some issues may need to be addressed prior to processing the applications submitted by Massachusetts.

First, section 101(a)(5)(E)(i) of the MMPA refers to commercial fisheries in the plural. In the past, NMFS considered the impacts of all commercial fishery operations in making its negligible impact determinations. Thus, NMFS has not authorized the take of an endangered or threatened marine mammal in any category I or II fishery unless all fisheries satisfy the negligible impact standard, even if a particular fishery, by itself, might satisfy the standard.

In contrast, under 50 CFR part 229, subpart A, fisheries are classified in Category I, II or III based on cumulative incidental serious injury and mortality of a particular stock in all fisheries, and the serious injury and mortality incidental to a particular fishery (60 FR 45086, August 30, 1995). NMFS invites comments on whether it would be appropriate to consider this approach with respect to making negligible impact determinations.

Second, although both Congress and NMFS have stressed the need to reduce incidental mortalities and serious injuries of marine mammals occurring in commercial fishing operations, little consideration has been given to the authorization of less serious types of takings, such as taking by harassment. Section 118 of the MMPA does not address takings by harassment. While section 118 requires all injuries to be reported, fisheries are classified and TRTs are formed based on the levels of serious injuries and mortalities.

NMFS recognizes Congressional intent that the ''negligible impact'' standard in the MMPA is more stringent than the ''no jeopardy'' standard in the ESA (H.R. Rep. No. 439, 103d Cong. 2d Sess. 30). Consequently, it could be concluded that the MMPA provides more protection for endangered and threatened marine mammals than the ESA. From the language of the statute it would appear that all types of takings of endangered and threatened marine mammals incidental to commercial fishing operations are prohibited unless a permit is issued under section 101(a)(5)(E)(i). Still, it is not absolutely clear whether Congress intended 101(a)(5)(E) to prohibit all types of takings, including takes by harassment. The use of the term ''taking'' in the introductory portion of section 101(a)(5)(E)(i) does not appear to be limited to serious injuries and mortalities yet the first criterion for issuing that permit in section 101(a)(5)(E)(i)(I) focuses only on the impact of serious injuries and mortalities.

In the past, NMFS has not distinguished between types of takes in issuing permits that authorize the taking of marine mammals incidental to commercial fishing operations. When NMFS made its determination under section 101(a)(5)(E) regarding whether permits should be issued authorizing the take of any threatened or endangered marine mammals in the Atlantic Ocean, it did not distinguish between takings by harassment only versus takings by serious injury or mortality.

To date, the agency has not considered issuing permits under section 101(a)(5)(E) solely for the purpose of taking by harassment. NMFS is inviting comments on whether it should issue permits for harassment under 101(a)(5)(E) and, if so, what standards should be used in making determinations concerning the issuance of these permits.

Summary of Request

On October 17, 1996, the Director of the Massachusetts Division of Marine Fisheries submitted to NMFS an application under the MMPA seeking authorization of a small take of northern right whales (*Eubalaena glacialis*) incidental to commercial fishing activities within Massachusetts' territorial waters, in particular Cape Cod Bay during the months of February through May. This application was in response to an order dated September 24, 1996, in *Strahan* v. *Coxe* wherein the presiding District Court judge ordered Massachusetts to apply, under the MMPA, for a small take of northern right whales. In their letter, Massachusetts also requested a general incidental take permit for the northern right whale under either section 7(b)(4) or section 10(a)(1)(b) of the ESA.

Preliminary Determinations and Suggestions

NMFS is issuing the following preliminary determinations and suggestions with respect to Massachusetts' request:

(1) *Application for a permit under section 101(a)(5)(E)(i) of the MMPA.* On May 28, 1996, NMFS advised Massachusetts that it was unnecessary and inappropriate for Massachusetts to apply for a small take permit under section 101(a)(5)(E) and noted that, where appropriate, NMFS would issue incidental take authority through the section 118 authorization certificate process. There was no new evidence provided in the letter submitted by Massachusetts to indicated that NMFS should re-evaluate its previous position that a negligible impact determination could not be made for right whales.

Since registration under the MMPA is required under section 118 for participants in Category I and II fisheries, NMFS' initial response indicated that an application for a permit under section 101(a)(5)(E) would be redundant.

In 1995 and 1996, NMFS initiated the process for issuing permits under 101(a)(5)(E) without requiring applications from individuals, states or fishing groups. This process should be distinguished from the process under section 118 where individual applications are required unless registration is integrated with a pre-existing registration program. NMFS recognizes that the legislative history of the 1994 amendments stresses that the agency should, wherever possible, provide permits under section 101(a)(5)(E) to identifiable groups of vessels rather than individuals (H.R. Rep. No. 439, 103d Cong. 2d Sess. 30); NMFS issued section 101(a)(5)(E) permits in conjunction with section 118 authorization certificates in accordance with this legislative guidance.

Essentially, the section 101(a)(5)(E) permit is ''piggy-backed'' on the section 118 authorization certificate. This approach is consistent with other NMFS actions to integrate and coordinate registration under the MMPA with existing fishery license, registration, or permit systems and related programs, wherever possible (50 CFR 229.4). In addition, the proposed rule for the 1997 list of fisheries proposes to provide additional flexibility for integrated registration systems (61 FR 37035, July 16, 1995). The authorization certificate is issued annually while a permit under section 101(a)(5)(E) normally remains valid for 3 years. NMFS may initiate a review of the appropriateness of its section 101(a)(5)(E) determinations for certain marine mammal stocks and for certain fisheries at any time within this 3-year period. For example, NMFS may initiate review in the context of the development of TRPs that are expected to achieve the negligible impact goal for various stocks of endangered and threatened marine mammals.

NMFS is seeking public comments on its initial response provided to Massachusetts.

(2) *State cooperative application under section 118.* As an alternative to applying for a permit under section 101(a)(5)(E), NMFS encourages Massachusetts to work to develop an integrated registration system so that registration for the purpose of the MMPA (including both section 118 certificates of authorization and section 101(a)(5)(E) permits) can be coordinated with Massachusetts' fishery registration system.

(3) *Petition for modification under section 101(a)(5)(E)(iv) of the MMPA.* Section 101(a)(5)(E)(iv) and 50 CFR 229.20(f) authorize NMFS to modify the list of fisheries authorized to take endangered or threatened marine mammals, after notice and opportunity for public comment, if NMFS determines that there has been a significant change in the information or conditions used to make the original determinations.

If Massachusetts is applying for a permit under section 101(a)(5)(E)(i) in order to challenge the list of fisheries authorized to take endangered or threatened marine mammals (See 60 FR 45399, August 31, 1996), NMFS suggests that Massachusetts consider submitting a petition for the modification of that list. It should be emphasized that such a determination must be based upon a significant change in the information or conditions used to make the original determination with respect to that list.

At this time NMFS does not consider the application submitted by Massachusetts to indicate a significant change in the information available in August, 1995. However, NMFS notes that the court in *Strahan* v. *Coxe* ordered Massachusetts to develop a Massachusetts Take Reduction Plan (Massachusetts TRP) and that Massachusetts is cooperating with NMFS to develop a Large Whale Take Reduction Plan (LWTRP) that addresses the take of right whales in Massachusetts waters as well as waters off other Atlantic coastal states. As Massachusetts and NMFS develop and implement these or other TRPs, the impact of fisheries on endangered and threatened marine mammal stocks may be reduced significantly. NMFS encourages Massachusetts to provide a summary of new information, including the Massachusetts TRP, the LWTRP, and any other mitigation efforts or relevant material, as a part of any petition for modification under section 101(a)(5)(E)(iv).

(4) *Application for an incidental take statement under section 7(b)(4) of the ESA.* NMFS does not consider it necessary or appropriate for Massachusetts to apply for an incidental take statement under section 7(b)(4) of the ESA. If there is an agency action by NMFS or another Federal agency, that Federal agency must comply with section 7 of the ESA and, if appropriate, a section 7 incidental take statement will be issued in association with that consultation. Although a state or private party may initiate the process that would result in an agency action, eg., by applying for a Federal permit, it is inappropriate for a state or private party to apply for an incidental take statement directly.

NMFS considers the issuance of permits under section 101(a)(5)(E)(i) and the implementation of a Federal TRP under section 118 to be ''agency actions'' and would engage in consultation with itself before taking such actions; if appropriate, an incidental take statement would be issued in association with such consultations.

Although NMFS views an application for an incidental take statement under section 7(b)(4) to be inappropriate, certain information from Massachusetts would be useful in conducting any consultation related to state fishing activities and NMFS would encourage Massachusetts to work with the agency in providing that information. For example, a detailed description of the

proposed activity, information concerning the expected level of impact of the activity on northern right whales and other endangered and threatened species under NMFS' jurisdiction, including species other than marine mammals, and reasonable measures to minimize such impacts would assist NMFS in conducting the consultation and in issuing any incidental take statement.

Therefore, NMFS intends to reject Massachusetts' request for an incidental take statement.

(5) *Application for an incidental take permit under section 10(a)(1) of the ESA.* An incidental take permit under section 10(a)(1) of the ESA is unnecessary if an incidental take statement is issued in conjunction with a consultation conducted under section 7 of the ESA, with respect to the issuance of permits under section 101(a)(5)(E).

The legislative history of section 101(a)(5)(E) indicates that the issuance of a permit under that section should be considered a federal agency action for the purposes of the ESA (H. Rept. 103–439 p. 30). This indicates that any incidental take associated with a section 101(a)(5)(E) authorization would be covered through a section 7 incidental take statement rather than a section 10 incidental take permit.

NMFS notes that, unlike section 7 of the ESA, the provisions of section 10 do not include a cross-reference to section 101(a)(5) of the MMPA; nonetheless, NMFS stresses that section 7 of the ESA indicates that, except as otherwise provided, no provision of the ESA shall take precedence over any more restrictive provision of the MMPA. Therefore, any authorization to take endangered and threatened marine mammals must comply with provisions of both the ESA and the MMPA.

NMFS would refuse to consider any application for an incidental take permit unless the application referred to all endangered and threatened species under NMFS' jurisdiction that may be taken by the proposed activity. For that reason, NMFS considers the application submitted by Massachusetts to be incomplete. In addition, NMFS recommends that Massachusetts provide a more detailed and complete description of the proposed activity, with particular emphasis on the anticipated impact of that activity on endangered and threatened species.

NMFS also considers the proposed conservation plan submitted by Massachusetts to be inadequate. For example, that plan should specify the steps that will be taken to monitor, minimize and mitigate the impacts of the proposed activity on endangered and threatened species and their habitat and the funding that will be available to implement such measures. These and other requirements are specified at 50 CFR 222.22. NMFS, again, notes that additional mitigation measures to protect northern right whales may be developed in the context of the Massachusetts TRP, the LWTRP or through other efforts. At this time, NMFS considers the application for an incidental take permit to be incomplete. NMFS encourages Massachusetts to provide additional information in support of their request.

Information Solicited

At this time, NMFS is offering the public an opportunity to review and comment on (1) the applications, (2) the issues described above, and (3) NMFS' preliminary determinations and suggestions. Interested persons are encouraged to submit comments, new and relevant information regarding interactions between northern right whales and commercial fisheries in Massachusetts, and suggestions concerning the request (see **ADDRESSES**). Following the close of the comment period and upon a determination that the applications are appropriate and complete, NMFS will consider all relevant information in a reassessment of impacts. If appropriate, NMFS will propose to authorize the taking as requested. If NMFS proposes to authorize this take request, interested parties will be given additional time and opportunity to comment.

Dated: November 29, 1996.

Ann Terbush,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–30933 Filed 12–4–96; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 112796A]

Marine Mammals; Scientific Research Permit No. 1023 (P6P)

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. G. David Johnson, Marine Mammal Program, Department of Vertebrate Zoology, National Museum of Natural History, Smithsonian Institution, NHB 390, MRC 108, 10th & Constitution Ave., SW., Washington, D.C. 20560, has been issued a permit to take marine mammal specimens and parts for the purpose of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment (see **SUPPLEMENTARY INFORMATION**).

SUPPLEMENTARY INFORMATION: On September 30, 1996, notice was published in the Federal Register (61 FR 51082) that a request for a scientific research permit to take marine mammals had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222.25), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act.

Documents may be reviewed in the following locations:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203 (703/358–2104);

Regional Administrator, Northwest Region, NMFS, 7600 Sandpoint Way, NE BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150);

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/570–5301).

Dated: November 27, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: November 27, 1996.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 96–30971 Filed 12–4–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 110796C]

Marine Mammals; Scientific Research Permit No. 1022 (P617)

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Madonna L. Moss, Professor, 1218 Department of Anthropology, University of Oregon, Eugene, OR 97403–1218, has been issued a permit to obtain 4 carcasses from 2 cetacean species of the Order Phocoenidae and 35 carcasses from 12 species of the Order Pinnipedia for scientific purposes.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503 (907/786–3800).

SUPPLEMENTARY INFORMATION: On September 17, 1996, notice was published in the Federal Register (61 FR 48888) that a request for a scientific research permit to obtain 4 carcasses (bones and teeth) from two species of the Order Phocoenidae and 35 carcasses from 12 species of the Order Pinnipedia for scientific purposes. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222.23).

Issuance of this permit as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 20, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: November 20, 1996.

Margaret Tieger,

Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 96–30972 Filed 12–4–96; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' meeting scheduled for 19 December 1996 has been canceled. The next meeting is scheduled for 16 January 1997 at 10:00 AM in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001 to discuss various projects affecting the appearance of Washington, D.C., including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, D.C. November 26, 1996.

Charles H. Atherton,

Secretary.

[FR Doc. 96–30975 Filed 12–4–96; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

November 29, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

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) 927–6704. 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); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in Indonesia and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Memorandum of Understanding (MOU) dated November 1, 1996 between the Governments of the United States and Indonesia.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits. The limits for certain categories have been reduced for carryforward applied in 1996.

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 60 FR 65299, published on December 19, 1995). Information regarding the 1997 CORRELATION will be published in the Federal Register at a later date.

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, the ATC and the MOU dated November 1, 1996, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Memorandum of Understanding dated November 1, 1996 between the Governments of the United States and Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
200	729,520 kilograms.
219	8,585,408 square meters.
225	6,012,012 square meters.
300/301	3,467,912 kilograms.
313	15,578,131 square meters.
314	54,394,935 square meters.
315	24,716,046 square meters.
317/326/617	23,872,137 square meters of which not more than 3,527,368 square meters shall be in Category 326.
331/631	2,192,197 dozen pairs.
334/335	200,886 dozen.
336/636	529,646 dozen.
338/339	1,084,834 dozen.
340/640	1,336,002 dozen.
341	803,541 dozen.
342/642	315,265 dozen.
345	388,504 dozen.
347/348	1,387,165 dozen.
350/650	154,310 dozen.
351/651	434,201 dozen.
359–C/659–C [1]	1,198,005 kilograms.
359–S/659–S [2]	1,336,002 kilograms.
360	1,189,037 numbers.
361	1,189,037 numbers.
369–S [3]	820,097 kilograms.
433	11,331 dozen.
443	84,063 numbers.
445/446	56,330 dozen.
447	16,814 dozen.
448	20,704 dozen.
604–A [4]	637,848 kilograms.
611–O [5]	4,000,000 square meters.
613/614/615	22,645,242 square meters.
618–O [6]	5,344,010 square meters.
619/620	7,818,563 square meters.
625/626/627/628/629–O [7].	25,273,984 square meters.
634/635	267,201 dozen.
638/639	1,389,444 dozen.
641	2,037,006 dozen.
643	297,260 numbers.
644	416,163 numbers.
645/646	703,099 dozen.
647/648	2,912,841 dozen.
847	368,030 dozen.
Group II	
201, 218, 220, 222–224, 226, 227, 229, 237, 239, 330, 332, 333, 349, 352–354, 359–O [8], 362, 363, 369–O [9], 400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465, 469, 603, 604–O [10], 606, 607, 621, 622, 624, 630, 632, 633, 649, 652–654, 659–O [11], 665, 666, 669–O [12], 670–O [13], 831–836, 838, 839, 840, 842–846, 850–852, 858 and 859, as a group.	88,892,270 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465 and 469, as a group.	2,967,670 square meters equivalent.
In Group II subgroup	
435	46,584 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 604–A: only HTS number 5509.32.0000.

[5] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[6] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[7] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[8] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S).

[9] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[10] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[11] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[12] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P).

[13] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–30964 Filed 12–4–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment and Correction of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

November 29, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs correcting and adjusting limits.

EFFECTIVE DATE: December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Helen LeGrande, 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) 927–6704. 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); Uruguay Round Agreements Act.

The current limits for certain categories are being increased for carryforward. The previously adjusted limit for Category 313 is being corrected.

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 60 FR 65299, published on December 19, 1995). Also see 60 FR 66268, published on December 21, 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.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1996.

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 December 15, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on December 6, 1996, you are directed to correct the current limit for Category 313 to 2,959,162 square meters and increase 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]
Levels in Group I	
333/334/335/833/834/835.	277,076 dozen, of which not more than 129,162 dozen shall be in Categories 333/335/833/835.
336/836	63,300 dozen.
338	339,895 dozen.
339	1,427,456 dozen.
340	322,380 dozen.
341	217,750 dozen.
342	98,509 dozen.
345	62,901 dozen.
347/348/847	818,041 dozen.
351/851	75,921 dozen.
359–C/659–C [2]	384,818 kilograms.
359–V [3]	136,037 kilograms.
638/639/838	1,827,093 dozen.
642/842	124,162 dozen.
647/648	614,303 dozen.
Group II	
400–469, as a group	1,618,049 square meters equivalent.
445/446	88,832 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–30962 Filed 12–4–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

November 29, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

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) 927–6713. 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); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in the Philippines and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits. The limits for certain

categories have been reduced for carryforward applied in 1996.

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 60 FR 65299, published on December 19, 1995). Information regarding the 1997 CORRELATION will be published in the Federal Register at a later date.

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 ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
237	1,636,359 dozen.
239	9,873,305 kilograms.
331/631	5,299,047 dozen pairs.
333/334	256,338 dozen of which not more than 36,800 dozen shall be in Category 333.
335	166,850 dozen.
336	573,122 dozen.
338/339	1,965,057 dozen.
340/640	925,678 dozen.
341/641	835,307 dozen.
342/642	495,722 dozen.
345	156,398 dozen.
347/348	1,736,735 dozen.
350	138,454 dozen.
351/651	540,683 dozen.
352/652	2,249,594 dozen.
359–C/659–C [1]	734,598 kilograms.
361	1,748,892 numbers.
369–S [2]	396,430 kilograms.
431	168,147 dozen pairs.
433	3,115 dozen.
443	37,660 numbers.
445/446	27,345 dozen.
447	7,603 dozen.
611	4,954,143 square meters.
633	33,840 dozen.
634	419,863 dozen.
635	337,476 dozen
636	1,582,353 dozen.
638/639	2,141,438 dozen.
643	808,294 numbers.
645/646	703,650 dozen.
647/648	1,047,928 dozen.
649	7,101,186 dozen.
650	99,096 dozen.
659–H [3]	1,303,839 kilograms.
847	864,812 dozen.
Group II	
200–229, 300–326, 330, 332, 349, 353, 354, 359–O [4], 360, 362, 363, 369–O [5], 400–414, 432, 434–442, 444, 448, 459, 464–469, 600–607, 613–629, 630, 632, 644, 653, 654, 659–O [6], 665, 666, 669–O [7], 670–O [8], 831–846 and 850–859, as a group.	147,367,002 square meters equivalent.
Sublevel in Group II	
604	1,854,158 kilograms.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C).

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[6] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090 (Category 659–H).

[7] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P).

[8] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–30965 Filed 12–4–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

November 29, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 6, 1996.

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) 927–5850. 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); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted for swing.

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 60 FR 65299, published on December 19, 1995). Also see 61 FR 9982, published on March 12, 1996 and 61 FR 37952 published on July 22, 1996.

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.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on March 5, 1996 and July 22, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. Those directives concern imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on December 6, 1996, you are directed to amend the directives dated March 5 and July 22, 1996 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]
334/634	241,683 dozen.
335/635/835	166,034 dozen.
340/640	370,582 dozen.
342/642	269,306 dozen.
352	159,080 dozen.
847	169,998 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–30963 Filed 12–4–96; 8:45 am]

BILLING CODE 3510–DR–F

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 11, 1996. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 10:00 a.m. at the same location and will include reports on the Tulpehocken Creek/Blue Marsh watershed project; flood and hurricane-related reservoir operation; the Commission's GIS and computer systems and proposed revisions to the Southeastern Pennsylvania Ground Water Protected Area Regulations.

In addition to the subjects listed below which are scheduled for public hearing at the business meeting, the Commission will also address the following matters: Minutes of the October 23, 1996 business meeting; announcements; General Counsel's report; consideration of Wissahickon Spring Water, Inc. matter; report on Basin hydrologic conditions; authorization to accept funding for water quality assessment and modeling of the Maurice River; a resolution to continue the Commission's Water Quality Advisory Committee; a resolution approving certain budget transfers for fiscal years 1996 and 1997; annual salary rates of Commission employees and public dialogue.

The subjects of the public hearing will be as follows:

A Proposal to Adopt the 1996–1997 Water Resources Program. A proposal that the 1995–1996 Water Resources Program and the activities, programs, initiatives, concerns, projections and proposals identified and set forth therein be accepted and adopted and that a staff report of progress in completing the various elements in the 1995–1996 Water Resources Program be made a part thereof, in accordance with the requirements of Section 13.2 of the Delaware River Basin Compact.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact: 1. *Ramblewood Country Club D–94–41.* An application for an increased withdrawal from the Ramblewood Country Club golf course irrigation pond from 3.9 million gallons (mg)/30 days (0.13 million gallons per day (mgd)) to 14 mg/30 days (0.47 mgd). The proposed maximum withdrawal rate from all sources, existing wells and the pond, is 0.47 mgd. The surface water withdrawal facilities are located at the pond pump house on the golf course property. The pond is on an unnamed tributary of North Branch Pennsauken Creek in Mount Laurel Township, Burlington County, New Jersey. Two existing Potomac-Raritan-Magothy wells (Pool House Well and Well No. 2) are also reallocated to restrict their yearly use.

2. Degussa Corporation D–96–11. A project to modify and expand the applicant's existing industrial wastewater treatment plant (IWTP) from 0.42 mgd to 0.95 mgd. The IWTP is located adjacent to the Delaware River, to which it will continue to discharge, just off Front Street in the City of Chester, Delaware County, Pennsylvania. The expanded IWTP will continue to serve only the applicant's silica production operations. The applicant has also requested a new determination for the allowable total dissolved solids limits relative to the expanded discharge.

3. Township of Roxbury D–96–17 CP. An application for approval of a ground water withdrawal project to supply up to 30 mg/30 days of water to the applicant's distribution system from existing Well Nos. 2, 4, 9 and 12 located within the Delaware River Basin, and to limit the withdrawal from all wells located within the Delaware River Basin to 30 mg/30 days. The project is located in Roxbury Township, Morris County, New Jersey.

4. Warrington Township and The Cutler Group D–96–18. An application to construct a new 0.26 mgd sewage treatment plant (STP) to serve existing and proposed residential developments

in the northwestern area of Warrington Township, Bucks County, Pennsylvania. The Tradesville STP will provide advanced secondary biological treatment utilizing sequencing batch reactors, phosphorus removal and ultraviolet disinfection. The STP will be located on a site along the west side of Pickerton Road immediately north of Mill Creek Road and will discharge to Mill Creek, a tributary of Neshaminy Creek.

5. Artesian Water Company, Inc. D–96–33 CP. An application for approval of a ground water withdrawal project to supply up to 30 mg/30 days of water to the applicant's distribution system from new Artisans Village Well No. 3, and to increase the existing withdrawal limit of 60.48 mg/30 days from all Artisans Village wells to 90.72 mg/30 days. The project is located in New Castle County, Delaware.

6. City of Philadelphia, Division of Aviation D–96–36 CP. An application for approval of a ground water withdrawal of up to 29.7 mg/30 days of water as part of the applicant's Western Boundary Area Mitigation system from new Well Nos. EW–A, EW–1, EW–2 and EW–3, and to limit the withdrawal from all wells to 29.7 mg/30 days. The project is located in the City of Philadelphia, Philadelphia County, Pennsylvania.

7. Milford-Trumbauersville Area Sewer Authority D–96–41 CP. A project to modify the applicant's existing 0.8 mgd STP. The existing STP provides secondary biological treatment via the extended aeration activated sludge process as well as tertiary filtration prior to disinfection by chlorine contact and discharge to Unami Creek, a tributary of the Perkiomen Creek, in Milford Township, Bucks County, Pennsylvania. The project entails primarily the addition of two sand filters along with other minor modifications. The STP will continue to serve Trumbauersville Borough and portions of Milford Township.

8. Lansdale Borough D–96–45 CP. An application to expand the Lansdale Borough STP from the current annual average flow capacity of 2.5 mgd to 2.6 mgd and the maximum monthly flow of 4.0 mgd to 4.5 mgd. The STP will also change its mode of operation so that more wet weather related flow will be routed through the treatment process. The STP will continue to serve Lansdale Borough and provide secondary biological treatment via the extended aeration activated sludge process, and tertiary treatment for nutrient removal prior to chlorine disinfection and discharge to an unnamed tributary of the West Branch Neshaminy Creek in the northern portion of Lansdale Borough, Montgomery County, Pennsylvania just east of the Penn Central railroad tracks.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at the hearing are requested to register with the Secretary prior to the hearing.

Dated: November 25, 1996.

Susan M. Weisman,

Secretary.

[FR Doc. 96–30979 Filed 12–4–96; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–96–000]

Louisiana-Nevada Transit Company; Notice of Proposed Changes in FERC Gas Tariff

November 29, 1996.

Take notice that on November 25, 1996, Louisiana-Nevada Transit Company (LNT), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective December 25, 1996.

LNT states that it is filing the instant tariff sheets to comply with the Commission's Order No. 582 governing the form and composition of interstate natural gas pipeline tariffs.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30924 Filed 12–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–120–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

November 29, 1996.

Take notice that on November 25, 1996, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP97–120–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to abandon sales tap facilities and to construct and operate replacement sales tap facilities in Warren County, Pennsylvania under National's blanket certificate issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission And open to public inspection.

National proposes to abandon and replace sales tap facilities at Station No. 2854, an existing sales tap at which National delivers gas to United Refining Company (United), an end-user, under National's FT and IT Rate Schedules. National states that the proposed construction consists principally of replacing: (i) two, 2-inch regulators with two 3-inch regulators; (ii) a 3-inch meter with a 4-inch meter; (iii) a 3-inch filter with a 4-inch filter; and (iv) a 2×3 relief valve with either a 3×4 or 4×6 relief valve.

National states that the proposed replacement would increase the design delivery capacity from 5,200 Dth per day to approximately 10,600 Dth per day. National also states that this upgrade is necessary to meet the increased demand for gas by United. National states that the estimated cost of this project is $18,237, most of which National would be reimbursed by United.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30928 Filed 12–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT97–5–001]

Northwest Pipeline Corporation; Notice of Compliance Filing

November 29, 1996.

Take notice that on November 25, 1996, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 363, to become effective December 26, 1996. In addition, Northwest submitted amendments to five non-conforming service agreements.

Northwest states that this filing is submitted in response to the Commission's Letter Order dated November 8, 1996 in Docket No. GT97–5–000 (77 FERC ¶ 16,140). Northwest states that it has provided explanations and clarifications as required by the Commission concerning Northwest's commitment to revise service agreements containing contractual operational flow order (OFO) provisions to reflect terms incorporated into Northwest's tariff. In conjunction with these explanations, Northwest states it has submitted amendments to five non-conforming service agreements containing revised OFO provisions and a tariff sheet listing these amended service agreements.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30927 Filed 12–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–339–003]

Pacific Gas Transmission Company; Notice of Compliance Filing

November 29, 1996.

Take notice that on November 22, 1996, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Substitute Original Sheet No. 81.01. PGT requested the above-referenced tariff sheet become effective September 13, 1996, consistent with the previously-approved sheets in the initial proceeding.

PGT asserts that the purpose of this filing is to comply with the Commission's Order on Rehearing on November 14, 1996 in PGT's Order 582 compliance proceeding. FERC directed that PGT further revise its tariff to provide that allocation of discounted IT capacity for shippers paying equivalent rates would be pursuant to PGT's queue. PGT further states the proposed changes will not affect PGT's costs, rates or revenues, and that a copy of this filing has been served on PGT's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30926 Filed 12–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–4–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

November 29, 1996.

Take notice that on November 25, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing. Such tariff sheets are proposed to be effective January 1, 1997.

Transco states that the purpose of such filing is to reflect, for purposes of assessing Transco's GRI surcharge, the reclassification of: (1) Penn Fuel Gas Inc. and PG Energy Inc. (formerly Pennsylvania Gas & Water Company) from the low load factor category to the high load factor category; and (2) Commonwealth Gas services (Lynchburg) and Union Gas Company from the high load factor category to the low load factor category. In that regard, Transco has calculated the firm transportation service load factors for the 12 month period October 1995 through September 1996.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30923 Filed 12–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–95–000]

Transcontinental Gas Pipe Line Corporation, Notice of Compliance Filing

November 29, 1996.

Take notice on November 25, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of December 31, 1996:

Title Page

Eighth Revised Sheet No. 250
Second Revised Sheet No. 335
Fourth Revised Sheet No. 336
Second Revised Sheet No. 346
Second Revised Sheet No. 347
First Revised Sheet No. 348
Second Revised Sheet No. 349
Second Revised Sheet No. 367
First Revised Sheet No. 370
First Revised Sheet No. 374A
First Revised Sheet No. 374J

Transco states that the purpose of the instant filing is to revise Transco's FERC

Gas Tariff in order to further comply with the regulations adopted pursuant to Order No. 582, et al. The proposed tariff revisions provide for an update title page, an identification of the order in which Transco discounts its rates, a new section to the General Terms and Conditions that sets forth Transco's required periodic reports, and updated references to the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30925 Filed 12–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–518–000, et al.]

Union Electric Company, et al.; Electric Rate and Corporate Regulation Filings

November 29, 1996.

Take notice that the following filings have been made with the Commission:

1. Union Electric Company

[Docket No. ER97–518–000]

Take notice that on November 19, 1996, Union Electric Company (UE), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service dated November 18, 1996 between AES Power, Inc. (AES) and UE. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to AES pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER97–519–000]

Take notice that on November 19, 1996, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with Western Power Services, Inc. for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on July 9, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. UtiliCorp United Inc.

[Docket No. ER97–520–000]

Take notice that on November 19, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *Sikeston Board of Municipal Utilities*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *Sikeston Board of Municipal Utilities* pursuant to the tariff, and for the sale of capacity and energy by *Sikeston Board of Municipal Utilities* to WestPlains Energy-Kansas.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. UtiliCorp United Inc.

[Docket No. ER97–521–000]

Take notice that on November 19, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *Sikeston Board of Municipal Utilities*. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Sikeston Board of Municipal Utilities* pursuant to the tariff, and for the sale of capacity and energy by *Sikeston Board of Municipal Utilities* to Missouri Public Service.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER97–522–000]

Take notice that on November 19, 1996, Entergy Services, Inc. (ESI), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Firm Point-to-Point Transmission Service Agreement between ESI, as agent for the Entergy Operating Companies, and Cajun Electric Power Cooperative, Inc. (Cajun).

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. The Montana Power Company

[Docket No. ER97–523–000]

Take notice that on November 20, 1996, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, as an initial rate schedule, a South Huntley 230–69 Kv Delivery Point Joint Facilities Agreement Between Yellowstone Valley Electric Cooperative, Inc. (Yellowstone) and Montana.

A copy of the filing was served upon Yellowstone and Central Montana Electric Power Cooperative.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Company

[Docket No. ER97–524–000]

Take notice that on November 20, 1996, Florida Power & Light Company (FPL), filed the Contract for Purchases and Sales of Power and Energy between FPL and The Power Company of America, L.P. FPL requests an effective date of November 25, 1996.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER97–525–000]

Take notice that on November 20, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which Florida Power Corporation will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 13, 1996.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER97–526–000]

Take notice that on November 20, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which Minnesota Power & Light Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 13, 1996.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Illinois Power Company

[Docket No. ER97–527–000]

Take notice that on November 20, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which AIG Trading Corporation will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 14, 1996.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Rochester Gas and Electric Corporation

[Docket No. ER97–528–000]

Take notice that on November 20, 1996, Rochester Gas and Electric Corporation (RG&E) tendered for filing three executed Service Agreements for acceptance by the Federal Energy Regulatory Commission. These Service Agreements were executed between RG&E and the following companies: (1) Citizens Lehman Power Sales; (2) Coral Power, L.L.C.; and (3) Aquila Power Corporation. The terms and conditions of service under these Service Agreements are made pursuant to RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279. RG&E has also requested waiver of the 60 day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Pool

[Docket No. ER97–530–000]

Take notice that on November 20, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Oceanside Energy, Inc. (Oceanside Energy). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Oceanside Energy to join the over 100 Participants that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Oceanside Energy a Participant in the Pool. NEPOOL requests an effective date on or before January 1, 1997, or as soon as possible thereafter for commencement of participation in the Pool by Oceanside Energy.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER97–531–000]

Take notice that on November 20, 1996, Florida Power & Light Company (FPL) filed the Contract for Sales of Power and Energy by Florida Power & Light Company to The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Services, Inc. FPL requests an effective date of November 25, 1996.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Ohio Valley Electric Corporation

[Docket No. ER97–532–000]

Take notice that on November 20, 1996, Ohio Valley Electric Corporation (OVEC) tendered for filing a Service Agreement dated October 23, 1996, for Non-Firm Point-to-Point Transmission Service (the Service Agreement) between Western Power Services, Inc. (WPS) and OVEC. OVEC proposes an effective date of October 23, 1996 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to WPS.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

A copy of this filing was served upon WPS.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Ohio Valley Electric Corporation

[Docket No. ER97–533–000]

Take notice that on November 20, 1996, Ohio Valley Electric Corporation (OVEC) tendered for filing (i) a Service Agreement dated November 1, 1996, for Non-Firm Point-to-Point Transmission Service between OVEC and Sonat Power Marketing, Inc. (SPMI) and (ii) a Service Agreement for Non-Firm Point-to-Point Transmission Service between OVEC and Sonat Power Marketing L.P. (SPMLP) (both service agreements, together, the Service Agreements). OVEC proposes an effective date of November 1, 1996 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreements provide for non-firm transmission service by OVEC to SPMI and SPMLP.

In its filing, OVEC states that the rates and charges included in the Service Agreements are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

Copies of this filing were served upon SPMI and SPMLP.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Carolina Power & Light Company

[Docket No. ER97–535–000]

Take notice that on November 21, 1996, Carolina Power & Light Company (CP&L) tendered for filing separate Service Agreements for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customers. The Power Company of America, LP; Tennessee Valley Authority; and Coral Power, L.L.C. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power & Light Company

[Docket No. ER97–536–000]

Take notice that on November 21, 1996, Florida Power & Light Company (FPL), filed the Contract for Purchases and Sales of power and Energy between FPL and Illinova Power Marketing, Inc.

FPL requests an effective date of November 25, 1996.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Central Maine Power Company

[Docket No. ER97–537–000]

Take notice that on November 21, 1996, Central Maine Power Company (CMP), tendered for filing twenty executed service agreements and two certificate of concurrence entered into with the following entities: AIG Trading Corporation; Aquila Power Corporation; Burlington Electric Light Department (Supersedes Service Agreement No. 3); CPS Utilities; CENERGY; Electric Clearinghouse, Inc.; Engelhard Power Marketing Inc.; Equitable Power Services Co. (and Certificate of Concurrence); Federal Energy Sales Inc.; Global Petroleum Corp.; KCS Power Marketing, Inc.; LG&E Power Marketing Inc.; National Gas & Electric L.P.; Niagara Mohawk Power Corporation; Northeast Utilities Service Company (Supersedes Service Agreement No. 12) (and Certificate of Concurrence); PanEnergy Trading and marketing Services, Inc; Phibro Inc.; the Power Company of America, LP; TransCanada Power Corp.; and United Illuminating Company (Supersedes Service Agreement No. 13). Service will be provided pursuant to CMP's Power Sales Tariff, designated rate schedule CMP–-FERC Electric Tariff, Original Volume No. 2, as supplemented.

Comment date: December 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. South Carolina Electric and Gas Company

[Docket No. ES97–13–000]

Take notice that on November 25, 1996, South Carolina Electric and Gas Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue unsecured short-term notes, from time to time, in an aggregate principal amount of not more than $200 million outstanding at any one time, during the period January 1, 1997 through December 31, 1998, with a final maturity date no later than twelve months from the date of issue.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. IES Utilities Inc.

[Docket No. ES97–14–000]

Take notice that on November 26, 1996, IES Utilities Inc. filed an application, under § 204 of the Federal Power Act, seeking authorization to issue short-term notes, from time to time, in an aggregate principal amount of not more than $200 million outstanding at any one time, during the period January 1, 1997 through December 31, 1998, with a final maturity date no later than December 31, 1999.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30948 Filed 12–4–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. CP96–248–000, CP96–248–003, CP96–249–000, and CP96–249–003]

Portland Natural Gas Transmission System; Notice of Amended Facilities by Portland Natural Gas Transmission System To Be Included in the Environmental Impact Statement for the Proposed PNGTS Project and Request for Comments on Environmental Issues

November 29, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is preparing an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the facilities, about 275 miles of various diameter pipeline, proposed in the PNGTS Project.[1] This EIS will be used by the Commission in its decision-making process to determine whether to approve the project. The original notice was issued May 23, 1996. The purpose of this supplemental notice is to inform the public of amended facilities that will be analyzed in the EIS.

A number of Federal and state agencies have indicated that they wish to cooperate with us in the preparation of the EIS. These agencies are listed in appendix 1. Other Federal and state agencies may choose to cooperate with us once they have evaluated the proposal relative to their responsibilities.[2]

Summary of Originally Proposed PNGTS Project

Portland Natural Gas Transmission System (PNGTS) had proposed to build new natural gas pipeline facilities in Vermont, New Hampshire, Maine, and Massachusetts. PNGTS requested Commission authorization to construct and operate about 246.2 miles of various diameter pipeline, 4 new meter stations, 15 mainline block valves, and 4 scraper launcher/receivers.

Summary of Proposed Changes

On October 31, 1996, PNGTS amended its application to delete the first 90.6 miles of its originally filed route from Jay, Vermont to Shelburne, New Hampshire. The total project now involves about 271 miles of pipeline, 7 meter stations, 20 block valves, and 6 pig launcher/receivers.

The amendment includes a revised route from the Canadian border at Pittsburg, New Hampshire through a portion of Vermont near Beecher Falls to Shelburne, New Hampshire, a distance of about 72.8 miles. The originally filed mainline route from Shelburne, New Hampshire to Haverhill, Massachusetts remains unchanged.

In addition to the amended mainline route, PNGTS also proposes, in its amendment, to construct three new natural gas pipeline laterals: the Groveton Lateral, the Rumford-Jay Lateral, and the Westbrook Lateral. These three laterals total 48.4 miles of pipeline. The originally proposed Falmouth Lateral has been deleted, and the originally proposed Newington Lateral remains part of the proposed project.

The current project, as amended, would include the construction and operation of the following facilities:

[1] Portland Natural Gas Transmission System's applications were filed with the Commission under Sections 3 and 7 of the Natural Gas Act and Parts 153 and 157 of the Commission's regulations.

[2] Appendices 2 through 5 referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426 or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

• 224.1 miles of 20-inch-diameter pipeline (mainline) extending from a connection with TransCanada Pipelines Limited (TCPL) at the border of the United States and Canada near Pittsburg, New Hampshire to the existing Tennessee Gas Pipeline Company transmission system in Haverhill, Massachusetts. Of the 224.1-mile-long mainline, about 0.6 mile would be in Vermont, 106.5 miles would be in New Hampshire, 116.9 miles would be in Maine, and 0.1 mile would be in Massachusetts;

• 26.9 miles of 10-inch-diameter pipeline lateral from the mainline in Oxford County, Maine to Rumford, Maine (Rumford Lateral);

• 16.6 miles of 8-inch-diameter pipeline lateral from the Rumford Lateral to Jay, Maine, (Jay Lateral);

• 3.9 miles of 8-inch-diameter pipeline lateral from the mainline in Cumberland County, Maine to Westbrook, Maine (Westbrook Lateral);

• 1.0 mile of 12-inch-diameter pipeline lateral from the mainline to Newington, New Hampshire (Newington Lateral);

• Seven new meter stations, one each in Groveton and Newington, New Hampshire; Rumford, Jay, Westbrook, and Wells, Maine; and Haverhill, Massachusetts;

• Acquisition and modification of an existing meter station in Newington, New Hampshire adjacent to the proposed meter station; and

• Associated pipeline facilities, such as about 20 mainline block valves and 6 scraper launcher/receivers.

PNGTS proposes to have the facilities in service by November 1998. The general locations of the project facilities are shown in appendix 2. The general locations of other natural gas projects under Commission review occurring in the same region and generally within the same time frame (Granite State Gas Transmission, Inc. [Granite State], Granite State LNG Project, Docket No. CP96–610–000; Maritimes & Northeast Pipeline, L.L.C. [M&NP], Maritimes Phase I Project, Docket No. CP96–178–000; and M&NP, Maritimes Phase II Project, Docket No. CP96–809–000) are shown in appendix 3. If you are interested in obtaining detailed maps of a specific portion of the project, or procedural information contact the EIS Project Manager identified at the end of this notice.

Land Requirements for Construction

Construction of the proposed pipelines (nominal right-of-way width of 75 feet) and meter stations would affect about 2,480 acres of land. Additional land disturbance would be needed for extra work spaces at road, railroad and certain waterbody, and wetland crossings, as well as for pipeyards and contractor yards and temporary topsoil or rock storage.

Following construction, about 1,655 acres of the land affected by the project would be retained for operation of the pipeline and aboveground facilities. This total includes about 0.5 acre for each of the new meter stations. Permanent 50-foot-wide rights-of-way would be maintained for the pipelines. Existing land uses on the remainder of the disturbed area, as well as most land uses on the permanent rights-of-way, would continue following construction.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues under each topic that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by the applicants. These issues are listed below. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

- Geology and Soils
  - —Seismology, soil liquefaction, and areas susceptible to landslide.
  - —Blasting in areas of near-surface bedrock.
  - —Effect on exploitable mineral resources.
  - —Effect on farmland.
  - —Erosion control and right-of-way revegetation procedures.
- Water Resources
  - —Effect on groundwater and surface water supplies.
  - —Crossings of 595 waterbodies, including 10 crossings of waterbodies over 100 feet wide (Androscoggin [4 crossings], Presumpscot [2 crossings], Saco, Mousam, Squamscott, and Piscataqua Rivers).
  - —Consistency with state Coastal Zone Management Programs.
- Biological Resources
  - —Clearing of upland forest and permanent conversion of forest to open land.
  - —Effect on habitat at 993 wetland crossings.
  - —Effect on warmwater, coldwater, anadromous, and estuarine fisheries habitat.
  - —Effect on wildlife habitat, including deer wintering areas and waterfowl and wading bird habitat.
  - —Effect on federally listed or proposed threatened and endangered species.
  - —Effect on Kennebunk Plains, an unusual grassland community.
- Cultural Resources
  - —Effect on historic and prehistoric sites.
  - —Native American and tribal concerns.
- Land Use
  - —Effect on residences within 50 feet of construction work areas.
  - —Effect on planned residential developments.
  - —Effect on public and recreation lands, including the Appalachian Trail, the White Mountain National Forest, hiking trails in the White Mountains, Baha'i Faith property, and Pease Development Authority property.
  - —Effect on scenic waterbodies, including the Connecticut and Exeter Rivers and the Great Brook.
  - —Effects resulting from construction over or near known hazardous waste sites.
- Socioeconomics
  - —Effect of construction workforce on surrounding areas.
  - —Effect on property values and tax revenue.
- Air Quality and Noise
  - —Effect on local air quality and noise environment from construction.
- Reliability and Safety
  - —Assessment of hazards associated with natural gas pipelines.
- Cumulative Impact
  - —Assessment of the combined effect of the proposed project with other projects occurring in the same general area and within the general same time frame, including the Granite State LNG Project and the Maritimes Phase I and II Projects.

We will also evaluate possible alternatives to the proposed project or

portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received and will be used by the Commission in its decision-making process to determine whether to approve the project.

Public Participation and Scoping Meetings

You can make a difference by sending a letter to the Secretary of the Commission addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or minimize environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Reference Docket Nos. CP96–249–000 and CP96–249–003;

Also, send a *copy* of your letter to: Mr. Mark Jensen, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, NE, Room 72–65, Washington, DC 20426; and

Mail your comments so that they will be received in Washington, DC on or before January 3, 1997.

In addition to sending written comments, you may attend public scoping meetings. We will conduct two public scoping meetings at the following times and locations:

Date	Time	Location
December 11, 1996.	7:00 p.m.	Berlin Town Hall, Berlin, NH.
December 12, 1996.	7:00 p.m.	Colebrook Elementary School, Colebrook, NH.

The purpose of the scoping meetings is to obtain input from state and local governments and from the public. Federal agencies have formal channels for input into the Federal process on an interagency basis. Federal agencies are expected to transmit their comments directly to the FERC and not use the scoping meetings for this purpose.

Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental issues which they believe should be addressed in the Draft EIS. The more specific your comments, the more useful they will be. Anyone who would like to make an oral presentation at the meeting should contact the EIS Project Manager identified at the end of this notice to have his or her name placed on the list of speakers. Priority will be given to those persons representing groups. A list will be available at the meetings to allow non-preregistered speakers to sign up. A transcript will be made of the meetings and comments will be used to help determine the scope of the Draft EIS.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding or become an ''intervenor.'' Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 4).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all potential right-of-way grantors to solicit comments regarding environmental considerations related to the proposed project. As details of the project become established, representatives of PNGTS may also separately contact landowners, communities, and public agencies concerning project matters, including acquisition of permits and rights-of-way.

If you do not want to send comments at this time but still want to receive copies of the Draft and Final EISs, please return the Information Request (appendix 5). If you do not return the Information Request, you will be taken off the mailing list.

Additional procedural information about the proposed project is available from Mr. Mark Jensen, EIS Project Manager, at (202) 208–0828.

Lois D. Cashell,

Secretary.

Appendix 1—Cooperating Agencies

The following Federal and state agencies have indicated that they will be cooperating agencies for purposes of producing an EIS:

U.S. Department of the Army, Army Corps of Engineers

U.S. Department of the Interior, Fish and Wildlife Service

Maine Department of Environmental Protection

New Hampshire Fish and Game Department

Any other Federal, state, or local agencies wanting to participate as a cooperating agency should send a letter describing the extent to which they want to be involved. Follow the instructions below if your agency wishes to participate in the EIS process or comment on the project:

Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426;

Reference Docket Nos. CP96–249–000 and CP96–249–001;

Send a *copy* of your letter to: Mr. Mark Jensen, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, NE, Room 72–65, Washington, DC 20426; and

Mail your letter so that it will be received in Washington, DC on or before January 3, 1997.

Cooperating agencies are encouraged to participate in the scoping process and provide us written comments. Agencies are also welcome to suggest format and content changes that will make it easier for them to adopt the EIS. However, we will decide what modifications will be adopted in light of our production constraints.

[FR Doc. 96–30929 Filed 12–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–102–000, et al.]

Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

November 27, 1996.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP97–102–000]

Take notice that on November 18, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in the above docket a request pursuant to Sections 157.205, 157.211 and 157.216 of the Regulations (18 CFR Sections 157.205, 157.211 and 157.216) for authorization to upgrade its Kalama II Meter Station in Cowlitz County, Washington, by abandoning certain facilities and constructing and operating upgraded replacement facilities to accommodate a request by Cascade Natural Gas Corporation (Cascade) for additional delivery capacity at the Kalama II delivery point, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that the Kalama II Meter Station was originally constructed by its predecessor, El Paso Natural Gas Company, under certificate authorization received in Docket No. CP69–55. A subsequent modification to this station was authorized in Docket No. CP93–752. The meter station currently consists of a four-inch tap, two-inch inlet piping, one four-inch turbine meter, two one-inch regulations, a relief valve and appurtenances. The meter station has a maximum design delivery capacity of 3,903 Dth per day at the contractual delivery pressure of 400 psig from Northwest's Astoria Lateral into Cascade's distribution system.

Specifically, Northwest proposes to upgrade the Kalama II Meter Station by:

- Installing an additional four-inch turbine meter,
- Replacing the two-inch inlet piping with new four-inch piping,
- Replacing the two existing one-inch regulators with two-inch large port Mooney regulators, and
- Replacing the existing relief valve with a three-inch by four-inch relief valve and appurtenances.

Northwest states that as a result of this proposed upgrade, the maximum design delivery capacity of the meter station will increase from approximately 3,903 Dth per day to approximately 12,057 Dth per day at 400 psig.

Northwest states that the total cost of the proposed meter station upgrade is estimated to be approximately $320,800. Pursuant to a Facilities Agreement between Northwest and Cascade dated August 1, 1996, Northwest will construct the upgraded facilities and Cascade will reimburse Northwest for the cost of the meter station upgrade.

Comment date: January 13, 1997, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP97–107–000]

Take notice that on November 19, 1996, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP97–107–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing Natural to increase the certificated maximum daily deliverability at its Cooks Mills Storage Field (Cooks Mills) from 80 MMcf per day to 150 MMcf per day, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it is not proposing to construct jurisdictional facilities to effectuate the increase in deliverability. Moreover, Natural states that it is not requesting authority to increase the reservoir capacity, storage inventory level, or seasonal working volume at Cooks Mills. Natural says that Cooks Mills can operate at a higher level than the currently certificated maximum daily deliverability of 80 MMcf per day as a direct result of a recently completed well performance improvement program.

Comment date: December 18, 1996, in accordance with Standard Paragraph F at the end of this notice.

Florida Gas Transmission Company

[Docket No. CP97–110–000]

Take notice that on November 20, 1996, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP97–110–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new city gate station in Hillsborough County, Florida to accommodate delivery of natural gas to Peoples Gas Systems, Inc. (Peoples) under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a new city gate station in Hillsborough County, Florida to serve as an additional point of delivery under existing firm and interruptible gas transportation service agreements. The proposed new city gate station will consist of a 4-inch tap and valve at or near mile post 83.6 on FGT's existing St. Petersburg Lateral, minor 4-inch connecting pipe, electronic flow measurement equipment and other appurtenant facilities to enable FGT to deliver natural gas to Peoples of up to 717 MMBtu per day and 261,705 MMBtu per year at the subject city gate station. FGT states that Peoples would reimburse it for all construction costs which is estimated to be $66,000. FGT states that Peoples has elected to construct, operate and own the metering and regulation facilities and related appurtenant facilities.

FGT states that the proposed construction and operation of the new city gate station will not result in an increase in FGT's contractual gas deliveries to Peoples under the existing agreements. Therefore, the proposed construction and operation will not impact FGT's peak day delivery requirements nor its annual gas deliveries.

Comment date: January 13, 1997, in accordance with Standard Paragraph G at the end of this notice.

4. Florida Gas Transmission Company

[Docket No. CP97–112–000]

Take notice that on November 21, 1996, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in the above docket, a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon and sell a measurement facility, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, FGT proposes to abandon and transfer by sale to City Gas Company of Florida, a Division of NUI Corporation (City Gas) the Goulds measurement facility which is located on the 4-inch Homestead Lateral in Dade County, Florida. Upon receiving the authority requested herein, FGT indicates that it will sell the Goulds measurement facility concurrently with the Homestead Lateral to City Gas. FGT states that it received an order

authorizing the abandonment and sale of the Homestead Lateral on October 21, 1996 in Docket No. CP96–221–000.

FGT states that this proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to continue all services without detriment or disadvantage to its other customers.

Comment date: January 13, 1997, in accordance with Standard Paragraph G at the end of this notice.

5. Florida Gas Transmission Company

[Docket No. CP97–113–000]

Take notice that on November 21, 1996, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP97–113–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point located in Dade County, Florida, for City Gas Company of Florida, a Division of NUI Corporation (City Gas), under FGT's blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct, operate, and own the new Cutler Ridge Meter Station to be used as a transportation delivery point by FGT to City Gas, located at the interconnection of their existing Turkey Point Lateral and the 4-inch Homestead Lateral in Dade County, Florida.

FGT advises the proposed new Cutler Ridge Delivery Point will include a rotary meter, approximately 150 feet of 4-inch connecting line, and other related minor facilities. FGT estimates the cost for the construction of the proposed delivery point to be $130,000, including Federal income tax gross-up. FGT states City Gas will reimburse them for all costs directly and indirectly incurred by FGT.

FGT states the present gas quantities delivered at the old Cutler Ridge Delivery Point are 7,096 MMBtu daily and 2,288,501 MMBtu annually, and the proposed gas quantities delivered at the new Cutler Ridge Delivery Point to be the same. FGT advises the end use of the gas deliveries will be primarily industrial.

Comment date: January 13, 1997, in accordance with Standard Paragraph G at the end of this notice.

6. CNG Transmission Corporation

[Docket No. CP97–114–000]

Take notice that on November 21, 1996, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP97–114–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct a new Measuring and Regulation (M&R) station and appurtenant facilities in Wetzel County, West Virginia, under CNG's blanket certificate issued in Docket No. CP82–537–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CNG states that these facilities will serve as a new point of interconnection with Eastern States Oil & Gas Inc. (Eastern). CNG states that an M&R station must be constructed near Pine Grove, Wetzel County, West Virginia so CNG can deliver Eastern's gas supplies. The auxiliary installations will be a meter, regulator, various valves and piping. The facility will be an interconnection with CNG's TL–413 line. Eastern has agreed to reimburse CNG for its costs and that CNG will be the owner of the M&R station. CNG states it will maintain and operate the M&R station and that the maximum daily design capacity will be 500 Mcf.

Comment date: January 13, 1997, in accordance with Standard Paragraph G at the end of this notice.

7. Colorado Interstate Gas Company

[Docket No. CP97–117–000]

Take notice that on November 21, 1996, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP97–117–000, a petition to amend the authorizations issued on November 17, 1959, October 14, 1969 and June 19, 1973, in Docket Nos. G–19452, CP96–333 and CP73–174, respectively, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations to change the Maximum Allowable Operating Pressure (MAOP) of approximately 34.1 miles of the Trinidad Lateral located in Otero and Las Animas Counties, Colorado, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Specifically, CIG seeks to increase the MAOP of 34.1 miles of the 8-inch looped Trinidad Lateral from 820 psig to 1067 psig. CIG states that the proposed change in MAOP will increase the operational capacity of this portion of the Trinidad Lateral from approximately 26,000 Mcf/d to approximately 43,000 Mcf/d. CIG says that this increase in capacity would be used to transport potential gas supplies from the Raton Basin Area.

CIG states that the regulators at the delivery points are currently being evaluated to determine if any change to these above ground facilities will be required. CIG proposes to make any regulator change if any is required pursuant to Section 2.55 of the Commission's Regulations.

Comment date: January 13, 1997, in accordance with Standard Paragraph G at the end of this notice.

8. Indicated Land Owners v. Riverside Pipeline Company, L.P.

[Docket No. CP97–118–000]

Take notice that on November 19, 1996, the Indicated Land Owners [1] filed a ''Motion to Intervene Out-Of-Time and Protest'' in Riverside Pipeline Company, L.P.'s (Riverside) proceeding in Docket No. CP96–152–000. In their pleading, the Indicated Land Owners ask the Commission to issue an order to show cause why Riverside's proposed KPOC 700 Line Expansion under section 311 of the Natural Gas Policy Act (NGPA) in Docket No. CP96–746–000 should not be subject to Section 7(c) of the Natural Gas Act (NGA). The Commission is treating this pleading as a complaint under the NGPA and Section 5 of the NGA, in the above-captioned new docket.

On August 26, 1996, Riverside and Kansas Pipeline Partnership filed in Docket No. CP96–746–000 a section 284.11 Notice of Construction for its KPOC 700 Line, also known as its Linchpin 2 Project.[2] Riverside indicates that it intends to construct these facilities as non-jurisdictional natural gas facilities to be used exclusively for NGPA Section 311(a)(1) transportation.

Indicated Land Owners note that the cost of the proposed NGPA section 311 expansion is estimated to be at least $36.5 million. The Indicated Land Owners contend that the cost of the expansion is substantial and cannot be accomplished without reflecting the cost of the facilities in Riverside's rate base. The Indicated Land Owners

[1] The Indicated Land Owners are Harry J. Lloyd, Loch Lloyd, Inc., Bill Southerland and JoAnn Farb.

[2] This certificate application was filed as a result of the Commission's order in Docket No. RP95–212–000, which found that KansOk Partnership and Kansas Pipeline Partnership operated as a single interstate pipeline system. *See* KansOk Partnership, *et al.*, 73 FERC ¶ 61,160 (1995).

complain that, nonetheless, Riverside is professing that these facilities will be used exclusively for NGPA Section 311 transportation and that the costs of these facilities will not be added to Riverside's jurisdictional rate base.

Indicated Land Owners state that although the Commission has conducted programmatic environmental assessments from time to time with respect to its automatic authorization of NGPA Section 311 transportation, those assessments were based on the assumption that the facilities involved would be relatively small and would not create major environmental impacts. Indicated Land Owners contend that such environmental assessments did not contemplate an interstate pipeline's attempting deliberately to evade jurisdiction by linking substantial segments held by intrastate pipeline affiliates with nominal segments held by an interstate pipeline at the state line. Nor did the assessments contemplate an interstate pipeline's attempting to evade environmental consideration of the ''no action'' alternative by using a two step process of first constructing a NGPA Section 311-only pipeline and then subsequently seeking to convert it to NGA Section 7(c) status after the facility becomes a fait accompli.

Indicated Land Owners complain that Riverside is attempting to circumvent the requirements of the National Environmental Policy Act (NEPA) by its jurisdictional maneuvers. They argue that if the Commission delays its environmental review until after Riverside seeks to convert the proposed KPOC 700 Line to a NGA Section 7(c) pipeline, important NEPA requirements, such as consideration of the ''no action'' alternative and possible alternative routing, will be evaded.

Indicated Land Owners complain that Riverside is seeking state condemnation of the proposed right-of-way for the KPOC 700 Line, and is erroneously asserting that because the *transportation* is authorized under NGPA Section 311, federal law preempts a state law inquiry into the public need for the facilities. Indicated Land Owners allege that, as a result, Riverside is attempting to create a jurisdictional gap where it will be able to secure condemnation under state law, without a prior determination of public necessity for the facilities under either state or federal law.

Indicated Land Owners ask the Commission to issue a show cause order as to why Riverside's proposed KPOC 700 Line should not be subject to NGA Section 7(c). Alternatively, Indicated Land Owners ask the Commission to conduct a full environmental assessment of the proposed expansion, including a consideration of the ''no action'' alternative.

Comment date: December 27, 1996, in accordance with the first paragraph of Standard Paragraph F at the end of this notice. Answers to the complaint shall also be due on or before December 27, 1996.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30922 Filed 12–4–96; 8:45 am]

BILLING CODE 6717–01–P

Office of Energy Efficiency and Renewable Energy

[Case No. DH–007]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver from the Vented Home Heating Equipment Test Procedure to HEAT-N-GLO Fireplace Products, Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. DH–007) granting a Waiver to HEAT-N-GLO Fireplace Products, Inc. (HEAT-N-GLO) from the existing Department of Energy (DOE or Department) test procedure for vented home heating equipment. The Department is granting HEAT-N-GLO's Petition for Waiver regarding pilot light energy consumption in the calculation of Annual Fuel Utilization Efficiency (AFUE) for its models AT-SUPREME, BAY-GDV, BAY-STOVE, DVT-INSERT, DVT-STOVE, R5500RH, SL–3000, SL–32S, TOWNSEND I, TOWNSEND II, and 6000XLS vented heaters.

FOR FURTHER INFORMATION CONTACT:

William W. Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9145.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with Title 10 CFR 430.27(j), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, HEAT-N-GLO has been granted a Waiver for its models AT-SUPREME, BAY-GDV, BAY-STOVE, DVT-INSERT, DVT-STOVE,

R5500RH, SL–3000, SL–32S, TOWNSEND I, TOWNSEND II, and 6000XLS vented heaters, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on November 20, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, Public Law 94–163, 89 Stat. 917, as amended (EPCA), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including vented home heating equipment. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at Title 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding Title 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

HEAT–N–GLO filed a ''Petition for Waiver,'' dated August 13, 1996, in accordance with section 430.27 of Title 10 CFR Part 430. The Department published in the Federal Register on October 11, 1996, HEAT–N–GLO's Petition and solicited comments, data and information respecting the Petition. 61 FR 53366, October 11, 1996. HEAT–N–GLO also filed an ''Application for Interim Waiver'' under section 430.27(b)(2), which DOE granted on October 7, 1996. 61 FR 53366, October 11, 1996.

No comments were received concerning either the ''Petition for Waiver'' or the ''Interim Waiver.'' The Department consulted with The Federal Trade Commission (FTC) concerning the HEAT–N–GLO Petition. The FTC did not have any objections to the issuance of the waiver to HEAT–N–GLO.

Assertions and Determinations

HEAT–N–GLO's Petition seeks a waiver from the DOE test provisions regarding pilot light energy consumption for vented heaters in the calculation of AFUE. The DOE test provisions in section 3.5 of Title 10 CFR Part 430, Subpart B, Appendix O requires measurement of energy input rate to the pilot light (Q_P) with an error no greater than 3 percent for vented heaters, and use of this data in section 4.2.6 for the calculation of AFUE using the formula: AFUE = $[4400\eta_{SS}\eta_u Q_{in-max}]/[4400\eta_{SS}Q_{in-max}+2.5(4600)\eta_u Q_P]$. HEAT–N–GLO requests the allowance to delete the $[2.5(4600)\eta_u Q_P]$ term in the denominator in the calculation of AFUE when testing its models AT–SUPREME, BAY–GDV, BAY–STOVE, DVT–INSERT, DVT–STOVE, R5500RH, SL–3000, SL–32S, TOWNSEND I, TOWNSEND II, and 6000XLS vented heaters. HEAT–N–GLO states that its models AT–SUPREME, BAY–GDV, BAY–STOVE, DVT–INSERT, DVT–STOVE, R5500RH, SL–3000, SL–32S, TOWNSEND I, TOWNSEND II, and 6000XLS vented heaters are designed with a transient pilot which is to be turned off by the user when the heater is not in use.

The control knob on the combination gas control in these heaters has three positions: ''OFF,'' ''PILOT'' and ''ON.'' Gas flow to the pilot is obtained by rotating the control knob from ''OFF'' to ''PILOT,'' depressing the knob, holding in, pressing the piezo igniter. When the pilot heats a thermocouple element, sufficient voltage is supplied to the combination gas control for the pilot to remain lit when the knob is released and turned to the ''ON'' position. The main burner can then be ignited by moving an ON/OFF switch to the ''ON'' position. Instructions to users to turn the gas control knob to the ''OFF'' position when the heater is not in use, which automatically turns off the pilot, are provided in the User's Instruction Manual and on a label adjacent to the gas control knob. If the manufacturer's instructions are observed by the user, the pilot light will not be left on. This will result in a lower energy consumption, and in turn a higher efficiency than calculated by the current DOE test procedure. Since the current DOE test procedure does not address this issue, HEAT–N–GLO asks that the Waiver be granted.

Previous Petitions for Waiver to exclude the pilot light energy input term in the calculation of AFUE for home heating equipment with a manual transient pilot control have been granted by DOE to Appalachian Stove and Fabricators, Inc., 56 FR 51711, October 15, 1991; Valor Inc., 56 FR 51714, October 15, 1991; CFM International Inc., 61 FR 17287, April 19, 1996; Vermont Castings, Inc., 61 FR 17290, April 19, 1996; Superior Fireplace Company, 61 FR 17885, April 23, 1996; and Vermont Castings, Inc., 61 FR 57857, November 8, 1996.

Based on DOE having granted similar waivers in the past to vented heaters utilizing a manual transient pilot control, its review of how HEAT-N-GLO's models AT-SUPREME, BAY-GDV, BAY-STOVE, DVT-INSERT, DVT-STOVE, R5500RH, SL–3000, SL–32S, TOWNSEND I, TOWNSEND II, and 6000XLS vented heaters operate and the fact that if the manufacturer's instructions are followed, the pilot light will not be left on, DOE grants HEAT-N-GLO a Petition for Waiver to exclude the assumed pilot light energy input term in the calculation of AFUE.

This decision is subject to the condition that the heaters shall have an easily read label near the gas control knob instructing the user to turn the valve to the off-position when the heaters are not in use.

It is therefore, ordered that:

(1) The ''Petition for Waiver'' filed by HEAT-N-GLO Fireplace Products, Inc. (Case No. DH–007) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix O of Title 10 CFR Part 430, Subpart B, HEAT-N-GLO Fireplace Products, Inc. shall be permitted to test its models AT-SUPREME, BAY-GDV, BAY-STOVE, DVT-INSERT, DVT-STOVE, R5500RH, SL–3000, SL–32S, TOWNSEND I, TOWNSEND II, and 6000XLS vented heaters on the basis of the test procedure specified in Title 10 CFR Part 430, with modifications set forth below:

(i) Delete paragraph 3.5 of Appendix O.

(ii) Delete paragraph 4.2.6 of Appendix O and replace with the following paragraph:

4.2.6 Annual Fuel Utilization Efficiency. For manually controlled vented heaters, calculate the Annual Fuel Utilization Efficiency (AFUE) as a percent and defined as:

$AFUE = \eta_u$

where:

η_u = as defined in section 4.2.5 of this appendix.

(iii) With the exception of the modification set forth above, HEAT-N-GLO Fireplace Products, Inc. shall comply in all respects with the test procedures specified in Appendix O of Title 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to models AT-SUPREME, BAY-GDV, BAY-STOVE, DVT-INSERT, DVT-STOVE, R5500RH, SL–3000, SL–32S, TOWNSEND I, TOWNSEND II, and 6000XLS vented heaters manufactured by HEAT-N-GLO Fireplace Products, Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that a factual basis underlying the Petition is incorrect.

(5) Effective November 20, 1996, this Waiver supersedes the Interim Waiver granted HEAT-N-GLO Fireplace Products, Inc. on October 7, 1996, 61 FR 53366, October 11, 1996. (Case No. DH–007).

Issued in Washington, DC, on November 20, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–30940 Filed 12–4–96; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notices

DATE AND TIME: Tuesday, December 10, 1996, at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, December 12, 1996. at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Election of Chairman and Vice Chairman for 1997.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 96–31133 Filed 12–3–96; 2:48 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notices

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 60285, November 27, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 8:30 a.m. Wednesday, December 4, 1996.

CANCELLATION OF THE MEETING: Notice is hereby given of the cancellation of the Federal Housing Finance Board meeting scheduled for December 4, 1996.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96–31115 Filed 12–3–96; 2:45 pm]

BILLING CODE 6725–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting Notice

TIME AND DATE: 10:00 a.m. (EST), December 16, 1996.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 18, 1996, Board meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Review of KPMG Peat Marwick audit reports:

(a) ''Pension and Welfare Benefits Administration Review of Thrift Savings Plan Withdrawal and Inactive Accounts Operations at the United States Department of Agriculture, National Finance Center.''

(b) ''Pension and Welfare Benefits Administration Review of Access Controls and Security Over the Thrift Savings Plan Computerized Resources at the United States Department of Agriculture, National Finance Center.''

(c) ''Pension and Welfare Benefits Administration Review of Thrift Savings Plan Account Maintenance Subsystem and Participant Support Process at the United States Department of Agriculture, National Finance Center.''

(d) ''Pension and Welfare Benefits Administration Review of U.S. Treasury Operations relating to the Thrift Savings Plan Investments in the Government Securities Fund.''

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 3, 1996.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 96–31117 Filed 12–3–96; 2:46 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

[File No. 942–3218]

California SunCare, Inc.; Donald J. Christal; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Los Angeles, California-based company, and its president, to make certain disclosures in future ads and labeling, cautioning consumers that tanning, even without burning, can cause skin cancer and premature skin aging. The agreement settles allegations that California SunCare made false and unsubstantiated claims that moderate exposure to the ultraviolet radiation of the sun and in indoor tanning salons, such as those marketed by the company, is not harmful, and that such exposure actually provides many health benefits.

DATES: Comments must be received on or before February 3, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, Federal Trade Commission, S–4002, 6th and Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3153. Toby Milgrom Levin, Federal Trade Commission, S–4002, 6th and

Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for November 19, 1996), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from California Suncare, Inc., the manufacturer and marketer of ''California Tan Heliotherapy'' tanning products, and its president, Donald J. Christal (hereinafter sometimes referred to as respondents).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter concerns representations made by respondents for their Heliotherapy line of skin care products, which are designed to be used in connection with tanning. The complaint alleges that certain advertisements and promotional materials disseminated by respondents have contained false or unsubstantiated claims about the safety and health benefits of exposure to ultraviolet radiation (''UVR'') from the sun or indoor tanning salons, and about the benefits and efficacy of the Heliotherapy products.

More specifically, the complaint alleges that respondents falsely represented that:

—The negative effects of UVR, including skin cancer and premature skin aging, are caused only by overexposure and burning, and not by moderate exposure;
—Tanning as a result of UVR exposure is not harmful to the skin;
—Use of Heliotherapy products prevents or minimizes the negative effects of UVR; and
—Exposure to UVR reduces the risk of skin cancer.

The complaint further challenges as unsubstantiated respondents' claims that exposure to UVR:

—Prevents or reduces the risk of colon and breast cancer;
—Lowers elevated blood pressure;
—Has benefits similar to those of exercise, including decreased blood pressure and lower heart rate;
—Significantly reduces serum cholesterol;
—Is an effective treatment for AIDS;
—Enhances the immune system; and
—Is necessary for the general population to reduce the risk of bone disorders such as osteoporosis and osteomalacia, which can be caused by reduced winter sunlight.

The complaint also alleges that respondents' claim that exposure to indoor UVR is an effective treatment for Seasonal Affective Disorder is unsubstantiated.

In addition, the complaint challenges as unsubstantiated certain claims about the tanning efficacy of certain Heliotherapy products, including claims that Heliotherapy MAXIMIZERS help users achieve up to forty-two percent better tanning results and that Heliotherapy products with two percent VITATAN improve users' ability to tan by up to sixty-seven percent.

Finally, the complaint charges that respondents falsely represented that scientific studies demonstrate that exposure to UVR provides the health benefits set forth above and that the American Medical Association endorses exposure to UVR as an effective medical treatment.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the order prohibits respondents from making the false claims alleged in the complaint about the lack of harm from moderate UVR exposure and tanning, and the benefits of UVR in reducing the risk of skin cancer. Part I also prohibits misrepresentations about the ability of any tanning products or services to prevent or minimize the adverse effects of UVR exposure.

Part II requires scientific substantiation for the claims about health benefits from UVR exposure challenged as unsubstantiated in the complaint, and for any claims about the health benefits of sunlight or indoor ultraviolet radiation. Part III of the order requires substantiation for claims that any tanning product or service prevents or minimizes the harms of UVR or will improve tanning or about the performance, safety, benefits, or efficacy of any such product or service.

Part IV prohibits misrepresentations about studies or official endorsements for any product or service.

The order also requires certain clear and prominent disclosures in future advertising and labeling for certain tanning products about the risks of exposure to sunlight or indoor ultraviolet radiation. Part V.A requires a disclosure in future ads and promotional materials for all tanning products that do not contain a sunscreen ingredient providing a minimum sun protection factor (SPF) of two. The disclosure reads as follows:

CAUTION: Tanning in sunlight or under tanning lamps can cause skin cancer and premature skin aging—even if you don't burn.

The disclosure is required in all advertising, with the exception of television advertising, billboards, and publications directed primarily to salon professionals. The exempted publications are limited to periodicals sold only by subscription with a readership of at least fifty percent salon professionals. The above disclosure must be made in all nonexempt advertising until the respondents have spent $1,500,000 disseminating advertisements with the disclosure to consumers. If that amount is not spent within two years and six months after the order becomes effective, the exemptions no longer apply and the disclosure must appear in all advertising until the amount above is expended.

Parts V.B and C require disclosures about the adverse effects of tanning in advertising and product labeling for tanning products that contain representations about the health benefits or safety of exposure to UVR. The advertising disclosure becomes effective

immediately in the case of the three types of advertising that are exempt from Part V.A as described above and becomes effective for all other types of advertising once the requirements of Part V.A have been satisfied. The labeling disclosure is required when the order becomes effective and applies to any tanning product not containing a sunscreen ingredient of at least SPF two. The label disclosure in addition to cautioning about the harms of tanning, states that the product does not contain a sunscreen and does not protect against burning.

Part VI requires respondents to send a letter (appended to the order) to people who purchased Heliotherapy products for resale such as distributors and retailers. The letter describes the Commission's action and advises recipients to discontinue use of promotional materials that contain the challenged claims. The record keeping requirements for this part are laid out in Part VII. Part VII.C requires the respondents to warn and ultimately to stop doing business with recipients of the letter who continue to use materials that make the challenged claims.

Part VII contains a provision permitting respondents to use old labeling for 100 days after the effective date of the order. However, it requires the removal of all the fold-out labels once the order becomes effective.

The remaining parts of the order contain standard provisions with respect to record keeping, safe harbors for claims approved by the Food and Drug Administration, compliance, and sunsetting the order after twenty years.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Statement of Commissioner Roscoe B. Starek, III, Concurring in Part and Dissenting in Part in California Suncare, Inc., File No. 942–3218

I have voted to accept for public comment the consent agreement with California Suncare, Inc. (CSI) because, for the most part, it provides appropriate relief for the extremely serious misrepresentations alleged in the complaint about the health and safety effects of ultraviolet radiation (UVR) exposure and the benefits and efficacy of the company's tanning products. However, I do not support including the ''untriggered'' disclosure in Part V.A. of the proposed order.[1] In my view this remedy constitutes corrective advertising, and I am not convinced that the evidence here meets the standard for imposing corrective advertising set forth in *Warner-Lambert Co.* v. *FTC,* 562 F.2d 749, 762 (D.C. Cir. 1977), *cert. denied,* 435 U.S. 950 (1978).

Both the characteristics and scope of the untriggered disclosure lead me to conclude that it is actually corrective advertising in disguise. The disclosure requirement has certain characteristics usually associated with corrective advertising: it runs until a specific time period expires and a specific sum of money is exhausted, and it must be made regardless of the representations CSI makes about its products. *See, e.g., American Home Products Corp.* v. *FTC,* 695 F.2d 681, 700 (3d Cir. 1982) (''[A] genuine corrective advertising requirement . . . demand[s] disclosure in future advertisements regardless of the content of those advertisements.''). Most significant, however, the scope of the untriggered disclosure far exceeds its rationale. The disclosure must appear in CSI's general advertising as well as in all promotional materials distributed directly to consumers for any tanning product that does not contain a sunscreen with a minimum SPF of 2. Yet the rationale advanced for this untriggered disclosure is that it is necessary to protect prospective purchasers from being misled by future misrepresentations about the effects of UVR exposure, particularly misrepresentations that might occur at ''the point of sale''—the tanning salons where consumers purchase CSI products. I see no reason for the untriggered disclosure to appear in general advertising if the disclosure's true intent is to prevent possible future deception of consumers at the point of sale.

The disparity between the scope of the disclosure and its rationale suggests to me that its primary purpose is more consistent with corrective advertising than with an affirmative disclosure. The purpose of corrective advertising is to dispel false beliefs in the public mind created or reinforced by a challenged ad that are likely to endure (and thus to influence purchase decisions) even after the ad stops running. In contrast, the purpose of an affirmative disclosure remedy is to prevent deception from future claims like or related to those challenged.[2] I recognize that the untriggered disclosure might have some impact on potential future deceptive claims about UVR exposure at the point of sale, but it is overbroad for this particular purpose, and the need for it seems minimal in light of the extensive other relief provided by the order.[3] Thus, the main purpose of this untriggered disclosure seems to be to ameliorate lingering false beliefs that may have been created or reinforced by CSI's past claims that UVR exposure not only is not harmful but is positively beneficial.

Although both corrective advertising and affirmative disclosures are forms of fencing-in relief that are well within the Commission's remedial authority, the standard for imposing corrective advertising is significantly more stringent than that for an affirmative disclosure. In imposing corrective advertising, the Commission normally relies on extrinsic evidence of the existence of lingering false beliefs created by past advertising. In certain cases, however, it may be possible to presume the existence of such false beliefs based on the nature and extent of the advertising campaign. *Warner-*

[1] Part V.A. requires CSI to include the following statement in all advertising and promotional materials disseminated directly to consumers or through purchasers for resale (except television advertising, billboards and advertising in magazines sold only by subscription for which half or more of the readership is comprised of tanning or beauty salon professionals): ''CAUTION: Tanning in sunlight or under tanning lamps can cause skin cancer and premature aging—even if you don't burn.'' This disclosure is applicable to all of respondent's products that contain a sunscreen ingredient providing a sun protection factor (SPF) of less than 2 and must be made until CSI spends $1.5 million on dissemination. If CSI does not expend this amount within 2½ years after the service of the order, the untriggered disclosure then becomes applicable to all forms of advertising until the required amount is spent.

[2] It is difficult to draw bright lines between these possible forms of fencing-in relief, and I am not suggesting that the Commission forgo ordering affirmative disclosures in all circumstances in which the disclosures, while targeted primarily at the prevention of deception from future claims, may also incidentally affect a possible lingering public misimpression created by past advertising. This situation is not the case presented here.

[3] In addition to prohibiting misrepresentations about the effects of UVR exposure and tanning and unsubstantiated claims about the performance, safety, benefits, or efficacy of products or services used in connection with tanning, the proposed order requires two additional affirmative disclosures (Parts V.B. and V.C.) that are triggered by claims about the safety or health benefits of exposure to sunlight or indoor UVR. The language of these triggered disclosures is similar to that of the untriggered disclosure. The triggered disclosures apply to labeling and packaging—forms of advertising exempted from the untriggered disclosure—and, after the untriggered disclosure requirement runs out, to all other advertising and promotional material. The proposed order (Part VI) also requires CSI to send a letter to distributors and retailers of the company's tanning products that describes the Commission's enforcement action and advises them to stop using ads and promotional materials that contain any of the representations prohibited by the order or face losing CSI's business.

Lambert, 562 F.2d at 762–63.[4] An affirmative disclosure remedy, on the other hand, requires only that the disclosure be ''reasonably related'' to the alleged violations. In my view, it is important to distinguish between corrective advertising and affirmative disclosures because the Commission should not evade the more demanding standard for corrective advertising where it is clearly applicable.

There appears to be little basis for Part V.A. of the proposed order when it is viewed as corrective advertising. There is no direct evidence that CSI's ads and sales materials created or contributed to a lingering false impression that UVR exposure through sunlight and tanning has the health and safety benefits represented by the company. Moreover, I am not persuaded that it would be appropriate to presume that the company's message—that UVR exposure is beneficial—would endure in light of pervasive messages to the contrary.

By accepting this consent agreement, the Commission is coming perilously close to lowering its standard for imposing corrective advertising by erasing the already blurred dividing line between that form of fencing-in relief and affirmative disclosures. Such a change is one that I cannot endorse.

[FR Doc. 96–30944 Filed 12–4–96; 8:45 am]

BILLING CODE 6750–01–P

[4] *See, e.g., Eggland's Best, Inc.*, Docket No. C–3520 (Aug. 15, 1994) (Statement of Roscoe B. Starek, III).

[File Nos. 952 3093, 952 3094, 952 3095, 952 3450, and 952 3096

General Motors Corp., American Honda Motor Co., Inc., American Isuzu Motors, Inc., Mazda Motor of America, Inc., and Mitsubishi Motor Sales of America, Inc., Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, these five consent agreements, accepted subject to final Commission approval, would require, among other things, five major automobile manufacturers to provide consumers with clear, readable, and understandable cost information in their car lease and financed purchase advertising. The agreements prohibit the manufacturers from featuring low monthly payments or low amounts ''down'' in large, bold print, while hiding additional costs and sometimes contradictory information in ''mouse print'' that is difficult or impossible to read.

DATES: Comments must be received on or before February 3, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: David Medine, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the five consent agreements, and the allegations in the accompanying complaints. Electronic copies of the full text of the five consent agreement packages can be obtained from the Commission Actions section of the FTC Home Page (for November 21, 1996), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' Paper copies can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted separate agreements, subject to final approval, to proposed consent orders from General Motors Corporation (''General Motors''), American Honda Motor Corporation, Inc. (''Honda''), American Isuzu Motors Inc. (''Isuzu''), Mazda Motor of America, Inc. (''Mazda''), and Mitsubishi Motor Sales of America, Inc. (''Mitsubishi'') (collectively referred to as ''respondents'').

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The complaints allege that each of the respondents' automobile lease advertisements violated the Federal Trade Commission Act (''FTC Act''), the Consumer Leasing Act (''CLA''), and Regulation M. The complaints also allege that General Motors and Mitsubishi's automobile credit advertisements violated the FTC Act, the Truth in Lending Act (''TILA''), and Regulation Z. Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertising under the CLA and the TILA, respectively, and directed the Federal Reserve Board (''Board'') to promulgate regulations implementing such statutes—Regulations M and Z. *See* 15 U.S.C. §§ 1601–1667e; 12 C.F.R. Part 213; 12 C.F.R. Part 226. On September 30, 1996, Congress passed revisions to the CLA that will be implemented by the Board through future changes to Regulation M and will become optionally effective immediately. See Title II, Section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. No. 104–208, 110 Stat. 3009, _____ (Sept. 30, 1996)(''revised CLA''), as amended, and Section 213.7(d)(2) of revised Regulation M, 61 Fed. Reg. at 52,261 (to be codified at 12 C.F.R. § 213.7(d)(2)), as amended.

The complaints against General Motors, Honda, Isuzu, Mazda, and Mitsubishi allege that respondents' automobile lease advertisements represented that a particular amount stated as ''down'' is the total amount consumers must pay at the initiation of a lease agreement to lease the advertised vehicles. This representation is false, according to the complaints, because consumers must pay additional fees beyond the amount stated as ''down,'' such as the security deposit and first month's payment, to lease the advertised vehicles. The complaints also allege that respondents failed to disclose adequately these additional fees in their advertisements. These practices, according to the complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The complaints further allege that respondents' lease advertisements failed to disclose the terms of the offered lease

in a clear and conspicuous manner, as required by the CLA and Regulation M. According to the complaints, respondents' television lease disclosures were not clear and conspicuous because they appeared on the screen in small type, against a background of similar shade, for a very short duration, and/or over a moving background. The General Motors, Honda, Mazda, and Mitsubishi complaints also allege that these respondents' fine print disclosures of lease terms in print advertisements were not clear and conspicuous. The complaints, therefore, allege that respondents' failure to disclose lease terms in a clear and conspicuous manner violates the CLA and Regulation M.

The General Motors and Mitsubishi complaints also allege that these respondents' credit advertisements represented that consumers can purchase the advertised vehicles at the terms prominently stated in the ad, such as a low monthly payment and/or a low amount ''down.'' This representation is false, according to the complaints, because consumers must also pay a final balloon payment of several thousand dollars, in addition to the low monthly payment and/or amount down, to purchase the advertised vehicles. The complaints further allege that respondents General Motors and Mitsubishi failed to disclose adequately in their credit advertisements additional terms pertaining to the credit offer, including the existence of a final balloon payment of several thousand dollars and the annual percentage rate. These practices, according to the complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The General Motors and Mitsubishi complaints further allege that these respondents' credit advertisements failed to disclose required credit terms in a clear and conspicuous manner, as required by the TILA and Regulation Z. According to the complaints, respondents' television advertisements contained credit disclosures that were not clear and conspicuous because they appeared on the screen in small type, against a background of similar shade, for a very short duration, and/or over a moving background. The complaints also allege that these respondents' fine print disclosures of credit terms in print advertisements were not clear and conspicuous. The complaints, therefore, allege that General Motors and Mitsubishi's failure to disclose credit terms in a clear and conspicuous manner violates the TILA and Regulation Z.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Specifically, subparagraph I.A. of the proposed orders prohibits respondents, in any lease advertisement, from misrepresenting the total amount due at lease inception, the amount down, and/or the downpayment, capitalized cost reduction, or other amount that reduces the capitalized cost of the vehicle (or that no such amount is required). Subparagraph I.B. of the proposed orders also prohibits respondents, in any lease advertisement, from making any reference to any charge that is part of the total amount due at lease inception or that no such amount is due, not including a statement of the periodic payment, more prominently than the disclosure of the total amount due at lease inception. The ''prominence'' requirement prohibits the companies from running deceptive advertisements that highlight zero dollars or other low amounts ''down,'' with inadequate disclosures of actual total inception fees. This ''prominence'' requirement for lease inception fees also is found in the revised Regulation M recently adopted by the Board.

Moreover, subparagraph I.C. of the proposed orders prohibits respondents, in any lease advertisement, from stating the amount of any payment or that any or no initial payment is required at consummation of the lease, unless the ad also states: (1) that the transaction advertised is a lease; (2) the total amount due at lease inception; (3) that a security deposit is required; (4) the number, amount, and timing of scheduled payments; and (5) that an extra charge may be imposed at the end of the lease term where the liability of the consumer at lease end is based on the anticipated residual value of the vehicle. The information enumerated above must be displayed in the lease advertisement in a clear and conspicuous manner. This approach is consistent with the lease advertising disclosure requirements of the revised CLA.

Paragraph II of the proposed orders provides that lease advertisements that comply with the disclosure requirements of subparagraph I.C. of the orders shall be deemed to comply with Section 184(a) of the CLA, as amended, or Section 213.7(d)(2) of the revised Regulation M, as amended.

Paragraph III of the proposed orders provides that certain future changes to the CLA or Regulation M will be incorporated into the orders. Specifically, subparagraphs I.B. and I.C. will be amended to incorporate future CLA or Regulation M required advertising disclosures that differ from those required by the above order paragraphs. In addition, the definition of ''total amount due at lease inception,'' as it applies to subparagraphs I.B. and I.C. only, will be amended in the same manner. The orders provide that all other order requirements, including the definition of ''clearly and conspicuously,'' will survive any such revisions.

Subparagraph IV.A. of the proposed General Motors and Mitsubishi orders prohibits these respondents, in any credit advertisement, from misrepresenting the existence and amount of any balloon payment or the annual percentage rate; subparagraph IV.B. also prohibits these respondents from stating the amount of any payment, including but not limited to any monthly payment, in any credit advertisement unless the amount of any balloon payment is disclosed prominently and in close proximity to the most prominent of the above statements.

Subparagraph IV.C. of the proposed General Motors and Mitsubishi orders also enjoins these respondents from disseminating credit advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any periodic payment, including but not limited to the monthly payment, or the amount of any finance charge without disclosing, clearly and conspicuously, the following items of information: (1) the amount or percentage of the downpayment; (2) the terms of repayment, including but not limited to the amount of any balloon payment; and (3) the correct annual percentage rate, using that term or the abbreviation ''APR,'' as defined in Regulation Z and the Official Staff Commentary to Regulation Z. If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be clearly and conspicuously disclosed.

The information required by subparagraphs I.C. (lease advertisements) and IV.C. (credit advertisements) must be disclosed ''clearly and conspicuously'' as defined in the proposed orders. The ''clear and conspicuous'' definition requires that respondents present such lease or credit information within the advertisement in a manner that is readable [or audible] and understandable to a reasonable consumer.

The definition lends specificity to and is consistent with the general ''clear and conspicuous'' requirement in

Regulations M and Z, which requires readable and understandable disclosures. Similar to prior Commission orders and statements that interpret Section 5's prohibition of deceptive acts and practices, these orders require respondents to include certain disclosures in advertising that are readable (or audible) and understandable to reasonable consumers.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–30945 Filed 12–4–96; 8:45 am]

BILLING CODE 6750–01–P

[File No. 932–3180]

Phaseout of America, Inc.; Products & Patents, Ltd.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Lynbrook, New York-based company to possess competent and reliable scientific evidence to substantiate all claims about the performance, efficacy, or benefits of any smoking-cessation or cigarette-modification product. The agreement also prohibits the company from making claims challenged as false in the future. The agreement settles allegations that advertising claims for PhaseOut, a device marketed as helping smokers to stop smoking and making cigarettes less harmful are unsubstantiated.

DATES: Comments must be received on or before February 3, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Lesley Anne Fair, Federal Trade Commission, S–4002, 6th and Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3081. Shira Modell, Federal Trade Commission, S–4002, 6th and Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3116.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home page (for November 14, 1996), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Phaseout of America, Inc. and Products & Patents, Ltd. This matter concerns advertising for PhaseOut, a device which punches one or more small holes in cigarettes and which was advertised as both aiding in smoking cessation and making cigarettes less harmful.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter challenges three sets of representations made by respondents regarding the performance of PhaseOut: its ability to reduce smokers' intake of smoke constituents, allow smokers to quit smoking, and reduce health risks for smokers who continue smoking.

According to the Commission's complaint, the respondents made unsubstantiated representations that PhaseOut reduces by certain specified percentages the amount of nicotine, tar, and carbon monoxide that smokers, get, and does so without changing a cigarette's taste or draw; and that smokers using PhaseOut will not compensate for its effects by increasing the number of cigarettes they smoke per day. The complaint also alleges that the respondents misrepresented that a particular study conducted at The Johns Hopkins University proves that PhaseOut significantly reduces the amount of tar, nicotine, and carbon monoxide smokers get under normal smoking conditions. According to the complaint, the study was conducted under carefully controlled conditions that did not reflect how smokers actually smoke. The complaint explains that the study did not take into account compensatory smoking—the tendency of some smokers who switch to lower yield cigarettes to smoke more cigarettes or to smoke each one more intensively (*e.g.*, taking bigger or more frequent puffs), often without realizing it.

The complaint further alleges that the respondents made unsubstantiated representations that PhaseOut enables smokers to quit and to do so without withdrawal symptoms; and that the respondents falsely claimed that PhaseOut's effectiveness in enabling smokers to quit smoking is proven by the Johns Hopkins study.

The complaint also alleges that the respondents made unsubstantiated representations that PhaseOut significantly reduces the risk of smoking-related health problems, including lung cancer and heart disease, for smokers who continue to smoke and that it also provides immediate health benefits including reduced congestion, coughing or windedness. The complaint further challenges the related misrepresentation that the Johns Hopkins study proves that smokers who use PhaseOut and continue to smoke significantly reduce their risk of smoking-related health problems.

In addition, the complaint alleges that the respondents represented without substantiation that testimonials contained in advertisements for PhaseOut reflect the typical or ordinary experience of consumers who use the product.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the order prohibits the respondents from making the representations challenged as false in the proposed complaint about the Johns Hopkins study's findings concerning PhaseOut.

Part II requires respondents to possess competent and reliable scientific evidence to substantiate claims that any smoking-cessation or cigarette-modification product: (A) reduces the amount of nicotine, tar, carbon monoxide, or any other component of cigarette smoke that smokers get from smoking a cigarette; (B) is effective in enabling or helping smokers to quit smoking; (C) reduces the risk of smoking-related health problems for smokers who continue to smoke; (D) reduces the amount of nicotine, tar, carbon monoxide, or any other component of cigarette smoke that smokers get without changing a cigarette's taste or draw; (E) is effective in enabling or helping smokers to quit smoking without withdrawal symptoms; or (F) provides immediate health benefits, such as reduced congestion, coughing or windedness, for smokers who continue to smoke. Part II also requires respondents to possess competent and reliable scientific evidence to substantiate claims that smokers using any such product will not compensate for the product's effects by increasing the number of cigarettes they smoke per day.

Part III requires respondents to possess competent and reliable scientific evidence to substantiate any performance, benefit or efficacy claims for smoking-cessation or cigarette-modification products.

Part IV prohibits the respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

Part V requires respondents either to possess competent and reliable scientific evidence to substantiate claims that any endorsement reflects the typical or ordinary experience of consumers who use the product; or to clearly and prominently disclose either: a) what the generally expected results would be, or b) that consumers should not expect to experience similar results.

Part VI requires respondents to send a postcard to identifiable past purchasers of PhaseOut notifying them of the Commission's action in this case and advising them that PhaseOut has *not* been proven to reduce the risk of smoking-related diseases or to make cigarettes ''safer.'' Part VI also requires respondents to send a letter to their purchasers for resale requesting the names and addresses of their customers and notifying them that if the purchasers for resale do not stop using advertising and promotional materials containing claims covered by this order, the respondents are required to stop doing business with them. Part VII requires the respondents to maintain for five years copies of all communications with consumers and purchasers for resale pursuant to the terms of Part VI.

The proposed order also requires respondents to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to certain current officers and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order. The order also contains a provision stating that it will terminate after twenty (20) years absent the filing in federal court, by either the United States or the FTC, of a complaint against the respondents alleging a violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–30943 Filed 12–4–96; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the National Center for Research Resources Initial Review Group and the Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities for February 1997. These meetings will be open to the public as indicated below, to discuss program planning; program accomplishments; administrative matters such as previous meeting minutes; the report of the Director, National Center for Research Resources (NCRR); review of budget and legislative updates; and special reports or other issues relating to committee business. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Public Affairs Officer, NCRR, National Institutes of Health, 1 Rockledge Center, Room 5146, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 10892–7965, (301) 435–0888, will provide summaries of meetings and rosters of committee members. Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator listed below, in advance of the meeting.

Name of Committee: National Center for Research Resources Initial Review Group—Research Centers in Minority Institutions Review Committee.

Dates of Meeting: February 10, 1997.

Place of Meeting: The Bethesda Ramada, Ambassador II Room, 8400 Wisconsin Avenue, Bethesda, MD 20814, (301) 654–1000.

Open: February 10, 8:30 a.m.–10:30 a.m.

Closed: February 10, 10:30 a.m. until adjournment.

Scientific Review Administrator: Dr. John Lymangrover, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0820.

Name of Committee: National Center for Research Resources Initial Review Group—Comparative Medicine Review Committee.

Date of Meeting: February 23–25, 1997.

Place of Meeting: The Latham Hotel, Washington/Jefferson Conference Room, 3000 M Street, N.W., Washington, DC 20007 (202) 726–5000.

Closed: February 23, 6:30 p.m. until recess.

Open: February 24, 8:30 a.m.–10:00 a.m.

Closed: February 24, 10:00 a.m. until adjournment.

Scientific Review Administrator: Dr. Raymond O'Neil, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0814.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date of Meeting: February 25, 1997.

Place of Meeting: Gaithersburg Hilton, Darnestown Room, 620 Perry Parkway, Gaithersburg, MD 20877, (301) 977–8900.

Open: February 25, 8:00 a.m.–10:00 a.m.

Closed: February 25, 10:00 a.m. until adjournment.

Scientific Review Administrator: Dr. Jill Carrington, Dr. D.G. Patel, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0822.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.389;

Research Centers in Minority Institutions; 93.167, Research Facilities Improvement Program; 93.214 Extramural Research Facilities Construction Projects, National Institutes of Health)

Dated: November 27, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30952 Filed 12–4–96; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; 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: NCRR Initial Review Group—General Clinical Research Centers Review Committee.

Dates of Meeting: February 12–14, 1997.

Time: 8:00 a.m.—until adjournment.

Place of Meeting: Hyatt Regency, Bethesda, Potomac/Patuxent Conference Room, One Bethesda Metro Center, Bethesda, MD 20815, Telephone: (301) 657–6406.

Scientific Review Administrator: Dr. Charles Hollingsworth, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0818.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 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.

(Catalog of Federal Domestic Assistance Program No. 93.333 Clinical Research, National Institutes of Health, HHS)

Dated: November 26, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30957 Filed 12–4–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: SCOR in Molecular Medicine and Atherosclerosis.

Date: December 20, 1996.

Time: 8:00 a.m.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Contact Person: Eric H. Brown, Ph.D., Two Rockledge Center, Room 7204, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–3541.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 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 fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: November 26, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30958 Filed 12–4–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; 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 of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 2, 1996.

Time: 2 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Salvador H. Cuellar, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

The meeting will be closed in accordance with the provisions set forth in secs. 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 fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 29, 1996.

Anna Snouffer,

Committee Management Specialist, NIH.

[FR Doc. 96–30950 Filed 12–2–96; 12:02 pm]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Meeting Cancellation

Notice is hereby given of the cancellation of the meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, December 10, 1996, which was to have taken place as a telephone conference call originating in Room 400C Executive Plaza South, 6120 Executive Blvd., Rockville, Maryland 20852, which was published in the Federal Register on November 27, 1996, 61 FR 60291.

This meeting is being cancelled due to the National Institute on Deafness and Other Communication Disorders' cancellation of the solicitation RFP–NIH–DC–96–03.

Dated: December 2, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30951 Filed 12–4–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting of the Advisory Council and Its Planning Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee on January 22–23, 1997, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. Both meetings will take place as telephone conference calls. The Planning Subcommittee will originate in Conference Room 7, Building 31. The meeting of the full Council will originate in Conference Room 6, Building 31.

In accordance with the provisions set forth in Secs. 552b(c)(4) and 552b(c)(6), Title 5, United States Code and Sec. 10(d) of Pub. L. 92–463, the meeting of the Planning Subcommittee on January 22 will be closed to the public from 1 p.m. to adjournment. The meeting of the full Council will be closed to the public on January 23 from 1 pm until adjournment. The meetings will include the review, discussion, and evaluation of individual grant applications. The 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.

Further information concerning the Council and Subcommittee meeting may be obtained from Dr. Craig A. Jordan, Executive Secretary, National Institute on Deafness and Other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, Room 400C, 6120 Executive Blvd., MSC7180, Bethesda, Maryland 20892, 301–496–8693. A summary of the meeting and rosters of the members may also be obtained from his office.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: November 26, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30954 Filed 12–4–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of a 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 National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Reproductive Toxicology Test Systems.

Date: December 19, 1996.

Time: 9:00 a.m.

Place: National Institute of Environmental Health Sciences, South Campus, Conference Center 101–C, Research Triangle Park, NC.

Contact Person: Dr. John Braun, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446.

Purpose/Agenda: To review and evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 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, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the contract review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: November 26, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30959 Filed 12–4–96; 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: Behavioral and Neurosciences.

Date: December 12, 1996.

Time: 9:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

Name of SEP: Clinical Sciences.

Date: December 13, 1996.

Time: 12:00 p.m.

Place: NIH, Rockledge 2, Room 4134, Telephone Conference.

Contact Person: Dr. Clark Lum, Scientific Review Administrator, 6701 Rockledge Drive, Room 4134, Bethesda, Maryland 20892, (301) 435–1195.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 18, 1996.

Time: 1:30 p.m.

Place: NIH, Rockledge 2, Room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Biological and Physiological Sciences.

Date: December 18, 1996.

Time: 8:30 a.m.

Place: NIH, Rockledge 2, 9th Floor Conference Room.

Contact Person: Dr. Nancy Pearson, Scientific Review Administrator, 6701 Rockledge Drive, Room 6178, Bethesda, Maryland 20892, (301) 435–1047.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: January 6, 1997.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4148, Telephone Conference.

Contact Person: Dr. Philip Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, Maryland 20892, (301) 435–1718.

The meetings will be closed in accordance with the provisions set forth in secs. 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.

(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: November 26, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30953 Filed 12–4–96; 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: Clinical Sciences.

Date: December 12, 1996.

Time: 1:30 p.m.

Place: NIH, Rockledge 2, Room 4136, Telephone Conference.

Contact Person: Dr. Gordon Johnson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4136, Bethesda, Maryland 20892, (301) 435–1212.

Name of SEP: Clinical Sciences.

Date: December 18, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4136, Telephone Conference.

Contact Person: Dr. Gordon Johnson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4136, Bethesda, Maryland 20892, (301) 435–1212.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Application 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.

(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: November 26, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30955 Filed 12–4–96; 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: Microbiological and Immunological Sciences.

Date: December 11, 1996.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4186, Telephone Conference.

Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: December 18, 1996.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 5136, Telephone Conference.

Contact Person: Dr. Sherry Dupere, Scientific Review, Administrator, 6701 Rockledge Drive, Room 5136, Bethesda, Maryland 20892, (301) 435–1021.

Name of SEP: Behavioral and Neurosciences.

Date: December 20, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5172, Telephone Conference.

Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Clinical Sciences.

Date: December 20, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4112, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

The meetings will be closed in accordance with the provisions set forth in secs. 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.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–92.396, 93.837–93.844, 93.846–92.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: November 26, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30956 Filed 12–4–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–019–97–1010–24–1A]

Emergency Closure of Public Lands in Monterey County, CA

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of emergency closure and restrictions on use of public lands on the former Fort Ord military base in Monterey County, California.

SUMMARY: Notice is served that former Fort Ord lands transferred from the Department of Defense to the Department of the Interior are closed to the following uses:

1. Motorized vehicles are restricted to paved roads north of Eucalyptus Road. Non-street legal motor vehicles are prohibited at all times. Vehicles found in violation of these restrictions may be towed and impounded at the owner's expense. Motor vehicles being used by duly authorized emergency response personnel, including police, ambulance and fire suppression, as well at BLM vehicles engaged in official duties and other vehicles authorized by BLM, are excepted.

2. Equestrian, mountain bike, pedestrian. and other trail use is restricted to designated roads and trails, except as otherwise permitted in writing by the authorized officer. Open trails are indicated on BLM trail maps and are signed with trail signs.

3. Trail access and all public use of some areas may be restricted by the authorized officer as necessary to support environmental remediation efforts.

4. Possession, use and/or discharge of any weapons is prohibited. Law enforcement officials on official business are exempted from this restriction.

5. Campfires or other open flame fires are prohibited without written permission from the authorized officer.

6. Use and/or occupancy (including leaving personal property unattended) is prohibited between one-half hour after sunset to one-half hour before sunrise without the written permission of the authorized officer.

7. Littering and the disposal of any commercial, industrial, or household waste is prohibited.

8. The possession or discharge of fireworks is prohibited.

9. Wood cutting or the collection of down wood is prohibited.

The above closures and restrictions are temporary and are intended to prevent further resource damage, and/or adverse impacts to public health and safety, pending completion of an amendment to the Hollister Resource Area Management Plan to address management of these lands.

EFFECTIVE DATE: These closures and restrictions shall be effective on December 5, 1996, and shall remain in effect until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: These closures and restrictions are under the authority of 43 CFR 8364.1 and 43 CFR 8341.2. A map of the area affected by this closure order is on file and can be viewed at the Hollister Resource Area Office of the Bureau of Land Management. Persons violating this closure shall be subject to the penalties provided in 43 CFR 8360.0–7 and 8340.0–7, including a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Robert E. Beehler, Area Manager, Hollister Resource Area, 20 Hamilton Court, Hollister, CA 95024, (408) 637–8183.

Robert E. Beehler,

Hollister Area Manager.

[FR Doc. 96–30994 Filed 12–4–96; 8:45 am]

BILLING CODE 4310–40–P

[MT–921–07–1320–01; MTM 83859]

Coal Lease Offering

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Coal Lease Offering by Sealed Bid MTM 83859—Spring Creek Coal Company.

SUMMARY: Notice is hereby given that the coal resources in the lands described below in Big Horn County, Montana,

will be offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by Spring Creek Coal Company, in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181–287), as amended.

An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement and hearings have been completed in accordance with 43 CFR 3425. The results of these activities were a finding of no significant environmental impact.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

Coal Offered: The coal resource to be offered consists of all recoverable reserves in the following-described lands:

T. 8 S., R. 39 E., P.M.M.,
Sec. 22: E½SW¼SW¼;
Sec. 25: SW¼SW¼;
Sec. 26: S½NE¼NE¼SW¼, NW¼NE¼SW¼, N½SW¼NE¼SW¼, SE¼NE¼SW¼, N½N½NW¼SW¼, S½NE¼NW¼SW¼, SE¼NW¼NW¼SW¼, NE¼SE¼NW¼SW¼, S½NW¼SE¼, N½S½SW¼SE¼, SE¼NE¼SW¼SE¼, N½SE¼SE¼, NE¼SW¼SE¼SE¼, N½SE¼SE¼SE¼;
Sec. 27: N½SW¼NE¼, N½S½SW¼NE¼, SE¼SE¼SW¼NE¼, S½NW¼SE¼NE¼, S½SE¼NE¼, E½NW¼NW¼, N½NE¼SE¼NW¼, SE¼NE¼SE¼NW¼, NE¼NW¼SE¼NW¼, NE¼NE¼NE¼SE¼.
T. 8 S., R. 40 E., P.M.M.
Sec. 30: S½NW¼NE¼SW¼, S½NE¼SW¼, SW¼NW¼SE¼, W½SW¼SE¼, W½SE¼SW¼SE¼.

Containing 320.00 acres.

Big Horn County, Montana.

Rental and Royalty: A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof; and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. The value of the coal shall be determined in accordance with 30 CFR 206.

Date: The lease sale will be held at 11:00 a.m., Friday, January 10, 1997, in the Conference Room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59101.

Bids: Sealed bids must be submitted on or before 10:00 a.m., Friday, January 10, 1997, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107–6800. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

SUPPLEMENTARY INFORMATION: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile documents are also available for public inspection at the Montana State Office.

Dated: November 22, 1996.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 96–30978 Filed 12–04–96; 8:45 am]

BILLING CODE 4310–DN–P

[UT–060–07–1310–00]

Notice of Extension of Time To Comment on Draft Price Coalbed Methane Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of extension of time to comment on draft price coalbed methane environmental impact statement.

SUMMARY: Notice of Availability of the Draft Price Coalbed Methane EIS was announced in Federal Register/ Vol. 61, No. 194/ Friday, October 4, 1996/ 52055 with a public comment closing date of December 2, 1996. The comment closing date has been extended to January 3, 1997.

ADDRESSES: Written comments on the DEIS should be addressed to: Kate Kitchell, Moab Field Office Manager, Bureau of Land Management, 82 East Dogwood, Moab, Utah, 84532.

FOR FURTHER INFORMATION CONTACT: Daryl Trotter, Project Coordinator, Moab Field Office, Bureau of Land Management, 82 East Dogwood, Moab, Utah, 84532, (801) 259–6111.

Dates: November 26, 1996.

Brad Palmer,

Acting District Manager.

[FR Doc. 96–30980 Filed 12–4–96; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

TIME AND DATE: December 18, 1996 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–753–756 (Preliminary) (Cut-to-Length Carbon Steel Plate from China, Russia, South Africa, and Ukraine)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: December 3, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–31148 Filed 12–3–96; 3:56 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Police Corps Program Implementation; State Plans Submission

AGENCY: Office of the Police Corps and Law Enforcement Education, Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice invites the submission of State Plans for the implementation of the Police Corps. The Police Corps provides scholarships and financial assistance for educational expenses to qualified individuals in participating States in return for a commitment to devote four years of service as a member of a State or local police force. All States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are eligible to submit a State Plan.

DATES: Invitations to submit a State Plan and background materials will be mailed to the chief executives of eligible States and other jurisdictions during the week of November 18, 1996. State Plans for the FY 1997 Police Corps should be submitted by January 31, 1997.

ADDRESSES: State Plans should be submitted to Sampson Annan, Project

Director, Office of the Police Corps and Law Enforcement Education, Office of Community Oriented Policing Services, U.S. Department of Justice, 1100 Vermont Avenue, N.W., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Questions regarding preparation of a State Plan should be directed to Sampson Annan, Project Director, at (202) 616–9581. General inquiries regarding the Police Corps should be directed to the Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770.

Dated: November 25, 1996.

Joseph E. Brann,

Director.

[FR Doc. 96–30988 Filed 12–4–96; 8:45 am]

BILLING CODE 4410–AT–M

Notice of Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *BASF Corporation, et al.,* Civil Action No. 96–CV–75279–DT, has been lodged with the United States District Court for the Eastern District of Michigan on November 18, 1996.

The Consent Decree resolves the claims alleged against 35 parties under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* The proposed Consent Decree provides for the payment by these settling parties of $14,564,000 of the United States' response costs at the Metamora Landfill Site, located in Metamora Township, Lapeer County, Michigan (''the Site'').

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044, and should refer to the *United States* v. *BASF Corporation, et al.,* D.J. Ref. 90–11–3–289C.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of Michigan, Suite 2300, 211 West Fort Street, Detroit, MI 48226, at the Office of Regional Counsel, United States Environmental Protection Agency, Region, V, 200 West Adams Street, Chicago, Illinois 60606, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $14.75 (25 cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–30985 Filed 12–4–96; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on November 21, 1996, a proposed Consent Decree in *United States* v. *Sheller Globe Corporation et al.,* Civil No. 1:96–CV–927, was lodged with the United States District Court for the Western District of Michigan. This consent Decree resolves specified claims against sixty-three (63) parties (''Settling Defendant'') under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.* (''CERCLA'') relating to the Auto Ion Superfund Site (''Site'') in Kalamazoo.

The Consent Decree requires the sixty-three Settling Defendants to design and implement the Second Operable Unit remedy selected by the United States Environmental Protection Agency (''U.S. EPA''), which addresses groundwater contamination at the Site. The estimated present value of the groundwater remedy is approximately $565,000. The Consent Decree also requires the Settling Defendants to reimburse the Superfund in the amount of $360,000, plus prejudgment interest, for the United States' past costs, and to pay certain future response costs, including U.S. EPA's future oversight costs, to be incurred by the United States relating to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer in *United States* v. *Sheller Globe Corporation et al.,* D.J. Ref. 90–11–2–1107.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Michigan, Gerald R. Ford Federal Building and Courthouse, 110 Michigan Street, N.W., Room 399, Grand Rapids, Michigan 49503, at the Region V Office of the Environmental Protection Agency, 200 West Adams Street, Chicago, Illinois, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $26.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–30987 Filed 12–4–96; 8:45 am]

BILLING CODE 4410–15–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 PNGV Electrical and Electronics Technical Team

Notice is hereby given that, on October 30, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), General Motors Corporation filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to and (2) the nature and objectives of a research and development venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are General Motors Corporation, Detroit, MI; Chrysler Corporation, Auburn Hills, MI; and Ford Motor Company, Dearborn, MI.

The parties have established an Electrical and Electronics Technical Team to conduct joint research on electrical and electronic devices for applications in technologically advanced vehicles that can meet the goals of the Partnership for a New Generation of Vehicles (PNGV). PNGV is the joint effort of Federal Government and the U.S. Auto Industry to develop affordable, fuel-efficient, low-emission automobiles that meet today's performance standards. The objective of the joint effort is to develop advanced electrical and electronic devices that can significantly improve vehicle

performance with high dynamic response and improve fuel economy. The results of this research can be applied in such areas as battery charging, electric steering assist, high intensity lighting, active suspension, air conditioning, regenerative braking and electric propulsion. To accomplish this objective, the Parties, working closely with various government entities, suppliers, and universities, will conduct research on various electrical and electronic breakthrough technologies, including power electronic control systems, adjustable-speed drives, power inverters, semi-conductors, and advanced motor/generator technologies and perform other acts allowed by the National Cooperative Research and Production Act that would advance these goals.

Contact: Steven J. Cernak, General Motors Corporation Legal Staff, 3031 West Grand Boulevard, P.O. Box 33122, M.C. 482–207–700, Detroit, MI 48232, (313) 974–7735.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–30981 Filed 12–4–96; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PNGV Manufacturing Technical Team

Notice is hereby given that, on October 30, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), General Motors Corporation filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) the identities of the parties to; and (2) the nature and objectives of a research and development venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identifies of the parties are General Motors Corporation, Detroit, MI; Chrysler Corporation, Auburn Hills, MI; and Ford Motor Company, Dearborn, MI.

The parties have established a Manufacturing Technical Team to conduct joint research necessary to develop methods of producing in high volume and at an affordable cost technologically advanced vehicles that can meet the goals of the Partnership for a New Generation of Vehicles (PNGV). PNGV is the joint effort of the Federal Government and the U.S. Auto Industry to develop affordable, fuel-efficient, low-emission automobiles that meet today's performance standards. The objective of this joint effort is to improve national competitiveness by significantly upgrading U.S. manufacturing technology by reducing costs, lead times and environmental impact while improving quality. To accomplish this objective, the parties, working in conjunction with government entities, suppliers and universities, will conduct research on: (1) generic manufacturing and design technologies that reduce the cost and time to bring product innovations to market, including design from manufacturing, rapid prototyping, intelligent processes, and agile/flexible manufacturing; and (2) breakthrough vehicle enabling technologies that support affordable, high quality production of technologies used in the design of breakthrough vehicles, such as fuel cells, flywheels, ceramic turbine components and advanced batteries. The parties may also perform other acts allowed by the Act that would advance these goals.

Contact: Steven J. Cernak, General Motors Corporation Legal Staff, 3031 West Grand Boulevard, P.O. Box 33122, M.C. 482–207–700, Detroit Michigan 48232, (313) 974–7735.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–30984 Filed 12–4–96; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 PNGV Mechanical Energy Storage Technical Team

Notice is hereby given that, on October 30, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), General Motors Corporation filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to and (2) the nature and objectives of a research and development venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are General Motors Corporation, Detroit, MI; Chrysler Corporation, Auburn Hills, MI; and Ford Motor Company, Dearborn, MI.

The parties have established a Mechanical Energy Storage Technical Team to conduct joint research aimed at developing and demonstrating viability of lightweight, compact high power energy storage devices, capable of storing and releasing energy at high power levels at very high levels of efficiency in automotive applications. The research and development activities of this group involve efforts to develop flywheel energy storage systems, including efforts to develop lightweight, high strength materials, nearly frictionless bearings, and vehicle mounting systems for flywheels. Flywheel research also includes containment and safety in the event of failure or crash and reducing the cost of these devices. In addition to flywheels, the team may also conduct research and development on other mechanical energy storage systems, such as hydraulic/pneumatic systems. Research on these systems would include developing advanced energy storage accumulators, improved hydraulic pump/motor combinations, and system integration. The results of these efforts will support the Partnership for a New Generation of Vehicles (PNGV) and help the parties better meet the expected needs of their respective customers worldwide. PNGV is the joint effort of the Federal Government and the U.S. auto industry to develop affordable, fuel-efficient, low-emission automobiles that meets today's performance standards. To meet these objectives, the parties will collect, exchange and analyze research information, interact with government agencies, universities, suppliers and other interested entities and perform other acts allowed by the Act that would advance these goals.

Contact: Steven J. Cernak, General Motors Corporation Legal Staff, 3031 West Grand Blvd, P.O. Box 33122, Detroit, MI 48232, (313) 974–7735.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–30983 Filed 12–4–96; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PNGV Systems Analysis Technical Team

Notice is hereby given that, on October 30, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), General Motors Corporation filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) the identities of the parties to; and (2) the nature and objectives of a research and

development venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are General Motors Corporation, Detroit, MI; Chrysler Corporation, Auburn Hills, MI; and Ford Motor Company, Dearborn, MI.

The Systems Analysis Technical Team will conduct joint research necessary to develop technologically advanced vehicles that can meet the goals of the Partnership for a New Generation of Vehicles (PNGV). PNGV is the joint effort of the Federal Government and the U.S. auto industry to develop affordable, fuel-efficient, low-emission automobiles that meet today's performance standards. The objective of this joint activity is to reduce significantly the cost and time needed to develop complex automotive systems by: (1) conducting rapid, cost-efficient analysis and assessment of vehicle concepts and supporting technology options; and (2) developing advanced analytical/computational capability to enable the accurate analysis of concept vehicles and production prototypes once overall designs and component/system technologies have been selected. To accomplish this objective, the Parties, working in conjunction with government entities and universities, will develop modeling and analysis methods covering component and system optimization techniques applicable to PNGV. These will form the basis for a comprehensive systems analysis capability to be jointly developed by government and industry. The Parties may also perform other acts allowed by the Act that would advance these goals.

Contact: Steven J. Cernak, General Motors Corporation Legal Staff, 3031 West Grand Boulevard, P.O. Box 33122, M.C. 482–207–700, Detroit, MI 48232, (313) 974–7735.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–30982 Filed 12–4–96; 8:45 am]

BILLING CODE 4410–11–M

United States Parole Commission

Sunshine Act Meeting

Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b].

TIME AND DATE: 1:30 p.m., Tuesday, December 3, 1996.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.

2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

3. Proposal for Special Computer Condition.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

December 2, 1996.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 96–31042 Filed 12–3–96; 11:01 am]

BILLING CODE 4410–01–M

Sunshine Act Meeting

Public Announcement

Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b].

DATE AND TIME: 9:30 a.m., Tuesday, December 3, 1996.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeal to the Commission involving approximately seven cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: December 2, 1996.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 96–31043 Filed 12–3–96; 11:01 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

American Tourister, A/K/A Samsonite; TA–W–32,492, Jacksonville, Florida; TA–W–32,493, Warren, Rhode Island; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 21, 1996, applicable to workers of American Tourister located in Jacksonville, Florida and Warren, Rhode Island. The notice was published in the Federal Register on September 13, 1996 (61 FR 48504).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that American Tourister is a division of Samsonite. Some of the workers at the subject firms' production facilities have had their UI taxes reported to the UI tax account for Samsonite.

The intent of the Department's certification is to include all workers of American Tourister who were affected by increased imports. Accordingly, the Department is amending the worker certification to include Samsonite.

The amended notice applicable to TA–W–32,492 and TA–W–32,493 is hereby issued as follows:

All workers of American Tourister also known as Samsonite, Jacksonville, Florida (TA–W–32,492) and Warren, Rhode Island (TA–W–32,493), who became totally or partially separated from employment on or after June 11, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of November 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–30914 Filed 12–4–96; 8:45 am]

BILLING CODE 4510–30–M

[TWA–W–32,660, etc.]

Amoco Exploration and Production, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of: TA–W–32, 660 Amoco Exploration and Production Headquartered in Chicago, Illinois; and TA–W–32, 660A, Houston, Texas, including Amoco shared

Services operating at any of the following units and locations.

Operating the following units: US Operations Group, Permian Basin Business Unit, Southeast Business Unit, Natural Gas Group, Natural Gas Liquids Business Unit, E&P Technology Group and operating in the following states:

TA–W–32,660B Alabama
TA–W–32,660D Colorado
TA–W–32,660F Louisiana
TA–W–32,660H Mississippi
TA–W–32,660J Oklahoma
TA–W–32,660C Arkansas
TA–W–32,660E Kansas
TA–W–32,660G Michigan
TA–W–32,660I New Mexico
TA–W–32,660K Texas and Tulsa Research Center operating in Oklahoma and offshore business unit.

At locations in the following states:

TA–W–32,660L Louisiana, TA–W–32,660, TA–W–32,660M Texas and operating the following units:

Mid-Continent Business Unit
Northwestern U.S. Business Unit
Southern Rockies Business Unit.

Operating in the following States:

TA–W–32,660N Colorado
TA–W–32,660P New Mexico
TA–W–32,660R Texas
TA–W–32,660T Wyoming
TA–W–32,660O Kansas
TA–W–32,660Q Oklahoma
TA–W–32,660S Utah
TA–W–32,660U Alaska.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on September 30, 1996, applicable to all workers of Amoco Exploration and Production, headquartered in Chicago, Illinois and Houston, Texas, operating various business units in various States. The notice was published in the Federal Register on October 16, 1996 (61 FR 53936).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Company officials report that the subject firms' entity, Amoco Shared Services, was excluded from the worker certification. Workers at Amoco Shared Services provided consulting, technical and administrative and support staff services to each of the Amoco exploration and producing organizations.

The intent of the Department's certification is to include all workers of Amoco Exploration and Production who were adversely affected by imports. Accordingly, Department if amending the certification to include workers of Amoco Shared Services at the various Amoco Exploration and Production operating units in the United States.

The amended notice applicable to TA–W–32,660 is hereby issued as follows:

''All workers of Amoco Exploration and Production Houston, Texas, and extended to headquarters located in Chicago, Illinois, including Amoco Shared Services operating at any of the following units and locations, and all of the workers of U.S. Operations Group, Permian Basin Business Unit, Southeast Business Unit operating in the following states: Alabama, Arkansas, Colorado, Kansas, Louisiana, Michigan, Mississippi, New Mexico, Oklahoma and Texas; the Tulsa Research Center, operating in the State of Oklahoma; the Offshore Business Unit operating in the States of Louisiana and Texas; and the Mid-Continent Business Unit, Northwestern U.S. Business Unit, Southern Rockies Business Unit and Amoco Shared Services, operating in the following states: Colorado, Kansas, New Mexico, Oklahoma, Texas, Utah, Wyoming and Alaska who became totally or partially separated from employment on or after June 9, 1996 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974; and workers of Natural Gas Group, Natural Gas Liquids Business Unit, E&P Technology Group operating in the following states: Alabama, Arkansas, Colorado, Kansas, Louisiana, Michigan, Mississippi, New Mexico, Oklahoma and Texas who became totally or partially separated from employment on or after August 6, 1995 through two years from the date of certification are eligible to apply for adjustment assistance with Section 223 of the Trade Act of 1974.''

Signed in Washington, D. C. this 21st day of November, 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–30918 Filed 12–4–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 16, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later December 16, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of November, 1996.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 11/18/96

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,924	Cooper Firearms, Inc (Wkrs)	Stevensville, MT	10/31/96	Bolt action rifles.

APPENDIX—PETITIONS INSTITUTED ON 11/18/96—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,925	Ferraz Corp (Wkrs)	Parsippany, NJ	10/30/96	Electrical fuses and accessories.
32,926	Culver Textile Corp (UFCW)	Fairview, NJ	10/28/96	Yarn.
32,927	Lucent Custom Mfg (Wkr)	Whittsett, NC	10/31/96	Circuit boards—computer network.
32,928	Chicago Steel and Wire (Comp)	Chicago, IL	11/04/96	Tin and galvanized fine wire.
32,929	Rocky Mountain Clothing (Comp)	Baxley, GA	10/31/96	Woven shirts, vests, and skirts.
32,930	M. Fine and Sons Mfg. (UNITE)	New Albany, IN	11/12/96	Men's work shirts.
32,931	Jay Garment Co (UNITE)	Portland, IN	11/07/96	Work pants.
32,932	Stroh Brewery (The) (Wkrs)	Baltimore, MD	10/28/96	Beer and malt liquors.
32,933	American Fashion (Wkrs)	Brooklyn, NY	11/06/96	Men's and ladies' sportwear.
32,934	Lawson Mardon Thermaplate (Comp)	Piscataway, NJ	10/28/96	Plastic trays.

[FR Doc. 96–30912 Filed 12–4–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,971 and TA–W–31,971B]

J.E. Morgan Knitting, Inc.; New Market, VA and Ilion, NY; and Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 26, 1996; applicable to all workers of J.E. Morgan Knitting, Inc., located in New Market, Virginia. The notice was published in the Federal Register on April 9, 1996 (61 FR 15832).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. The company confirms that worker separations have occurred at its Ilion, New York production facility. The workers at Ilion produce thermal underwear.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is again amending the certification to cover the workers of J. E. Morgan Knitting, Inc., Ilion, New York.

The amended notice applicable to TA–W–31,971 is hereby issued as follows:

All workers of J. E. Morgan Knitting, Inc., New Market, Virginia (Ta–W–31,971) and Ilion, New York (TA–W–31,971B), who became totally or partially separated from employment on or after February 13, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of November 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–30913 Filed 12–4–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA 01177 and 01177A]

J.E. Morgan Knitting Mills, Inc. Division of Dawson International-PLC, Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on September 4, 1996, applicable to workers of J.E. Morgan Knitting Mills located in Tamaqua, Pennsylvania. The notice was published in the Federal Register on September 25, 1996 (61 FR 50333).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The company confirms that worker separations have occurred at its Ilion, New York production facility. The workers are engaged in employment related to the production of thermal underwear.

The intent of the Department's certification is to include all workers of J.E. Morgan Knitting Mills, Inc. who were adversely affected by increased imports from Mexico or Canada. Accordingly, the Department is amending the certification to include workers at the Ilion, New York location of the subject firm.

The amended notice applicable to NAFTA–01177 is hereby issued as follows:

All workers of J.E. Morgan Knitting Mills, Inc., Tamaqua, Pennsylvania (NAFTA–01177) and Ilion, New York (NAFTA–01177A), who became totally separated from employment on or after August 8, 1995, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of November 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–30915 Filed 12–4–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA 01328]

J.E. Morgan Knitting Mills, Ilion, NY; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on November 6, 1996, in response to a petition filed on behalf of workers at J.E. Morgan Knitting Mills located in Ilion, New York. Workers are engaged in employment related to the production of thermal underwear.

The petitioning group of workers are covered under an existing NAFTA certification (NAFTA–01177A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 22nd day of November 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–30916 Filed 12–4–96; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of November, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,726; Marblehead Lime Co., Thornton, IL

TA–W–32,823; Sunbeam Corp., Sunbeam Outdoor Products, Linton, IN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32,786; Miller Automation, Inc., Troy, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,752; Rockland Pipeline Co., Houston, TX

U.S. imports to U.S. shipments declined in the period June 1995 through May 1996 as compared to the year earlier.

U.S. imports to U.S. consumption declined in the period June 1995 through May 1996 as compared to the year earlier.

TA–W–32,871; Ford Electronics & Refrigeration Corp., Export Operations, Hatfield, PA

TA–W–32,878; Ralph's Rig Service, Inc., Great Bend, KS

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–32,787; Hoskins Manufacturing Co., New Paris, IN

During 1996 the parent company of Hoskins Manufacturing Co. made a business decision to transfer its production of alloy and electrode wires from its New Paris, Indiana plant to other existing domestic plants.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–32,743; Motor Coach Industries International, North American Coach, Inc., Roswell, NM: July 31, 1995.

TA–W–32,755; Gordon Garment, Bristol, VA: September 5, 1995.

TA–W–32,773; A & B; Viersen & Cochran, Oklahoma City, OK, Okmulgee, OK and Viersen & Cochran Drilling Co., Oklahoma City, OK: September 7, 1995.

TA–W–32,795; Jody Lynn Sportswear, Middleburg, PA: September 27, 1995.

TA–W–32,745; The Jay Garment Co., Clarksville, TN: August 30, 1995.

TA–W–32,738; Brandie Rose, Inc., McMinnville, TN: August 23, 1995.

TA–W–32,809; Parkway Industries, Inc., Spencer, TN: September 27, 1995.

TA–W–32,780; SKF USA, Inc., King of Prussia, PA: March 28, 1995.

TA–W–32,876 & A; Eastland Woolen Mill, Inc., Corinna, ME 1995, and Striar Textile Mill, Orono, ME: October 15, 1995.

TA–W–32,929; Rocky Mountain Clothing Co., Baxley, GA: October 31, 1995.

TA–W–32,855; Garan Manufacturing Corp., Corinth, MS: October 9, 1995.

TA–W–32,774 & A; Motor Wheel Corp., Okemos, MI and Lansing, MI: August 22, 1995.

TA–W–32,779; AVX Tantalum Corp., Biddeford, ME: August 20, 1995.

TA–W–32,816; Zyloware Corp., Long Island City, NY: September 30, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01267; Barney & Company, Atlanta, GA.

NAFTA–TAA–01287; Nicholson Industries, Inc., Seattle, WA.

NAFTA–TAA–01301; W.C. McCurdy Company, a Subsidiary of Mascotech, Inc., Oxford, MI.

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

None.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01300; Ivax Corp., Zenith Goldline Shreveport, Inc., (AKA H N Norton Co), Shreveport, LA: October 25, 1995.

NAFTA–TAA–01233; Rockland Pipeline Co., AKA American Cometra, Inc., Fort Worth and Houston, TX: September 12, 1995.

NAFTA–TAA–01304; Johnson Controls, Inc., Systems Products—Humboldt Facility, Milwaukee, WI: October 21, 1995.

I hereby certify that the aforementioned determinations were issued during the month of November, 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 25, 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–30911 Filed 12–4–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,710]

Northbridge Marketing Corporation, Berea, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 9, 1996 in response to a worker petition which was filed on behalf of workers at Northbridge Marketing Corporation, Berea, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C., this 15th day of November 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–30917 Filed 12–4–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,532, TA–W–32,532E, and TA–W–32,532F]

Orbit Industries, Inc., Helen, GA, Grady Garment Company, Homer, GA, and Mt. View Mfg. Company, Hayesville, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 9, 1996, applicable to all workers of Orbit Industries, Incorporated located in Helen, Georgia. The notice was published in the Federal Register on September 13, 1996 (61 FR 48504).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Based on new information received by the company, the Department is amending the certification to cover workers at affiliate plants of the subject firm, Grady Garment Company, Homer, Georgia, and Mt. View Mfg. Company, Hayesville, North Carolina. Each of these plants have closed; Grady Garment on October 30, 1995, and Mt. View on November 3, 1995. The workers were engaged in employment related to the production of apparel.

The intent of the Department's certification is to include all workers of Orbit Industries adversely affected by increased imports of apparel.

The amended notice applicable to TA–W–32,532 is hereby issued as follows:

All workers of Orbit Industries, Incorporated, Helen, Georgia (TA–W–32,532), Grady Garment Company, Homer, Georgia (TA–W–32,532E), and Mt. View Mfg. Company, Hayesville, North Carolina (TA–W–32, 532F) who became totally or partially separated from employment on or after June 24, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of November 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–30921 Filed 12–4–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,252; TA–W–32,252A, and TA–W–32,252B]

Penn Virginia Oil and Gas Corporation Located in Tennessee, West Virginia, and Kentucky; Notice of Negative Determination on Reconsideration on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of Penn Virginia Oil & Gas Corp.* v. *Reich,* No. (86–06–01612).

The Department's initial denial for the workers of Penn Virginia Oil and Gas Corporation, Kingsport, Tennessee, and the states of West Virginia and Kentucky, issued on May 17, 1996, and published in the Federal Register on June 6, 1996, (61 FR 28,900), was based on the fact that sales and production increased in the relevant period, and on the fact that layoffs at the subject firm are attributable to a corporate decision to consolidate its operation, subcontracting the production of the subject firm to another domestic oil and gas producer.

The workers at Penn Virginia Oil and Gas Corporation, Kingsport, Tennessee, and the states of West Virginia and Kentucky, are engaged in employment related to the production of crude oil and natural gas.

Former workers of the subject firm contend that the determination was based on what the company said rather than the actual sales and production figures. Also, petitioner submitted reports from the *GRI Baseline Projection of U.S. Energy Supply and Demand* and from the Department of Energy projecting increased imports of gas. In addition, it was pointed out that a neighboring oil and gas firm, Equitable Resources Exploration Company, was certified at approximately the same time as the subject firm's layoff.

Findings on remand with regard to the subject firm's sales and production show that the dollar value of natural gas sales increased in 1995 compared with 1994, and also increased in the first three months of 1996 compared with the same period of 1995. Production of natural gas, measured in quantity (BcF), also increased in both of the above sets of time periods. Crude oil sales accounted for approximately 6.1 percent of the subject firm's combined oil and gas sales revenue in 1995. Sales and production figures for crude oil were deemed to be insufficiently large to be considered in determining import impact.

Other findings on remand show that dry natural gas imports into the United

States are relatively low, not exceeding 15 percent of total shipments in the last three years. U.S. imports of dry natural gas declined as a percent of total U.S. shipments in January to May, 1996, compared with the same period of 1995. Projections of future aggregate imports, such as those of the *GRI Baseline Projection of U.S. Energy Supply and Demand,* cannot be used in determining import impact under the Trade Act of 1974.

With regard to the certification of workers at Equitable Resources Energy Company (TA–W–32,251), the record shows that that certification was based on Equitable Resources' increasing corporate imports of natural gas in the relevant time period. Penn Virginia Oil and Gas Corporation did not import crude oil or natural gas.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and formers workers of Penn Virginia Oil and Gas Corporation, Kingsport, Tennessee, and the states of West Virginia and Kentucky.

Signed in Washington, D.C. this 22nd day of November, 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–30919 Filed 12–4–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,598, TA–W–32,598E]

Strick Corporation, Casa Grande, AZ, Monroe, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 27, 1996, applicable to all workers of Strick Corporation located in Casa Grande, Arizona. The notice was published in the Federal Register on September 25, 1996 (61 FR 50332).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New Information provided by the company shows that worker separations have occurred at the Strick Corporation production facility in Monroe, Indiana. The workers, including support staff, are engaged in employment related to the production of truck trailers.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover all workers of Strick Corporation in Monroe, Indiana.

The amended notice applicable to TA–W–32,598 is hereby issued as follows:

''All workers of Strick Corporation, Casa Grande, Arizona (TA–W–32,598) and Monroe, Indiana (TA–W–32,598E), who became totally or partially separated from employment on or after July 18, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 21st day of November 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–30920 Filed 12–4–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comment on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 21, 1997. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Energy, Energy Information Administration (N1–434–96–2). Route administrative and housekeeping files, survey and input forms of energy statistics, authors' drafts, and printing negatives.

2. Department of State, All Foreign Service Posts (N1–84–97–1). Duplicative records relating to political and economic matters.

3. Bureau of Engraving and Printing (N1–318–97–1). Video stock footage.

4. Panama Canal Commission (N1–185–96–8). Routine housing building space and land management records.

5. Postal Rate Commission (N1–458–96–4). Compliance statements, notices, orders, comments and visit records maintained outside of official docket files.

Dated: November 22, 1996.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 96–30938 Filed 12–4–96; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Reporting Statistics—Airlines

AGENCY: National Transportation Safety Board.

ACTION: Notice of proposed statistical reporting changes and request for comment.

SUMMARY: The NTSB has developed a proposed system for classifying airline accidents based upon the severity of their consequences. An improved classification system that provides more meaningful measures of the level of safety of airline transportation is required by the FAA Reauthorization Act. This notice provides a description of the proposed classification system and of several additional accident parameters that the NTSB intends to publish. Many of the statistics focus on passenger injuries.

DATES: The law to which this action is a response was signed by the President on October 9, 1996, and requires that the NTSB complete development of the new classification system by January 7, 1997. Comments are due December 16, 1996. The NTSB will attempt to consider comments received after that date, as staff time and resources permit.

ADDRESSES: Comments must be submitted either by electronic mail (AirStats@ntsb.gov) or by other means to: Analysis and Data Division (R–50), ATTN: Airline Statistics, National Transportation Safety Board, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594–2000.

FOR FURTHER INFORMATION CONTACT: Stan Smith (202) 314–6550.

SUPPLEMENTARY INFORMATION: The NTSB believes that its proposal is fully responsive to the law, and in fact exceeds its requirements. There is no intention to change the definition of an accident (''an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage'').

Airline safety statistics that the NTSB published in recent years include: the number of accidents and fatal accidents; overall and fatal accident rates using flight hours, departures, and miles as normalizing factors; and the numbers of fatalities aboard and total. These statistics have been presented for each year of a several-year series. None of the statistics, taken alone can be considered an accurate measure of airline safety and can be misleading. For example, some fatal accidents involving only ground crew fatalities pose no threat to the aircraft or its occupants. Yet the fatal accident statistics have counted such accidents equal to those resulting in the total destruction of an aircraft with no survivors.

While the NTSB has found no single index that perfectly indicates the state of airline safety, it believes the new classification system is an improvement over the current statistics. For each safety statistic described herein, the NTSB has developed sample charts using historical data, estimated data, and partial-year data for 1996. These samples are available at the above address, Room 5111, and on the NTSB world wide web site (http://www.ntsb.gov).

a. Accident Severity Classification for Airline Accidents

In the proposed classification system below, each accident involving a Part 121 aircraft is placed into one of four mutually exclusive and collectively exhaustive categories. If an accident involves more than one Part 121 aircraft, the accident is placed into the category appropriate to the most severe consequences to any of those aircraft. Such an accident counts only once (rather than counting once for each of the Part 121 aircraft involved.) The four accident categories, defined in terms of the injuries and aircraft damage that resulted from the accident are:

I. ''Major'' Accident—an accident in which any of three conditions is met: (1) a Part 121 aircraft was destroyed, (2) there were multiple fatalities, or (3) there was one fatality and a Part 121 aircraft was substantially damaged.

II. ''Severe'' Accident—an accident in which at least one of two conditions is met: (1) there was one fatality without substantial damage to a Part 121 aircraft, or (2) there was at least one serious injury and a Part 121 aircraft was substantially damaged.

III. ''Injury'' Accident—a nonfatal accident with at least one serious injury and without substantial damage to a Part 121 aircraft. *(These often involve abrupt maneuvers, turbulence, evacuation, or scalding.)*

IV. ''Damage'' Accident—an accident in which no person was killed or seriously injured, but in which any aircraft was substantially damaged.

The NTSB reports the numbers of accidents in each category and corresponding accident rates per flight hour and/or departure. These statistics are reported for the industry as a whole and not by airline, aircraft type, etc. The Board believes that accident statistics reported in the form described above will be useful to the aviation safety community, the press, and the public in assessing the state of aviation safety.

B. Destroyed Aircraft Statistics for Airline Accidents

The NTSB reports the number of destroyed aircraft and the corresponding rate by hours and/or departures. These statistics are reported for U.S. airline operations as a whole and are not reported by airline, aircraft type, etc. Accident statistics reported in this form are expected to be of particular interest to the aviation safety community, but will be useful to the press and the public in understanding the state of aviation safety.

C. Passenger Injury Statistics for Passenger Operations of Airlines

The NTSB reports numbers of fatally- and seriously-injured passengers and their corresponding passenger injury rates by passenger miles and/or passenger enplanements. Rates will be reported inversely to the way they are customarily presented—for example, passenger miles per fatality rather than fatalities per million passenger miles. We believe that this convention will have greater meaning to the typical consumer of the information. These statistics are reported for U.S. airline passenger operations as a whole and are not reported by airline, aircraft type, etc. Passenger injury statistics reported in this form are expected to be particularly useful to the press and the public in assessing aviation safety, and will be another safety indicator of interest to the aviation community.

D. Passenger Fatality Accident List

The NTSB publishes a list of accidents that caused passenger fatalities aboard U.S. airlines. The list includes the airline, the aircraft model, and the number of passenger fatalities and survivors.

E. Passenger Fatality Time Line

The NTSB publishes a graphical portrayal of passenger fatalities aboard

U.S. airlines. This graphic shows at a glance the number of passenger fatalities and the time between the accidents that caused them.

Issued in Washington, DC on this 29th day of November, 1996.

Jim Hall,

Chairman.

[FR Doc. 96–30936 Filed 11–4–96; 8:45 am]

BILLING CODE 7533–01–M

Sunshine Act Meeting

ACTION: Cancellation of Oral Argument.

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 61, No. 224/Tuesday, November 19, 1996/ Notices.

PREVIOUSLY ANNOUNCED TIME AND DATE: 3:00 p.m., November 25, 1996.

SUMMARY: The National Transportation Safety Board gives notice that the oral argument in a consolidated case pending before the Board was cancelled. The Cases, SE–13961–3, *Administrator* v. *Willette,* et al., involve the applicability of the Federal Aviation's Advisory Circular 120–56, ''Air Carrier Voluntary Disclosure Reporting Procedures,'' to individual airmen and crew.

FOR FURTHER INFORMATION CONTACT: Althea Walker, (202) 314–6080.

SUPPLEMENTARY INFORMATION: No early announcement of the cancellation was possible.

FOR MORE INFORMATION, CONTACT: Bea Hardesty, (202) 382–6525.

Dated: December 3, 1996.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 96–31151 Filed 12–3–96; 4:00 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282, 50–306, and 72–10]

Northern States Power Company, Prairie Island Nuclear Generating Plant, Units 1 and 2, License Nos. DPR–42, DPR–60 and SNM–2506, Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Acting Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated June 5, 1995, filed by the Nuclear Information and Resource Service and the Prairie Island Coalition Against Nuclear Storage (Petitioners) under § 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The Petition requested that Prairie Island Units 1 and 2 be immediately shut down and the operating licenses be suspended until the issues raised in the Petition could be resolved. The Petition was based on alleged problems with cracking of the Prairie Island steam generator tubes and reactor vessel head penetrations, use of the transfer channel between the reactor core and the fuel pool during unloading and loading of dry cask storage units, and use of the Prairie Island crane.

The Acting Director of the Office of Nuclear Reactor Regulation has determined that the Petition should be denied for the reasons stated in the ''Director's Decision Under 10 CFR 2.206'' (DD–96–21), the complete text of which follows this notice. In reaching this decision, the Acting Director considered the concerns expressed by the Petitioners in letters to the NRC dated June 21, 1995, February 19, 1996 and March 13, 1996. The decision and the documents cited in the decision are available for public inspection and copying in 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 Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, MN 55401.

A copy of this decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided therein, this decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the decision within that time.

Dated at Rockville, Maryland, this 27th day of November, 1996.

For the Nuclear Regulatory Commission,

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. Introduction

On June 5, 1995, the Nuclear Information and Resource Service and the Prairie Island Coalition Against Nuclear Storage (PICANS), now known as the Prairie Island Coalition (Petitioners), filed a Petition pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206) requesting that the Nuclear Regulatory Commission (NRC) immediately suspend the operating licenses for Prairie Island Nuclear Generating Plant, Units 1 and 2, operated by Northern States Power Company (NSP or Licensee).

II. Background

As a basis for their request, Petitioners presented four concerns which are summarized as follows: (1) The Prairie Island steam generators are suffering from tube degradation and may rupture unless proper testing is conducted and corrective actions are taken; (2) the Prairie Island reactor vessel head penetrations (VHPs) have stress-corrosion cracks which, if not found and corrected, may result in a catastrophic accident involving the reactor control rods; (3) plans for loading and unloading of dry cask storage units in an emergency, which include storage of irradiated components in the fuel transfer canal, were not properly reviewed by NRC and do not satisfy NRC requirements; and, (4) the physical integrity of the Prairie Island crane used to lift the dry cask for Prairie Island's spent fuel requires physical testing and a safety analysis before future crane use following its handling of a heavy load for an extended period of time.

By a letter dated June 19, 1995, the Director of the Office of Nuclear Reactor Regulation (NRR) denied the Petitioners' request for immediate suspension of Prairie Island Units 1 and 2 licenses. The Director stated that the NRC staff's review of the Petition did not identify any safety issues warranting immediate action at the Prairie Island Nuclear Generating Plant. The Director also stated that the NRC staff would issue a Director's Decision addressing Petitioners' concerns within a reasonable time.

PICANS submitted a letter to the Chairman of the NRC dated June 21, 1995, which reiterated the concerns raised in the Petition and requested an evening public hearing within the vicinity of the Prairie Island facility. In a July 12, 1995, response, the NRC staff informed PICANS that an evening public hearing was not warranted at that time but that the request would again be considered at the time of issuance of the Director's Decision.[1] PICANS was further informed that the concerns raised in the June 21, 1995, letter would be addressed in the Director's Decision.

On February 19, 1996, Petitioners filed an addendum to their Petition raising further concerns regarding steam generator tube cracking and requested that Prairie Island, Unit 1 not be allowed to return to operation until

[1] For the reasons set out in the cover letter transmitting this Decision, the NRC staff has again determined that an evening public hearing is not warranted.

certain inspections of steam generator tubes was conducted. In a March 1, 1996, response, the Director of NRR denied Petitioners' request for action concluding that no safety issues warranting immediate action had been identified.

On March 13, 1996, Petitioners submitted another addendum to the Petition raising additional concerns regarding steam generator tube cracking at Prairie Island and again requesting that the NRC require that Prairie Island, Units 1 and 2 be placed in mid-cycle outages for the purpose of steam generator tube inspections. Petitioners further requested an informal public hearing if the NRC determined that such testing need not be conducted.

In an August 21, 1996, response, the Director of NRR concluded that the addendum did not raise any safety issues warranting immediate action and that an informal public hearing was not warranted at that time.

Petitioners' concerns are addressed below. In addressing these issues, I have considered the concerns expressed by the Petitioners in the letters of June 21, 1995, February 19, 1996, and March 13, 1996.

III. Discussion

A. Steam Generator Tube Degradation

The steam generators used at pressurized water reactors (PWRs) are large heat exchangers that use the heat from the primary reactor coolant to make steam in the secondary side to drive turbine generators which generate electricity. The primary reactor coolant flows through tubes contained within the steam generator. As the coolant passes through the steam generator tubes, it heats the water (i.e., secondary coolant) on the outside of the tubes and converts it to steam which drives the turbine generators. Steam generator tubes made from mill-annealed alloy 600 have exhibited a wide variety of degradation mechanisms. Such material has been used in a number of steam generators at commercial nuclear facilities, including the steam generators at Prairie Island Units 1 and 2. These degradation mechanisms include mechanically induced (e.g., fretting wear, fatigue) and corrosion-induced (e.g., pitting, wastage, and cracking) degradation.

Steam generator tubes constitute a significant portion of the reactor coolant pressure boundary. As a result, the structural and leakage integrity of the boundary is important in ensuring the safe operation of the plant. A loss of steam generator tube integrity has potential safety implications, as noted by the Petitioners, namely, (1) the loss of primary coolant which is needed to cool the reactor core and (2) the potential for leakage of radioactive fission products into the secondary system where their isolation from the environment cannot be ensured. As a result of the importance of this portion of the reactor coolant pressure boundary, NRC has regulations on maintaining the structural and leakage integrity of the steam generator tubes. The overall regulatory approach to ensuring that steam generators can be safely operated consists of the following:

(1) Technical specification requirements to ensure that the likelihood of steam generator tube rupture events is minimized, including

(a) Periodic inservice inspection of the tubing,

(b) Plugging or repair of tubing found by inspection to be defective, and

(c) Operational limits on primary-to-secondary leakage beyond which the plant must be shut down.

(2) Analysis of the design-basis steam generator tube rupture event to demonstrate that the radiological consequences meet 10 CFR Part 100 guidelines.

(3) Emergency operating procedures for ensuring that steam generator tube rupture events can be successfully mitigated.

Steam generator tube degradation can be detected through inservice inspection of the steam generator tubes. These inspections are generally required by a plant's Technical Specifications which specify the frequency and scope of the examinations along with the tube repair criteria. In the 1970s, wastage (i.e., general tube wall thinning) and denting (mechanical deformation of the tube) were the dominant degradation mechanisms being observed. These degradation mechanisms were readily detectable with the bobbin coil inspection method and were effectively controlled or eliminated, in part, by improvements in water chemistry. Stress-corrosion cracking (SCC) emerged in the mid-1980s as the dominant degradation mechanism affecting the steam generator tubes. SCC can be oriented axially along the tube or circumferentially around the tube, or can consist of a combination of axial and circumferentially oriented cracks. SCC that has an axial orientation can be detected with a bobbin coil probe. The capabilities of the bobbin coil inspection method at detecting axially oriented cracks depend on such factors as the location of the cracking, interfering signals, and the data analysis procedures.

Circumferentially oriented SCC emerged as a significant problem affecting the industry in the late 1980s. The bobbin coil probe is generally insensitive to such cracking (i.e., circumferential SCC); as a result, locations susceptible to circumferential SCC may need to be examined with techniques other than the bobbin coil. Historically, probes such as the motorized rotating pancake coil (MRPC) probe have been used to detect circumferential SCC at locations susceptible to such degradation. Recently, more advanced probes (e.g., Zetec Plus-Point probe which contains a plus-point coil) have been used.

Deficiencies have been identified in certain utility inspection programs for detecting SCC, particularly circumferentially oriented SCC. Potential deficiencies include using inappropriate probes for inspecting locations susceptible to circumferential cracking, not optimizing the test methods to minimize electrical noise and signal interference, and not being alert to plant-unique circumstances (e.g., dents, copper deposits) which may necessitate special test procedures found unnecessary at other similarly designed steam generators or not included as part of a generic technique qualification.

Even though deficiencies in eddy-current inspection programs have been identified, operating experience indicates that steam generator tube integrity can be maintained at a plant when appropriate eddy-current data acquisition (including probe selection) and data analysis procedures are used, when the data analysts have been properly trained, when the intervals between inspections are determined based on the inspection findings, and when the operating environment of the steam generator tubes is controlled (e.g., water chemistry control). Adequate tube integrity has historically been achieved at plants through inservice inspections that involved the use of bobbin and MRPC probes. In some instances, operating intervals were shortened between inspections to ensure tube integrity.

Nevertheless, inspection findings at the Maine Yankee Atomic Power Station in 1994 and 1995 raised concerns that large circumferential cracks could develop over the course of an operating interval or that a large number of circumferential cracks may be present if a facility was not using appropriate inspection techniques. As a result of these inspection findings, the NRC staff issued Generic Letter (GL) 95–03, ''Circumferential Cracking of Steam Generator Tubes,'' on April 28, 1995,

which: (1) Requested affected licensees to evaluate recent experience (including the Maine Yankee experience) concerning the detection and sizing of circumferential cracks and the potential applicability of this experience to their plants; (2) on the basis of the results of this evaluation, including past inspections and the results thereof, and other relevant factors, requested affected licensees to develop a safety assessment justifying continued operation until the next scheduled steam generator tube inspections were performed at their plants; and (3) requested that licensees develop and submit their plans for the next steam generator tube inspection as they pertain to the detection of circumferential cracks.

Subsequent to the issuance of GL 95–03, the Petitioners made the following requests with respect to steam generator tubes at Prairie Island Units 1 and 2: *Request (a)*—''That all steam generator tubes in Prairie Island Unit 2 be given a full length inspection utilizing the more comprehensive and proactive battery of tests employed at Maine Yankee during NSP's 1995 outage. Petitioners specifically demand that the Zetec Plus Point Probe and any state of the art, eddy current probe for corrosive cracking be employed at Prairie Island 2 during Outage 17 scheduled to end June 15, 1995.'' *Request (b)*—''That if the Zetec Plus Point Probe and any state of the art probe are not employed during the mid-June 1995 outage, then reactor Unit 2 be taken immediately off-line until such time these specific Zetec Plus Point Probe and any state of the art, eddy current probe for corrosion cracking are completed.'' *Request (c)*—''That Prairie Island Unit 1 immediately be placed into a mid-cycle outage to perform the NRC requested actions outlined in Generic Letter 95–03. In addition, all Unit 1 steam generator tubes be inspected through the use of the Zetec Plus Point Probe and any state of the art, eddy current probe for corrosion cracking.''

NSP submitted its response to the generic letter for Prairie Island Units 1 and 2 by letter dated June 27, 1995. As discussed below, the information submitted provides no indication of an active circumferential crack mechanism at the Prairie Island units, nor does it suggest any significant concern regarding the potential for large, undetected circumferential cracks at these units.

The Prairie Island Unit 2 steam generators were last inspected in June 1995. This inspection included a 100-percent, full-length inspection with the bobbin probe. In addition, a 100-percent inspection was performed with a combined MRPC/Plus-Point probe from the hot-leg tube end to 3 inches above the tubesheet. Most row 1 and 2 U-bends were also inspected with the MRPC/Plus-Point coil. The bobbin probe is appropriate for performing the general-purpose, full-length inspection of the tubing because of its capability to detect flaw geometries exhibiting an axial component (e.g., corrosion thinning and wastage, mechanically induced wear, pitting, and axial cracks). The bobbin inspection was supplemented by inspections with a combined MRPC/Plus-Point probe to provide enhanced sensitivity to detecting cracks. These inspections encompassed the areas of axial crack activity with the bobbin coil probe and, in addition, the locations most vulnerable to circumferential cracking with the MRPC/Plus-Point coil.

NSP reports that the Prairie Island Unit 1 steam generators were last inspected in January 1996. This inspection included a 100-percent full-length inspection with the bobbin probe, except for rows 1 and 2 U-bends. Rows 1 and 2 U-bends were examined with MRPC/Plus-Point. All hot-leg tubes were examined with rotating probe technology (including Plus-Point) from the tube end to 6 inches above the top of the tubesheet. All sleeves were examined full length with the Plus-Point rotating coil.

In addition, NSP's response to the generic letter addressed, in part, each of five locations at which circumferentially oriented degradation has historically occurred in Westinghouse steam generators. These locations are places where there is significant axial stress associated with variations in tube geometry and include (1) tube expansion transition areas, (2) dented top-of-tubesheet locations in partial roll-expanded tubes (described below), (3) dented tube-to-tube support plate intersections, (4) small-radius U-bends, and (5) sleeve joints. Significant axial stress would contribute to the development of circumferential cracking.

Regarding the first and second categories, the tubes at Prairie Island are roll expanded over only the lower portion of the tubesheet depth (i.e., partial roll expansion). NSP reports that the incidence of circumferential cracks at expansion transitions where the tubes have received a partial-depth expansion has been negligible industry-wide. For Prairie Island Unit 1, the 100-percent MRPC/Plus-Point inspection in the tubesheet regions in January 1996 did not find any circumferential indications in the in-service tubes. Similarly, for Prairie Island Unit 2, the MRPC/Plus-Point inspections in the tubesheet regions did not identify circumferential indications.

With regard to the third category, circumferential SCC at dented tube support plate intersections has only been reported at a limited number of plants. In addition, dented regions have exhibited both axial and circumferential SCC with axial SCC typically being the more frequently observed degradation mechanism. Axial SCC at dented locations can be detected with the bobbin probe. Although NSP has not reported performing MRPC or Plus-Point examination at the support plates, it has examined 100 percent of these locations using a bobbin probe and has not reported any axial cracking. Not detecting any axial cracking gives confidence that widespread circumferential SCC is not occurring.

Regarding the fourth category, SCC in the small-radius (row 1 and some row 2) U-bends has been extensive in Westinghouse steam generators. This cracking has been predominantly axial, with only isolated instances of non-axial cracks. NSP reports that the small-radius U-bends are routinely inspected with the MRPC. In January 1996, the licensee inspected 100 percent of rows 1 and 2 U-bends on Prairie Island Unit 1 with the MRPC/Plus-Point and found no indications. The June 1995 inspections at Prairie Island Unit 2 with the MRPC/Plus-Point probe looked at the majority of small-radius U-bends, and found one axial and no circumferential indications.

Regarding the fifth category, during the January 1996 inspection in Unit 1, all in-service and new sleeves were examined full length with Plus-Point. Indications were found in the upper sleeve weld region of 61 ABB Combustion Engineering welded tubesheet sleeves. These indications were characterized as single or multiple circumferential indications or volumetric indications. All of these sleeved tubes with circumferential indications were removed from service by sample removal and/or plugging. The volumetric indications were evaluated and indications located within the pressure boundary were plugged. No sleeves are installed in Unit 2. Sleeves were installed in Unit 1 to address forms of tube degradation (e.g., axial cracking and intergranular attack) other than circumferential cracking.

In response to the large number of indications identified in the upper sleeve welds of ABB Combustion Engineering welded tubesheet sleeves during the January 1996 Unit 1 outage, the NRC staff held discussions and meetings with the Licensee to determine

the root cause of the indications. NSP pulled five sleeve/tube samples during the outage to perform metallurgical analysis on and determine the root cause of the indications. Four of the removed tubes contained circumferential indications and one contained a volumetric indication. NSP started up Unit 1 on March 3, 1996, and committed to perform a mid-cycle outage to perform additional inspections unless the results of the metallurgical analyses from the pulled sleeves indicated that additional inspections would not be warranted.

ABB Combustion Engineering performed the metallurgical examinations, with third-party review by the Electric Power Research Institute. The results showed that the sleeve weld indications were not service induced. Instead, they were original fabrication flaws that were the result of faulty cleaning of tube surfaces prior to welding. The examinations of the tube samples revealed the sizes of the flaws were such that the structural integrity of the welds was not compromised. None of the flaws showed any indication of having propagated in service. Since the indications were not service induced, the NRC staff agreed that a mid-cycle outage to perform further inspections was not necessary.

ABB Combustion Engineering is currently revising its topical report on sleeving to incorporate improved cleaning techniques prior to installation of sleeves, in order to prevent such flaws in the future. NSP plans to submit an amendment to the NRC for review to adopt the revised ABB Combustion Engineering topical report prior to installation of CE sleeves.

After GL 95–03 was issued, additional information from inspections performed at Maine Yankee and the destructive examination of several tubes removed from Maine Yankee became available. This additional information appears in NRC Information Notice 95–40, ''Supplemental Information Pertaining to Generic Letter 95–03, 'Circumferential Cracking of Steam Generator Tubes'.'' This information led to the conclusion that the tubes with the largest indications at Maine Yankee continued to exhibit adequate structural integrity at the time they were found. This was attributable, in part, to the crack morphology as discussed in the Information Notice. As a result, adequate tube structural integrity was ensured for the operating interval between inspections, even though the MRPC probe, rather than the Plus-Point probe, was used during the earlier inspections.

As mentioned above, the safe operation of the steam generators is ensured by performing inspections and repairing defective tubes, limiting the operational leakage through the steam generators, analyzing a design-basis steam generator tube rupture event to demonstrate acceptable radiological consequences, and having appropriate emergency operating procedures in place. As discussed above, the staff believes that the inspection probes used during the May 1994 and June 1995 outages at Prairie Island Units 1 and 2, respectively, were adequate to provide reasonable assurance of tube integrity. In addition, NRC requires an operational leak rate limit to provide reasonable assurance that, should a leak occur during service, it will be detected and the plant will be shut down in a timely manner before rupture occurs and with no undue risk to public health or safety.

Therefore, on the basis of (1) the fact that appropriate steam generator tube inspections have been performed, (2) monitoring of primary-to-secondary leakage is being conducted, and (3) the fact that appropriate emergency operating procedures are in place, the NRC staff has concluded that the Petitioners' request for the shutdown of Prairie Island Units 1 and 2 until full-length tube inspections are completed using the Zetec Plus-Point probe and any state-of-the-art eddy-current probe should be denied.

B. Vessel Head Penetration (VHP) Cracking

The Petitioners contend that the VHP's at Prairie Island Units 1 and 2 are likely to have stress-corrosion cracks which, if not found and corrected, may result in a catastrophic accident involving reactor control rods. The Petitioners also contend that VHPs in PWRs in France, Belgium, Switzerland, and Sweden are cracking and that French data indicate that the cracking mechanism will not necessarily produce a detectable leak prior to a break that would initiate a serious accident. The Petitioners further contend that failure of a VHP could cause the ejection of a control rod drive mechanism (CRDM), resulting in a loss of control of the reactor and/or a serious leak that could not be isolated and thereby could induce a loss-of-coolant accident. The Petitioners request immediate, full inspection of all VHPs in Units 1 and 2 for cracking using state-of-the-art eddy-current testing. The Petitioners also request that NRC immediately suspend the operating licenses of both units until the VHPs are inspected.

This same issue has been the subject of a recent Director's Decision under 10 CFR 2.206 issued by the Director of NRR. See *All Pressurized Water Reactors*, DD–95–2, 41 NRC 55 (1995). There, the NRC staff concluded, after reviewing the information referred to by that Petitioner, that the likelihood of the formation of circumferential cracks is small, the likelihood of forming small axial cracks is higher, and that leaks would develop before catastrophic failure of a VHP would occur. This would result in the deposition of boric acid crystals on the vessel head and surrounding area that would be detected during surveillance walkdowns. The Petitioners contend that this conclusion is not supportable as French data indicate that the cracking mechanism will not necessarily produce a detectable leak prior to a break that would initiate a serious accident.

The NRC staff's review of the French data does not support the Petitioners' contention that a crack would not be detected due to leakage prior to catastrophic failure. Topical reports submitted to and reviewed by the NRC staff indicate that cracks in the CRDM VHP's would need to grow well above the reactor vessel head before reaching a critical size that would lead to the catastrophic failure of a CRDM VHP. The portion of the crack above the head would leak well before the critical size is reached.

The circumferential crack at the French reactor was very small relative to the size flaw that would jeopardize structural integrity. Furthermore, the circumferential crack initiated from the exterior of the VHP which is more susceptible to circumferential cracking. This situation occurred after a small axial throughwall crack leaked. Thus, it is expected that leakage would be detected long before significant circumferential cracking could occur. Of the numerous VHP inspections in Europe, Japan, and the United States, no additional cases of circumferential cracking have been observed. The members of the Westinghouse, Babcock & Wilcox and Combustion Engineering Owners Groups through Nuclear Energy Institute submitted acceptance criteria for both axial and circumferential cracking to the NRC for review and approval. The acceptance criteria were partially accepted by the NRC staff. The criteria for axial cracking were accepted as proposed. The criteria for circumferential cracking were rejected. Any circumferential cracks found must be reported to the NRC staff for disposition. If VHP cracking violated the above acceptance criteria, the NRC staff would review the Licensee's plan for monitoring or repair of the crack.

Finally, a foreign reactor developed extensive circumferential cracking in VHPs as a result of two major demineralizer resin ingress events in the early 1980s. The NRC staff issued a request for additional information to NSP on September 25, 1995, to determine if any similar resin ingress events had occurred at Prairie Island. The Licensee responded to the NRC staff on October 24, 1995, that there have been no resin ingress events at Prairie Island.

The NRC staff has closely monitored VHP cracking experience in the U.S. and abroad and has reviewed extensive evaluations of VHP cracking. The evaluations and operating experience indicate that it is highly unlikely that significant circumferential cracks could develop and that there is significant margin between the flaw sizes that would result in detectable leakage and the flaw sizes that would jeopardize structural integrity. Thus, the staff has concluded that VHP cracking is not a safety concern at this time. To assure that VHP cracking continues to be properly monitored and controlled, the NRC is in the process of preparing a Generic Letter requesting addressees to describe their program for ensuring the timely inspection of PWR CRDM VHPs and other VHPs. This letter was issued for public comment on August 1, 1996.

Accordingly, the requests made by the Petitioners for the shutdown of the Prairie Island units and inspection of the VHPs with enhanced inspection techniques is denied. As explained above, the NRC staff has concluded that no substantial health and safety issues have been raised by the Petitioners.

C. Unloading of Dry Cask Storage Units

Spent fuel discharged from a reactor core is stored on site in a spent fuel pool prior to transfer to the U.S. Department of Energy (DOE) for final deposition. Typically, one-third of a reactor core is discharged every refueling outage (approximately every 18 months in the case of each of the Prairie Island units). The Licensee concluded several years ago that it would reach maximum capacity in its spent fuel pool in 1994, prior to availability of a DOE repository for storage of spent fuel. To support the need for continued storage of spent fuel at the reactor site, the Licensee applied to NRC for a license to store spent fuel in an onsite independent spent fuel storage installation (ISFSI). NRC issued Materials License No. SNM–2506 to NSP on October 19, 1993, for receipt and storage of spent fuel at the ISFSI on the site of the Prairie Island Nuclear Generating Plant. Materials License No. SNM–2506 allows NSP to use the TN–40-type casks for storage at its ISFSI. The TN–40, a metal cask system, is designed to store 40 PWR spent fuel assemblies in each cask. Dimensions of the cask (with protective cover) are 202 inches high with an outside diameter of 103.5 inches. A loaded TN–40 storage cask weighs 109.3 metric tons.

On April 28, 1995, a public meeting was held in Red Wing, Minnesota, to present NRC inspection findings related to dry cask storage activities at the Prairie Island plant. Questions were raised by members of the public as to how the Licensee would unload the spent fuel in a dry storage cask, if it became necessary, i.e., would there be enough empty fuel racks in the spent fuel pool to accommodate unloading of the cask.

In a letter to the NRC dated May 3, 1995, the Licensee submitted a plan for unloading the TN–40 cask in response to the questions raised at the April 28, 1995, meeting. In that letter, the Licensee stated that some of the fuel racks in the spent fuel pool contain nonfuel-bearing components, which could be relocated to a temporary location in the fuel transfer canal. Alternatively, it may be possible for the components to be stored temporarily in the TN–40 cask, should it become necessary to unload a cask. In the latter case, even though the TN–40 cask being returned to the spent fuel pool may no longer be qualified to hold spent fuel, it quite possibly could still safely hold irradiated nonfuel-bearing components.

The Petitioners raised issues concerning compliance with 10 CFR 50.59 and the need to make changes to Technical Specifications in order to use the fuel transfer canal for nonfuel-bearing components under the Licensee's plan. Petitioners also stated that 10 CFR 50.59 requires a safety analysis and amendment to the operating license with a public hearing whenever a change occurs in Technical Specifications for spent fuel pool and reactor transfer canal use. Petitioners further stated that a safety analysis is essential when a Technical Specification change occurs.

The need for a change to the Technical Specifications and the process to be followed under 10 CFR 50.59 are two separate, but related, issues. With regard to the Prairie Island Technical Specifications, the plan proposed by the Licensee in its letter of May 3, 1995, for dealing with the need to unload a cask, would not involve a change to Technical Specifications because Technical Specifications do not address use of the fuel transfer canal nor do they address movement of nonfuel-bearing components within the spent fuel pool. Prairie Island's Technical Specification 3.8 specifies operating limitations associated with fuel-handling operations and core alterations only. Further, the fuel transfer canal is not classified as a reactor safety system. The fuel transfer canal provides no protection for the reactor, nor does it mitigate the consequences of a postulated accident to the reactor. The fuel transfer canal is a component of the fuel storage and fuel handling systems, which is considered a plant auxiliary system rather than a reactor safety system. As use of the fuel transfer canal in the Licensee's plan does not involve a change to the Technical Specifications, an amendment for this reason would not be required and the opportunity to request a public hearing with regard to a Technical Specification change would, therefore, not arise.

With regard to § 50.59 of Title 10 of the Code of Federal Regulations, that provision allows a Licensee to make changes to its facility and procedures as described in the Final Safety Analysis Report (FSAR) without prior approval from NRC, provided a change in Technical Specifications is not involved (which, as described above, is met in this instance) and an unreviewed safety question does not exist. Before moving the nonfuel-bearing components to temporary storage racks in its fuel transfer canal, NSP would need to determine if this use of the transfer canal changes the facility or procedures as described in the FSAR. If NSP determines that a change has been made to the facility or procedures as described in the FSAR, then a safety evaluation pursuant to 10 CFR 50.59 is required to be performed by the Licensee. If a Technical Specification change were needed (not the case as discussed above), or an unreviewed safety question existed, NRC review and approval would be required. Otherwise, the Licensee could make the modifications without prior NRC approval. Licensees submit a list of modifications that were performed under 10 CFR 50.59 without NRC approval to NRC annually.

The Licensee did not fail to comply with the requirements of 10 CFR 50.59 by presenting a plan for retrieval of fuel from a cask, which included an option to place nonfuel-bearing components in the fuel transfer canal. At the time a cask unloading is deemed necessary, the Licensee can evaluate the specific modifications needed to implement the plan and determine whether 10 CFR 50.59 is applicable.

When applying for the license, NSP performed an accident analysis, in its Safety Analysis Report, as required by

NRC regulations.[2] In its Safety Evaluation Report dated July 1993, the NRC staff reviewed the Licensee's accident analysis and determined that ''Dose equivalent consequences, from a single cask, to any individual, from direct and indirect radiation and gaseous activity release after postulated accident events, are less than the 50 mSv (5 rem) limit established in 10 CFR 72.106(b).'' Additionally, in its Environmental Assessment, dated July 28, 1992, the NRC staff assessed the accident dose at the Prairie Island site boundary as: ''a small fraction * * * of the criteria specified.* * * '', and found that: ''These doses are also much less than the Protective Action Guides established by the Environmental Protection Agency (EPA) for individuals exposed to radiation as a result of accidents;* * *'' Because it has been shown that the dose equivalent from a single cask to any individual from postulated accident events is not in excess of the levels required for taking protective actions to protect public health, the NRC staff considers that a time-urgent unloading of the TN–40 cask is not a likely event.

Even if such an unlikely accident occurred and the Licensee determines that corrective actions may need to be taken to maintain safe storage conditions, options are available. This may include returning the cask to the auxiliary building and/or the spent fuel pool for repairs. Once the cask is in the spent fuel pool, it does not necessarily have to be unloaded to maintain safe storage conditions. In addition, the Licensee may have other options available to cover this unlikely contingency including temporary storage of spent fuel in a spare storage cask or use of an existing certified transportation cask. The Licensee would have time to consider these, and other available options, in such an unlikely event.

Petitioners also raise an issue concerning the necessity to offload both the entire reactor core and a TN–40 cask simultaneously. NRC has no requirement for licensees to maintain the spent fuel capacity to offload the entire core at once. Prairie Island normally offloads only one-third of the core during refueling outages. If NSP determines the need to offload the entire core during a refueling outage, NSP can install temporary fuel racks in the cask laydown area in the spent fuel pool. Therefore, a cask could not be unloaded for the short time that temporary racks are installed in the cask laydown area. The staff does not view this as a problem for two reasons. First, the probability that a cask would require unloading at the same time a full-core offload is in process is extremely small. Second, in the event it became necessary to unload a cask, fuel could be placed back into the reactor vessel and the temporary fuel storage racks could be removed. As discussed above, time-urgent unloading of a TN–40 cask is extremely unlikely. The cask could then be unloaded after the cask laydown area was cleared of the temporary fuel storage racks.

In addition to assuring that a TN–40 cask could be unloaded if necessary, the Licensee's plan also provides assurance with regard to spent fuel retrievability. Subpart F of 10 CFR part 72 provides general design criteria for ISFSIs and monitored retrievable storage installations. Section 72.122 sets overall requirements and 10 CFR 72.122(l) provides for retrievability of the fuel and states: ''Storage systems must be designed to allow ready retrieval of spent fuel or high-level radioactive waste for further processing or disposal.'' The NRC staff concluded in a May 5, 1995, letter to the Licensee that the ability to unload a TN–40 cask if necessary in accordance with the Licensee's plan would satisfy this fuel retrievability provision.

Finally, Petitioners state that the wrong NRC department reviewed and approved NSP's plan for retrievability of irradiated fuel. The Office of Nuclear Material Safety and Safeguards (NMSS) is responsible for licensing and regulating all issues under 10 CFR part 72, including issues related to the design requirements for ISFSIs. Therefore, NMSS is the correct NRC office to review whether the licensee's plan met 10 CFR 72.122(l). As discussed above, the Licensee's plan does not involve a Technical Specification change. Accordingly, NRR review of such a change would not be required. If, upon implementing its plan, the Licensee determined that a safety evaluation pursuant to § 50.59 was required, NRR review and approval would be required only if an unreviewed safety question existed.

With regard to the requests made by the Petitioners, there is no basis for suspending NSP's operating licenses for the Prairie Island units until a safety analysis is completed, reviewed, and approved by NRC, and until NSP's licenses are amended and public hearings have been held. If NSP plans to implement a specific plan to utilize the fuel-transfer canal which changes the facility or procedures as described in the FSAR, then an evaluation pursuant to 10 CFR 50.59 would be required at that time, which would not require prior NRC approval unless an unreviewed safety question exists or a change to Technical Specifications is required.

D. Auxiliary Building Crane

Petitioners contend that a recent incident at Prairie Island on May 13, 1995, involving the crane used to lift the dry cask for Prairie Island's ISFSI, requires physical testing and safety analysis before future crane use. The incident resulted in the crane holding the 123.75-ton cask above the surface of the reactor pool for 16 hours. The Petitioners assert that the incident could have caused metal fatigue within the crane's structure and the cables attached to the crane. Also, Petitioner Prairie Island Coalition asserts in its June 21, 1995, letter to the Chairman of the NRC that the crane, its cable, and its cable mechanisms were not designed to withstand holding nearly a maximum load for 16 hours.

The Prairie Island auxiliary building crane was upgraded in 1992 in accordance with the provisions of Topical Report EDR–1(P), ''Ederer Nuclear Safety-Related Extra Safety and Monitoring (X–SAM) Cranes.'' The crane is designed and tested in accordance with the NRC staff's guidance as outlined in NUREG–0554, ''Single-Failure-Proof Cranes for Nuclear Power Plants,'' and NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants.''

The staff evaluated the design of the auxiliary building crane and the lifting device for the cask as part of its review of the dry cask ISFSI. This crane system is designed so that a single failure will not result in the loss of the capability of the system to safely retain the load (this design is known as single-failure proof). The crane is designed to handle a rated load of 125 tons and is capable of raising, lowering, and transporting occasional loads, for testing purposes, of 25-percent higher than the rated load without damage or distortion to any crane part. All parts of the crane that are subjected to dynamic strains, such as gears, shafts, drums, blocks, and other integral parts, have a safety factor of 5 (i.e., they are designed to lift 5 times the design rated load). The hook has a

[2] The Licensee analyzed accidents classified as Design Events III and IV, as described in ANSI/ANS 57.9, ''Design Criteria for an Independent Spent Fuel Storage Installation (Dry Storage Type).'' Design Event III consists of that set of infrequent events that could reasonably be expected to occur during the lifetime of the ISFSI. Design Event IV consists of the events that are postulated because their consequences may result in the maximum potential impact on the immediate environs. Included among the scenarios considered under Design Event IV was a loss of confinement barrier leading to an immediate release of radioactivity.

design safety factor of 10 and was subjected to a 200-percent overload test followed by magnetic particle inspection prior to initial operation. Protection against wire rope wear and fatigue damage are ensured by scheduled inspection and maintenance. The special lifting device used for cask movement is designed to support 6 times the weight of the fully loaded cask and was subjected to a 300-percent overload test by the manufacturer. The lifting device undergoes dimensional testing, visual inspection, and nondestructive testing every 12 months (plus or minus 25 percent).

A single-failure-proof crane, such as the crane at Prairie Island, that has become immobilized by failure of components while holding a load, is able to hold the load or set the load down while adjustments or repairs are made. Safety features and emergency devices permit manual operation to accomplish this task. Two separate magnetic brakes are provided as well as an emergency drum band brake. Each magnetic brake provides a braking force of at least 150 percent of rated load. The emergency drum brake assures that the load can be safely lowered even if power is lost to the crane. Because of the large design margins and the ability to withstand a failure of any single component, the NRC staff does not postulate a load drop from a single-failure-proof crane.

After the incident on May 13, 1995, the Licensee temporarily removed the crane from service for testing. The Licensee and the crane vendor performed testing on the crane to analyze the event and assure the crane was operable. The Licensee's analysis of the May 13, 1995, incident found the problem to be an improperly calibrated load cell (a load cell is a device that measures the load being lifted by the crane and provides input to an overload-sensing device). It was determined that the actual load was less than what was being sensed by the overload-sensing device. The function of the overload-sensing device is to stop the operation of the crane when the load reaches a predetermined value. This prevents loading the crane beyond its rated load by maintaining loads within the design working limit, thereby maintaining safety and the physical integrity of the crane system.

Since the design-rated load of the crane was not exceeded during the incident, there is no reason to assume that the crane cannot continue to operate safely. Even if the rated load had been exceeded, an analysis would be needed to determine how much the rated load was exceeded and if that amount is significant. When cranes are built, manufacturers conduct proof tests at a load above rated load. The proof test for this crane was 25 percent higher than the 125-ton design-rated load for the main hoist (i.e., the proof test was 156.25 tons).

With regard to the Petitioners' comment about metal fatigue, metal fatigue is a condition that results from cyclic stress. Cyclic stress is produced by repeated loading and unloading. The crane is designed to handle all loading and unloading cycles during the life of the plant, including construction and operating periods. A single static (constant) load such as the load in question, does not produce the cyclic stress that causes metal fatigue. The Petitioners' contention that it was never contemplated that the Prairie Island polar crane hold a load of 123.75 tons inches above the surface of the reactor pool for 16 hours is incorrect. The contemplated failure mechanism of a single-failure proof crane is to hold the load safely at any location until the load can be safely moved. Because of the large design margins, the length of time that a design-rated load (or a load less than design rated) is on the hook of a single-failure-proof crane is inconsequential.

With regard to cable and cable mechanisms (also known as the reeving system and lifting devices), the crane is provided with a balanced dual reeving system with each wire rope capable of supporting the maximum critical load (if a load being held by a crane can be a direct or indirect cause of release of radioactivity, the load is called a critical load). The hydraulic load equalizing system allows transfer of the load to the remaining rope, without overstressing it, in the event of a failure of one rope. Protection against wire rope wear and fatigue damage are ensured by scheduled inspection and maintenance.

In conclusion, NRC agrees with the Licensee in its determination that the cause of the incident was an incorrectly calibrated load cell. This cause was documented in NRC Inspection Report 95–006, issued June 27, 1995. NRC has determined that the Licensee met the design and testing requirements established in industry standards for the control of heavy loads such as a dry storage cask, that the overload-sensing device worked as designed, and that no safety issue was involved in the Licensee's use of the auxiliary building crane and associated cask handling equipment to move the cask. Therefore, the Petitioners' requests for suspension of NSP's licenses for the Prairie Island units until physical testing and safety analyses can be performed on the crane are denied.

IV. Conclusion

Petitioners requested an immediate suspension of NSP's licenses for Prairie Island Units 1 and 2 until corrective actions of potentially hazardous conditions would be taken by NSP and NRC with regard to issues identified in the Petition. The institution of a proceeding in response to a request for action under 10 CFR 2.206 is appropriate only when substantial health and safety issues have been raised. *See Consolidated Edison Co. of New York*, (Indian Point, Units 1, 2, and 3), CLI–75–8, 2 NRC 173, 176 (1975), and *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), DD–84–7, 19 NRC 899, 923 (1984). I have applied this standard to determine if any action is warranted in response to the matters raised by the Petitioners. Each of the claims by the Petitioners has been reviewed. The available information is sufficient to conclude that no substantial safety issue has been raised regarding the operation of Prairie Island Units 1 and 2. Therefore, I conclude that, for the reasons discussed above, no adequate basis exists for granting Petitioners' requests for immediate suspension of NSP's licenses for Prairie Island Units 1 and 2.

A copy of this decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c).

As provided by this regulation, this decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision with that time.

Dated at Rockville, Maryland, this 27th day of November, 1996.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–30949 Filed 12–04–96; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

1997 Railroad Experience Rating Proclamations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: The Railroad Retirement Board is required by paragraph (1) of section 8(c) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)), as amended by Public Law 100–647, to proclaim by October 15

of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The Railroad Retirement Board is further required by section 8(c)(2) of the Act to publish the amounts so determined and proclaimed. Pursuant to section 8(c)(2), the Railroad Retirement Board gives notice of the following system-wide factors used in the computation of individual employer contribution rates for 1997:

(1) The balance to the credit of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 1996, is $136,017,033.90;

(2) The balance of any new loans to the Account, including accrued interest, is zero;

(3) The system compensation base is $2,724,133,182.21;

(4) The system unallocated charge balance is −$185,148,121.98;

(5) The pooled credit ratio is zero;

(6) The pooled charge ratio is zero;

(7) The surcharge rate is zero.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 1996. The balance in notice (2) is based on data as of September 30, 1996. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 1997.

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

FOR FURTHER INFORMATION CONTACT: Gerald E. Helmling, Chief of Experience Rating, Office of Programs—Policy and Systems, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone (312) 751–4567.

Dated: November 26, 1996.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–30977 Filed 12–4–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions:

Form T–1, SEC File No. 270–121, OMB Control No. 3235–0110

Form T–2, SEC File No. 270–122, OMB Control No. 3235–0111

Form T–3, SEC File No. 270–123, OMB Control No. 3235–0105

Form T–4, SEC File No. 270–124, OMB Control No. 3235–0107

Form T–6, SEC File No. 270–344, OMB Control No. 3235–0391

Form 11–K, SEC File No. 270–101, OMB Control No. 3235–0082

Rule 14f–1, SEC File No. 270–127, OMB Control No. 3235–0108

Rule 12d1–3, SEC File No. 270–116, OMB Control No. 3235–0109

Form SR, SEC File No. 270–120, OMB Control No. 3235–0124

Rules 7a–15 through 7a–37, SEC File No. 270–115, OMB Control No. 3235–0132

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is publishing the following summaries of collections for public comment.

Form T–1 is a statement of eligibility under the Trust Indenture Act of 1939 (''TIA'') of a corporation designated to act as a trustee. It is filed by an estimated 500 respondents for a total estimated annual burden of 7,500 hours.

Form T–2 is a statement of eligibility under the TIA of an individual designated to act as a trustee. It is filed by an estimated 36 respondents for a total estimated annual burden of 324 hours.

Form T–3 is used for applications for the qualification of trust indentures. It is filed by an estimated 55 respondents for a total estimated annual burden of 2,365 hours.

Form T–4 is used to apply for exemption pursuant to Section 304(c) of the TIA. It is filed by an estimated 3 respondents for a total estimated annual burden of 15 hours.

Form T–6 is used to apply under Section 310(a)(1) of the TIA for determination of eligibility of a foreign person to act as institutional trustee. It is filed by an estimated 15 respondents for a total estimated annual burden of 255 hours.

TIA Rules 7a–15 through j7a–37 set forth general requirements as to the form and content of applications, statements and reports required to be made under the TIA. The burden hours resulting from these requirements are reflected in the FIA forms and Rules 7a–15 through 7a–37 therefore are collectively assigned only one burden hour for administrative convenience.

Form SR is used to report sales of securities and use of proceeds therefrom. The Commission has proposed that this form be eliminated. Form SR is filed by an estimated 2,566 respondents for a total estimated annual burden of 14,113 hours.

Form 11–K is an annual report of certain types of employee benefit plans. It is filed by an estimated 774 respondents for a total estimated annual burden of 23,220 hours.

Rule 14f–1 requires issuers to file information in connection with a change in the majority of their directors. Rule 14f–1 submissions are filed by an estimated 44 respondents for a total estimated annual burden of 792 hours.

Rule 12d1–3 sets forth requirements concerning certification that a security has been approved by an exchange for listing and registration pursuant to Section 12(d) of the Securities Exchange Act of 1934. Rule 12d1–3 submissions are filed by an estimated 688 respondents for a total estimated annual burden of 344 hours.

The information provided by the above forms and submissions is needed to ensure compliance with the requirements of the TIA, Securities Act of 1933 and Securities Exchange Act of 1934. Trustees and corporate issuers are the likely respondents.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: November 22, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30942 Filed 12–4–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37994; File No. SR–NASD–96–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Release of Additional Information Regarding Disciplinary History of Members and Their Associated Persons Via Toll-Free Telephone Listing

November 27, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 25, 1996 [1] NASD Regulation, Inc. (''NASDR'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by NASDR. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDR is proposing to amend the Interpretation on the Release of Disciplinary Information, IM–8310–2 of the Procedural Rules of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), to include additional information required to be reported on the revised Forms BD and U–4. Below is the text of the proposed rule change. Proposed new language is in italics.

IM–8310–2. Release of Disciplinary Information

(a) The Association shall, in response to a written inquiry, *electronic inquiry* or telephonic inquiry via a toll-free telephone listing, release certain information as contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal or state or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD or U–4 and all foreign government or self-regulatory organization disciplinary actions that are securities or commodities related and are required to be reported on Form BD or U–4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U–4. The Association will also release information *required to be reported on Form BD or Form U–4* concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers, *pending and settled customer complaints, arbitrations and civil litigation, current investigations involving criminal or regulatory matters, terminations of employment after allegations involving violations of investment related statutes or rules, theft or wrongful taking of property, bankruptcies less than ten (1) years old, outstanding judgements or liens, any bonding company denial, pay out or revocation, and any suspension or revocation to act as an attorney, accountant or federal contractor.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASDR included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASDR has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This proposed rule change will permit the NASD to release additional information contained in the Central Registration Depository (''CRD'') System regarding the disciplinary history of its members and their associated persons in response to a written, electronic inquiry or telephonic inquiry via its existing toll-free telephone listing which is included in the ''Public Disclosure Program'' (''Program''). The NASD presently has in place its toll-free telephone listing, which was approved by the Commission in April 1992 and which was amended in July 1993.[2] Under the Program as amended, the NASD reports the past and present employment history of associated persons with NASD members, pending and final disciplinary actions taken by foreign, federal or state securities agencies or self-regulatory organizations which relate to securities or commodities transactions, criminal indictments, informations or convictions required to be reported on Form BD or Form U–4, and civil judgment and arbitration decisions in securities and commodities disputes involving public customers. In addition to the existing toll-free service, the NASD plans to provide a Public Disclosure Form on its World Wide Web site. Investors using the form will be able to request the same information accessible from the toll-free number. The NASD also plans to add the capability of responding via e-mail to such requests.

The proposed rule change will allow the NASD to release all information on any question on page 3 (Question 22) of the revised Form U–4 and Question 11 of the revised Form BD. The SEC approved the revised Forms U–4 and BD in July 1996.[3] The revised Forms U–4 and BD will be used when the new CRD system becomes operational in the spring of 1997. The additional information to be disclosed includes:

1. All pending arbitrations and civil proceedings that relate to securities or commodities transactions;
2. Pending written customer complaints alleging sales practice violations and compensatory damages of $5,000 or more;
3. Settlements of $10,000 or more of arbitrations, civil suits and customer complaints involving securities or commodities transactions;
4. Current investigations involving criminal or regulatory matters;
5. Terminations of employment after allegations involving violations of investment-related statutes or rules, fraud, theft or failure to supervise investment-related activities;
6. Bankruptcies less than 10 years old and outstanding liens or judgments;
7. Bonding company denials, payouts or revocations; and
8. Any suspension or revocation to act as an attorney, accountant or federal contractor.

The revised Form U–4 will require the reporting of all written customer complaints that allege sales practice rule violations and compensatory damages of $5,000 or more. The definition of sales practice violations will be included in the ''Explanation of Terms'' section of the forms but will generally include any allegations concerning a violation of applicable Commission, self-regulatory organization or state securities rules. Under the revised Forms U–4 and U–5, written complaints that do not evolve into arbitration, civil litigation or a

[1] The NASDR filed Amendment No. 1 to supersede the filing submitted on October 17, 1996. See letter from Joan C. Conley, Corporate Secretary, NASDR, to Katherine A. England, Esq., Assistant Director, Division of Market Regulation, SEC, dated November 25, 1996.

[2] See Securities Exchange Act Rel. No. 30629 (April 23, 1992), 57 FR 18535 (April 30, 1992); and Securities Exchange Act Rel. No. 32568 (July 1, 1993), 58 FR 36723 (July 8, 1993).

[3] See Securities Exchange Act Rel. No. 37407 (July 5, 1996), 61 FR 36595 (July 11, 1996); and Securities Exchange Act Rel. No. 37431 (July 12, 1996), 61 FR 37357 (July 18, 1996). See also Securities Exchange Act Rel. No. 37632 (September 4, 1996), 61 FR 47412 (September 9, 1996).

settlement over the jurisdictional amount, would be deleted from the CRD system two years from the date of the report to the complaint to the CRD system. Dismissed or withdrawn arbitration or civil proceedings would also be deleted. All arbitration and civil litigation proceedings involving securities transaction matters and all settlements of $10,000 or more would be reported.

Because there are differences in the information required to be disclosed in the existing and revised Form U–4 and because the revised Form U–4 will not be utilized until the new CRD system is operational in 1997, the proposed changes to the Program will be implemented in two phases. In the first phase, starting with implementation of the proposed disclosure changes in calendar 1996 until the new CRD system is operational, the NASD will review each member's and associated person's existing CRD record against the revised Question 22 on page 3 of Form U–4 and disclose any information that is available to the NASD at that time. The revised Form U–4 will require the reporting of certain written customer complaints that are not required to be reported on the existing Form U–4. Since these ''new'' complaints are not presently required to be reported, these complaints will not be available for disclosure until the revised Form U–4 is in use. In phase two, beginning with the operation of the new CRD system (expected to be in spring 1997), the NASD will disclose all information required to be disclosed in revised Question 22 on page 3.

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6)[4] and 15A(i)[5] of the Act. The NASD believes the proposed rule change will further the goals of these sections of the Act because the increased disclosure will enhance the general public's access to information that will help investors determine whether or not to conduct or continue to conduct business with an NASD member or any of the member's associated persons. The NASD also recognizes the growth in information technology and its customers' increased use thereof; thus, the proposed rule change attempts to accommodate investors by making access to information as convenient as possible.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 26, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30941 Filed 12–4–96; 8:45 am]

BILLING CODE 8010–01–M

[4] Section 15A(b)(6) requires that the Association amend its rules to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and in general, to protect investors and the public interest.

[5] Section 15A(i) requires the Association to: (1) Establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and (2) promptly respond to such inquiries in writing.

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–38008; File No. SR–NASD–96–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Implementation of the SEC's Order Handling Rules

December 2, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 18, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule

The NASD is submitting this rule filing to amend a variety of NASD rules and The Nasdaq Stock Market's (''Nasdaq'') Small Order Execution System (''SOES'') and SelectNet Service to conform to the Commission's new limit order display rule, Rule 11Ac1–4 under the Act[1] (''Display Rule'') and amendments to Rule 11Ac1–1(c)(5) under the Act[2] (''ECN Rule''). These amendments are also being proposed to reflect the order-driven nature of the Nasdaq market that will be brought about by implementation of the Display Rule and ECN Rule. Proposed new language is in italics. Deleted language is in brackets.

Marketplace Rules

* * * * *

4613. Character of Quotations

(a) Two-Sided Quotations

(1) For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations in The Nasdaq Stock Market, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) *If a market maker updates the price of its bid or offer without any accompanying update to the size of such bid or offer, the size of the updated*

[1] 17 CFR 240.11Ac1–4.

[2] 17 CFR 240.11Ac1–1.

bid or offer shall be the size of the previous bid or offer.

(B) Notwithstanding any other provision in this paragraph (a), in order to display a limit order in compliance with SEC Rule 11Ac1–4, a registered market maker's displayed quotation size may be for one normal unit of trading or a larger multiple thereof.

(C) A registered market maker must display a quotation size for at least one normal unit of trading or a larger multiple thereof when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.

[(2) Each member registered as a Nasdaq market maker in Nasdaq National Market equity securities shall display size in its quotations of 1,000, 500, or 200 shares and the following guidelines shall apply to determine the applicable size requirement:

(A) a 1,000 share requirement shall apply to Nasdaq National Market securities with an average daily non-block volume of 3,000 shares or more a day, a bid price of less than or equal to $100, and three or more market makers;

(B) a 500 share requirement shall apply to Nasdaq National Market securities with an average daily non-block volume of 1,000 shares or more a day, a bid price of less than or equal to $150, and two or more market makers and

(C) a 200 share requirement shall apply to Nasdaq National Market securities with an average daily non-block volume of less than 1,000 shares a day, a bid price of less than or equal to $250, and that have two or more market makers.

(3) Each member registered as a Nasdaq market maker in Nasdaq SmallCap Market equity securities shall display size in its quotations of 500 or 100 shares and the following guidelines shall apply to determine the applicable size requirement:

(A) a 500 share requirement shall apply to Nasdaq SmallCap Market securities with an average daily non-block volume of 1,000 shares or more a day or a bid price of less than $10.00 a share; and

(B) a 100 share requirement shall apply to Nasdaq SmallCap Market securities with an average daily non-block volume of less than 1,000 shares a day and a bid price equal to or greater than $10.00 a share.

(4) Share size display requirements in individual securities may be changed depending upon unique circumstances as determined by the Association, and a list of the size requirements for all Nasdaq equity securities shall be published from time to time by the Association.]

* * * * *

(e) Locked and Crossed Markets

(1) A market maker shall not, except under extraordinary circumstances, enter or maintain quotations in Nasdaq during normal business hours if:

(A) the bid quotation entered is equal to or greater than the asked quotation of another market maker entering quotations in the same security; or

(B) the asked quotation is equal to or less than the bid quotation of another market maker entering quotations in the same security.

(2) A market maker shall, prior to entering a quotation that locks or crosses another quotation, make reasonable efforts to avoid such locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed. Pursuant to the provisions of paragraph (b) of this Rule 4613, a market maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through Nasdaq at the time of receipt of any order.

(3) *For purposes of this paragraph, the term ''market maker'' shall include any NASD member that enters into an electronic communications network, as that term is defined in SEC Rule 11Ac1–1(a)(8), a priced order that is displayed in The Nasdaq Stock Market. Such term also shall include an NASD member that operates the electronic communications network when the priced order being displayed has been entered by a person or entity that is not an NASD member.*

* * * * *

IM–4613 Autoquote Policy

(a) General Prohibition—The Association has extended a policy banning the automated update of quotations by market makers in Nasdaq. *Except as provided below,* [T]*t*his policy prohibits systems known as ''autoquote'' systems from effecting automated quote updates or tracking of inside quotations in Nasdaq[, with two exceptions]. [Automated updating of quotations is permitted when the update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size) or when it requires a physical entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq).] This ban is necessary to offset the negative impact on the capacity and operation of Nasdaq of certain autoquote techniques that track changes to the inside quotation in Nasdaq and automatically react by generating another quote to keep the market maker's quote away from the best market.

(b) Exceptions To the General Prohibition—Automated updating of quotations is permitted when: (1) the update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size); (2) it requires a physical entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq); (3) the update is to reflect the receipt, execution, or cancellation of a customer limit order; or (4) an electronic communications network as defined in SEC Rule 11Ac1–1(a)(8) is required to maintain a two-sided quotation in Nasdaq for the purpose of meeting Nasdaq system design requirements.

* * * * *

4623 Electronic Communications Networks

(a) The Association may provide a means to permit electronic communications networks, as such term is defined in SEC Rule 11Ac1–1(a)(8), to meet the terms of the electronic communications network display alternative provided for in SEC Rule 11Ac1–1(c)(5)(ii)(A) and (B). In providing any such means, the Association shall establish a mechanism that permits the electronic communications network to display the best prices and sizes of orders entered by Nasdaq market makers (and other entities, if the electronic communications network so chooses) into the electronic communications network, and allows any NASD member the electronic ability to effect a transaction with such price orders that is equivalent to the ability to effect a transaction with a Nasdaq market maker quotation in Nasdaq operated systems.

(b) An electronic communications network that seeks to utilize the Nasdaq-provided means to comply with the electronic communications network display alternative shall:

(1) demonstrate to the Association that it qualifies as an electronic communications network meeting the definition in the SEC Rule;

(2) be registered as an NASD member;

(3) enter into and comply with the terms of a Nasdaq Workstation Subscriber Agreement;

(4) agree to provide for Nasdaq's dissemination in the quotation data made available to quotation vendors the prices and sizes of Nasdaq market maker orders (and other entities, if the electronic communications network so chooses) at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the electronic communications network and

(5) provide an automated execution or, if the price is no longer available, an automated rejection of any order routed to the electronic communications network through the Nasdaq-provided display alternative.

* * * * *

4700 Small Order Execution System (SOES)

4710 Definitions

* * * * *

[(h) The term ''exposure limit'' means the number of shares of a security on either side of the market specified by a Market Maker that it is willing to have executed for its account by unpreferenced orders entered into SOES.

(i) The term ''minimum exposure limit'' for a security means the aggregate number of shares of the security equal to two times the maximum order size for that security.]

(j)–(k). Re-lettered as subparagraphs (h) and (i).

* * * * *

4730 Participant Obligations in SOES

* * * * *

(b) Market Makers

(1) A SOES Market Maker shall commence participation in SOES by initially contacting the SOES Operation Center to obtain authorization for the trading of a particular SOES security and identifying those terminals on which the SOES information is to be displayed and thereafter by an appropriate keyboard entry which obligates the firm, so long as it remains a Market Maker in SOES:

(A) to execute individual preferenced SOES orders equal to or smaller than the applicable maximum order size at the best bid or offer as disseminated by Nasdaq in any security for which it is a SOES market maker;

(B) for any NNM security for which it is a SOES market maker, to execute individual unpreferenced SOES orders equal to or smaller than the market maker's displayed quotation size in any security for which it is a SOES Market Maker; and

(C) for any Nasdaq SmallCap Market security for which it is a SOES market maker, to execute individual unpreferenced SOES orders equal to or smaller than the market maker's displayed quotation size when the market maker's quotation is at the best bid or offer as disseminated by Nasdaq, and, when the market maker's quotation is inferior to the best bid or offer as disseminated by Nasdaq, to execute individual unpreferenced SOES orders up to the lessor of the market maker's displayed quotation size or the smallest quotation size of all the market makers whose quotations are at the best bid or offer as disseminated by Nasdaq.

[(A) for any security for which it is a SOES Market Maker, to execute individual orders in sizes equal to or smaller than the maximum order size; and

(B) for any NNM security for which it is a Market Maker, to execute individual orders equal in the aggregate to the minimum exposure limit.] *A SOES Market Maker's displayed quotation size will be decremented upon the execution of an unpreferenced SOES order equal to or greater than one normal unit of trading; provided, however, that the execution of an unpreferenced SOES order that is a mixed lot (i.e., an order that is for more than a normal unit of trading but not a multiple thereof) will only decrement the SOES Market Maker's displayed quotation size by the number of shares represented by the number of round lots contained in the mixed lot order.* Market Makers shall have a period of time following their receipt of an execution report in which to update their quotation in the security in question before being required to execute another unpreferenced order at the same bid or offer in the same security. This period of time shall initially be established as 15 seconds, but may be modified upon appropriate notification to SOES participants. All entries in SOES shall be made in accordance with the requirements set forth in the SOES User Guide.

[(2) For each security in which a Market Maker is registered, the Market Maker may enter into SOES an exposure limit. For an NNM security, that limit may be any amount equal to or larger than the minimum exposure limit. If no exposure limit is entered for an NNM security, the firm's exposure limit will be the minimum exposure limit.]

(2)[(3)] For each security in which the Market Maker is registered, the Market Maker may elect to have The Nasdaq Stock Market refresh its quotation automatically by an interval designated by the Market Maker, once its *displayed quotation size on either side of the market* [exposure limit] in the security has been *decremented to zero due to SOES executions* [exhausted]. The Nasdaq Stock Market will refresh the market maker's quotation on the bid *or* [and] offer side of the market*, whichever is decremented to zero,* by the interval designated, and will reestablish the Market Maker's displayed size *for one normal unit of trading; provided, however, that a Market Maker may elect to have The Nasdaq Stock Market refresh its bid or offer at the same price if the Market Maker's quotation size prior to any decrementation was equal to or greater than the maximum SOES order size for the security.* [and selected exposure limit. If the market maker elects to utilize The Nasdaq Stock Market automated update feature, it may establish an exposure limit equal to the maximum order size for the securities, regardless of the minimum exposure limit set forth in Rule 4710(i).]

(3)[(4)] *Except as otherwise provided in subparagraph (10) below,* [A]*at* any time a locked or crossed market, as defined in Rule 4613(e) exists for a NNM security, a Market Maker with a quotation for that security in The Nasdaq Stock Market that is causing the locked or crossed market may have orders representing shares equal to the *size of its bid or offer that is locked or crossed* [minimum exposure limit or the firm's exposure limit, whichever is greater,] executed by SOES for that Market Maker's account at its quoted price if that price is the best price. Those orders will be executed irrespective of any preference indicated by the Order Entry Firm.

(4)[(5)] For each security in which a Market Maker is registered, the Market Maker may not enter orders *into SOES for its proprietary account, but may enter orders* on an agency basis into SOES. [, unless a locked or crossed market, as defined in Rule 4613(e), exists for that security. This prohibition against use of SOES does not obviate the Market Maker's duty to give its agency orders best execution in the prevailing market, according to Rule 2320.]

(5)[(6)] The Market Maker may terminate his obligation by keyboard withdrawal from SOES at any time. However, the Market Maker has the specific obligation to monitor his status in SOES to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the Market Maker. In the case of a security that is not a NNM security, a Market Maker whose *bid or offer has been decremented to zero due to SOES executions* [exposure limit is exhausted] will be deemed to have withdrawn from SOES and may reenter at any time pursuant to paragraph (a)

above*; provided, however, that a market maker in a Nasdaq SmallCap Market security that does not reenter a quotation by the close of business on the day its quotation is decremented shall be deemed to have withdrawn as a market maker in the security and precluded from entering quotations in that security for twenty (20) business days pursuant to NASD rule 4620.*

(6)[(7)] In the case of an NNM security, a Market Maker will be suspended from SOES if its *bid or offer has been decremented to zero due to SOES executions* [exposure limit is exhausted] and will be permitted a standard grace period, the duration of which will be established and published by the Association, within which to take action to restore *a two-sided quotation in the security for at least one normal unit of trading* [its exposure limit]. A Market Maker that fails to *re-enter a two-sided quotation* [renew its exposure limit] in a NNM security within the allotted time will be deemed to have withdrawn as a Market Maker. Except as provided in subparagraph *(7)*[(8)] below, a Market Maker that withdraws in an NNM security may not reenter SOES as a Market Maker in that security for twenty (20) business days.

(7)[(8)] Notwithstanding the provisions of subparagraph *(6)* [(7)] above: (A) a Market Maker that obtains an excused withdrawal pursuant to Rule 4619 prior to withdrawing from SOES may reenter SOES according to the conditions of its withdrawal; and (B) a Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and SOES for NNM securities, may reenter SOES after a clearing arrangement has been reestablished and the market maker has compiled with ACT participant requirements. Provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

(8)[(9)] The Rule 9700 Series of the Code of Procedure shall apply to proceedings brought by Market Makers seeking review of (A) their removal from SOES pursuant to subparagraph *(6)*[(7)] above, (B) the denial of an excused withdrawal pursuant to Rule 4619, or (C) the conditions imposed on their reentry.

(9)[(10)] In the event that a malfunction in the Market Maker's equipment occurs, rendering on-line communications with SOES inoperable, the SOES Market Maker is obligated to immediately contact the SOES Operations Center by telephone to request withdrawal from SOES. For NNM securities, such request must be made pursuant to Rule 4619. If withdrawal is granted, SOES operational personnel will enter the withdrawal notification into SOES from a supervisory terminal. Such manual intervention, however, will take a certain period of time for completion and the SOES Market Maker will continue to be obligated for any transaction executed prior to the effectiveness of his withdrawal.

(10) In the event that there are no SOES market makers at the best bid (offer) disseminated by Nasdaq, market orders to sell (buy) entered into SOES will be rejected and returned to their respective order entry firms.

(c) SOES Order Entry Firms

* * * * *

(2) SOES will *only* accept [both] market and *marketable* limit orders for execution *and will not accept market or marketable limit orders designated as All-or-None (''AON'') orders; provided, however, that SOES will not accept any limit orders, marketable or unmarketable, prior to 9:30 a.m., Eastern Time. For purposes of this subparagraph, an AON order is an order for an amount of securities equal to the size of the order and no less.* Orders may be preferenced to a specific SOES Market Maker or may be unpreferenced, thereby resulting in execution in rotation against SOES Market Makers. A Market Maker may indicate order entry firms from which it agrees to accept preferenced orders. If an order is received by a Market Maker from an order entry firm from which it has not agreed to accept preferencing, the order will be executed at the inside market on an unpreferenced basis and will be subject to a period of time between executions for market makers to update their quotations.

* * * * *

6330 Obligations of CQS Market Makers

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(b) CQS market makers shall be required to input a minimum quotation size of 200 or 500 shares in each reported security (as established and published from time to time by the Association) depending on trading characteristics of the security*; provided that a CQS market maker may input a quotation size less than such minimum quotation size to display a limit order in compliance with SEC Rule 11Ac1–4. A limit order displayed in a CQS market maker's quotation pursuant to SEC Rule 11Ac1–4 must be for at least one normal unit of trading or a multiple thereof.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Introduction and Background

On August 29, 1996, the Commission promulgated a new rule and adopted amendments to other Commission rules that have the effect of transforming The Nasdaq Stock Market (''Nasdaq'') into a combined order-driven market and a competing dealer market.[3] Specifically, the Commission adopted the Display Rule, which requires the display of customer limit orders: (1) that are priced better than a market maker's quote;[4] or (2) that add to the size associated with a market maker's quote when the market maker is at the best price in the market.[5] By virtue of the Display Rule, investors will now have the ability to directly advertise their trading interest to the marketplace, thereby allowing them to compete with market maker quotations and affect the size of bid-ask spreads.[6] In sum, with the Display Rule, Nasdaq will have order-driven aspects akin to an auction market while retaining its

[3] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Order Handling Rules Adopting Release'').

[4] For example, if a market maker's quote in stock ABCD is 10–10¼ (1000 x 1000) and the market maker receives a customer limit order to buy 200 shares at 10⅛, the market maker must update its quote to 10⅛–10¼ (200 x 1000).

[5] For example, if a market maker receives a limit order to buy 200 shares of ABCD at 10 when its quote in ABCD is 10–10¼ (1000 x 1000) and the NBBO for ABCD is 10–10⅛, the market maker must update its quote to 10–10¼ (1200 x 1000).

[6] There are eight exceptions to the Display Rule: (1) customer limit orders executed upon receipt; (2) limit orders placed by customers who request that they not be displayed; (3) limit orders for odd-lots; (4) limit orders of block size (10,000 shares or $200,000); (5) limit orders routed to a Nasdaq or exchange system for display; (6) limit orders routed to a qualified electronic communications network for display; (7) limit orders routed to another member for display; and (8) limit orders that are all-or-none orders.

competing dealer market structure to provide price continuity and market depth and liquidity.[7]

The other rule changes adopted by the Commission involve amendments to the Commission's firm quote rule, Rule 11Ac1–1 under the Act.[8] The ECN Rule requires market makers to display in their quote any better priced orders that the market maker places into an electronic communications network (''ECN'') such as SelectNet or Instinet. Alternatively, instead of updating its quote to reflect better priced orders entered into an ECN, a market maker may comply with the display requirements of the ECN Rule through the ECN itself, provided the ECN meets two conditions.[9]

This rule filing addresses the changes to the NASD's rules and systems that the NASD and Nasdaq believe must be made to implement the Display Rule and ECN Rule by January 10, 1997. The rule filing also discusses a variety of proposed rule changes that the NASD and Nasdaq believe are necessary in light of the order-driven nature of the Nasdaq market that will be brought about by implementation of the Display Rule and ECN Rule.

2. Proposed Rule Changes to Implement the Display Rule

i. *Minimum Quotation Size Requirements.*

a. *Quote Size When Displaying Customer Limit Orders.*

In order to facilitate the display of customer limit orders in accordance with the Display Rule, the NASD and Nasdaq propose to amend NASD Rules 4613 and 6330 to provide that Nasdaq market makers and CQS market makers may display a quotation size for one normal unit of trading or a larger multiple thereof to reflect the actual size of a customer limit order.[10] Thus, if a market maker's quote for ABCD is 20–20¼, 10 x 10, and it receives a customer limit order to buy 100 shares at 20⅛, the market maker may update its quote to 20⅛–20¼, 1 x 10. By permitting market makers to display the actual size of limit orders in their quotes, market makers will not be responsible for executing any additional shares above the size of the limit order. The NASD and Nasdaq believe this proposed rule change will help to promote the acceptance of limit orders priced inside quoted markets, thereby furthering the investor protection and market transparency objectives sought by the Commission in the Order Handling Rules Adopting Release. Moreover, without these rule changes, in instances where customer limit order are smaller than the applicable minimum quotation size requirement and a market maker's quote is inferior to the limit order price, market makers would be obligated to execute trades at prices superior to their proprietary quotations. The NASD and Nasdaq believe that subjecting market makers to such an order execution requirement would be unfair and create a disincentive for firms to function as market makers.

b. *Quote Size When Displaying Proprietary Market Maker Quotes.*In an environment in which Nasdaq market makers are the only market participants who can impact quotation prices, the NASD and Nasdaq believe it is desirable and appropriate to impose minimum quotation size requirements to ensure an acceptable level of market liquidity and depth. However, now that the Display Rule will permit investors to directly impact quoted prices, the NASD and Nasdaq believe it would be appropriate to treat Nasdaq market makers in a manner equivalent to exchange specialists and not subject them to minimum quote size requirements. In sum, the NASD and Nasdaq believe the new order-driven nature of Nasdaq brought about by the Display Rule will obviate the regulatory justification for minimum quote size requirements because investors will have the capability to display their own orders in the marketplace. The ability for limit orders and ECN orders to be included in Nasdaq quotations should also ensure that market liquidity and price continuity will not be harmed by the elimination of minimum quotation size requirements. In this new environment, the NASD and Nasdaq believe that mandatory quote size requirements impose unnecessary regulatory burdens on market makers which are not consistent with the Act. Accordingly, the NASD and Nasdaq recommend that NASD Rule 4613 be amended to remove any requirements on market maker quotation sizes.

The NASD and Nasdaq also believe that permitting market makers to quote in sizes commensurate with their own freely-determined trading interest will enhance the pricing efficiency of the Nasdaq market. In this connection, several recent economic studies have concluded that exchange specialists rely on quotation size movements just as much as quotation price movements to manage their risk.[11] Indeed, a recent analysis by Nasdaq of quotation size updates by specialists on the New York Stock Exchange (''NYSE'') revealed that 62 percent of the quotation updates involved changes only to the size of the specialist's quotation and that 32 percent involved changes to both price and size. Thus, 94 percent of all quotation updates involved a change in quotation size. The analysis also found that the bid and offer sizes were the same for only 11 percent of the updates.[12] Accordingly, just as exchange specialists rely on quotation size updates in an order-driven market to manage their risk, the NASD and Nasdaq believe Nasdaq market makers should be able to use quotation size updates to effectively manage their risks in Nasdaq's order-driven/competing dealer market structure that will be brought about by the Display Rule. Moreover, the NASD and Nasdaq believe that eliminating artificial constraints on quotation size movements by Nasdaq market makers will enhance the independence and competitiveness of dealers quotations in the Nasdaq market.

The NASD and Nasdaq also believe that elimination of the minimum quotation size requirements is necessary

[7] The Display Rule requirements will become effective on January 10, 1997, for all exchange-listed securities and for the 1,000 Nasdaq securities with the highest average daily trading volume. On March 28, 1997, the Rule will apply to the next 1,500 Nasdaq securities, and on June 30, 1997, the next 2,000 Nasdaq securities. The final phase-in date is August 28, 1997, when the Rule will apply to all remaining Nasdaq securities.

[8] 17 CFR 240.11Ac1–1

[9] Specifically, in order for a market maker to comply with the rule via an ECN, the ECN must: (1) ensure that the best priced orders entered by market makers into the ECN are communicated to Nasdaq for public dissemination; and (2) provide brokers and dealers access to orders entered by market makers into the ECN, so that brokers and dealers who do not subscribe to the ECN can trade with those orders. This access must be equivalent to the access that would have been available had the market makers reflected their superior priced orders in their quotes.

[10] NASD Rule 4613 requires each market maker in a Nasdaq issue to enter and maintain two-sided quotations with a minimum size equal to or greater than the applicable SOES tier size for the security (*e.g.,* 1,000, 500, or 200 shares for Nasdaq National Market (''NNM'') issues and 500 or 100 shares for Nasdaq SmallCap Market issues). NASD Rule 6330 requires registered market makers in exchange-listed securities to display a minimum quotation size of 200 or 500 shares in each reported security (as established and published from time to time by the Association) depending on trading characteristics of the security.

[11] *See, e.g.,* Lee, C., Mucklow, B., and Ready, M, 1993, ''Spread, Depth, and the Impact of Earnings Information: An Intraday Analysis,'' The Review of Financial Studies, 6, 345–74; K. Kavajecz, 1995, ''A Specialist's Quoted Depth and the Limit Order Book,'' Working Paper, J.L. Kellogg Graduate School of Management, Northwestern University; and K. Kavajecz, 1996, ''A Specialist's Quoted Depth as a Strategic Choice Variable,'' Working Paper, The Wharton School of the University of Pennsylvania.

[12] The source of the data used in Nasdaq's analysis was the Trade and Quote (''TAQ'') Database produced by the NYSE. The analysis reviewed over 750,000 quotation updates occurring over four days in 1996 (June 19, July 17, August 14, and September 18).

to ensure that market makers who do not have access to an ECN will not be placed at a competitive disadvantage vis-a-vis those market makers who do have access to an ECN. In particular, since an ECN is not subject to minimum quotation size requirements, market makers with access to an ECN will be able to publicly display a quote/order for as small as 100 shares and maintain their Nasdaq market maker quotation away from the inside market, while market makers without access to an ECN would have no such option. As a result, unless market makers can quote in the same size as ECNs, there will be a disincentive for some firms, particularly smaller firms, to make markets in Nasdaq securities. Finally, allowing market makers to quote smaller markets would likely result in narrower spreads, thereby lowering transaction costs for investors.

ii. *Operation of SOES.*

At present, all market makers in NNM securities must be registered as SOES market makers. SOES is voluntary for market makers in Nasdaq SmallCap securities. The maximum SOES order size for a NNM security is either 1,000, 500, or 200 shares depending on the price and volume of the issue; and the maximum order size for a Nasdaq SmallCap Market security is 500 shares. SOES automatically executes unpreferenced orders in rotation against those market makers who are at the best quoted bid or offer on Nasdaq at the time the order is entered.[13] SOES orders may be routed or ''preferenced'' to a particular market maker for execution at the inside market, regardless of what price the preferenced market maker is quoting. A SOES market maker is obligated to execute SOES orders up to the minimum SOES exposure limit for that stock or such greater exposure limit established by the market maker. The minimum exposure limit for a particular stock is two times the applicable maximum SOES order size (*e.g.* 2,000 shares for stocks in the 1,000 share tier size). If a market maker's exposure limit is exhausted, it is suspended from SOES and placed in a ''closed quote state'' and permitted a five-minute period to restore its exposure limit. If a market maker does not restore its exposure limit within five minutes it is automatically withdrawn from the stock and can not re-enter quotes in the issue for at least twenty business days.

Thus, SOES is currently designed to execute orders against market makers based on the tier size for a particular stock, without regard to the quotation size displayed by a market maker. Because the minimum quotation sizes for market makers are presently aligned with the maximum SOES order sizes, the current design of SOES does not obligate market makers to execute SOES orders larger than their quote size.

Because market maker quotes will at times reflect customer limit orders under the Display Rule, the NASD and Nasdaq believe SOES should be modified to allow market orders to be executed against market makers' displayed quotation sizes instead of SOES tier sizes. Following are discussions of other proposed changes to SOES that relate to the implementation of the Display Rule and the ECN Rule.

a. *Decrementation of Displayed Quotation Sizes After SOES Executions.* In order to avoid instances where a market maker could automatically receive multiple SOES executions because it displayed a customer's limit order at a price superior to the market maker's proprietary quote or increased its quote size because of the limit order, the NASD and Nasdaq propose that SOES be modified to decrement a market maker's displayed quote size upon the execution of unpreferenced SOES orders. For example, if a market maker's quote in ABCD is 10 x 10¼, 10 x 10, and it receives a customer limit order to buy 500 shares at 10⅛, it would update its quote to 10⅛ x 10¼, 5 x 10. Thereafter, if the market maker received a SOES execution at 10⅛ for 500 shares, the size of its bid would be depleted to 0 and the market maker would have to reenter a quotation. With this change, the NASD and Nasdaq believe market makers will be more inclined to accept and display customer limit orders because they will not be subject to mandatory SOES executions larger than the size of the limit orders that they display.[14] In addition, if market makers' displayed quotation sizes are not decremented after SOES executions, market makers would be unfairly subject to the risk and obligation of automatically executing orders at prices superior to their own quotation. Such a requirement would create a disincentive for firms to be market makers and threaten to diminish the liquidity of the Nasdaq market.

b. *Split Order Execution.* As noted above, because SOES presently executes orders based on SOES tier sizes and not market makers' displayed quotation sizes, SOES orders are not subject to partial executions. By decrementing market makers' displayed quotation sizes due to SOES executions, however, the NASD and Nasdaq believe it will be necessary to modify SOES so that it can execute one order against multiple market makers to ensure that SOES orders are automatically executed. As a result, the NASD and Nasdaq also recommend that SOES be amended to not accept ''all-or-none'' orders. For example, if the inside market for ABCD is 10–10¼ and two market makers are each at the inside bid for 500 shares, a SOES market order to sell 1,000 shares of ABCD would be executed at 10, with both market makers selling 500 shares. In addition, because all market maker quotations at the inside could be depleted by the execution of a SOES order, the NASD and Nasdaq believe it is necessary to modify SOES so that market orders may be filled at multiple price levels. For example, if the inside market for ABCD is 10–10¼ and Market Makers A and B are each at the inside bid for 100 shares, with Market Maker C at 9⅞ for 800 shares, a SOES market order to sell 1,000 shares of ABCD would be executed against all three market makers. Specifically, Market Makers A and B would each sell 100 shares at 10 and Market Maker C would sell 800 shares at 9⅞.

c. *Displayed Quotation Sizes Will Constitute Exposure Limits.* A corollary impact of decrementing market maker quotes after SOES executions is that a market maker's displayed quotation size will become its exposure limit. Exposure limits function by capturing and monitoring the amount of SOES volume executed by a market maker at its quoted price, without such SOES volume effecting the market maker's quotation size. Accordingly, by decrementing market maker quotations after SOES executions, a market maker's displayed quotation size will become its exposure limit because SOES will cease executing orders against a market maker once its quote size has gone to zero. Thus, the NASD and Nasdaq propose that the SOES rules be amended to replace references to exposure limits with references to a market maker's displayed size.

d. *Prohibition Against the Entry of Non-Marketable Limit Orders into SOES.* SOES currently accepts both market orders and limit orders. If a limit order is not immediately executable, or non-marketable, (*i.e.,* a limit order to buy (sell) priced below (above) the offer

[13] For Nasdaq SmallCap securities, SOES market makers must execute unpreferenced orders at the inside price regardless of whether they are at the inside market.

[14] The NASD and Nasdaq also propose that displayed quotations not be decremented after the execution of odd-lots and that the execution of a mixed lot order will only decrement a market maker's quotation by the number of shares represented by the number of round lots contained in the mixed lot order.

(bid) price), it is placed in the SOES limit order file and will be subsequently executed if the limit price becomes equal to the best bid or offer. SOES also has a limit order processing facility that matches limit orders priced inside the spread. Limit orders placed into SOES are never publicly disseminated, they are not included in the calculation of the best bid or offer, and they are not matched against incoming market orders. Accordingly, the NASD and Nasdaq believes that the current processing of non-marketable limit orders through SOES and the SOES limit order facility are in direct conflict with the Display Rule.[15] If Nasdaq were to retain these SOES features, Nasdaq believes it would be operating a system that would result in NASD members systematically violating the federal securities laws. In addition, by not matching market orders against limit orders, the NASD and Nasdaq do not believe the current operation of SOES is consistent with the Commission's statements regarding best execution in its Order Handling Rule approval order.[16] Thus, the NASD and Nasdaq propose that non-marketable limit orders be prohibited from SOES. As is currently the case, a marketable limit order will continue to be processed like a market order.

e. *Modifications to the SOES Automated Quotation Update Feature.* The ''auto-refresh'' feature of SOES moves both sides of a market maker's quotation by a pre-determined amount when its exposure limit has been exhausted. Accordingly, because a market maker's displayed quotation size will become its exposure limit under the proposed changes to SOES, the NASD and Nasdaq propose that the auto-refresh feature be modified so that it is activated when a market maker's quotation size is depleted. In addition, because of the possibility that a market maker's quotation at the next price level up or down could be comprised exclusively of customer limit orders and in light of the proposal to eliminate minimum quotation sizes for proprietary market maker quotes, the NASD and Nasdaq propose that market maker quotes be refreshed for 100 shares instead of the SOES tier size. The NASD and Nasdaq also recommend that the auto-refresh feature be modified so that it only updates the side of a market maker's quote that has been decremented. By updating the bid or the offer, but not both, the NASD and Nasdaq believe the auto-refresh feature will not exacerbate or contribute to locked or crossed markets, as has been the case with the current update feature during turbulent market conditions.

The NASD and Nasdaq also propose to amend the auto-refresh feature to allow a market maker to maintain its quote at the inside market. With this auto-refresh feature, those market makers seeking to buy or sell more stock than their displayed quotation can continue to remain at the inside market. Accordingly, only those market makers entering a quotation size equal to or greater than the maximum SOES order size would be able to utilize this feature.

f. *Allowing SOES Market Makers to Enter Agency Orders into SOES.* Currently, absent a locked or crossed market, a SOES market maker is prohibited from entering agency orders into SOES. This rule was implemented to prevent market makers from engaging in ''fair weather'' market making by entering orders into SOES that they do not want to execute themselves during turbulent market conditions. With the Display Rule, however, the quotations disseminated by market makers will at times reflect customer limit orders. Accordingly, in order to ensure that all small investors have access to better-priced customer limit orders displayed in market maker quotes and enhance the price improvement opportunities for all small investors, the NASD and Nasdaq believe it would be appropriate to allow SOES market makers to enter agency orders into SOES.

g. *Processing of Marketable Limit Orders.* Currently, SOES is designed so that marketable limit orders are processed ahead of market orders queued up in SOES. Because a marketable limit order is economically equivalent to a market order as long as the limit price is superior to the inside market,[17] the NASD and Nasdaq believe this system feature unnecessarily advantages investors placing marketable limit orders over investors placing market orders. This is particularly true since investors placing market orders to buy (sell), unlike investors placing marketable limit orders, have placed no upper (lower) limit on price at which they are willing to purchase (sell) the stock. Accordingly, the NASD and Nasdaq recommends that SOES be amended to execute market and marketable limit orders on a time priority basis.

h. *Market Maker Withdrawal from Nasdaq SmallCap Market Securities.* Because SOES is voluntary for Nasdaq SmallCap Market securities, when a market maker's exposure limit is exhausted in one of these securities it does not mean that the market maker has voluntarily withdrawn from the stock because the market maker can continue to quote the issue without participating in SOES. If market maker quotations are decremented after SOES executions, however, it will now be possible for a market maker in a SmallCap security to go into a ''closed quote'' state because its quotation size has been depleted. Accordingly, the NASD and Nasdaq propose that the SOES rules be amended to specify that a market maker in a SmallCap security shall be deemed to have voluntarily withdrawn from a stock if its quote size remains at zero at the close of the trading day, thereby precluding the market maker from being a market maker in the issue for twenty business days.

3. Proposed Rule Changes To Implement the ECN Rule

The NASD and Nasdaq also are amending certain rules and the SOES and SelectNet systems to facilitate the development of a means for ECNs to comply with the requirements of the ECN display alternative permitted under the ECN Rule. As noted above, the ECN Rule provides that market makers and specialists must make publicly available any superior prices that the market maker or specialist privately quotes through certain ECNs. The Commission also adopted an alternative display means to the ECN Rule, the ECN display alternative. Under this alternative, instead of updating its quote to reflect better priced orders entered into an ECN, a market maker may comply with the display requirements of the ECN Rule through the ECN itself, provided that the ECN: (1) ensures that the best priced orders entered by market makers into the ECN are communicated to Nasdaq for public dissemination; and (2) provides brokers and dealers access to orders entered by market makers into the ECN, so that brokers and dealers who do not subscribe to the ECN can trade with those orders. This access must be equivalent to the access that would have been available had the market makers reflected their superior priced orders in their quotes. The Commission stated that it expected the SROs to work cooperatively with the ECNs to display the prices in the

[15] The NASD notes that Nasdaq's proposed NAqcess system would provide for limit order display and execution capabilities consistent with the Commission's Order Handling Rules and hopes that the Commission will act favorably on the proposed system. *See* Securities Exchange Act Release No. 37302 (June 11, 1996), 61 FR 31574 (June 20, 1996).

[16] *See* Order Handling Rules Adopting Release, *supra* note 1, 61 FR at 48324.

[17] That is, a limit order to buy priced above the offer and a limit order to sell priced below the bid.

consolidated quote systems and to provide equivalent access to them.

The NASD and Nasdaq agree with the Commission that the ECN Rule and the ECN display alternative should enhance the transparency of prices in Nasdaq and other markets and can assist broker-dealers in obtaining the best prices for their customers. Indeed, in its comment letter to the Commission during the proposal phase of the ECN Rule, the NASD stated that it supported the broad dissemination of ECN best prices. The NASD also stated, however, that it was concerned that the rule as originally proposed could have the potential to harm market liquidity, because the original proposal could adversely affect the anonymity features of ECNs. The ECN display alternative as adopted by the Commission appears to substantially address this concern. Accordingly, since the Commission adopted its new rule, the NASD and Nasdaq have sought to develop a linkage to any ECN recognized as an ECN by the Commission and that seeks to avail itself of the ECN display alternative.

In order to meet the short time frame between the Commission's adoption of the rule and its effective date, the NASD is proposing to develop an interim approach [18] to a linkage that is based on existing Nasdaq system platforms, SOES and SelectNet. Because the linkage relies in substantial part on SelectNet as the means of accessing the ECN prices, the NASD has called this approach the ''SelectNet Linkage'' approach. The methodology for establishing the SelectNet Linkage and the rule changes required are described below.

i. *Overview of the Operation of the SelectNet Linkage.* To provide a means for ECNs to substantially comply with the requirements of the ECN display alternative by January 13, 1996,[19] Nasdaq has developed an interim approach that substantially meets the terms of Commission Rule 11Ac1–1(c)(5)(ii). The SelectNet Linkage is a display and access linkage that, for purposes of meeting the display requirement of the ECN display alternative, utilizes the methodology currently used for displaying Unlisted Trading Privileges (''UTP'') exchange quotes,[20] and for access purposes, builds upon the existing SelectNet system to reach the priced orders available in the ECN.

Under this approach, ECNs will function in a manner equivalent to UTP exchanges and/or Nasdaq market makers. This allows these ECNs to enter their best-priced orders into Nasdaq for display on the Nasdaq Workstation. To effect transactions against these displayed prices, NASD members that are subscribers to Nasdaq Workstation II service will be permitted to access the ECN prices through the delivery of orders directed to the ECN via the SelectNet system. Accordingly, the NASD and Nasdaq have proposed to establish a new provision within Rule 4600, the Nasdaq Market Maker Requirement section of the NASD Rules, that provides for Nasdaq's display of ECN price information and access to such prices, as well as the minimal obligations required of ECNs that seek to take advantage of the SelectNet Linkage to meet the Commission's ECN display alternative requirements.

Specifically, any ECN seeking to avail itself of the SelectNet Linkage, or any future system Nasdaq develops to meet the ECN display alternative requirements, must: (1) demonstrate to the Association that it qualifies as an ECN meeting the ECN definition found in the Commission's Rule; (2) be registered as an NASD member; (3) enter into and comply with the terms of a Nasdaq Workstation Subscriber Agreement; (4) agree to provide for Nasdaq's dissemination in Nasdaq's quotation data stream that it makes available to quotation vendors the prices and sizes of Nasdaq market maker orders [21] at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the ECN; and (5) provide an automated execution of priced orders displayed through the linkage or, if the price is no longer available, an automated rejection of any order routed to the ECN through the Nasdaq-provided display alternative.

a. *Display of ECN Prices.* For quotation display purposes, Nasdaq will collect the actual prices contained in an ECN's system delivered by ECNs that agree to deliver such prices to Nasdaq, and display and disseminate rounded prices.[22] Assuming that ECNs meet the standards set forth in new Rule 4623, Nasdaq will furnish ECNs that identify themselves to Nasdaq as meeting the terms of the ECN definition in the ECN Rule with market maker identifiers (''MMIDs''). While ECNs will be assigned MMIDs, ECNs will not be registered as market makers. With the exception of certain rules such as the firm quote rule, the two-sided quote requirement,[23] and the locked or

[18] The NASD and Nasdaq continue to examine other means to develop a longer-term mechanism that would provide a permanent means to establish an ECN display alternative that meets every aspect of the Commission's rule. Any such permanent approach will be proposed separately at the appropriate time.

[19] The NASD and Nasdaq note that to comply with prudent standard industry practices regarding the implementation of new or substantially revised software, Nasdaq does not normally introduce extensive new or revised software into production on a Friday. Indeed, pursuant to previous discussions with Commission staff regarding the procedures for implementation of significant, non-emergency software changes, Nasdaq and Commission staff have agreed that significant changes should be implemented over a weekend. Thus, Nasdaq plans to introduce the software on Monday, January 13th. This means that unless the Commission temporarily delays the January 10, 1997 effective date for the ECN Rule, market makers entering priced orders into ECNs on January 10th will be required to operate under the ECN Rule without any ECN display alternative.

[20] Pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information For Exchange Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privileges Basis (''Nasdaq/NMS/UTP Plan''), Nasdaq acts as the facilities manager for itself and the UTP Exchanges in collecting, consolidating and disseminating quotes from Nasdaq market makers and UTP exchange specialists that trade Nasdaq securities pursuant to Section 12(f) of the Act. UTP exchange specialists are not subject to SOES executions, nor do UTP exchange specialists have access to SelectNet.

[21] The ECN Rule does not require an ECN to provide non-market maker interest in the data that would be provided under the ECN display alternative. Nasdaq has been informed, however, by several ECNs that have non NASD member participants, e.g., institutions, that these ECNs will deliver to Nasdaq the best prices for each security for which they permit orders to be entered, whether those best prices are from a market maker subject to the rule or an entity not subject to the rule. If the ECN so chooses, it may send priced orders from other entities that are not Nasdaq market makers. Nasdaq will display such prices as it does the other ECN-provided prices.

[22] Nasdaq currently allows the dissemination of quotations in ⅛ths for securities priced over $10 and quotations in 1/16ths and 1/32nds for securities priced under $10. ECNs, however, often have priced orders that are quoted in finer increments. Under the ECN Rule, Nasdaq is not required to display the actual price of the finer-incremented order; instead, it is permitted to round the order to the nearest standard quote increment (rounding down for increments on the better-priced bids and up for better-priced offers). The Commission stated that Nasdaq should develop a capability in its quote dissemination system to flag or specially denote that an ECN priced order is rounded, but noted that this capability does not currently exist. Nasdaq is developing a rounding indicator for implementation as soon as possible.

In the interim before such an indicator is available, the NASD and Nasdaq believe that it would be appropriate for the Commission to permit the operation of the SelectNet Linkage without a rounding indicator. Balancing considerations of additional price information being made available in Nasdaq, together with the development of a means of readily accessing such prices, against a temporary inability to flag rounded quotes as such, it appears to the NASD and Nasdaq that the improved transparency of ECN prices and greater electronic access to these prices clearly outweigh the minimal negative transparency effects that may flow from the inability to flag a rounded price. Moreover, because Nasdaq has enhanced SelectNet's access feature to permit ECNs to easily accept a directed order at an improved price, those using the linkage will obtain the price improvement benefits that are among the ECN Rule's goals.

[23] The requirement for ECNs to display two-sided quotes is a temporary requirement, contingent on

Continued

crossed rule discussed below, ECNs will not be subject to standard market maker requirements in the NASD's Rules. Nasdaq will include the ECN prices and sizes in the Nasdaq Workstation II quote montage with the ECN MMID and incorporate the ECN price in the Nasdaq best price calculation, i.e., when it is at the best bid or offer in the market, its price will be included in the inside price.

As it currently does with UTP exchanges, Nasdaq will not include the ECN as a SOES market maker. Consequently, an ECN utilizing the SelectNet Linkage will not be subject to SOES executions. Because ECNs act solely as agents on behalf of customers, the NASD and Nasdaq believe that ECNs should not be required to have their ECN orders exposed to SOES executions because it exposes the ECN to the risk of double executions and the consequent need to take a principal position. The risk of double executions arises because, with electronic order entry capabilities, once an order is displayed in multiple execution systems, the same order can be nearly simultaneously accessed by different counterparties. For example, an ECN could have a single customer order to buy 1,000 shares displayed in its own system to its own subscribers. If the ECN were also accessible at that price in SOES, the ECN could have the single 1,000 share order executed simultaneously in SOES and in its own system. This double execution would means that the ECN would be required to take a principal position for one of the executions. Exposure to proprietary executions would change the model under which ECNs have operated and would likely have a serious negative effect on ECNs, causing them to change the approach that they typically take.

As the NASD has noted in its comment letter to the Commission, ECNs provide an important liquidity function in the markets and any adverse effect on them could cause a shift in the way the markets operate. The NASD believes that the approach that it is taking in allowing ECNs to function in a mode similar to UTP exchanges on this interim basis permits the ECN to continue to provide liquidity, while enhancing the degree of price information available to ECN subscribers and non-subscribers alike. Moreover, as discussed immediately below, the NASD and Nasdaq believe that the electronic access capability that it will provide NASD members that are not subscribers to a particular ECN almost immediate execution of orders delivered to the ECN through this linkage.

b. *Access to ECN Prices.* Access to ECN prices displayed in Nasdaq would be achieved through SelectNet. NASD members could direct orders up to the size displayed in the ECN quote. The ECN would have the ability to accept at the displayed price, or accept at an improved price if its actual price is at an increment better than that actually displayed.[24] Alternatively, the ECN, subject to firm quote rule obligations, could decline to act on the order, if the order has already been executed in its own system. The NASD and Nasdaq believe that, regardless of the specific action taken by the ECN on Nasdaq's delivery of an order through SelectNet, the ECN should automate these functions to provide virtually immediate responses to members entering orders seeking to access the ECN orders. The Nasdaq Workstation Subscriber Agreement will establish specific system performance standards generally requiring the ECN to respond to the orders within a few seconds of delivery. The only purpose in providing this decline capability is to permit the ECN the briefest time possible for its electronic system to review its own file to determine whether the priced order displayed in Nasdaq has already been executed in the ECN's own system. There is no intent in providing this capability to allow the ECN to decide whether it wants to accept a particular delivered order because it may find a better order elsewhere.

Accordingly, as NASD members and subscribers to the Nasdaq Workstation II service, ECNs will be subject to contractual obligations to demonstrate that their systems are properly designed to operate in high volume trading environments and that they have adequate security and other operational procedures in place to maintain the integrity of Nasdaq systems. Additionally, each ECN will be required as a subscriber to meet response time performance standards when orders are delivered through SelectNet for ECN action. ECNs that are not willing or are unable to comply with such system requirements will not be permitted to establish a SelectNet Linkage for ECN display alternative purposes.

ii. *Other Rule Changes Necessitated By The Development of the SelectNet Linkage.* As explained in greater detail below and in addition to the ECN display alternative rule described above, the following rule changes are necessary to implement the SelectNet Linkage approach by January 13, 1996:

a. *SelectNet Changes.* The NASD and Nasdaq are proposing several changes to the current operation of Nasdaq's SelectNet system to provide access to the ECN priced orders that is equivalent to the access that would have been available if such prices were published in the market maker's own quotation in Nasdaq. SelectNet is an automated order routing and execution system that allows a member to direct buy or sell orders in Nasdaq securities to a single market maker (preferenced orders) or broadcast orders to all market makers in the security. Upon receiving a SelectNet order, a member can accept the order, decline it, or send a counter-offer to the originating member. The NASD and Nasdaq believe that the SelectNet system as modified through these rule changes meets the ECN display alternative equivalent access requirement. As the Commission noted in its Adopting Release for the ECN Rule, equivalent automated access ''could be achieved either through an electronic linkage to SOES or by other means agreed upon with the NASD.''[25] As to be designed, SelectNet will allow any NASD member to access electronically the best prices available in ECNs. This access to ECN prices is the same as that which an NASD member has via SelectNet, and in fact, under the performance standards that ECNs must agree to be permitted to take advantage of the SelectNet Linkage, ECN response time will be much more rapid than that required of market makers.

To establish the equivalent access link, the NASD and Nasdaq propose to eliminate the SelectNet Broadcast feature and allow only the entry of a SelectNet order directed to a specific market maker or ECN. The NASD and Nasdaq believe that it is necessary to eliminate the Broadcast feature for several reasons. The Broadcast feature of SelectNet brings the system within the Commission's definition of an ECN.[26]

Nasdaq's development of a capability that permits ECNs to display a one-sided quote. Nasdaq recognizes that ECNs often have orders only on one side of the market. Currently, however, because Nasdaq's quote display system was built to display market maker quotations and market makers are required by rule to furnish both a bid and offer, Nasdaq's system would be unable to recognize an ECN price unless that price were also entered with a corresponding bid or offer. Accordingly, until such time that Nasdaq can build a one-sided ECN priced order display capability, ECNs must enter two-sided ''quotations.'' The NASD and Nasdaq believes that the one-sided ECN order entry capability should be available in the first quarter of 1997.

[24] See discussion below regarding the execution of SelectNet orders at rounded ECN prices when such orders are priced at increments finer than those permitted to be displayed in the consolidated quote system.

[25] Order Handling Rules Release, *supra* note 3, 61 FR at 48314.

[26] ECN Rule 11Ac1–1(a)(8).

Under the Commission's ECN Rule, an ECN is defined to include ''any electronic system that widely disseminates to third parties orders entered therein by an exchange specialist or OTC market maker, and permits such orders to be executed against in whole or in part.'' The SelectNet Broadcast feature meets the terms of the Commission's definition and accordingly, market makers that entered priced orders into SelectNet would be required to display such prices in their Nasdaq quotes or Nasdaq would be required to develop an ECN linkage for SelectNet to display those orders in the Nasdaq inside. Nasdaq cannot develop an ECN linkage for SelectNet Broadcast by January 10th and accordingly, market makers that entered priced orders into SelectNet Broadcast would be required to change their quotes in the Nasdaq Workstation display. Moreover, the SelectNet Broadcast feature is a very significant drain on network capacity resources that are more appropriately devoted to establishing the ECN linkage for directed orders.

The NASD and Nasdaq also propose to change SelectNet to permit an ECN or market maker receiving an order through SelectNet at a specific price to execute that order at a price reflecting price improvement without having to go through the currently designed counter-offer mechanism. Today, when a market maker receives a SelectNet order, it can do one of several things. For example, it can accept at the price sent by the order entry firm; or it can counter with a different price or size. As soon as the market maker puts in a different price, however, the currently-operating system treats the new price as a counteroffer message. Because ECNs are likely to hold orders at increments that can not be shown in Nasdaq, when it attempts to accept the order at a better price, e.g., a 1/16th better, the SelectNet system would treat the new price as a counter offer. Accordingly, to comply with the ECN Rule requirement that orders be executed at their actual prices, Nasdaq will change SelectNet to prevent the counter mechanism from operating in such a situation and will deliver to the order entry firm and the ECN an execution report at the improved price.

b. *SOES Rule Change.* The NASD and Nasdaq also propose to amend the SOES Rules to permit the system to reject orders entered when an ECN or UTP Exchange alone sets the inside market. Specifically, the NASD and Nasdaq propose to add a new subsection to the SOES Rules (Rule 4730(b)(10)) to state that when there are no SOES market makers at the best bid or offer that is being disseminated by Nasdaq, orders entered into SOES will be returned to the order entry firm to permit the order entry firm to direct the order to the entity establishing the best price. This situation arises because although UTP exchanges and ECNs can establish the best price in the Nasdaq inside, they are not required to participate in SOES as market makers and therefore are not accessible through SOES.

Because the ECN quote is incorporated in Nasdaq's inside price but is not accessible through SOES under this approach, and SOES is programmed to execute at the best price displayed, SOES, as currently designed and operating, executes orders against the next available Nasdaq market maker whether that Nasdaq market maker is at that price or at an inferior price. This execution process exacerbates the current problem surrounding the lack of market maker and UTP exchange specialist parity of execution obligations in SOES and raises a possibility for ''gamesmanship,'' where a person could enter an order into an ECN that drives the Nasdaq inside and obtain multiple SOES automated executions against Nasdaq market makers that are not even displaying the ECN price. The NASD and Nasdaq do not believe that any approach that lends itself to this type of serious trading abuse should be pursued.

To resolve this potential for abuse, Nasdaq's SOES system could be revised to ignore the ECN or UTP quote and execute SOES orders at the Nasdaq market maker's inferior price. While this approach eliminates gaming concerns, it raises best execution concerns—the customer's order entered in SOES would be executed at a price inferior to the best price displayed in Nasdaq's inside market. Consequently, the NASD and Nasdaq will not revise SOES to execute market orders at prices that are inferior to the best market prices.

Instead, the NASD and Nasdaq believe that the best available interim response to potential gaming is to return unexecuted SOES orders to the entering member during such time that a SOES-inaccessible price drives the inside. Although brokers who automatically route orders to SOES initially could find any significant number of rejections caused by this approach to be problematic, the ''order rejection'' solution to the gaming problems clearly eliminates the gaming concern and therefore eliminates serious market quality concerns. Moreover, to the extent that order entry firms are concerned with the return of market orders, the NASD and Nasdaq believe that the handling of rejected orders can be dealt with satisfactorily by order entry firms through the firms' development of automated means to determine when an ECN or UTP exchange is alone at the inside and to deliver orders at such times through the SelectNet directed order capability. Order entry firms that enter orders into SOES during the period when an ECN is alone at the inside market will be informed that the order has been rejected and they may choose to route that order into SelectNet to access the ECN order driving the inside market or take other measures, such as routing the order to a market maker that guarantees the best price.[27]

c. *Locked or Crossed Market Rule Amendments.* The NASD and Nasdaq also propose to amend the locked or crossed market rule, Rule 4613(e), to clearly indicate that the locked or crossed market rule applies to NASD members, including the ECN itself, when prices entered into ECNs and provided to Nasdaq for dissemination in the consolidated quote stream would be locked or crossed through the entry of a priced order into an ECN. Locked or crossed markets can cause investor confusion because investors seeing the bid or the offer at the same price or at crossed prices do not know the true price of the security at that moment. Further, because broker-dealers that operate internal automated execution systems drive those execution systems by means of a data stream based on the Nasdaq best bid and offer, those systems may not operate when the inside is locked or crossed.

Accordingly, the NASD and Nasdaq propose to make clear that market makers using ECNs must continue to comply with Rule 4613(e). Further, the NASD and Nasdaq propose to extend the scope of the locked or crossed rule to clarify that its requirements apply to the ECNs and other NASD members when the ECN, as an NASD member acting as agent, represents an institutional order or other non-NASD member order the price of which would lock or cross the best bid or offer in Nasdaq.[28] In other words, under the

[27] The NASD and Nasdaq recognize that it would be preferable to integrate the market order system more closely with the display of prices. Consequently, the NASD and Nasdaq continue to develop a longer-term approach to the ECN display alternative that would better integrate the two systems. When such system is available, the NASD and Nasdaq will submit a new rule filing to replace the current SelectNet Linkage approach with a seamlessly integrated system that would not require the rejection of orders in a market order delivery system.

[28] The NASD and Nasdaq believe that an ECN should be required to hold an order in its system

Continued

newly-expanded locked or crossed rule, ECNs must comply with Nasdaq's rule that before a market is locked or crossed the locking or crossing party must first make reasonable efforts to execute the quote that would be locked.[29]

4. Modifications to Autoquote Policy

Currently, the NASD's Autoquote Policy does not explicitly state that it is permissible for a market maker to autoquote to display a customer limit order. Because of the requirements of the Display Rule and the benefits to investors and the marketplace to be derived from the Display Rule, the NASD and Nasdaq believe the Autoquote Policy should be amended to clarify that it is permissible to autoquote to display a customer limit order. In this connection, the NASD has previously issued an interpretation stating that it is permissible to autoquote to display a customer limit order. In addition, in order to eliminate any ambiguity as to whether the effectiveness of the NASD's Autoquote Policy lapsed upon completion of the roll-out of Nasdaq Workstation II, the NASD and Nasdaq propose to extend the effectiveness of the Autoquote Policy until such time as Nasdaq has had an opportunity to respond to the Commission's questions and concerns regarding autoquoting raised in its order adopting the Display Rule and the ECN Rule and implement any changes to the Policy as a result of such analysis.

In addition, the NASD and Nasdaq are amending the Autoquote Policy to make clear that on a temporary basis, for as long as Nasdaq requires ECNs to enter two-sided quotes because of existing systems limitations, ECNs are permitted to autoquote to maintain a continuous two-sided market. As explained above, the requirement for ECNs to display two-sided quotes is a temporary requirement, contingent on Nasdaq's development of a system capability that permits ECNs to display a one-sided quote. Until such time that Nasdaq can build a one-sided ECN priced order display capability, ECNs must enter two-sided ''quotations.'' The NASD and Nasdaq believes that the one-sided ECN order entry capability should be available in the first quarter of 1997. Thus, on a temporary basis, an ECN as defined in SEC Rule 11Ac1–1(a)(8) will be permitted to autoquote to maintain a two-sided quotation in Nasdaq. When Nasdaq system design requirements are changed, this exception to the autoquote policy will lapse.

Because the proposed rule changes and Nasdaq system modifications contained in this filing are designed to implement the Display Rule and ECN Rule, the NASD and Nasdaq believe they are consistent with Sections 11A(a)(1)(C), 15A(b)(6), 15A(b)(9) and 15A(b)(11) of the Act and Rules 11Ac1–1 and 11Ac1–4 thereunder. Section 11A(a)(1)(C) provides that it is in the public interest to, among other things, assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) requires that rules of an Association not impose any burden on competition not necessary or appropriate to furtherance of the purposes of the Act. Section 15A(b)(11) requires the NASD to, among other things, formulate rules designed to produce fair and informative quotations. Finally, as described above, effective January 10, 1996, the Display Rule and ECN Rule will require the display of customer limit orders and certain orders placed by Nasdaq market makers into ECNs.

Specifically, by facilitating the display and accessibility of customer limit orders and orders placed by market makers into ECNs, the NASD and Nasdaq believe the proposed rule changes will enhance the transparency of the Nasdaq market, facilitate the best execution of investors' orders, and promote the integrity of the Nasdaq market. In addition, with more robust quotations, the NASD and Nasdaq believe there will be greater quote competition, improved price discovery, and greater market depth and liquidity. Moreover, the NASD and Nasdaq believe the proposed rule changes will increase the likelihood that customer limit orders will be executed, improve the opportunities for investors to receive best execution of their orders, and strengthen the ability of investors to monitor the quality of their order executions. Accordingly, the NASD and Nasdaq believe the proposed rule changes are consistent with all of the above-cited Sections of the Act and the rules thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received by the self-regulatory organization.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All

and not enter it into Nasdaq's quote dissemination system until it has made a reasonable effort to reach the entity represented on the other side of the market.

[29] It should be noted that if an ECN locks or crosses the market, is alone at that price, and a SOES order is entered against the ECN price that is causing the lock or cross, SOES will be programmed to reject such orders, rather than executing them against a Nasdaq market maker at a different price level.

submissions should refer to the file number in the caption above and should be submitted by December 26, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31079 Filed 12–3–96; 1:39 pm]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 96–11–31; Dockets OST–96–1023 and OST–96–1071]

Applications of Gulf and Caribbean Cargo, Inc., d/b/a Gulf & Caribbean Air, for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Gulf & Caribbean Cargo, Inc., d/b/a Gulf & Caribbean Air, fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than December 20, 1996.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–96–1023 and OST–96–1071 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–1064.

Dated: November 29, 1996.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–30974 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–62–P

[30] 17 CFR 200.30–3(a)(12) (1989).

Coast Guard

[CGD 96–064]

Differential Global Positioning System; Geiger Key, Florida: Environmental Assessment and Finding.

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for establishment of a broadcast site of the Differential Global Positioning System (DGPS) service at Geiger Key, Florida. The EA concludes that there will be no significant impact on the environment and that preparation of an Environmental Impact Statement will not be necessary. This EA incorporates minor textual clarifications noted during further review and includes copies of the US Army Corps of Engineers and State of Florida wetlands permits. This Notice announces the availability of the EA and FONSI.

FOR FURTHER INFORMATION CONTACT: LCDR Gene Schlechte, United States Coast Guard Navigation Center at (703) 313–5888. Copies of the EA and FONSI may be obtained by calling Mr. Schlechte, or by faxing him at (703) 313–5920. Copies of the EA—without enclosures—are also available on the Electronic Bulletin Board System (BBS) at the Navigation Information Service (NIS) in Alexandria, Virginia, at (703) 313–5910. For information on the BBS, call the watchstander of NIS at (703) 313–5900.

SUPPLEMENTARY INFORMATION:

Background

As required by Congress, the Coast Guard is preparing to install the equipment necessary to implement the Differential Global Positioning System (DGPS) service in the southeastern United States. DGPS is a new radionavigation service that improves upon the 100 meter accuracy of the existing Global Positioning System (GPS). USCG DGPS fielded sites are achieving accuracies on the order of 1 meter. For vessels, this degree of accuracy is critical for precise electronic navigation in harbors and harbor approaches and will reduce the number of vessel grounding, collisions, personal injuries, fatalities, and potential hazardous cargo spills resulting from such incidents.

After extensive study, the Coast Guard has selected a preferred alternative site at Geiger Key, Monroe County, FL. Significant concerns were raised about installing DGPS equipment at an alternate site located at U.S. Coast Guard Base Key West, Monroe County, FL. At the Base Key West site, close proximity of the docking facilities to the transmitting antenna has the potential to adversely affect Coast Guard and Naval vessels carrying ordnance. The radio frequency radiation of the antenna also has the potential of interfering with Group Key West communications adjacent to the proposed project area. In addition, the density of existing structures and the planned growth (new construction) of the base has the potential to create satellite signal reception errors due to multipath distortion from the buildings, vessels, and vehicles. Such errors would adversely affect the performance and safety function of the DGPS service.

Selected Installation at Geiger Key, FL

(a) Site—The Geiger Key, FL, site is located on the U.S. Naval Air Station (NAS) Key West, FL. The site is located on Geiger Key lying and being in the County of Monroe, State of Florida being more particularly described as follows: Lot 1, 2, 3, 4, 5, 30, 31, 32, 33, 34, Block 16 of ''Boca Chica Ocean Shores'' as recorded in Plat Book 5 on Page 49 of Public Records of Monroe County, Florida.

(b) Radiobeacon Antenna—The Coast Guard will install a 74 foot self supporting whip antenna with an accompanying ground plane. A ground plane for this 74 foot antenna consists of approximately 120 copper radials (6 gauge copper wire) installed 6 inches (or less) beneath the soil and projecting outward from the antenna base. The optimum radial length is 300 feet, but this length may be shortened to fit within property boundaries. Wherever possible, a cable plow method will be used in the radial installation to minimize soil disturbance. DGPS signal transmissions will be broadcast in the marine radiobeacon frequency band (283.5 to 325 KHz) using less than 35 watts (effective radiated power). Signal transmissions at these low frequencies and power levels have not been found to be harmful to the surrounding environment.

(c) DGPS Antennas—Two 30-foot masts to support six small (4 inches by 18 inches diameter) receiving antennas will be required. The masts will be installed on concrete foundations. The antennas support the primary and backup reference receivers and integrity monitors.

(d) Equipment shelter—DGPS transmitting equipment will be housed in a 10 foot 8 inch by 16 foot 8 inch shelter.

(e) Utilities—The Coast Guard will use available commercial power as the primary source for the electronic equipment with battery power as a backup. A telephone line and modem will be required at each site for remote monitoring and operation.

Finding

Implementation of a DGPS service at Geiger Key, FL, is determined to have no significant effect on the quality of the human environment or require preparation of an Environmental Impact Statement.

Dated: November 27, 1996.

N. T. Saunders,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 96–30935 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Advisory Circular 25–20, Pressurization, Ventilation and Oxygen Systems Assessment for Subsonic Flight Including High Altitude Operation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25–20, Pressurization, Ventilation and Oxygen Systems Assessment for Subsonic Flight Including High Altitude Operation. This AC sets forth guidance on methods of compliance with the requirements of part 25 of the Federal Aviation Regulations (FAR) pertaining to pressurization, ventilation, and oxygen systems, especially as they pertain to high altitude subsonic flight. As with all AC material, it is not mandatory and does not constitute a regulation. The applicant may elect to follow alternate methods provided that these methods are also found by the FAA to be an acceptable means of complying with the requirements of part 25.

DATES: Advisory Circular 25–20 was issued by the Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100, on September 10, 1996.

HOW TO OBTAIN COPIES: A copy may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23,3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or faxing your request to the warehouse at 301–386–5394.

Issued in Renton, Washington, on November 25, 1996.

Darrell M. Pederson,

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

[FR Doc. 96–31001 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application (#97–03–C–00–EGE) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Eagle County Regional Airport, Submitted by the Eagle County Regional Airport, Eagle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Eagle County Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before January 6, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Ave., Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jim Elwood, A.A.E., Airport Manager, at the following address: Eagle County Regional Airport, P.O. Box 850, Eagle, CO 81631.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Eagle County Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Ave., Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#09–03–00–EGE); to impose and use PFC revenue at Eagle County Regional Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 29, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Eagle County Regional Airport, Eagle, Colorado, was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 28, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3:00.

Proposed charge effective date: May 1, 1997.

Proposed charge expiration date: March 1, 2012.

Total requested for use approval: $8,132.130.00.

Brief description of proposed project: New terminal building.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Eagle County Regional Airport.

Issued in Renton, Washington on November 29, 1996.

Dennis G. Ossenkop,

Acting Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–31004 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at McGhee Tyson Airport, Knoxville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at McGhee Tyson Airport Knoxville, Tennessee, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 6, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Terrance Igoe, Executive Director of the Metropolitan Knoxville Airport Authority at the following address: P.O. Box 15600, Knoxville, TN 37901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Knoxville Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–0301; 901–544–3495. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to: use the revenue from a PFC at McGhee Tyson Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 26, 1996, the FAA determined that the application to use the revenue from a PFC submitted by Metropolitan Knoxville Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 28, 1997.

The following is a brief overview of the application.

PFC application number: 97–04–U–00–TYS.

Level of the proposed PFC: $3.00.

Charge effective date: January 1, 1994.

Proposed charge expiration date: June 1, 1997.

Total estimated PFC revenue to be used for this project: $647,000.

Brief description of proposed project: Purchase airfield maintenance and snow removal equipment (grader, loader, snow blower, and snow broom) to replace existing equipment which has served its useful life.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled air taxi/commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Knoxville Airport Authority.

Issued in Memphis, Tennessee, on November 26, 1996.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 96–31002 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at McGhee Tyson Airport, Knoxville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at McGhee Tyson Airport Knoxville, Tennessee, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 6, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Terry Igoe, Executive Director of the Metropolitan Knoxville Airport Authority at the following address: P.O. Box 15600, Knoxville, TN 37901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Knoxville Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–0301; 901–544–3495. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to: use the revenue from a PFC at McGhee Tyson Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 29, 1996, the FAA determined that the application to use the revenue from a PFC submitted by Metropolitan Knoxville Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 28, 1997.

The following is a brief overview of the application.

PFC application number. 97–03–C–00–TYS.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 1997.

Proposed charge expiration date: May 1, 1998.

Total estimated PFC revenue: $1,646,272.

Brief description of proposed projects: Terminal area study with preliminary design for phased development of the terminal area; replace electrical conduits, cables, equipment and fixtures providing or serving taxiway system from Taxiway G5 and G8; and PFC Administrative expense.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled air taxi/commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Knoxville Airport Authority.

Issued in Memphis, Tennessee, on November 29, 1996.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 96–31003 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. § 30162 requesting that the agency commence a

proceeding to determine the existence of a defect related to motor vehicle safety.

Ms. Joan Claybrook of Public Citizen submitted a petition dated June 4, 1996, requesting the agency to investigate more than 40 million model year (MY) 1978 through 1988 GM vehicles, equipped with the General Motors Corporation (GM) Type III door latch, to remedy an alleged safety-related defect in the door latch which reportedly fails to hold the door closed during a crash. Specifically, the petitioner alleges that during a collision, the Type III door latch allows the detent lever to be out of alignment with respect to the fork bolt. According to the petitioner, when this occurs, the fork bolt may be free to rotate and may disengage from the striker, allowing the door to inadvertently open and the occupants to be ejected.

The petition was based on information from an Alabama product liability case *Hardy* v. *General Motors Corporation, et al.* (Circuit Court, Lowndes County, Alabama, Civil Action File No. CV9356), in which the plaintiff alleged that Mr. Hardy was ejected through an opened side door from a MY 1987 Chevrolet S–10 Blazer, equipped with the GM Type III door latch, and injured because the door latch failed to hold the door closed during a rollover accident.

After reviewing the petition and its supporting materials, as well as information both furnished by GM and within the agency's possession from previous rulemakings and other actions, NHTSA has concluded that further investigation of the GM Type III side door latch is unlikely to result in a determination that the latch contains a safety-related defect and that a further commitment of agency resources in this effort is not warranted. The agency has accordingly denied the petition.

NHTSA's Office of Defects Investigation (ODI) has prepared a report that describes in detail the agency's analysis of the allegation presented in the petition. Interested persons may obtain copies of that report by contacting the Technical Reference Division, NAD–52, Room 5108B, 400 7th Street, SW, Washington, DC 20590, (202) 366–2768. A summary of this report is presented below.

System Description

Front Door Latch and Lock Assembly. The side door latch assembly in these GM vehicles provides three major functions as described below.

a. It provides a means of keeping the door closed.

When closing the door, the latch fork bolt contacts the striker pin body. This causes the fork bolt to rotate in the latch and the ''throat'' to wrap around the striker pin. A cam surface of the fork bolt causes the detent lever to ride on the cam until it drops into engagement with the secondary latch tooth of the fork bolt. Further inboard movement of the door causes the detent lever to ride on a second cam surface until it drops into engagement with the primary latch tooth of the fork bolt. A spring on the detent lever keeps the detent lever engaged with the fork bolt, keeping the door latched.

b. It provides a means to unlatch the door from inside and outside the vehicle.

To open the door, a release lever actuated by the door handle operates an intermittent lever that disengages the detent from the teeth of the fork bolt. When the outside handle is operated, a rod attached to the handle pushes the release lever in the latch, thereby disengaging the detent. When the inside handle is operated, a rod attached to the handle pulls a remote lever in the latch. This lever moves the release lever and also disengages the detent. When the detent is disengaged from the fork bolt, continuous outboard movement of the door causes the fork bolt to rotate until it clears the striker bolt.

c. It provides a means to lock and unlock the door.

To lock the door, a rod attached to the key cylinder mechanism or a rod attached to the inside locking button drives the locking lever in the latch to a locked position. The intermittent lever is thereby moved out of engagement with the detent lever and renders the door handles inoperative.

Modification

The GM Type III door latch has two basic versions: one is the original design and the other is a modification of the same. The petitioner alleges that the original Type III side door latch is defective.

The modification of the original latch involved the addition of a metal plate (support plate) within the latch assembly. This support plate was riveted in front of the fork bolt and detent lever and welded on the latch inboard edge. According to GM, the purpose of adding the support plate was to increase resistance to ''bypass,'' i.e., release of the latch due to mis-alignment of the fork bolt from the detent lever. The modification was first introduced as a running change on GM's K body passenger vehicles during MY 1986.

Vehicles Involved

GM produced approximately 46 million MY 1978 through 1988 vehicles equipped with GM's ''original'' Type III and ''modified'' Type III door latches. Approximately 40 million of these vehicles were equipped with the GM's original Type III door latch that was built without a support plate. Beginning in MY 1986, the modified Type III door latch, which was built with a support plate, was used in certain models.

Owner Reports

Analysis of the Office of Defects Investigation (ODI) computerized database for the subject vehicles revealed only one (1) complaint concerning side door opening during a collision accident. The vehicle involved was a MY 1984 Chevrolet Camaro that was built with the original Type III door latch. The report mentions that during the March 13, 1996 accident, the side door was opened and the driver was injured but not ejected.

Testing

1. Static Test—Performed by NHTSA

NHTSA's Office of Vehicle Safety Compliance (OVSC) has tested thirty-nine MY 1978–88 GM vehicles according to Federal Motor Vehicle Safety Standard (FMVSS) No. 206, ''Door locks and door retention components'' and all passed the requirements of the standard. The test vehicles were equipped with three different latches: twelve with the original Type III latch, eight with the modified Type III latch, and the remaining nineteen with a different (non-Type III) latch.

Beginning with model year 1978, certain door latches that passed compliance testing to FMVSS 206 were further tested until failure to determine the ultimate load for each latch. The purpose was to gather additional information on the strength of the latches. Of the twenty compliance tests involving MY 1978–88 vehicles equipped with the Type III latches, ten were further tested until failure. The test-to-failure results showed that: (1) there was insignificant difference in strength between the original and modified Type III latches, and (2) both the original and modified Type III latches exceeded NHTSA's safety standard requirements, in many cases by a factor of two or more.

In an effort to reduce the accident ejection rates on the nation's roadways, NHTSA has considered the possible benefits of upgrading FMVSS No. 206. In 1986, NHTSA initiated a pilot study and contracted with Chi Associates Inc. to correlate the ultimate strength (test-to-failure) of side door latches with the overall occupant ejection rates. In this

study, the ejection rate was determined, using the number of ejections in the Fatal Accident Reporting System (FARS) data divided by the number of vehicle registrations obtained from the POLK database for 173 vehicles of various make and models. These vehicles were then divided and ranked into three groups with high, average, and low ejection rates. Eight vehicles from each of the high, average and low categories were selected for ultimate strength testing, with priority given to the major automobile manufacturers. All 24 vehicles tested were MY 1983 models. The test results showed that GM's original Type III latch performed far better than many other latches. In fact, three of the four strongest tested latches in both longitudinal strength tests and transverse strength tests were original GM Type III latches.

In 1988, as a follow-up study, NHTSA conducted its own door latch testing program at the Vehicle Research and Test Center (VRTC) to validate the findings of Chi Associates' study. A total of 25 latches were tested: two GM models with the original latch, two GM models with non-Type III Latches, and 21 non-GM latches. Each specimen was tested until failure, using a procedure similar to FMVSS No. 206, in order to determine its ultimate latch strength. The test results showed that in both the longitudinal and transverse loading directions, GM's original Type III latch was among the top six in terms of strength for the 25 latches tested.

In the mid-1980's, GM developed the Horizontal Rotation Test (HRT) as a way of simulating (and ultimately reducing the incidence of) latch ''bypass,'' which can occur on all vehicles. In this test, the door latch and striker are allowed to rotate relative to one another to simulate rotation of the surrounding vehicle structure. GM provided NHTSA with information on the test fixture and some early test results. In 1991, NHTSA conducted an evaluation of GM's HRT on door latch integrity to determine if that test is a suitable replacement of or supplement to the FMVSS No. 206 test requirements. NHTSA analyzed the National Accident Sampling System (NASS) data and found that a GM's HRT would represent approximately 16 percent of the door opening cases that involve B pillar twisting.

To further evaluate the HRT fixture, NHTSA conducted tests on door latches from thirteen MY 1981 and 1983 non-GM vehicles and from the MY 1983 Buick Regal using GM's original Type III latch. For each latch-type, two latches were tested to failure. To evaluate repeatability, five additional latches were selected from each previously tested vehicle group; a total of 25 additional latches were tested. The failure loads were correlated with ejection rates for the vehicles under consideration. The test results showed that the GM Type III latch was the strongest tested; the average strength of the seven tests of the original GM Type III latch was well above the breaking load of all non-GM latches.

In January 1994, NHTSA conducted an additional follow-up study of the potential for different door latch failure modes. The following test-to-failure tests were conducted:

a. Five MY 1989 non-GM vehicles and one MY 1993 non-GM vehicle were tested to failure, using a procedure similar to one specified in FMVSS No. 206. The test results were compared with those for the MY 1983 GM vehicles with the original Type III latch. Even against the newer non-GM models, the original GM Type III latch compared favorably, at or above the median of all tests.

b. Full-door longitudinal strength tests (latch strength tests with each latch mounted on a full door instead of on a test fixture) were conducted on 21 non-GM doors and two doors from GM models having the original Type III door latch. The full-door transverse strength test was performed on 15 non-GM doors and one door from a GM model using the original Type III door latch. In the full-door longitudinal strength test, the 1983 Buick Regal's original Type III latch outperformed all but two of the non-GM designs. In the full-door transverse strength test, the Buick Regal's original Type III latch outperformed all but one non-GM latch.

c. The HRT was performed on six non-GM vehicles. The test results were compared with the average of the seven tests previously reported for the original Type III latch. Once again, the GM Type III latch from a 1983 model car compared favorably to all the newer vehicles tested by NHTSA.

Static Test—Conducted by GM:

GM's September 5, 1996 response to ODI's DP96–008 information request indicated that GM had tested twenty-four original Type III latches to the requirements of FMVSS No. 206—all passed.

2. Dynamic Tests—Performed by NHTSA:

FMVSS No. 208, ''Occupant crash protection''. NHTSA's OVSC tested two subject vehicles equipped with the original Type III latches and one subject vehicle equipped with a modified Type III latch. A review of the photographs in the three test reports revealed that no side door was opened on any of the test vehicles as a result of the 30 mph rigid barrier frontal crash.

FMVSS No. 301, ''Fuel system integrity'' (Rear impact): NHTSA tested 20 vehicles equipped with the GM original Type III latch, and one subject vehicle equipped with the modified latch. A review of the photographs in the 21 test reports revealed that no side door opened on any of the test vehicles as a result of the 30 mph rear impact by a 4,000 moving barrier.

New Car Assessment Program. NHTSA tested 31 subject vehicles equipped with the original Type III latch, four subject vehicles equipped with the modified Type III latch, and five subject vehicles equipped with either the original or modified Type III latch (in certain model and model year vehicles both the original and modified Type III latches were used). Despite the severity of the 35 mph rigid barrier crash, a review of the photographs in the test reports revealed that no side door opened as a result of the crash.

2. Dynamic Tests—Performed by GM

In its September 5, 1996 response to ODI, GM provided 42 crash test reports on vehicles equipped with Type III latches. These crash tests involved both developmental (non-production) vehicles and production vehicles, and were performed for a variety of evaluation purposes. Of the 38 developmental test vehicles, 28 were equipped with the original Type III latch, seven were equipped with the modified Type III latch, and three were equipped with unspecified Type III latches. Of the four production vehicles tested, three were equipped with the original Type III latch and one was equipped with the modified Type III latch.

A total of 28 developmental vehicles equipped with the Type III door latch reportedly experienced side door openings during crash testing; 22 were equipped with the original Type III latch, four were equipped with the modified Type III latch, and two were equipped with either the original or the modified Type III latch. There was only one production vehicle which reportedly experienced side door opening—a MY 86 Oldsmobile 'H' body vehicle equipped with the original Type III latch. During the 50 mph high speed impact, the passenger side rear door latch separated from the striker, allowing the door to open.

The rear door on a second production vehicle, a MY 1978 Chevrolet 'T' body vehicle equipped with the original Type III latch, came partially unlatched during a 31 mph rear impact test.

It is important to note that many of these crash tests involved prototype or altered Type III latches and vehicles and thus cannot be considered equivalent to tests involving standard Type III latches and production vehicles. Prototype or altered latches involved significantly different weld patterns, bolt structures, materials, and varying striker and detent sizes. These developmental modifications may significantly change the Type III latch's strength, and there is no record that any of these developmental modifications (with the exception of the support plate) survived into the final design. Similarly, the vehicles used in developmental tests were often two or more years ahead of their production date. These differences mean that the prototype Type III door latches or vehicles used in developmental crashes are not necessarily representative of production versions, and thus doors opening in developmental crashes do not necessarily indicate that doors will open in production vehicles under the same crash conditions.

Accident Data

In response to DP96–008 Information Request concerning reports of inadvertent side door openings on the subject vehicles involved in a collision or rollover, GM's September 5, 1996 response did not limit the reports to those involving a ''bypass'' although the petition focused on that type of door latch failure. According to GM, it has provided reports involving all door openings regardless of the causes, which include side door openings caused by something other than door latch failure. Further, GM indicated that door openings can and do result from many causes including intentional or accidental actuation of the door handle, or vehicle crash damage to the actuating rods inside the door, the door hinges, the door pillar or other parts of the door system.

Analysis of GM's September 5, 1996 response indicates that: (a) the majority of door-opening cases occurred from high speed collisions, and (b) under high speed collisions, both the original and modified latches cannot always prevent side door opening.

1. Accident Reports and Lawsuits

GM reported 19 accident reports and 105 lawsuits involving side door openings in the subject vehicles. In the 45 cases where the posted speed limits were reported, all of the accidents occurred in areas where the posted speed limits were 35 mph or higher, and eighty percent of the accidents occurred on roadways where the posted speed limits were 50 mph or higher. In the 38 cases where the estimated impact speeds were reported, all of the accidents occurred at an estimated impact speed of 36 mph or higher. In cases where neither the posted speed limits nor the estimated impact speeds were reported, almost all the vehicles were declared a total loss.

Of the 45 cases where the posted speed limits were reported, 29 involved the original Type III latch and 16 involved the modified Type III latch. Similarly, of the 38 cases where the estimated impact speeds were reported, 25 involved the original Type III latch and 13 involved the modified latch. One would expect to have more accident cases involving the subject vehicles with the original Type III latch than those with the modified Type III latch because there were 40 million vehicles equipped with the original Type III latch and only 6 million vehicles equipped with the modified latch.

2. Survey

Unlike other manufacturers, GM owns an insurance company that provides it with collision performance and injury reports (CPIR) on the crashworthiness of certain new model GM vehicles. GM provided NHTSA with 322 CPIRs involving side door openings during a collision and 265 of which involved Type III latches.

Analysis of the 265 CPIRs involving Type III latches showed that 243 cases included the posted speed limits in the reports. Eighty-six (86) percent of the accidents occurred on roadways where the posted speed limits were 35 mph or higher, and 50 percent of the accidents occurred on roadways where the posted speed limits were 50 mph or higher. Eighty-one (81) cases included the estimated impact speeds in the reports. Among those cases, 83 percent of the accidents occurred at an estimated impact speed of 35 mph or higher, and 48 percent of the accidents occurred at an estimated impact speed of 50 mph or higher.

Based on the accident reports, lawsuits, and CPIR cases provided, the difference between the number of door opening cases for vehicles equipped with the GM's original Type III latch and that with the modified Type III latch is not statistically significant.

3. Analysis of FARS and NASS Data—Performed by ODI

Accident data were analyzed to determine the ''real world'' performance of the subject vehicles and peer vehicles.

ODI's analysis was based on a peer vehicle comparison, i.e., GM vehicles with the original Type III latch compared to vehicles manufactured by other companies that are similar in size and/or use. Data analyses were conducted, using these two vehicle sets, using both NHTSA's Fatal Accident Reporting System (FARS) and National Accident Sampling System (NASS) Crashworthiness Data System (CDS) data.

Vehicle Selection and Peer Sets. The GM vehicles which used the original Type III latch were organized according to type and size. A peer vehicle group was selected according to size and type to be similar to those of the GM vehicle group.

Results of the analysis showed that:

a. Analysis of the NASS–CDS database indicated that the GM vehicles equipped with the original Type III latch without the support plate performed in a similar manner as the peer vehicle group, i.e., the rates of ejections, door openings, or latch failures for the GM vehicles equipped with the original Type III latch were about the same as those of the peer vehicles.

b. Analysis of the FARS data base indicated that the GM vehicle group performed no worse than the peer vehicle group, i.e., the ejection rates for the GM vehicle group equipped with the original Type III latch, involving fatally injured occupants and ejected occupants, were about the same as those of the peer vehicle group.

c. Analysis using both FARS and NASS data indicated that during rollover crashes, the vehicle group equipped with the original GM Type III latch performed the same as the peer vehicle group, i.e., the ejection rates for the GM vehicle group equipped with the original Type III latch were about the same as those of the peer vehicle group.

d. Analysis using both FARS and NASS data indicated that unbelted occupants in crashes in the vehicle group equipped with the original GM Type III latch performed the same as the peer vehicle group.

4. Analysis of FARS and NASS Data—Performed by GM

GM submitted to NHTSA a report dated September 25, 1996, including accident data analyses of the ''real world'' performance of the subject vehicles equipped with the original Type III latch. These analyses were developed from NHTSA's FARS and NASS–CDS data systems. GM's summary stated that ''GM vehicles equipped with Type III door latches have no higher rate of door opening than vehicles made by other manufacturers at the same time. Even

more importantly, GM vehicles with Type III door latches have no higher rate of ejection—either overall or through side-door openings—than contemporaneous vehicles of other manufacturers. * * *''

Using 1984–94 NASS data, GM's detailed analysis indicates that the GM and non-GM vehicles have similar door opening rates.

GM conducted several analyses using NHTSA's FARS data. Details of these analyses are summarized below.

Overall ejection rate: In an analysis using 28 different car lines of unbelted front seat outboard occupants in model year 1978 through 1987 passenger cars that were involved in fatal collisions in FARS years 1975–1994, GM determined the number of ejected occupants per 100 unbelted occupants. The results showed that GM vehicles had the second to lowest ejection rate, i.e., approximately 17 ejections per 100 unbelted occupants in fatal crashes.

Side door ejection rate: In a similar analysis using the number of ejections through side door openings in 1978 through 1987 passenger cars in the 1991 through 1994 FARS files, GM found a median ejection rate of about 1.8 unbelted front seat outboard occupants per 100 unbelted occupants in fatal crashes. The GM vehicles had a side door opening ejection rate of about 1.6 front seat outboard occupants per 100 unbelted occupants in fatal crashes.

Rollover ejection rates: GM presented an analysis of rollover and non-rollover crashes, comparing its vehicles that used the original Type III latch with other manufacturer's vehicles. The analysis shows that the overall ejection rate for GM cars equipped with the Type III latch was lower than that for five other manufacturers' cars, and the side door ejection rate for GM cars equipped with the Type III latch was lower than that for four other manufacturers' cars.

Make/Model analysis: GM analyzed FARS data concerning the ejection rate of front seat occupants in vehicles at the make-model level for four different vehicles: GM's S–10 pickup, GM's A body cars (Chevrolet Chevelle/Malibu, Pontiac Lemans/6000, Oldsmobile Cutlas/Ciera, and Buick Century), Ford Ranger and Ford Taurus. The results showed that the ejection rate of the S–10 pickups was lower than that of the Rangers for both overall and side door ejections, and the overall ejection rate of the A body cars was lower than that of the Taurus. For side doors, the ejection rate was the same for the A body cars and the Taurus.

Summary

1. The GM original Type III door latch has performed better than many other side door latches used in GM and non-GM vehicles, in both static and dynamic tests, in the laboratory and in the field.

2. Test and accident data indicate that vehicle side door openings did occur under certain crash conditions for all vehicles, regardless of vehicle make or model, including GM vehicles equipped with the modified Type III door latch as well as GM vehicles equipped with the original Type III door latches. Most crashes in which the side door opened were high speed crashes.

3. ''Real-world'' accident data indicate that GM vehicles equipped with the original Type III door latch have ejection rates or side door opening rates similar to or lower than those of vehicles made by other manufacturers.

4. There was only one complaint in the ODI database concerning an alleged side door opening during a collision accident involving a subject vehicle.

Based on the information available at the present time, no defect trend has been identified for the GM Type III door latch in 1978 through 1988 GM vehicles.

For the foregoing reasons and for the reasons stated in the ODI report, further expenditure of the agency's investigative resources on the allegation in the petition does not appear to be warranted. Therefore, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on November 27, 1996.

Michael B. Brownlee,

Associate Administrator for Safety Assurance.

[FR Doc. 96–30773 Filed 12–4–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

[STB Docket No. AB–167 (Sub-No. 1173X)]

Consolidated Rail Corporation—Abandonment Exemption—in Madison County, IN

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a portion of its line of railroad known as the Honey Creek Secondary between milepost 120.65 and milepost 121.10 in the City of Anderson, Madison County, IN.[1]

Conrail has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 4, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by December 16, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 26, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John J. Paylor, Associate General Counsel, Consolidated Rail Corporation, 20001 Market Street—16A, Philadelphia, PA 19101–1416.

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[1] The City of Anderson (City) filed a request for issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, U.S.C. 1247(d). The Board will address the City's trail use request, and any others that may be filed, in a subsequent decision

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 10, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 26, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–30718 Filed 12–4–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–227 (Sub-No. 8X)]

Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Huron County, OH

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the requirements of 49 U.S.C. 10903 the abandonment by Wheeling & Lake Erie Railway Company of a 2.3-mile rail line extending from milepost 0.0 at Huron Junction in Norwalk, to milepost 2.3 near Milan, all in Huron County, OH, subject to an environmental condition and standard labor protective conditions.

DATES: The exemption will be effective December 20, 1996 unless it is stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Statements of intent to file an OFA[1] under 49 CFR 1152.27(c)(2) and requests for a notice of interim trail use/rail banking under 49 CFR 1152.29 must be filed by December 16, 1996; petitions to stay must be filed by December 16, 1996; requests for a public use condition under 49 CFR 1152.28 must be filed by December 16, 1996; and petitions to reopen must be filed by December 26, 1996.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Docket No. AB–227 (Sub-No. 8X) must be filed with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423; a copy of all pleadings must be served on petitioner's representatives: William A. Collison, Wheeling & Lake Erie Railway Company, 100 East First Street, Brewster, OH 44613 and William C. Sipple, Oppenheimer Wolff and Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: November 27, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–30960 Filed 12–4–96; 8:45 am]

BILLING CODE 4915–00–P

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[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

Corrections

Federal Register
Vol. 61, No. 235
Thursday, December 5, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596-AB41

Sale and Disposal of National Forest Timber; Indices To Determine Market-Related Contract Term Additions

Correction

In the issue of Wednesday, November 13, 1996, on page 58281, in the first column, in the last line, in the correction of proposed rule document 96-26755, ''January 21, 1977'' should read ''January 21, 1997''.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960717195-6280-02; I.D. 070196E]

RIN 0648-AI95

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Fisheries Research Plan; Interim Groundfish Observer Program

Correction

In rule document 96–27891 beginning on page 56425 in the issue of Friday, November 1, 1996, make the following correction:

§902.1 [Corrected]

1. On page 56429, in the second column, in the table, in the last line, remove ''50 CFR Chapter VI''.

Title 50 [Corrected]

2. On the same page, in the same column, under the table and above the part heading, insert ''**50 CFR CHAPTER VI**''

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

Reauthorization of the Higher Education Act

Correction

In notice document 96–29549, beginning on page 58938, in the issue of Tuesday, November 19, 1996, make the following correction:

On page 58938, in the first column, in the ADDRESSES section, in the last line, ''reauth__1ed.gov'' should read ''reauth__1@ed.gov''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-ANE-22]

Establishment of Class E Airspace; Oxford, ME; Correction

Correction

Final rule document 96–30215 was inadvertently published in the Proposed Rules section of Wednesday, November 27, 1996 beginning on page 60241. It should have appeared in the Rules and Regulations section.

BILLING CODE 1505–01–D

federal register

Thursday
December 5, 1996

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5658–5]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Rule Clarifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On April 22, 1994 and June 6, 1994, the EPA issued the National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks. This rule is commonly known as the Hazardous Organic NESHAP or the HON. In June 1994, petitions for review of the April 1994 rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. The petitioners raised over 75 technical issues and concerns with drafting clarity of the rule. On August 26, 1996, the EPA proposed correcting amendments to the rule to address the petitioners' issues. Among the proposed amendments were proposed revisions that would eliminate the need for filing some implementation plans that would otherwise be due December 31, 1996, and would allow the filing of requests for compliance extensions up to four months before the April 1997 compliance date. Today's action takes final action on those proposed amendments.

These amendments to the rule will not change the basic control requirements of the rule or the level of health protection it provides. The rule requires new and existing major sources to control emissions of hazardous air pollutants (HAP) to the level reflecting application of the maximum achievable control technology. Final action on the rest of the amendments proposed on August 26, 1996 will be taken in a separate Federal Register document at a later date.

EFFECTIVE DATE: December 5, 1996.

FOR FURTHER INFORMATION CONTACT: For general questions, contact Dr. Janet S. Meyer; Coatings and Consumer Products Group; (919) 541–5254 or Mary Tom Kissell; Waste and Chemical Processes Group; (919) 541–4516. The mailing address for the contacts is Emission Standards Division (MD–13); U.S. Environmental Protection Agency; Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities and Background Information

A. Regulated Entities

The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in Table 1 of 40 CFR Part 63, subpart F.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. Entities potentially regulated by the HON are those which produce as primary intended products any of the chemicals listed in Table 1 of 40 CFR Part 63, subpart F and are located at facilities that are major sources as defined in Section 112 of the Clean Air Act (CAA). To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR Section 63.100. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** Section.

B. Background on Rule

On April 22, 1994 (59 FR 19402) and June 6, 1994 (59 FR 29196), the EPA published in the Federal Register the NESHAP for the SOCMI, and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR Part 63 and are commonly referred to as the hazardous organic NESHAP, or the HON. Since the April 22, 1994 notice, there have been several amendments to clarify various aspects of the rule. Readers should see the following Federal Register notices for more information: September 20, 1994 (59 FR 48175); October 24, 1994 (59 FR 53359); October 28, 1994 (59 FR 54131); January 27, 1995 (60 FR 5321); April 10, 1995 (60 FR 18020); April 10, 1995 (60 FR 18026); December 12, 1995 (60 FR 63624); February 29, 1996 (61 FR 7716); June 20, 1996 (61 FR 31435); and August 26, 1996 (61 FR 43698).

In June 1994, the Chemical Manufacturers Association (CMA) and Dow Chemical Company filed petitions for review of the promulgated rule in the U.S. Court of Appeals for the District of Columbia Circuit, *Chemical Manufacturers Association* v. *EPA*, 94–1463 and 94–1464 (D.C. Cir.) and *Dow Chemical Company* v. *EPA*, 94–1465 (D.C. Cir.). The petitioners raised over 75 technical issues on the rule's structure and applicability. Issues were raised regarding details of the technical requirements, drafting clarity, and structural errors in the drafting of certain sections of the rule. On August 26, 1996, the EPA proposed clarifying and correcting amendments to subparts F, G, H, and I of Part 63 to address the issues raised by CMA and Dow on the April 1994 rule.

In the August 26, 1996 notice, the EPA committed to taking final action on some portions of the proposed amendments to the rule as soon as possible after the close of the comment period in order to give sources as much lead time as possible. The comment period on the August 26, 1996 proposal ended on September 25, 1996. With today's action, the EPA is taking final action on those portions of the proposed amendments that would eliminate the need for filing some implementation plans that would otherwise be due December 31, 1996, and would allow the filing of requests for compliance extensions up to four months before the April 1997 compliance date.

C. Public Comment on the August 26, 1996 Proposal

Eighteen comment letters were received on the August 26, 1996 notice of proposed changes to the rule. All comment letters received were from industry representatives and trade associations. All comment letters were supportive of the proposed amendments pertaining to the requirements for implementation plans and to the deadline for filing of compliance extension requests. A few of these comment letters also included suggested editorial revisions to further clarify some aspects of these proposed amendments. The EPA considered these suggestions and, where appropriate, made changes to the proposed amendments.

D. Judicial Review

Under Section 307(b)(1) of the CAA, judicial review of this final action is available only on the filing of a petition

for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under Section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Summary of Comments and Amendments to the Rule

A. Rule Changes To Eliminate the Need for Filing Implementation Plans

1. Rule Changes To Remove Requirement for Filing Implementation Plans

On August 26, 1996 the EPA proposed to remove the requirement for submittal of implementation plans for existing sources' emission points that are not included in an emissions average. Under the 1994 final rule, owners or operators who have not yet submitted an operating permit application with the information specified in § 63.152(e) were required to submit by December 31, 1996, an implementation plan for all points not included in an emissions average. The proposed amendments to the rule to eliminate this requirement specified that this information would be provided in an operating permit application or as otherwise specified by the permitting authority.

All comments on the proposed amendments supported the proposal to remove the redundant reporting requirement. Commenters also recommended that § 63.151(a)(2) should be revised to clarify that new sources are required to submit an implementation plan unless an operating permit application containing the information specified in § 63.152(e) has been submitted. This correction was recommended in order to make this paragraph consistent with § 63.151(c) and thereby eliminate the potential for misunderstandings. The EPA agrees that the suggested correction of § 63.151(a)(2) is appropriate and this correction is included in the final amendments to this paragraph. No editorial revisions were suggested for any of the other paragraphs affected by this change to the rule.

Although no public comments were received requesting revisions to other paragraphs affected by this group of amendments, the EPA has also corrected drafting errors in proposed § 63.120(d)(2) and § 63.151(c). In today's amendments, in addition to revising § 63.120(d)(2) to remove the reference to the Implementation Plan, the EPA is revising § 63.120(d)(2) to specify that the monitoring plan for storage vessels complying using a control device must be submitted as part of the Notification of Compliance Status. The rule amendments proposed on August 26, 1996, required that the monitoring plan be submitted, but did not specify when the monitoring plan had to be submitted. The need to specify a submittal date was inadvertently overlooked when the revisions to remove the implementation plan requirement were considered. Because the monitoring plan specifies the compliance monitoring requirements for storage vessels complying using a control device, the EPA considers the Notification of Compliance Status to be the most appropriate report for this information. This correction also makes paragraph § 63.120(d)(2) consistent with paragraph § 63.120(d)(3) which requires that the operating range for the monitored parameter be reported in the Notification of Compliance Status. The EPA also made minor editorial revisions to § 63.151(c) to improve the organization of this paragraph. The specific changes made were to remove redundant text in paragraph (c)(1) and to redesignate paragraph (c)(1)(i) as (c)(1). Under this reorganized structure, paragraph (c)(1)(ii) is no longer reserved.

The other proposed changes to remove the requirement to file an implementation plan are being added to the final rule without change. Today's amendments revise all provisions that require filing of implementation plans by December 31, 1996. Some provisions in §§ 63.143, 63.146, and 63.147 still refer to the implementation plan. These sections are part of the wastewater provisions in subpart G which the EPA anticipates will be final no later than December 31, 1996.

2. Associated Changes to Rule, § 63.100(i)

In the August notice, the EPA proposed to revise paragraph (i) to include provisions to address the assignment of dedicated distillation units and clarify that the assignment procedure in this paragraph applies to distillation units shared among several processes. Revisions were also proposed to paragraph (i) to clarify the wording of the requirement to reassess the assignment of the equipment whenever there is a change in the use of the equipment.

Today's amendments include these clarifying changes to § 63.100(i). These changes are being made at this time because it is not practical to remove the requirement for submittal of implementation plans from these provisions without also finalizing these changes. Furthermore, there were no adverse or editorial comments on the proposed revisions to paragraph (i). Thus, the proposed changes to paragraph (i) are being added to the final rule without change.

B. Timing of Compliance Extension Requests

The April 22, 1994 rule required that requests for compliance extensions be submitted one year prior to the otherwise applicable compliance date. In the August 26, 1996 Federal Register, the EPA proposed to revise this requirement, which is in § 63.151(a)(6)(i), to allow submittal of requests up to 120 days prior to the compliance date. The EPA also proposed to add a new paragraph (iv) to § 63.151(a)(6) that would allow requests during the last 120 days before the compliance date if the need arose during that 120 days and if the need was due to circumstances beyond the reasonable control of the owner or operator. All comments were supportive of these proposed amendments and of the rationale for these changes. None of the comments included recommendations for editorial changes to clarify these provisions. Thus, the proposed amendments are being added to the rule without change.

One commenter did, however, encourage the EPA to refrain from taking enforcement actions against applicants during the EPA's review of the requested compliance extension. While the rule is silent on this issue, the EPA will bear the commenter's concern in mind in reviewing such applications. It is generally not the EPA's practice to take enforcement action against a source that has timely filed an extension request until the request has been acted on negatively.

C. Correction to § 63.106(a)

In the August notice, the EPA proposed to correct the delegation of authority citation in § 63.106(a) to reference Section 112(l), not Section 112(d), of the CAA. No comments were received on this proposed change. Thus, the proposed change to § 63.106(a) is being added to the final rule without change.

III. Administrative Requirements

A. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the rule the Provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 et seq. and has assigned OMB control number *2060–0282.* An Information Collection

Request (ICR) document was prepared by EPA (ICR No. 1414.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The changes listed in this Rule: Amendments to the NESHAP will have no impact on the information collection burden estimates previously made. Further, the changes remove redundant reporting requirement, do not impose additional ones, and appropriately revises the deadline for submitting compliance extension requests for this rule. Consequently, the ICR has not been revised for this rule.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Hon rule promulgated on April 22, 1994 was considered ''significant'' under Executive Order 12866, and a regulatory impact analysis was prepared. The amendments issued today remove a redundant reporting requirement and revise the deadline for submitting compliance extension requests to a date more appropriate for this rule. These amendments do not add any new control requirements. Therefore, this regulatory action is considered ''not significant.''

C. Regulatory Flexibility

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. See the April 22, 1994 Federal Register (59 FR 19449) for the basis for this determination. The changes to the rule remove a reporting requirement and provide additional time to request compliance extensions. Therefore, the changes do not create a burden for any of the regulated entities.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), the 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, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the 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. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 27, 1996.

Carol M. Browner,

Administrator.

Chapter I, Part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for Part 63 continues to read as follows:

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

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

2. Section 63.100 is amended by revising paragraph (d)(3)(ii); revising the last sentence in paragraph (g)(2)(iii); revising the last sentence of paragraph (h)(2)(iv); revising paragraph (i); revising paragraph (l)(3)(ii)(B); revising the second and third sentences in paragraph (l)(4)(iii) introductory text and revising paragraph (l)(4)(iii)(A); and revising paragraph (m)(2) to read as follows:

§ 63.100 Applicability and designation of source.

* * * * *

(d) * * *

(3) * * *

(ii) The determination of applicability of this subpart to chemical manufacturing process units that are designed and operated as flexible operation units shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

* * * * *

(g) * * *

(2) * * *

(iii) * * * This determination shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

* * * * *

(h) * * *

(2) * * *

(iv) * * * This determination shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

* * * * *

(i) Except as provided in paragraph (i)(4) of this section, the owner or operator shall follow the procedures specified in paragraphs (i)(1) through (i)(3) and (i)(5) of this section to determine whether the vent(s) from a distillation unit is part of the source to which this subpart applies.

(1) Where a distillation unit is dedicated to a chemical manufacturing process unit, the distillation column shall be considered part of that chemical manufacturing process unit.

(i) If the chemical manufacturing process unit is subject to this subpart according to the criteria specified in paragraph (b) of this section, then the distillation unit is part of the source to which this subpart applies.

(ii) If the chemical manufacturing process unit is not subject to this subpart according to the criteria specified in paragraph (b) of this section, then the distillation unit is not part of the source to which this subpart applies.

(2) If a distillation unit is not dedicated to a single chemical manufacturing process unit, then the applicability of this subpart and subpart G of this part shall be determined according to the provisions in paragraphs (i)(2)(i) through (i)(2)(iv) of this section.

(i) If the greatest input to the distillation unit is from a chemical manufacturing process unit located on the same plant site, then the distillation unit shall be assigned to that chemical manufacturing process unit.

(ii) If the greatest input to the distillation unit is provided from a chemical manufacturing process unit that is not located on the same plant site, then the distillation unit shall be assigned to the chemical manufacturing process unit located at the same plant site that receives the greatest amount of material from the distillation unit.

(iii) If a distillation unit is shared among chemical manufacturing process units so that there is no single predominant use as described in paragraphs (i)(2)(i) and (i)(2)(ii) of this section, and at least one of those chemical manufacturing process units is subject to this subpart, the distillation unit shall be assigned to the chemical manufacturing process unit that is subject to this subpart. If more than one chemical manufacturing process unit is subject to this subpart, the owner or operator may assign the distillation unit to any of the chemical manufacturing process units subject to this subpart.

(iv) If the predominant use of a distillation unit varies from year to year, then the applicability of this subpart shall be determined based on the utilization that occurred during the year preceding April 22, 1994. This determination shall be included as part of an operating permit application or as otherwise specified by the permitting authority.

(3) If the chemical manufacturing process unit to which the distillation unit is assigned is subject to this subpart, then each vent from the individual distillation unit shall be considered separately to determine whether it is a process vent (as defined in § 63.101 of this subpart). Each vent that is a process vent is part of the source to which this subpart applies.

(4) If the distillation unit is part of one of the chemical manufacturing process units listed in paragraphs (i)(4)(i) through (i)(4)(iii) of this section, then each vent from the individual distillation unit shall be considered separately to determine whether it is a process vent (as defined in § 63.101 of this subpart). Each vent that is a process vent is part of the source to which this subpart applies:

(i) The Aromex unit that produces benzene, toluene, and xylene;

(ii) The unit that produces hexane; or

(iii) The unit that produces cyclohexane.

(5) If a distillation unit that was dedicated to a single chemical manufacturing process unit, or that was part of a chemical manufacturing unit identified in paragraphs (i)(4)(i) through (i)(4)(iii) of this section, begins to serve another chemical manufacturing process unit, or if applicability was determined under the provisions of paragraphs (i)(2)(i) through (i)(2)(iv) of this section and there is a change so that the predominant use may reasonably have changed, the owner or operator shall reevaluate the applicability of this subpart to the distillation unit.

* * * * *

(l) * * *

(3) * * *

(ii) * * *

(B) Changes that meet the criteria in § 63.151(j) of subpart G of this part, unless the information has been submitted in an operating permit application or amendment;

* * * * *

(4) * * *

(iii) * * * A change to an existing chemical manufacturing process unit shall be subject to the reporting requirements for existing sources, including but not limited to, the reports listed in paragraphs (l)(4)(iii)(A) through (E) of this section if the change meets the criteria specified in § 63.118(g), (h), (i), or (j) of subpart G of this part for process vents or the criteria in § 63.155(i) or (j) of subpart G of this part. The applicable reports include, but are not limited to:

(A) Reports specified in § 63.151(i) and (j) of subpart G of this part, unless the information has been submitted in an operating permit application or amendment;

* * * * *

(m) * * *

(2) The compliance schedule shall be submitted with the report required in § 63.151(i)(2) of subpart G of this part for emission points included in an emissions average or § 63.151(j)(1) or subpart G of this part for emission points not in an emissions average, unless the compliance schedule has been submitted in an operating permit application or amendment.

* * * * *

3. Section 63.102 is amended by revising paragraph (c) introductory text and removing and reserving paragraph (c)(2) to read as follows:

§ 63.102 General standards.

* * * * *

(c) Each owner or operator of a source subject to this subpart shall obtain a permit under 40 CFR part 70 or part 71 from the appropriate permitting authority by the date determined by 40 CFR part 70 or part 71, as appropriate.

* * * * *

(2) [Reserved]

* * * * *

4. Section 63.106 is amended by revising paragraph (a) to read as follows:

§ 63.106 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under Section 112(l) of the CAA, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

* * * * *

Subpart G—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

5. Section 63.110 is amended by revising paragraphs (e)(2)(ii) introductory text and (f)(4)(ii) to read as follows:

§ 63.110 Applicability.

* * * * *

(e) * * *

(2) * * *

(ii) The owner or operator shall submit, no later than four months before the applicable compliance date specified in § 63.100 of subpart F of this part, a request for a case-by-case determination of requirements. The request shall include the information specified in paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section.

* * * * *

(f) * * *

(4) * * *

(ii) The owner or operator may submit, no later than four months before the applicable compliance date specified in § 63.100 of subpart F of this

part, information demonstrating how compliance with 40 CFR Part 61, subpart F, will also ensure compliance with this subpart. The information shall include a description of the testing, monitoring, reporting, and recordkeeping that will be performed.

* * * * *

6. Section 63.117 is amended by revising the last sentence in paragraph (e) to read as follows:

§ 63.117 Process vents provisions—reporting and recordkeeping requirements for group and TRE determinations and performance tests.

* * * * *

(e) * * * The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application or by other appropriate means.

* * * * *

7. Section 63.120 is amended by revising the introductory text of paragraph (d)(2), revising paragraph (d)(2)(i), and revising the first sentence in paragraph (d)(3)(i) to read as follows:

§ 63.120 Storage vessel provisions—procedures to determine compliance.

* * * * *

(d) * * *

(2) The owner or operator shall submit, as part of the Notification of Compliance Status required by § 63.151 (b) of this subpart, a monitoring plan containing the information specified in paragraph (d)(2)(i) of this section and in either (d)(2)(ii) or (d)(2)(iii) of this section.

(i) A description of the parameter or parameters to be monitored to ensure that the control device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed (e.g., when the liquid level in the storage vessel is being raised); and either

* * * * *

(3) * * *

(i) The operating range for each monitoring parameter identified in the monitoring plan. * * *

* * * * *

8. Section 63.122 is amended by removing and reserving paragraph (a)(2) and revising paragraph (b) to read as follows:

§ 63.122 Storage vessel provisions—reporting.

(a) * * *

(2) [Reserved]

* * * * *

(b) An owner or operator who elects to comply with § 63.119(e) of this subpart by using a closed vent system and a control device other than a flare shall submit, as part of the Monitoring Plan, the information specified in § 63.120(d)(2)(i) of this subpart and the information specified in either § 63.120(d)(2)(ii) of this subpart or § 63.120(d)(2)(iii) of this subpart.

* * * * *

§ 63.123 [Amended]

9. Section 63.123 is amended by removing and reserving paragraph (b).

10. Section 63.128 is amended by revising the introductory text in paragraph (h)(1), and revising paragraphs (h)(2) and (h)(3) to read as follows:

§ 63.128 Transfer operations provisions—test methods and procedures.

* * * * *

(h) * * *

(1) The owner or operator shall prepare, as part of the Notification of Compliance Status required by § 63.152(b) of this subpart, a design evaluation that shall document that the control device being used achieves the required control efficiency during reasonably expected maximum loading conditions. This documentation is to include a description of the gas stream which enters the control device, including flow and organic HAP content, and the information specified in paragraphs (h)(1)(i) through (h)(1)(v) of this section, as applicable.

* * * * *

(2) The owner or operator shall submit, as part of the Notification of Compliance Status required by § 63.152(b) of this subpart, the operating range for each monitoring parameter identified for each control device. The specified operating range shall represent the conditions for which the control device can achieve the 98-percent-or-greater emission reduction required by § 63.126(b)(1) of this subpart.

(3) The owner or operator shall monitor the parameters specified in the Notification of Compliance Status required in § 63.152(b) of this subpart or operating permit and shall operate and maintain the control device such that the monitored parameters remain within the ranges specified in the Notification of Compliance Status, except as provided in §§ 63.152(c) and 63.152(f) of this subpart.

11. Section 63.129 is amended by revising the last sentence in paragraph (b); and revising paragraphs (e) and (f) to read as follows:

§ 63.129 Transfer operations provisions—reporting and recordkeeping for performance tests and notification of compliance status.

* * * * *

(b) * * * The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application or by other appropriate means.

* * * * *

(e) An owner or operator meeting the requirements of § 63.128(h) of this subpart shall submit, as part of the Notification of Compliance Status required by § 63.152(b) of this subpart, the information specified in § 63.128(h)(1) of this subpart.

(f) An owner or operator meeting the requirements of § 63.128(h) of this subpart shall submit, as part of the Notification of Compliance Status required by § 63.152(b) of this subpart, the operating range for each monitoring parameter identified for each control device.

12. Section 63.151 is amended by revising the heading of the section; revising paragraph (a)(2); revising paragraph (a)(6)(i) and adding a new paragraph (a)(6)(iv); adding a new paragraph (a)(7); revising paragraphs (c) introductory text and (c)(1); revising paragraph (d)(8)(i); revising the introductory text in paragraph (e) and revising paragraph (e)(1); revising paragraph (e)(3); revising the introductory text in paragraph (f); revising paragraph (g)(1); revising paragraph (h); and revising paragraph (j) to read as follows:

§ 63.151 Initial Notification.

(a) * * *

(2) An Implementation Plan for new sources subject to this subpart or for emission points to be included in an emissions average, unless an operating permit application has been submitted prior to the date the Implementation Plan is due and the owner or operator has elected to include the information specified in § 63.152(e) in that application. The submittal date and contents of the Implementation Plan are specified in paragraphs (c) and (d) of this section.

* * * * *

(6) * * *

(i) For purposes of this subpart, a request for an extension shall be submitted to the permitting authority as part of the operating permit application or as part of the Initial Notification or as a separate submittal. Requests for extensions shall be submitted no later than 120 days prior to the compliance dates specified in § 63.100(k)(2), § 63.100(l)(4), and § 63.100(m) of

subpart F of this part, except as provided for in paragraph (a)(6)(iv) of this section. The dates specified in § 63.6(i) of subpart A of this part for submittal of requests for extensions shall not apply to sources subject to this subpart G.

* * * * *

(iv) An owner or operator may submit a compliance extension request after the date specified in paragraph (a)(6)(i) of this section provided the need for the compliance extension arose after that date and before the otherwise applicable compliance date, and the need arose due to circumstances beyond reasonable control of the owner or operator. This request shall include, in addition to the information in paragraph (a)(6)(ii) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the problem.

(7) The reporting requirements for storage vessels are located in § 63.122 of this subpart.

* * * * *

(c) Each owner or operator of an existing source with emission points that will be included in an emissions average or new source subject to this subpart must submit an Implementation Plan to the Administrator by the dates specified in paragraphs (c)(1) and (c)(2) of this section, unless an operating permit application accompanied by the information specified in § 63.152(e) of this subpart has been submitted. The Implementation Plan for emissions averaging is subject to Administrator approval.

(1) Each owner or operator of an existing source subject to this subpart who elects to comply with § 63.112 of this subpart by using emissions averaging for any emission points, and who has not submitted an operating permit application accompanied by the information specified in § 63.152(e) of this subpart at least 18 months prior to the compliance dates specified in § 63.100 of subpart F of this part, shall develop an Implementation Plan for emissions averaging. For existing sources, the Implementation Plan for those emission points to be included in an emissions average shall be submitted no later than 18 months prior to the compliance dates in § 63.100 of subpart F of this part.

* * * * *

(d) * * *

(8) * * *

(i) The information used to determine whether the wastewater stream is a Group 1 or Group 2 wastewater stream.

* * * * *

(e) An owner or operator expressly referred to this paragraph shall report, in an Implementation Plan, operating permit application, or as otherwise specified by the permitting authority, the information listed in paragraphs (e)(1) through (e)(5) of this section.

(1) A list designating each emission point complying with §§ 63.113 through 63.149 of this subpart and whether each emission point is Group 1 or Group 2, as defined in § 63.111 of this subpart.

* * * * *

(3) A statement that the compliance demonstration, monitoring, inspection, recordkeeping, and reporting provisions in §§ 63.113 through 63.149 of this subpart that are applicable to each emission point will be implemented beginning on the date of compliance.

* * * * *

(f) The owner or operator who has been directed by any section of this subpart that expressly references this paragraph to set unique monitoring parameters or who requests approval to monitor a different parameter than those listed in § 63.114 for process vents, § 63.127 for transfer, or § 63.143 for process wastewater of this subpart shall submit the information specified in paragraphs (f)(1), (f)(2), and (f)(3) of this section with the operating permit application or as otherwise specified by the permitting authority.

* * * * *

(g) * * *

(1) Requests shall be included in the operating permit application or as otherwise specified by the permitting authority and shall contain the information specified in paragraphs (g)(3) through (g)(5) of this section, as applicable.

* * * * *

(h) The owner or operator required to prepare an Implementation Plan, or otherwise required to submit a report, under paragraph (c), (d), or (e) of this section shall also submit a supplement for any additional alternative controls or operating scenarios that may be used to achieve compliance.

* * * * *

(j) The owner or operator of a source subject to this subpart, for emission points that are not included in an emissions average, shall report to the Administrator under the circumstances described in paragraphs (j)(1), (j)(2), and (j)(3) of this section unless the relevant information has been included and submitted in an operating permit application or amendment, or as otherwise specified by the permitting authority. The information shall be submitted within 180 calendar days after the change is made or the information regarding the change is known to the source. The update may be submitted in the next Periodic Report if the change is made after the date the Notification of Compliance Status is due.

(1) Whenever a deliberate change is made such that the group status of any emission point changes. The information submitted shall include a compliance schedule as specified in § 63.100 of subpart F of this part if the emission point becomes Group 1.

(2) Whenever an owner or operator elects to achieve compliance with this subpart by using a control technique other than that previously reported to the Administrator or to the permitting authority, or plans to monitor a different parameter, or operate a control device in a manner other than that previously reported.

(3) Whenever an emission point or a chemical manufacturing process unit is added to a source, a written addendum to the information submitted under paragraph (e) of this section containing information on the new emission point shall be submitted.

13. Section 63.152 is amended by revising paragraph (a)(2); revising paragraph (c)(4)(ii); removing paragraph (c)(5)(ii)(F); and revising the introductory text in paragraph (e) to read as follows:

§ 63.152 General reporting and continuous records.

* * * * *

(a) * * *

(2) An Implementation Plan described in § 63.151(c), (d), and (e) of this subpart for existing sources with emission points that are included in an emissions average or for new sources.

* * * * *

(c) * * *

(4) * * *

(ii) Any supplements required under § 63.151(i) and (j) of this subpart,

* * * * *

(e) An owner or operator subject to this subpart shall submit the information specified in paragraphs (e)(1) through (e)(4) of this section with the operating permit application or as otherwise specified by the permitting authority. The owner or operator shall submit written updates as amendments to the operating permit application on the schedule and under the circumstances described in § 63.151(j) of this subpart. Notwithstanding, if the owner or operator has an operating permit under 40 CFR part 70 or 71, the owner or operator shall follow the schedule and format required by the permitting authority.

* * * * *

[FR Doc. 96–30866 Filed 12–4–96; 8:45 am]

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federal register

Thursday
December 5, 1996

Part III

The President

Proclamation 6962—To Implement the United States-Israel Agreement on Trade in Agricultural Products

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Vol. 61, No. 235
Thursday, December 5, 1996

Presidential Documents

Title 3—

The President

Proclamation 6962 of December 2, 1996

To Implement the United States-Israel Agreement on Trade in Agricultural Products

By the President of the United States of America

A Proclamation

1. On April 22, 1985, the United States entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (''the FTA Agreement''), approved by the Congress in the United States-Israel Free Trade Area Implementation Act of 1985 (''the FTA Act'') (19 U.S.C. 2112 note).

2. The United States and Israel acknowledge that they have differing interpretations as to the meaning of certain rights and obligations in the FTA Agreement, in particular with respect to market access for certain United States agricultural products. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on November 4, 1996, the Government of the United States entered into an agreement with the Government of Israel concerning certain aspects of trade in agricultural products, effective December 4, 1996, through December 31, 2001 (''the 1996 Agreement'').

3. Section 4(b) of the FTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the FTA Agreement, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties as the President determines to be required or appropriate to carry out the FTA Agreement.

4. Pursuant to section 4(b) of the FTA Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel, to provide through the close of December 31, 2001, access into the United States customs territory for specified quantities of certain agricultural products of Israel free of duty or certain fees or other import charges.

5. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483)(''the 1974 Act''), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (''HTS'') the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

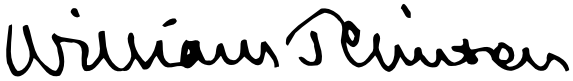
NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to section 4 of the FTA Act and section 604 of the 1974 Act, do hereby proclaim:

(1) In order to implement aspects of the 1996 Agreement with the Government of Israel concerning certain aspects of trade in agricultural products, the HTS is modified as provided in the Annex to this proclamation.

(2) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(3) The modifications to the HTS made by the Annex to this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates set forth in such Annex, and the tariff treatment set forth therein shall be effective as provided in such Annex through December 31, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of December, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.



Billing code 3195–01–P

ANNEX

TEMPORARY MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES TO IMPLEMENT THE AGREEMENT WITH ISRAEL CONCERNING CERTAIN ASPECTS OF TRADE IN AGRICULTURAL PRODUCTS

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after December 4, 1996, the Harmonized Tariff Schedule of the United States ("HTS") is modified as follows:

1. Subheadings 0401.30.75, 0403.90.78 and 0405.10.20 are each modified by inserting in the Rates of Duty 1-Special subcolumn the expression "See 9908.04.01 (IL)".

2. Subheadings 0402.10.50 and 0402.21.25 are each modified by inserting in the Rates of Duty 1-Special subcolumn the expression "See 9908.04.03 (IL)".

3. Subheadings 0406.10.08, 0406.10.18, 0406.10.28, 0406.10.38, 0406.10.48, 0406.10.58, 0406.10.68, 0406.10.78, 0406.10.88, 0406.20.28, 0406.20.33, 0406.20.39, 0406.20.48, 0406.20.53, 0406.20.63, 0406.20.67, 0406.20.71, 0406.20.75, 0406.20.79, 0406.20.83, 0406.20.87, 0406.20.91, 0406.30.18, 0406.30.28, 0406.30.38, 0406.30.48, 0406.30.53, 0406.30.63, 0406.30.67, 0406.30.71, 0406.30.75, 0406.30.79, 0406.30.83, 0406.30.87, 0406.30.91, 0406.40.70, 0406.90.12, 0406.90.18, 0406.90.32, 0406.90.37, 0406.90.42, 0406.90.48, 0406.90.54, 0406.90.68, 0406.90.74, 0406.90.78, 0406.90.84, 0406.90.88, 0406.90.92, 0406.90.94, 0406.90.97 and 1901.90.36 are each modified by inserting in the Rates of Duty 1-Special subcolumn the expression "See 9908.04.05 (IL)".

4. Subheadings 1202.10.80, 1202.20.80, 2008.11.35 and 2008.11.60 are each modified by inserting in the Rates of Duty 1-Special subcolumn the expression "See 9908.12.01 (IL)".

5. Subheading 2105.00.20 is modified by inserting in the Rates of Duty 1-Special subcolumn the expression "See 9908.21.01 (IL)".

6. New subchapter VIII, with the notes and tariff provisions set forth below, is inserted at the end of chapter 99:

"SUBCHAPTER VIII

TEMPORARY MODIFICATIONS ESTABLISHED PURSUANT TO THE AGREEMENT WITH ISRAEL CONCERNING CERTAIN ASPECTS OF TRADE IN AGRICULTURAL PRODUCTS

U.S. Notes

1. This subchapter contains temporary modifications of the provisions of the tariff schedule established pursuant to the United States' agreement with Israel concerning certain aspects of trade in agricultural products, dated November 4, 1996. Products of Israel eligible for benefits of the agreement when imported into the customs territory, and described in the provisions of this subchapter for which quantitative limits are prescribed along with rates of duty followed by the symbol "(IL)" are herein provided, are subject to duty under the provisions and at the rates set forth in this subchapter in lieu of the rates provided therefor in chapters 1 through 97 in rates of duty column 1 when entered in quantities that are within the limits provided in this subchapter. Notwithstanding quota provisions elsewhere in the tariff schedule, eligible products of Israel shall be permitted to enter the United States to the extent and at the duty rates herein provided. No goods entered under the quantitative limits set forth in this subchapter shall be counted toward any quota or tariff-rate quota provided for such goods elsewhere in the tariff schedule. No other preferential tariff treatment provided for elsewhere in the tariff schedule shall be afforded to goods described in the provisions of this subchapter. Unless otherwise provided, the provisions and notes in this subchapter are effective as to such products of Israel that are entered, or withdrawn from warehouse for consumption, on or after December 4, 1996, and through the close of December 31, 2001, after which date this subchapter shall cease to apply to any goods entered after that date.

2. Wherever goods are described by a provision of this subchapter and accorded a temporary modification of the otherwise applicable duty or quota treatment from chapters 1 through 97 of this schedule, the reporting number, in the absence of specific instructions providing otherwise, shall be the appropriate statistical reporting number for the basic provision (the appropriate provision for classification purposes in chapters 1 through 97) preceded by the appropriate subheading number from this subchapter. For statistical purposes, both the basic provision statistical reporting number and the applicable subheading number from this subchapter shall be collected by the United States Bureau of Census.

ANNEX (con.)

3. The aggregate quantity of butter, and fresh or sour cream containing over 45 percent by weight of butterfat, that are eligible products of Israel entered under subheading 9908.04.01 during any period specified in this note shall not exceed the quantity specified below.

Applicable time period	Quantity (kg)
Dec. 4-Dec. 31, 1996	300,000
Calendar year 1997	315,000
Calendar year 1998	331,000
Calendar year 1999	347,000
Calendar year 2000	365,000
Calendar year 2001	383,000

4. The aggregate quantity of dried milk, whether or not containing added sugar or other sweetening matter, that are eligible products of Israel entered under subheading 9908.04.03 during any period specified in this note shall not exceed the quantity specified below.

Applicable time period	Quantity (kg)
Dec. 4-Dec. 31, 1996	1,000,000
Calendar year 1997	1,030,000
Calendar year 1998	1,061,000
Calendar year 1999	1,093,000
Calendar year 2000	1,126,000
Calendar year 2001	1,160,000

5. The aggregate quantity of cheese and substitutes for cheese that are eligible products of Israel entered under subheading 9908.04.05 during any period specified in this note shall not exceed the quantity specified below.

Applicable time period	Quantity (kg)
Dec. 4-Dec. 31, 1996	1,000,000
Calendar year 1997	1,053,000
Calendar year 1998	1,107,000
Calendar year 1999	1,162,000
Calendar year 2000	1,220,000
Calendar year 2001	1,279,000

6. The aggregate quantity of peanuts that are eligible products of Israel entered under subheading 9908.12.01 during any period specified in this note shall not exceed the quantity specified below.

Applicable time period	Quantity (kg)
Dec. 4-Dec. 31, 1996	100,000
Calendar year 1997	103,000
Calendar year 1998	106,000
Calendar year 1999	109,000
Calendar year 2000	113,000
Calendar year 2001	116,000

For the purposes of this note, imports of peanuts in the shell shall be charged against the quantities in this note on the basis of 75 kilograms for each 100 kilograms of peanuts in the shell.

7. The aggregate quantity of ice cream that are eligible products of Israel entered under subheading 9908.21.01 during any period specified in this note shall not exceed the quantity specified below.

Applicable time period	Quantity (liters)
Dec. 4-Dec. 31, 1996	251,670
Calendar year 1997	276,837
Calendar year 1998	304,521
Calendar year 1999	334,973
Calendar year 2000	368,470
Calendar year 2001	405,317

ANNEX (con.)

	Eligible products of Israel under the terms of note 1 to this subchapter:	
9908.04.01	Provided for in subheading 0401.30.75, 0403.90.78 or 0405.10.20 and subject to the quantitative limits specified in U.S. note 3 to this subchapter.....	Free (IL)
9908.04.03	Provided for in subheading 0402.10.50 or 0402.21.25 and subject to the quantitative limits specified in U.S. note 4 to this subchapter.....	Free (IL)
9908.04.05	Provided for in subheading 0406.10.08, 0406.10.18, 0406.10.28, 0406.10.38, 0406.10.48, 0406.10.58, 0406.10.68, 0406.10.78, 0406.10.88, 0406.20.28, 0406.20.33, 0406.20.39, 0406.20.48, 0406.20.53, 0406.20.63, 0406.20.67, 0406.20.71, 0406.20.75, 0406.20.79, 0406.20.83, 0406.20.87, 0406.20.91, 0406.30.18, 0406.30.28, 0406.30.38, 0406.30.48, 0406.30.53, 0406.30.63, 0406.30.67, 0406.30.71, 0406.30.75, 0406.30.79, 0406.30.83, 0406.30.87, 0406.30.91, 0406.40.70, 0406.90.12, 0406.90.18, 0406.90.32, 0406.90.37, 0406.90.42, 0406.90.48, 0406.90.54, 0406.90.68, 0406.90.74, 0406.90.78, 0406.90.84, 0406.90.88, 0406.90.92, 0406.90.94, 0406.90.97 or 1901.90.36 and subject to the quantitative limits specified in U.S. note 5 to this subchapter.....	Free (IL)
9908.12.01	Provided for in subheading 1202.10.80, 1202.20.80, 2008.11.35 or 2008.11.60 and subject to the quantitative limits specified in U.S. note 6 to this subchapter.....	Free (IL)
9908.21.01	Provided for in subheading 2105.00.20 and subject to the quantitative limits specified in U.S. note 7 to this subchapter.....	Free (IL)"

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federal register

Thursday
December 5, 1996

Part IV

The President

Executive Order No. 13028—Further Amendments to Executive Order No. 12757—Implementation of the Enterprise for the Americas Initiative

Executive Order No. 13029—Implementing, for the United States, the Provisions of Annex 1 of the Decision Concerning Legal Capacity and Privileges and Immunities, Issued by the Council of Ministers of the Conference on Security and Cooperation in Europe on December 1, 1993

Federal Register
Vol. 61, No. 235
Thursday, December 5, 1996

Presidential Documents

Title 3—

The President

Executive Order 13028 of December 3, 1996

Further Amendments to Executive Order No. 12757—Implementation of the Enterprise for the Americas Initiative

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Agricultural Trade Development and Assistance Act of 1954, as amended, the Foreign Assistance Act of 1961, as amended, and the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Public Law 104–107), it is hereby ordered as follows:

Section 1. *Amendment of Executive Order No. 12757.* Executive Order No. 12757, ''Implementation of the Enterprise for the Americas Initiative,'' as amended by Executive Order No. 12823, is further amended as follows:

(a) The Preamble is amended:

(1) by striking ''and'' after ''Public Law 102–237''; and

(2) by inserting '', and section 571 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (''Public Law 104–107'')'' after ''Public Law 102–549''.

(b) Section 1 is amended:

(1) by striking ''and'' after ''ATDA Act'' the first time it appears, and inserting instead a comma (''','');

(2) by inserting '', and section 571(a)(1) of Public Law 104–107'' after ''FAA'' the first time it appears; and

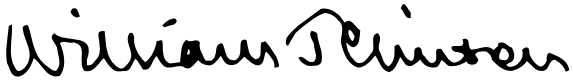
(3) by inserting ''. The functions vested in the President by section 571(a)(2), (c) and (d) of Public Law 104–107 are also delegated to the Secretary, who shall exercise such functions in accordance with recommendations of the Council and in consultation with the Secretary of State'' after ''State'' the first time it appears.

(c) Section 6 is redesignated as Section 7.

(d) A new Section 6 is added as follows:

''Sec. 6. Any references in this order to section 571, or any subsection of section 571, of Public Law 104–107 shall be deemed to include references to any hereinafter-enacted provision of law that is the same or substantially the same as such section 571 or any subsection thereof.''

Sec. 2. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government, and is not intended to create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,
December 3, 1996.

[FR Doc. 96–31164
Filed 12–4–96; 9:49 am]
Billing code 3195–01–P

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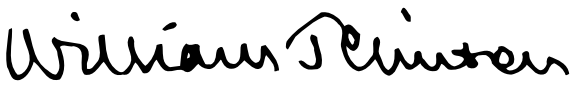
Executive Order 13029 of December 3, 1996

Implementing, for the United States, the Provisions of Annex 1 of the Decision Concerning Legal Capacity and Privileges and Immunities, Issued by the Council of Ministers of the Conference on Security and Cooperation in Europe on December 1, 1993

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 422 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236), and in order to implement for the United States, the provisions of Annex 1 of the decision concerning Legal Capacity and Privileges and Immunities (''Annex''), issued by the Council of Ministers of the Conference on Security and Cooperation in Europe on December 1, 1993, in accordance with the terms of that Annex, it is hereby ordered that the privileges and immunities set forth in the Annex are extended to the personnel and institutions described therein. Effective January 1, 1995, the Conference on Security and Cooperation in Europe will henceforth be called the Organization for Security and Cooperation in Europe.



THE WHITE HOUSE,
December 3, 1996.

Billing code 3195–01–P

CSCE
FOURTH MEETING OF THE COUNCIL
ROME 1993

CSCE/4-C/Dec.2
Rome, 1 December 1993
Original: English

LEGAL CAPACITY AND PRIVILEGES AND IMMUNITIES

1. At its Rome Meeting from 30 November to 1 December 1993, the CSCE Council considered the report submitted to the 24th CSO Meeting by the CSCE ad hoc Group of Legal and Other Experts on the relevance of an agreement granting internationally recognized status to the CSCE institutions.

2. The Ministers reaffirmed the importance of enhancing the ability of the institutions to better accomplish their functions, while preserving the flexibility and openness of he CSCE process. They agreed that, in order to help achieve a firmer basis for security and cooperation among all CSCE participating States, the CSCE could benefit from clearer administrative structures and a well defined operational framework

3 The Ministers were encouraged by the fact that the Governments hosting the CSCE Secretariat, the Conflict Prevention Centre (CPC) and the Office for Democratic Institutions and Human Rights (ODIHR) have taken steps under their las to confer upon these institutions and CSCE personnel as well as representatives of the CSCE participating States treatment comparable to that accorded to the United Nations and its personnel and to the representatives to it.

4 The Ministers noted the expanded operations within CSCE participating States of CSCE institutions and their personnel and of CSCE missions and the importance that all participating States provide for those institutions and individuals appropriate treatment

5 The Ministers agreed on the usefulness of legal capacity being granted to the CSCE institutions in the territories of all the CSCE participating States, in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings

6. The Ministers further agreed that it was appropriate that certain privileges and immunities be granted to the CSCE institutions and their officers and staffs, as well as to the Secretary General of the CSCE-and the High Commissioner on National Minorities and their staffs, members of CSCE missions and the representatives of the participating States to the extent necessary to the exercise of their duties.

7. In most participating States, however, the competence to make rules concerning the legal status of the CSCE institutions and privileges and immunities rests with the legislature.

8. In view of these considerations and in order to assist in harmonizing the rules to be applied, the Ministers adopted the provisions set out in Annex 1. They recommend that participating States implement these provisions, subject to their constitutional and related requirements.

The participating States will inform the Secretary General of the CSCE of the steps taken in this respect, no later than 31 December 1994.

9. The Ministers agreed that the present decision supersedes paragraph I.1. (Legal Basis) of Recommendations of the ad hoc Group of Experts of the participating States on administrative, financial and personnel arrangements for the CSCE institutional structures created by the Paris Summit, adopted by the Committee of Senior Officials on 29 January 1991 (document CSCE/HB/Dec.1), and that it does not apply to other undertakings with respect to privileges and immunities made within the framework of the CSCE.

It is understood, however, that this decision does not affect the treatment conferred upon the CSCE institutions referred to in paragraph 3 above, to the CSCE personnel as well as to the representatives of the CSCE participating States by legislation or administrative measures taken by the host States in accordance with the above decision adopted by the Committee of Senior Officials (document CSCE/HB/Dec.1).

CSCE/4-C/Dec.2
Annex 1

PROVISIONS CONCERNING THE LEGAL CAPACITY OF THE CSCE INSTITUTIONS AND PRIVILEGES AND IMMUNITIES.

LEGAL CAPACITY OF THE CSCE INSTITUTIONS.

1. The CSCE participating States will, subject to their constitutional, legislative and related requirements, confer such legal capacity as is necessary for the exercise of their functions, and in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings, on the following CSCE institutions:

- The CSCE Secretariat,

- The Office for Democratic Institutions and Human Rights (ODIHR),

- Any other CSCE institution determined by the CSCE Council.

PRIVILEGES AND IMMUNITIES
General

2. The CSCE participating States will, subject to their constitutional, legislative and related requirements, confer the privileges and immunities as set out in paragraphs 4-16 below.

3. Privileges and immunities will be accorded to the CSCE institutions in the interests of those institutions. Immunity may be waived by the Secretary General of the CSCE in consultation with the Chairman-in-Office.

Privileges and immunities will be accorded to individuals not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions. Immunity will be waived in any case where the immunity would impede the course of justice and can be waived without prejudice to the purpose for which the immunity is accorded. Decision to waive immunity will be taken:

with respect to officers and staff of the CSCE institutions and to members of CSCE missions, by the Secretary General of the CSCE in consultation with the Chairman-in-Office;

with respect to the Secretary General and the High Commissioner on National Minorities, by the Chairman-in-Office.

The Government concerned may waive immunity with respect to its representatives.

CSCE Institutions

4. The CSCE institutions, their property and assets, wherever located and by whomever held, will enjoy the same immunity from legal process as is enjoyed by foreign States.

5. The premises of the CSCE institutions will be inviolable. The property and assets of the CSCE institutions, wherever located and by whomever held, will be immune from search, requisition, confiscation

and expropriation.

6. The archives of the CSCE institutions will be inviolable.

7. Without being restricted by financial controls, regulations or moratoria of any kind:

(a) the CSCE institutions will be able to hold funds and keep amounts in all currencies to the extent necessary for the exercise of operations corresponding to their objectives;

(b) the CSCE institutions will be free to transfer their funds or currency from one country to another or within any country and to convert any currency held by them into another currency.

8. The CSCE institutions, their assets, income and other property will be:

(a) exempt from all direct taxes; it being understood, however, that the CSCE institutions will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(b) exempt from customs duties on imports and exports in respect of articles imported or exported by the CSCE institutions for their official use; it being understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country.

9. Where goods or services of substantial value necessary for the exercise of the official activities of the CSCE institutions are made or used, and when the price of such goods and services includes taxes or duties, the State that has levied taxes or duties will grant exemption or provide reimbursement of the amount of duty or tax.

10. The CSCE institutions will enjoy for their official communications the same treatment as that accorded to diplomatic missions.

Permanent Missions of the participating States

11. Participating States in whose territory permanent missions to the CSCE are located will accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.

Representatives of participating States

12. Representatives of participating States attending CSCE meetings or taking part in the work of the CSCE institutions will, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) immunity from legal process relating to acts performed by them in their official capacity;

(b) inviolability for all papers and documents;

(c) exemption in respect of themselves and their spouses from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;

(d) the same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;

(e) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States.

The provisions of this paragraph will not apply as between a representative and the State of which he or she is or has been the representative.

In this paragraph the expression "representative" means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

CSCE Officials

13. CSCE officials will enjoy the following privileges and immunities:◂

a) immunity from legal process, in respect of acts, including words written and spoken, performed by them in their official capacity;

(b) exemption from national service obligations;

(c) exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;

(d) the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;

(e) the same repatriation facilities in time of international crisis in respect of themselves and their spouses and relatives dependent on them as diplomatic envoys;

(f) the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.

No participating State will be obliged to accord the privileges and immunities referred to under items (b)-(f) above to its own nationals or to permanent residents of that State.

The question of exemption from income tax for CSCE officials is not covered by this paragraph.

In this paragraph the term "CSCE officials" means the Secretary General, the High Commissioner on National Minorities and persons holding positions determined by the appropriate CSCE decision-making body or designated by it.

14. The employees of the CSCE institutions will be exempt from the social security regulations of the host State provided that they are subject to the social security law of their home State, or participate in a voluntary insurance scheme with adequate benefits.

Provided that the employees of the CSCE institutions are covered by a social security scheme of the CSCE institution, or by a scheme to which the CSCE institution adheres, providing adequate benefits, they will be exempt from compulsory national social security schemes.

Members of CSCE Missions

15. Members of CSCE missions, established by the CSCE decision-making bodies, as well as personal representatives of the Chairman-in-Office, will enjoy the following privileges and immunities while performing their duties for the CSCE:

(a) immunity from personal arrest or detention;

(b) immunity from legal process, even after the termination of their mission, in respect of acts, including words spoken or written, performed by them in the exercise of their functions;

(c) inviolability for all papers and documents;

(d) the right to use codes and to receive papers or correspondence by courier or in sealed bags, which will have the same immunities and privileges as diplomatic couriers and bags;

(e) the same exemption from all measures restricting immigration and from alien registration formalities as are accorded to diplomatic agents of foreign States;

(f) the same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign states;

(g) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;

(h) the same repatriation facilities in time of international crisis as diplomatic agents;

(i) the right to use specific symbols or flags on their premises and vehicles.

Equipment used by the CSCE missions to accomplish their mandate shall enjoy the same treatment as provided for in paragraphs 4, 5, 8 and 9.

16. Members of other missions under the auspices of the CSCE than those mentioned in paragraph 15 will, while performing their duties for the CSCE, enjoy the privileges and immunities prescribed in paragraph 15 (b), (c), (e) and (f). The Chairman-in-Office may request that these members be granted the privileges and immunities prescribed in paragraph 15 (a), (d), (g), (h), and (i) in situations where such members may encounter specific difficulties.

CSCE IDENTITY CARD

17. The CSCE may issue a CSCE Identity Card to persons on official duty travel for the CSCE. The document, which will not substitute for ordinary travel documents, will be issued in accordance with the form set out in Annex A and will entitle the bearer to the treatment specified therein.

18. Applications for visas (where required) from the holders of CSCE Identity Cards will be dealt with as speedily as possible.

Annex A

CSCE IDENTITY CARD

Name:

Surname:

Date of Birth:

National of:

Holder of passport/diplomatic passport no..., issued on...by...

It is hereby certified that the person named in the present document is on official business of the Conference on Security and Co-operation in Europe ("CSCE") during the period from... to ... in the following CSCE participating State(s)....

The CSCE hereby requests all whom it may concern that the persons named herein

- **be allowed to pass without delay or hindrance,**
- **in case of need be accorded all necessary lawful assistance and protection.**

This document does not replace travel documents that may be required for entry or exit.

Issued in ....on....by....(relevant CSCE authority)

Signature:

Title:

Note: The document will be used in six official CSCE languages. It will also contain a translation into the language or languages of the country or countries which the holder of the document will visit as well as a translation into the language or languages used by those military or police forces which might be present in the area of the duty travel.

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