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Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 62, No. 3
Monday, January 6, 1997

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 95–098–3]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, are subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables are required to undergo prescribed treatments for injurious plant pests as a condition of entry, or to meet other special conditions. The removal of these prohibitions will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as ''the regulations'') prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of fruit flies and other injurious plant pests that are new to or not widely distributed within and throughout the United States.

On July 2, 1996, we published in the Federal Register (61 FR 34379–34385, Docket No. 95–098–1) a proposal to amend the regulations by allowing additional fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of these fruits and vegetables had been prohibited because of the risk that the fruits and vegetables could introduce injurious insects into the United States. We proposed to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk assessments that indicated that the fruits or vegetables could be imported under certain conditions without significant pest risk.

We solicited comments concerning our proposal for 60 days ending September 3, 1996. We received 15 comments by that date. They were from representatives of State and foreign governments, grocery stores, industry groups, and a member of Congress. Ten commenters supported the proposed rule as written. The other commenters expressed concerns about our proposing to allow importation of citrus fruit from the Western Cape Province of South Africa. These concerns are discussed below:

Comment: How has it been determined that the Western Cape Province is free of citrus blackspot?

Response: Many factors have contributed to our determination that the Western Cape Province is free of citrus blackspot. First, citrus blackspot has never been reported in the Western Cape Province. In addition, in June 1994, we received assurances from the Director of the Directorate of Plant and Quality Control, Department of Agriculture, Republic of South Africa, that the Western Cape Province is free of citrus blackspot. In that same month, personnel of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), began a review of the testing protocol for citrus blackspot (the procedures used in testing for the presence of citrus blackspot) and the results of the testing for citrus blackspot provided by the South African Department of Agriculture. APHIS personnel determined that the testing protocol used in the Western Cape Province was scientifically sound and that the Western Cape Province showed no evidence of citrus blackspot. Later, in May (the time of the year for optimum expression of citrus blackspot in South Africa) 1995, an additional survey for citrus blackspot was conducted by personnel of the Directorate of Plant and Quality Control, and no evidence of the disease was detected. The results of these surveys give us the confidence to make the determination that the Western Cape Province is free from citrus blackspot.

Comment: The pest risk analysis for citrus fruit from South Africa notes that the Western Cape Province is free of citrus blackspot. What measures are being taken to ensure that citrus blackspot is not introduced into the Western Cape Province from other areas of South Africa that are known to be infected with the disease? Regular, on-going surveys performed in the Western Cape Province by trained plant pathologists, routine verification of South African testing programs regarding the pest-free status of the Western Cape Province, and other on-going pest exclusion activites need to be established to prevent the spread of citrus blackspot into the Western Cape Province.

Response: As stated in the proposed rule, both natural and regulatory barriers are in place that will help ensure that the Western Cape Province will remain free of citrus blackspot. The Western Cape Province's nearest citrus-producing neighbor, the Gamtoos River Valley, has, to date, had no findings or reports of citrus blackspot, and the citrus-producing areas in South Africa that are infested with citrus blackspot are separated from the Western Cape Province by mountain ranges, semi-desert areas, or long distances. Additionally, the South African Government has in place regulations that prohibit the movement of nursery trees from the northern citrus-production area of South Africa into the Western Cape Province, and the South African Government carefully monitors and regularly inspects citrus fruit for citrus blackspot in the growing areas and packing houses of the Western Cape Province. We believe that these natural and regulatory barriers are sufficient to

help ensure that the Western Cape Province remains free of citrus blackspot.

Comment: Leaves and other debris which might result in the introduction of the citrus leaf miner, *Phyllocnistis citrella,* should not be allowed into the United States with any shipments of citrus imported from South Africa. Additionally, mitigation measures, such as limiting shipments of citrus from South Africa to early spring, need to be taken to prevent the introduction of *Toxoptera odinae,* a type of aphid, into the United States.

Response: This final rule allows the importation of citrus fruit from the Western Cape Province of South Africa. Section 319.56–2(a) of the regulations provides that all importations of fruits and vegetables must be free from plants or portions of plants, including leaves, twigs, or other portions of plants, or plant litter or rubbish as distinguished from clean fruits and vegetables. Both the citrus leaf miner and *Toxoptera odinae* are associated with the leaves and other portions of citrus plants, and as citrus leaves or other debris that may harbor the citrus leaf miner or *Toxoptera odinae* are prohibited entry into the United States, we are confident that at any time of the year, the risk of the introduction of the citrus leaf miner or *Toxoptera odinae* into the United States is negligible. Additionally, both of these pests are mitigated in the Western Cape Province of South Africa by chemical controls during preharvest and postharvest and by phytosanitary export inspections. Therefore, we are making no changes to the proposed rule in response to this comment.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule without changes.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the Federal Register. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the Federal Register.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the economic impact of this final rule on small entities.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151–167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This rule amends the regulations governing the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain foreign countries and localities under specified conditions. The importation of these fruits and vegetables had been prohibited because of the risk that they could have introduced injurious plant pests into the United States.

In our proposal, we solicited comments on the potential effects of the proposed action on small entities. In particular, we sought data and other information to determine the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. We received no comments on the Initial Regulatory Flexibility Analysis contained in the proposed rule.

This rule is based on pest risk assessments that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The pest risk assessments indicate that the fruits or vegetables listed in this rule can, under certain conditions, be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, will be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a USDA inspector. In addition, some of the fruits and vegetables will be required to undergo mandatory treatment for injurious plant pests as a condition of entry, or to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction into the United States of injurious plant pests by imported fruits and vegetables.

Basil From Argentina

From 1990 to 1994, the value of U.S. basil imports averaged $3.3 million annually. This average includes import values for 1994 when, due to a record import volume of 3,220 metric tons, U.S. basil imports amounted to $4.6 million. No information is available on U.S. basil production.

It is estimated that Argentina produces about 1,500 metric tons of basil annually. If commercial conditions are favorable, basil exports to the United States could, over time, reach 200 metric tons a year. This amount is only about 6 percent of current U.S. basil imports and, therefore, is not expected to have a significant economic effect on any entities in the U.S. basil market.

Babaco From Chile

Chile produced 334 metric tons of babaco from 1994 to 1995. Of this amount, only 6.9 metric tons were exported, and all exported babaco went to Argentina. There is no data available on production or importation of babaco by the United States. We do not expect that babaco imported from Chile would have a significant economic impact on U.S. producers or other small entities.

Hyacinth Bean and Yard Long Bean From Honduras

No information is available on potential U.S. imports of hyacinth bean or yard long bean from Honduras or on U.S. production of these commodities.

Angelica From Korea

Korea produces about 1,300 metric tons of angelica a year. Of this amount, only 10 kilograms were exported in 1994 and 14 kilograms in 1995. Given the negligible quantities exported in the last 2 years, it is anticipated that very little angelica will be imported into the United States from Korea. Therefore, no significant economic impact on U.S. entities is expected.

Strawberry From Morocco

In 1994, total U.S. strawberry production was 737,580 metric tons. That year, the United States exported 57,332 metric tons of fresh strawberries and 28,637 metric tons of frozen strawberries and imported 19,843 metric tons of fresh strawberries and 25,050 metric tons of frozen strawberries. Therefore, in 1994, U.S. exports of fresh strawberries surpassed U.S. imports of fresh strawberries by nearly three times, while frozen strawberry exports and imports were more balanced.

Morocco produced about 35,000 metric tons of strawberries in the 1994–95 season. During that season, Morocco exported about 9,000 metric tons of fresh strawberries and 11,000 metric tons of frozen strawberries.

Future U.S. strawberry imports from Morocco are estimated at 160 metric tons of strawberries per year. As these estimated strawberry imports from Morocco constitute less than .02 percent of U.S. strawberry production, they are not expected to have a significant economic impact on U.S. entities, large or small.

Broad Bean, Green Bean, and Mung Bean From Nicaragua

In 1994, total U.S. green bean production was 916,750 metric tons. Of this amount, 20,324 metric tons, or 2.2 percent of total production, was exported. In 1994, green bean imports amounted to 11,230 metric tons.

U.S. production data is not available for broad bean and mung bean. However, in 1994, the United States exported 389 metric tons of dried broad bean and 2,134 metric tons of dried mung bean. U.S. imports of these commodities in 1994 totaled 610 metric tons of dried broad bean and 7,178 metric tons of dried mung bean.

No information is available on potential imports of green bean, broad bean, and mung bean from Nicaragua. Given the sizable quantity of green beans produced in the United States and given the import levels for broad bean and mung bean, potential import of these commodities from Nicaragua is not expected to have a significant economic impact on U.S. producers or other small entities.

Clementine, Grapefruit, Lemon, Minneola, Navel Orange, Satsuma, and Valencia Orange From South Africa

In the 1994–95 season, the total value of the U.S. citrus crop was $2.25 billion. The 1994–95 value of U.S.-produced navel oranges (early and midseason) was $836 million, valencia oranges $727 million, grapefruit $301 million, and lemon $265 million. Production value is not available for clementine, satsuma, and minneola.

In 1994, the United States exported fresh citrus and citrus products valued at more than $650 million and imported fresh citrus and citrus products valued at about $70 million. By weight, about 50 percent of 1994 fresh citrus exports were oranges and tangerines, about 40 percent grapefruit, and about 10 percent lemons and limes.

South Africa exports about two-thirds of its citrus crop. The 1996 projected exports of citrus from the Western Cape Province of South Africa to the United States include 10,500 metric tons of navel oranges; 12,750 metric tons of valencia oranges; 8,000 metric tons of clementines; 75 metric tons of grapefruit; 3,000 metric tons of lemons; 1,000 metric tons of satsuma; and 900 metric tons of minneola. These projections amount to only a fraction of one percent of U.S. production of citrus.

Additionally, as South Africa exports most of its fresh citrus and citrus products during the summer months, South African citrus would not compete with the late fall, winter, and early spring citrus production season in the United States.

Therefore, due to summer arrival of citrus from South Africa, the relatively negligible quantity of citrus expected to be imported into the United States from South Africa, and the fact that U.S. citrus exports are more than nine times greater than U.S. citrus imports, we expect that South African citrus exports to the United States would not have a significant economic impact on U.S. producers, exporters, and importers of citrus, or other small entities. Citrus importers in the United States could benefit from the increased availability of citrus fruit, especially navel oranges, during the time of year when U.S. production is at its lowest.

The alternative to this rule was to make no changes in the regulations. After consideration, we rejected this alternative because there is no biological reason to prohibit the importation into the United States of the fruits and vegetables listed in this document.

Executive Order 12988

This rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding the importation of fruits and vegetables under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0049.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 300 and 319 are amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, paragraph (a), the introductory text is revised to read as follows:

§ 300.1 Materials incorporated by reference; availability.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through October 1996, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

4. A new § 319.56–2q is added to read as follows:

§ 319.56–2q Administrative instructions: conditions governing the entry of citrus from South Africa.

Clementine (*Citrus reticulata*), grapefruit (*Citrus paradisi*), lemon (*Citrus limon*), minneola (*C. paradisi* x *C. reticulata*), navel orange (*Citrus sinensis*), satsuma (*Citrus reticulata*), and valencia orange (*Citrus sinensis*) may be imported into the United States from the Western Cape Province of South Africa only under the following conditions:

(a) The citrus fruit must be grown in, packed in, and shipped from the Western Cape Province of South Africa.

(b) The citrus fruit must be cold treated for false codling moth and fruit

flies of the genus *Ceritatis* and *Pterandrus* in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(1) If the cold treatment is to be conducted in the United States, entry of the citrus fruit into the United States is limited to ports listed in § 319.56–2d(b)(1).

(2) If the cold treatment is conducted in South Africa or in transit to the United States, entry of the citrus into the United States may be made through any U.S. port.

(c) Each shipment of citrus fruit must be accompanied by a phytosanitary certificate issued by the South African Ministry of Agriculture stating that the conditions of paragraph (a) of this section have been met. (Approved by the Office of Management and Budget under control number 0579– 0049)

5. In § 319.56–2t, an OMB control number is added at the end of the section, and the table is amended as follows:

a. In the entries for Costa Rica, Guatemala, and Philippines, under the heading *Common name,* by removing the words ''Yam bean'' from each entry and adding the word ''Jicama'' in their places.

b. In the entries for Guatemala and Panama, the entry for Tarragon would be amended in the fourth column, under the heading Plant part(s), by removing the words ''Leaf and stem'' and adding the words ''Above ground parts'' in their place.

c. In the entry for Belize, the entry for Papaya, by revising the text under the heading *Plant part(s)* to read as set forth below.

d. By adding, in alphabetical order, entries for Basil from Argentina, Babaco from Chile, Angelica from Korea, and Strawberry from Morocco to read as set forth below.

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
Argentina.			
*	*	*	*
	Basil	Ocimum spp.	Above ground parts.
*	*	*	*
Belize.			
*	*	*	*
	Papaya	Carica papaya	Fruit (Must be accompanied by a phytosanitary certificate issued by the Belizean department of agriculture stating that the fruit originated in the district of Cayo, Corozal, or Orange Walk, or in any portion of the district of Stann Creek *except* the area bounded as follows: Beginning at the southernmost point of the Placencia Peninsula; then north along the coast of the Caribbean Sea to Riversdale Rd.; then west along Riversdale Rd. to Southern Hwy.; then south along the Southern Hwy. to Independence Rd.; then east along Independence Rd. to Big Creek Port; then east, on an imaginary line, from Big Creek Port across the Placencia Lagoon to the point of beginning. Papayas from other areas of Belize enterable only with treatment—see § 319.56–2x). Prohibited entry into Hawaii due to the papaya fruit fly, Toxotrypana curvicauda. Cartons in which fruit is packed must be stamped ''Not for importation into or distribution within HI.''
*	*	*	*
Chile	Babaco	Carica x heilborni var. pentagona.	Fruit. (From Medfly-free areas—see § 319.56–2j. Fruit must be accompanied by a phytosanitary certificate issued by the Chilean department of agriculture stating that the fruit originated in a Medfly-free province.)
*	*	*	*
Korea	Angelica	Aralia elata	Edible shoot.
*	*	*	*
Morocco	Strawberry	Fragaria spp.	Fruit.
*	*	*	*

* * * * *

(Approved by the Office of Management and Budget under control number 0579- 0049)

6. In § 319.56–2x, paragraph (a), the table is amended as follows:

a. In the entry for Belize, the entry for Papaya, by revising the text under the heading *Plant part(s)* to read as set forth below.

b. By adding, in alphabetical order, entries for Hyacinth bean and Yard long bean from Honduras and Broad bean, Green bean, and Mung bean from Nicaragua to read as set forth below.

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	*
Belize	Papaya	Carica papaya	Fruit (Treatment for Medfly not required for fruit grown in the districts of Cayo, Corozal, and Orange Walk, or in any portion of the district of Stann Creek except the area bounded as follows: Beginning at the southernmost point of the Placencia Peninsula; then north along the coast of the Caribbean Sea to Riversdale Rd.; then west along Riversdale Rd. to Southern Hwy.; then south along the Southern Hwy. to Independence Rd.; then east along Independence Rd. to Big Creek Port; then east, on an imaginary line, from Big Creek Port across the Placencia Lagoon to the point of beginning—see § 319.59–2t.) Papayas prohibited entry into Hawaii due to the papaya fruit fly, Toxotrypana curvicauda. Cartons in which fruit is packed must be stamped ''Not for importation into or distribution within HI.''
*	*	*	*
Honduras	Hyacinth bean	Lablab purpureus	Pod or shelled.
	Yard long bean	Vigna unguiculata, subsp. sesquipedalis.	Pod or shelled.
*	*	*	*
Nicaragua	Broad bean	Vicia faba	Pod or shelled.
	Green bean	Phaseolus spp.	Pod or shelled.
	Mung bean	Vigna radiata	Pod or shelled.
*	*	*	*

* * * * *

Done in Washington, DC, this 20th day of December 1996.

Al Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–108 Filed 1–3–97; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Parts 160 and 161

[Docket No. 96–075–1]

Accredited Veterinarians; Optional Digital Signature

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to accept digital signatures from accredited veterinarians as an additional option for official certificates, forms, records, and reports to the Animal and Plant Health Inspection Service. Currently, we require hand written signatures on all such documents. We believe that accepting digital signatures may benefit accredited veterinarians and the industries they serve by reducing the turn around time for these documents. This proposed action would relieve restrictions that appear to be unnecessary.

DATES: Consideration will be given only to comments received on or before March 7, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–075–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–075–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph S. VanTiem, Senior Staff Veterinarian, National Animal Health Programs, VS. APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–7716, or e-mail: jvantiem@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 160 and 161 (the regulations), govern the accreditation of veterinarians. Accredited veterinarians are approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) to perform certain regulatory tasks to control and prevent the spread of animal diseases throughout the country and internationally. One of these regulatory tasks is preparing official documents including certificates, forms, records, and reports and submitting such documents to APHIS. Currently, we require a hand written signature by the accredited veterinarian on all official certificates, forms, records, and reports.

We are proposing to change the regulations to allow accredited veterinarians the additional option of signing official certificates, forms, records, and reports by use of a digital signature and of transmitting such documents electronically to APHIS. We will continue to accept and process official certificates, forms, records, and reports in hard copy as well, so that the technical capabilities or preferences of

the accredited veterinarian will not hinder the processing of these documents. We believe that allowing accredited veterinarians the option of signing and transmitting documents electronically will provide them with more flexibility and allow them to choose the method which is most efficient for them.

Representatives of the poultry industry, other industries served by accredited veterinarians, and APHIS veterinarians have requested that we accept digital signatures and allow electronic transmissions between accredited veterinarians and APHIS. The proposed addition to the regulations could benefit the accredited veterinarians and the industries they serve by saving them time and money. The time delays currently experienced in transmitting documents to APHIS could be eliminated or lessened. In addition to the time saved, the costs currently incurred for the use of couriers or special handling to expedite delivery could be eliminated.

Previously Published Notice

As we stated in our Notice published in the Federal Register on October 31, 1996 (60 FR 56215–56216, Docket No. 96–084–1), APHIS has a waiver to use RSA [1] digital signature technology in lieu of the Digital Signature Standard specified by Federal Information Processing Standard 186. The RSA digital signature technology provides document security that can be used to verify the identity of the person who signed the document and can protect the signed document against unauthorized modifications of its text. The RSA digital signature technology is widely used in a variety of commercial software applications, for example, InForms by Novell Incorporated, Form Flow by Delrina Corporation, and Jet Form by Jet Form Corporation.

Digital Signature Pilot Project

APHIS developed a pilot project testing the use of digital signatures and electronic transmissions using the Veterinary Services (VS) Form 17–6, Certificate for Poultry or Hatching Eggs for Export. The pilot project began in December 1995 and ran through May 1996.

At the August 9–10, 1994, Livestock and Poultry Movement meeting in Fort Collins, CO, producers identified the following potential benefits from digitally signing and electronically transmitting the VS Form 17–6: (1) reduce costs associated with processing, handling, and mailing the VS Form 17–6, (2) move exports on short notice due to market conditions, and (3) reduce processing costs and turn around time between the producers and VS area offices for review and endorsement. Producers, accredited veterinarians, and VS Area Offices in Arkansas and Iowa volunteered to participate in the pilot project.

An automated copy of VS Form 17–6 was created using Novell Inc.'s InForms software. During the pilot project, the automated VS Form 17–6 was used by two producers, accredited veterinarians, and the VS Area Office in Arkansas and Iowa. The participants of the pilot project concluded that the use of digital signatures and electronic transmission was successful and beneficial. We believe that the use of digital signatures and electronic transmission of documents could be successful for other industries as well.

Other Government Use of Digital Signature Technology

As technology has advanced, various governments have begun to use or investigate the use of digital signatures. The Federal Government is using digital signatures on purchase orders. Many states have enacted legislation accepting digital signatures or are looking into the use of digital signatures, including Arizona, California, Florida, Georgia, Hawaii, Illinois, Oregon, Utah, Virginia, Washington, and Wyoming. Several foreign countries are also working on the acceptability of digital signatures, including Canada, Chile, and Germany. We expect to see continued advancements in the use of digital signatures.

Regulatory Changes

Due to the current state of technology and the technological advancements that we expect to continue, we propose to allow the maximum flexibility to use digital signatures and electronic transmission for official certificates, forms, records, and reports. We envision electronic transmission of official certificates, forms, records, and reports by various methods, including electronic mail and Internet. As technology advances, we expect new methods will be available. Therefore, we propose to approve the methods based on technological capabilities at the time of the request and not limit the regulations to a specific method, thus offering the greatest flexibility and the least restrictive regulations.

Specifically, we propose to revise several definitions, including the definitions of *issue* and *sign*. We propose to revise the definition of *issue* in § 160.1 of the regulations to include electronic transmission. We propose to revise the definition of *sign* in § 160.1 of the regulations to include digital signatures approved by the Administrator. We propose to add the following definition for *approved digital signature*:

> Digital signatures approved by the Administrator for electronic transmission, for example, via a computer. To be approved, a digital signature must be able to verify the identity of the accredited veterinarian signing the document and indicate if the integrity of the data in the signed document was compromised.

We also propose to revise § 161.3(j) of the regulations to require accredited veterinarians to be responsible for the use of approved digital signature capabilities.

Executive Order 12866 and Regulatory Flexibility Act

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

We do not have enough data for a comprehensive analysis of the economic impacts of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis for this proposed rule. We are inviting comments about this proposed rule as it relates to small entities. In particular, we are interested in determining (1) the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and (2) the economic impact of those benefits or costs.

Under the Animal Industry Act (21 U.S.C. 112, 113–114a–1, and 115), the Animal Quarantine Acts and the Cattle Contagious Diseases Act (21 U.S.C. 105, 111–113, 120, 121, and 125), the Federal Meat Inspection Act (21 U.S.C. 612 and 613), the Foot-and-Mouth Disease Research Act (21 U.S.C. 113a), and the Horse Protection Act (15 U.S.C. 1828), the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction and dissemination of communicable diseases of livestock and poultry. In accordance with the regulations in 9 CFR parts 160, 161, and 162, some veterinarians are accredited by the Federal Government to cooperate with APHIS in controlling and preventing the introduction and dissemination of animal diseases. Accredited veterinarians use their

[1] RSA was named for the inventors of the algorithm, Drs. Ronald Rivest, Adi Shamir, and Leonard Adleman.

professional training in veterinary medicine to perform certain regulatory tasks. One of these regulatory tasks is preparing official documents, including certificates, forms, records, and reports and submitting such documents to APHIS. Currently, only a hand written signature of an accredited veterinarian is acceptable.

APHIS is proposing to allow accredited veterinarians to use digital signatures in place of hand written signatures. Allowing the electronic transmission of signed documents could benefit accredited veterinarians and the industries they serve by eliminating the time-consuming step of physical transmission from the accredited veterinarian to the VS area office and others involved in the process.

An example of a document which accredited veterinarians must sign is an export health certificate. For the poultry industry, VS Form 17–6, Certificate for Poultry or Hatching Eggs for Export, is used as an export health certificate. Currently, a VS Form 17–6 is processed as follows: the producer fills out information related to the exportation on the VS Form 17–6 and sends it to the accredited veterinarian; the accredited veterinarian fills out the information about the health of the poultry or eggs on the VS Form 17–6, including any required test information, signs the VS Form 17–6 and sends it to the VS area office; the APHIS veterinarian reviews and endorses the VS Form 17–6 and sends it back to the producer, who sends the VS Form 17–6 to the importing country. Throughout this process, there can be time delays and additional expenses incurred for mailing or special handling to move the certificate from one place to the next.

With the use of digital signatures, the accredited veterinarian could receive, complete, and sign an automated document from the producer. The accredited veterinarian could electronically transmit the signed document to the VS area office. Therefore, this amendment would eliminate the need to pay couriers or package delivery companies and wait for delivery between the producers, accredited veterinarians, and the VS area office.

The proposed rule change would provide an additional option for signing and submitting official certificates, forms, records, and reports. While not requiring that this option be exercised, there are potential savings for those accredited veterinarians who make use of this option. The delivery costs associated with these documents can vary widely based on the delivery method used. Therefore, we cannot accurately estimate the potential savings. However, we expect that the proposed rule change could be beneficial to accredited veterinarians and their clients, whether large or small.

An alternative to this proposed rule is to make no changes in the regulations. We rejected this alternative because accredited veterinarians will not be required to use this alternative signature method.

This proposed rule contains no new information collection or recordkeeping requirements.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

9 CFR Part 160

Veterinarians.

9 CFR Part 161

Reporting and recordkeeping requirements, Veterinarians.

Accordingly, 9 CFR parts 160 and 161 would be amended as follows:

PART 160—DEFINITION OF TERMS

1. The authority citation for part 160 would continue to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612 and 613; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 160.1, the definitions for *issue* and *sign* would be revised and the definition for *approved digital signature* would be added, in alphabetical order, to read as follows:

§ 160.1 Definitions.

* * * * *

Approved digital signature. Digital signatures approved by the Administrator for electronic transmission, for example, via a computer. To be approved, a digital signature must be able to verify the identity of the accredited veterinarian signing the document and indicate if the integrity of the data in the signed document was compromised.

* * * * *

Issue. The distribution, including electronic transmission, of an official animal health document that has been signed.

* * * * *

Sign, (Signed). For an accredited veterinarian to put his or her signature in his or her own hand, or by means of an approved digital signature, on a certificate, form, record, or report. No certificate, form, record, or report is signed if:

(1) Someone other than the accredited veterinarian has signed it on behalf of or in the name of the accredited veterinarian, regardless of the authority granted them by the accredited veterinarian; or

(2) If any mechanical device, other than an approved digital signature, has been used to affix the signature.

* * * * *

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

3. The authority citation for part 161 would continue to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612 and 613; 7 CFR 2.22, 2.80, and 371.2(d).

4. In § 161.3 paragraph (j) would be revised to read as follows:

§ 161.3 Standards for accredited veterinarian duties.

* * * * *

(j) An accredited veterinarian shall be responsible for the security and proper use of all official certificates, forms, records, and reports; tags, bands, or other identification devices; and approved digital signature capabilities used in his or her work as an accredited veterinarian and shall take reasonable care to prevent the misuse thereof. An accredited veterinarian shall immediately report to the Veterinarian-in-Charge the loss, theft, or deliberate or accidental misuse of any such certificate, form, record, or report; tag, band, or other identification device; or approved digital signature capability.

* * * * *

Done in Washington, DC, this 26th day of December 1996.

Al Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–177 Filed 1–3–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–39; Amendment 39–9875; AD 97–01–05]

RIN 2120–AA64

Airworthiness Directives; Williams International, L.L.C. Model FJ44–1A Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Williams International, L.L.C. Model FJ44–1A turbofan engines. This action requires initial and repetitive eddy current inspections (ECI) for possible cracks in high pressure turbine (HPT) disk blade retention posts. In addition, this AD requires the installation of advanced design HPT disks as terminating action to the inspection requirements of this AD. This amendment is prompted by two incidents of HPT disk blade retention post separations. The actions specified in this AD are intended to locate possible cracks in HPT disk blade retention posts, thereby preventing the separation of these posts and the liberation of the turbine blades that they retain, and a subsequent loss of engine power. In addition, the actions specified in this AD are intended to prevent the possible high disk speed uncontained liberation of disk posts and turbine blades, which could cause aircraft damage.

DATES: Effective January 21, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 21, 1997.

Comments for inclusion in the Rules Docket must be received on or before March 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–39, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Mr. John Teeter, Manager, Customer Support, Williams International, 2280 West Maple Road, P.O. Box 200, Walled Lake, MI 48390–0200; telephone (810) 624–5200, fax (810) 669–9515. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene H. Messal, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (847) 294–7011, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has verified two reports of inflight HPT disk post separations on Williams International model FJ44–1A turbofan engines. One of these inflight post separations was uncontained. The investigation revealed that in both cases, high pressure turbine (HPT) disk blade retention posts separated due to cracking caused by material creep/fatigue. This condition, if not corrected, could result in other engines experiencing HPT disk blade retention post separations and turbine blade liberations, and subsequent losses of engine power. In addition, this condition could, if not corrected, result in other engines experiencing high disk speed uncontained liberation of disk posts and turbine blades, which could cause aircraft damage.

The FAA has reviewed and approved the technical contents of Williams-Rolls Alert Service Bulletin (ASB) No. FJ44–A72–30, dated November 6, 1996, that describes procedures for eddy current inspections (ECI) for possible cracks in HPT disk blade retention posts; and ASB No. FJ44–A72–31, dated November 4, 1996, that describes procedures for replacement of existing HPT disks with advanced design HPT disks.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same design, this AD is being issued to locate possible cracks in HPT disk blade retention posts, which could lead to the liberation of the turbine blades that they retain, and subsequent loss of engine power. In addition, this AD is being issued to prevent the separation of HPT disk posts that could lead to a high disk speed uncontained liberation of disk posts and turbine blades, which could result in aircraft damage. This AD requires initial and repetitive ECI for possible cracks in HPT disk blade retention posts. The inspection population is divided into two groups, with the higher risk group listed by engine serial number (S/N). This group of HPT disks is at a higher risk due to a lower stress rupture strength characteristic. In addition, this AD requires replacement of the existing HPT disks, Part Number (P/N) 48629, with advanced design HPT disks, P/N 55291, by July 1, 1997, as terminating action to the inspection requirements of this AD. The calendar end-dates for this AD were determined based upon each suspect disk group's time to crack initiation, subsequent crack propagation rate, and its failure probability. In addition, the total in-service cycles and hours of each of the suspect disks of both groups, and the ASB replacement parts availability were contributing factors for determining the end-dates. These actions are required to be accomplished in accordance with the ASBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

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 should 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–ANE–39.'' The postcard will be date stamped and returned to the commenter.

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 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, Incorporation by reference, 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

97–01–05 Williams International, L.L.C.: Amendment 39–9875. Docket 96–ANE–39.

Applicability: Williams International L.L.C. Model FJ44–1A turbofan engines, with serial numbers 1001–1179, 1196, and 1197, installed on, but not limited to, Cessna Citation Model 525 aircraft.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 possible high pressure turbine (HPT) disk blade retention post separations and the release of their retained turbine blades, subsequent loss of engine power, and possible high disk speed uncontained liberation of disk posts and the turbine blades, which could cause aircraft damage, accomplish the following:

(a) Perform initial and repetitive eddy current inspections (ECI) for cracks in HPT disks, Part Number (P/N) 48629, blade retention posts in accordance with the following schedule and requirements:

Engine serial Nos.	Initial compliance required	Repetitive inspection required
1001, 1004–1010, 1016, 1017, 1020, 1023–1026, 1031, 1033, 1036, 1039, 1041, 1042, 1043, 1046–1048, 1051–1056, 1063, 1069, 1071, 1072, 1076, 1080, 1082, 1091, 1092, 1095–1098, 1107, 1108, 1111, 1125, 1127–1129, 1133, 1134, 1165, 1172, 1178	Within 50 cycles after the effective date of this AD or by February 1, 1997, whichever occurs first.	Thereafter, at intervals not to exceed 125 cycles in service (CIS) since last inspection.
Remaining serial number engines with 575 CIS or more as of April 1, 1997	No later than May 1, 1997	Thereafter, at intervals not to exceed 125 CIS since last inspection.

(1) Perform the initial and repetitive eddy current inspections for cracks in HPT disk blade retention posts in accordance with Williams-Rolls Alert Service Bulletin (ASB) No. FJ44–A72–30, dated November 6, 1996.

(2) Remove from service HPT disks that do not meet the ''return to service'' criteria stated in Williams-Rolls ASB No. FJ44–A72–30, dated November 6, 1996, and replace them with serviceable HPT disks, P/N 48629, that meet the required ASB ''return to service'' criteria, or replace them with advanced design HPT disks, P/N 55291, in accordance with paragraph (b) of this AD.

(b) No later than July 1, 1997, replace all existing HPT disks, P/N 48629, with advanced design HPT disks, P/N 55291, in accordance with Williams-Rolls ASB No. FJ44–A72–31, dated November 4, 1996. Installation of this advanced design HPT disk constitutes terminating action to the repetitive inspection requirements of this AD.

(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, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

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

(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 aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following Williams-Rolls ASBs:

Document No.	Pages	Date
FJ44–A72–30	1–7	November 6, 1996.
Total pages: 7		
FJ44–A72–31	1–7	November 4, 1996.
Total pages: 7		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Mr. John Teeter, Manager, Customer Support, Williams International, 2280 West Maple Road, P.O. Box 200, Walled Lake, MI 48390–0200; telephone (810) 624–5200, fax (810) 669–9515. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North

Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 21, 1997.

Issued in Burlington, Massachusetts, on December 27, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–31 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–CE–59–AD; Amendment 39–9873; AD 97–01–02]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 525 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Model 525 airplanes. This action requires repetitively inspecting the main landing gear (MLG) trunnion pins for proper installation, and either immediately or eventually replacing the existing dry-film lubricated MLG trunnion slot bearings with sealed and self-lubricating bearings. This AD results from an incident where the left MLG collapsed during the landing roll even though the cockpit indications showed that the MLG was in the normal down and locked position. Loss of dry-film lubricant on the MLG trunnion bearings caused this incident. The actions specified by this AD are intended to prevent MLG collapse caused by trunnion bearing failure, which could result in loss of control of the airplane during landing operations.

DATES: Effective January 15, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 15, 1997.

Comments for inclusion in the Rules Docket must be received on or before March 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–59–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277; telephone (316) 941–6000; facsimile (314) 941–8500. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–59–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Eual Conditt, Aerospace Safety Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4128; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to This AD

Recently, a Cessna Model 525 airplane was involved in an incident where the left main landing gear (MLG) collapsed during the landing roll even though cockpit indications showed that the MLG was in the normal down and locked position. Investigation revealed that loss of dry-film lubricant on the MLG trunnion bearings caused this incident.

Further investigation of the MLG of Cessna Model 525 airplanes indicates that this dry-film lubricant in the MLG trunnion bearings becomes inadequate over time. When these bearings are not properly lubricated, the roll pin that goes through the trunnion and bearing shaft fails, which causes the pin to back out of the bearing. This roll pin supports the entire MLG, so its failure then causes MLG collapse.

Applicable Service Information

Cessna has issued the following service information:

- Cessna Alert Service Letter SLA525–32–11, Revision 1, dated October 1, 1996, which includes procedures for inspecting the MLG trunnion pins for proper installation; and
- Cessna Service Bulletin SB525–32–08, Revision 1, dated October 1, 1996, which includes procedures for replacing the existing dry-film lubricated MLG trunnion slot bearings with sealed and self-lubricating bearings.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incident described above, including the above-referenced service information, the FAA has determined that AD action should be taken to prevent MLG collapse caused by trunnion bearing failure, which could result in loss of control of the airplane during landing operations.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Model 525 airplanes of the same type design, this AD requires repetitively inspecting the main landing gear (MLG) trunnion pins for proper installation, and either immediately or eventually replacing the existing dry-film lubricated MLG trunnion slot bearings with sealed and self-lubricating bearings. Only two inspections will be allowed before mandatory replacement of the MLG trunnion slot bearings. Accomplishment of the inspections required by this AD will be in accordance with Cessna Alert Service Letter SLA525–32–11, Revision 1, dated October 1, 1996. Accomplishment of the replacement required by this AD will be in accordance with Cessna Service Bulletin SB525–32–08, Revision 1, dated October 1, 1996.

Determination of the Effective Date of the AD

Since a situation exists (loss of control of the airplane during landing operations) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to 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 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 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 No. 96–CE–59–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 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 a new airworthiness directive (AD) to read as follows:

97–01–02 Cessna Aircraft Company: Amendment 39–9873; Docket No. 96–CE–59–AD.

Applicability: Model 525 airplanes (serial numbers 525–0001 through 525–0153), 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 (f) 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 in the body of this AD, unless already accomplished.

To prevent main landing gear (MLG) collapse caused by trunnion bearing failure, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, and thereafter within 25 hours TIS after the initial inspection, inspect the main landing gear trunnion pins (four pins: both forward and aft trunnion pins on both the left and right MLG) for proper installation. Perform this inspection in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Alert Service Letter SLA525–32–11, Revision 1, dated October 1, 1996.

(b) If any pin is not properly installed as described in Cessna Alert Service Letter SLA525–32–11, Revision 1, dated October 1, 1996, prior to further flight, replace the existing dry-film lubricated MLG trunnion slot bearing with a sealed and self-lubricating bearing. Perform this replacement in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin SB525–32–08, Revision 1, dated October 1, 1996. The repetitive inspection need not be accomplished on the trunnion pin when the bearing is replaced with a sealed and self-lubricating bearing.

(c) Within the next 75 hours TIS after the effective date of this AD, unless already accomplished in accordance with paragraph (b) of this AD, replace the existing dry-film lubricated MLG trunnion slot bearing with a sealed and self-lubricating bearing at all four main landing gear trunnion locations (both forward and aft trunnion pins on both the left and right MLG). Perform these replacements in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin SB525–32–08, Revision 1, dated October 1, 1996.

(d) Replacing the existing dry-film lubricated MLG trunnion slot bearing with a sealed and self- lubricating bearing in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin SB525–32–08, Revision 1, dated October 1, 1996, on all four main landing gear trunnion locations (both forward and aft trunnion pins on both the left and right MLG) eliminates the repetitive inspection requirement of this AD. These replacements may be accomplished at any time prior to 75 hours TIS after the effective date of this AD, at which time they must be accomplished (see paragraph (c) of this AD).

(e) 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.

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(g) The inspections required by this AD shall be done in accordance with Cessna Alert Service Letter SLA525–32–11, Revision 1, dated October 1, 1996. The replacements required by this AD shall be done in accordance with Cessna Service Bulletin SB525–32–08, Revision 1, dated October 1, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–9873) becomes effective on January 15, 1997.

Issued in Kansas City, Missouri, on December 23, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–160 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–273–AD; Amendment 39–9866; AD 96–26–03]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Fokker Model F28 Mark 0070 and 0100 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) that will enable the flightcrew to determine if the thrust reversers are properly stowed and locked prior to take-off. In addition, the existing AD requires a revision to the maintenance program to incorporate instructions to perform checks of the thrust reverser system and correct thrust reverser malfunctions. That AD was prompted by results of a review, which indicated that a potential latent failure of the secondary lock actuator switch 1 of the thrust reverser system in the open position may occur, in addition to the potential failure of the secondary lock relay 1 in the energized position. This new AD adds a requirement to accomplish new modifications that will serve as terminating actions for the revisions to the AFM and maintenance program, and new repetitive checks of the thrust reverser system. The actions specified in this AD are intended to ensure protection against inadvertent deployment of the thrust reversers during flight.

DATES: Effective January 21, 1997.

The incorporation by reference of Fokker Service Bulletin SBF100–78–012, dated November 22, 1996; Fokker Service Bulletin SBF100–24–034, Revision 1, dated September 12, 1996; and Fokker Service Bulletin SBF100–78–013, dated November 22, 1996; as listed in the regulations; is approved by the Director of the Federal Register as of January 21, 1997.

The incorporation by reference of Fokker All Operator Message TS96.67591, dated November 14, 1996, was approved previously by the Director of the Federal Register as of December 24, 1996 (61 FR 66890, December 19, 1996).

Comments for inclusion in the Rules Docket must be received on or before March 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–273–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Service B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: On December 5, 1996, the FAA issued AD 96–24–10, amendment 39–9850 (61 FR 66890, December 19, 1996), applicable to all Fokker Model F28 Mark 0070 and 0100 series airplanes. That AD superseded AD 96–23–16, amendment 39–9825 (61 FR 5887, November 20, 1996). AD 96–24–10 requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to enable the flightcrew to determine if the thrust reversers are properly stowed and locked prior to take-off by monitoring proper engagement of the autothrottle system (ATS). It also allows dispatch of the airplane with both thrust reversers inoperative provided they are deactivated and secured in the stowed position, and no operations are conducted that are predicated on thrust reverser operation. In addition, that AD requires a revision to the FAA-approved maintenance program to incorporate instructions to correct malfunctions of the secondary lock relay 1 of the thrust reversers found during the operational tests; to perform a daily check to detect latent failure of the secondary lock actuator switch 1; and to take corrective actions, if necessary.

That action was prompted by results of a review and safety assessment of the thrust reverser control and indication system, which indicated that a potential latent failure of the secondary lock actuator switch 1 in the open position may occur in addition to the potential failure of the secondary lock relay 1 in the energized position addressed by AD 96–23–16.

The actions required by AD 96–24–10 are intended to prevent such failures, which could result in reduced protection against inadvertent deployment of the thrust reversers during flight.

In the preamble to AD 96–24–10, the FAA indicated that the actions required by that AD were considered to be ''interim action'' and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this AD follows from that determination.

New Service Information from the Manufacturer

Fokker issued Service Bulletin SBF100–78–012, dated November 22, 1996, which describes procedures for modification of the wiring of the electrical control, and indication and warning systems of the thrust reversers. This modification involves changing the wiring of the stow limit relay of the thrust reverser, which will prevent inadvertent loss of the thrust reverser stow signal during certain failure conditions (i.e., bypasses the stow limit relay to ensure that the stow solenoid is energized at all times regardless of the position of the secondary lock actuator switch 1, except during commanded deployment of the thrust reverser). This modification also involves changing the wiring of the flight warning computer (FWC), which will prevent unintended inhibition of the thrust reverser warning (i.e., bypasses the warning switch of the secondary lock relay 1). Accomplishment of this modification will eliminate the need for the revisions to the AFM and maintenance program (currently required by AD 96–24–10).

In addition, accomplishment of this modification will slightly increase the electrical loads on the emergency direct current (DC) bus on Fokker Model F28 Mark 0070 and 0100 series airplanes. The load margin for Fokker Model F28 Mark 0100 series airplanes is adequate to sustain the additional electrical loads created by accomplishment of Service Bulletin SBF100–78–012; however, Fokker Model F28 Mark 0070 series airplanes do not have an adequate load margin to sustain these additional loads. Therefore, Fokker Service Bulletin SBF100–24–034, Revision 1, dated September 12, 1996, must be accomplished on Fokker Model F28 Mark 0070 series airplanes prior to or in conjunction with Fokker Service Bulletin SBF100–78–012. Fokker Service Bulletin SBF100–24–034 describes procedures for modification of the wiring of the priority switching of the emergency inverter power supply. The modification involves reconfiguring the emergency DC bus wiring. Accomplishment of this modification

will reduce the load of the emergency DC bus on Fokker Model F28 Mark 0070 series airplanes.

In addition, Fokker has also issued Service Bulletin SBF100–78–013, dated November 22, 1996. This service bulletin describes procedures for performing repetitive operational checks to detect failures of the secondary lock actuator, primary lock switch, indication and warning system, and feedback cable mechanism of the thrust reversers; and repair of the thrust reverser system, if necessary.

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, classified these service bulletins as mandatory and issued Dutch airworthiness directive BLA 1996–140 (A), dated November 25, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are 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 RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, 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 the New 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, this AD supersedes AD 96–24–10. It continues to require the following actions:

- A revision to Limitations Section of the FAA-approved AFM that will enable the flightcrew to determine if the thrust reversers are properly stowed and locked prior to take-off by monitoring proper engagement of the authothrottle system (ATS); and
- A revision to the FAA-approved maintenance program to incorporate instructions to correct malfunctions found during the operational tests of the secondary lock relay 1 of the thrust reversers; to perform a daily check to detect latent failure of the secondary lock actuator switch 1; and to take corrective actions, if necessary.

In addition, this AD requires performing the following new requirements:

1. Modification of the wiring of the electrical control, and indication and warning systems of the thrust reversers, which terminates the currently required AFM revision and the maintenance program revision;
2. Modification of the wiring of the priority switching of the emergency inverter power supply, for certain airplanes;
3. Repetitive operational checks to detect failures of the secondary lock actuator, primary lock switch, indication and warning system, and feedback cable mechanism of the thrust reversers; and repair of the thrust reverser system, if necessary; and
4. Submission of a report of any finding to Fokker following accomplishment of the operational checks.

These actions are required to be accomplished in accordance with the service bulletins described previously.

Operators should note that the FAA has deleted the previous allowance to dispatch with both thrust reversers inoperative, which was specified in paragraph (b) of AD 96–24–10. The FAA finds that such an allowance is unnecessary, since adequate spare parts are now available to accomplish any required part replacements as a result of the daily maintenance check.

Difference Between the AD and the Related Dutch AD

This AD differs from the Dutch airworthiness directive BLA 1996–140 (A) in that it does not address changes to the FAA Master Minimum Equipment List (MMEL), whereas the Dutch airworthiness directive changes the requirements of the Dutch MMEL for the autothrottle and the thrust reverser indication and alerting system. The Dutch BLA allows dispatch with both autothrottle channels inoperative and both thrust reverser indication and alerting systems inoperative provided both thrust reversers are deactivated and secured in the stowed position, and no operations or procedures are predicated on their use. The FAA MMEL only allows dispatch with one autothrottle channel inoperative and does not allow dispatch with either thrust reverser indication or alerting system inoperative. The FAA finds no safety-related reason to relax these requirements.

Interim Action

This is considered to be interim action. The exact cause of the addressed unsafe condition is still unknown at this time. The reports of operational check results that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the inadvertent thrust reverser deployment, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

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–273–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, Incorporation by reference, 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 removing amendment 39–9850 (61 FR 66890, December 19, 1996), and by adding a new airworthiness directive (AD), amendment 39–9866, to read as follows:

96–26–03 Fokker: Amendment 39–9866. Docket 96–NM–273–AD. Supersedes AD 96–24–10, amendment 39–9850.

Applicability: All Model F28 Mark 0070 and 0100 series airplanes, 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 (g) 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 ensure protection against inadvertent deployment of the thrust reversers during flight, accomplish the following:

(a) Within 48 hours after November 25, 1996 (the effective date of AD 96–23–16, amendment 39–9825), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''Before take-off, arm the autothrottle system (ATS).

When cleared for take-off, activate the take-off/go-around (TOGA) trigger(s), and positively verify ATS engagement [throttle movement *and* white steady AT1, AT2, or AT in the flight mode annunciator (FMA) engage window].

If the ATS does NOT engage correctly, abort the take-off, return, and report to maintenance.

If the ATS does engage correctly, you may continue take-off with either ATS engaged or disengaged, as necessary.

(b) Within 48 hours after December 24, 1996 (the effective date AD 96–24–10, amendment 39–9850), revise the FAA-approved maintenance program to include the procedures specified in Appendix 2 of Fokker All Operator Message TS96.67591, dated November 14, 1996. These procedures must be accomplished daily, and prior to further flight following failure of the operational check required by paragraph (a) of this AD. If any failure is detected during these procedures, prior to further flight, accomplish the corrective actions in accordance with the procedures. The FAA-approved maintenance program procedures required by paragraph (a)(3) of AD 96–23–16, amendment 39–9825, may be removed following accomplishment of the requirements of this paragraph.

(c) Within 60 days after the effective date of this AD, modify the wiring of the electrical control, and indication and warning systems of the thrust reversers, in accordance with Fokker Service Bulletin SBF100–78–012, dated November 22, 1996. The AFM revision required by paragraph (a) of this AD and the FAA-approved maintenance program revision required by paragraph (b) of this AD may be removed following accomplishment of this paragraph.

(d) For Model F28 Mark 0070 series airplanes: Prior to or in conjunction with the accomplishment of paragraph (c) of this AD, modify the wiring of the priority switching of the emergency inverter power supply in accordance with Fokker Service Bulletin SBF100–24–034, Revision 1, dated September 12, 1996.

(e) Within 500 flight cycles following accomplishment of paragraph (c) of this AD, perform operational checks to detect failures of the secondary lock actuator, primary lock switch, indication and warning system, and feedback cable mechanism of the thrust reversers in accordance with Fokker Service Bulletin SBF100–78–013, dated November 22, 1996. If any failure is detected, prior to further flight, repair the thrust reverser system in accordance with Chapter 78–30–00 of the Fokker Airplane Maintenance Manual. Repeat the operational checks thereafter at intervals not to exceed 500 flight cycles.

(f) Within 10 days after accomplishing the operational checks required by paragraphs (b) and (e) of this AD, submit a report of all findings to Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(g) 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.

(h) 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.

(i) The actions shall be done in accordance with Fokker All Operator Message TS96.67591, dated November 14, 1996; Fokker Service Bulletin SBF100–78–012, dated November 22, 1996; Fokker Service Bulletin SBF100–24–034, Revision 1, dated September 12, 1996; and Fokker Service Bulletin SBF100–78–013, dated November 22, 1996. Fokker Service Bulletin SBF100–24–034 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–3	1	September 12, 1996.
4–7	Original	October 17, 1995.

The incorporation by reference of Fokker All Operator Message TS96.67591, dated November 14, 1996, was approved previously by the Director of the Federal Register in

accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of the remainder of the service documents listed above is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Service B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on January 21, 1997.

Issued in Renton, Washington, on December 20, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–161 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Docket No. 96–ACE–23]

Amendment to Class E Airspace, York, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at York Municipal Airport, York, Nebraska. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) which has made this change necessary. The effect of this rule is to provide additional controlled airspace for aircraft executing the new SIAP at York Municipal Airport.

DATES: Effective date: March 27, 1997.

Comment date: Comments must be received on or before January 24, 1997.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 96–ACE–23, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106: telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at York Municipal Airport, York Nebraska. The amendment to Class E airspace at York, NE, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments and therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A great degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 should 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this 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 action 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 No. 96–ACE–23.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will no 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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant

rule'' under Department of Transportation (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 it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment.

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulation (14 CFR part 71) as follows:

PART 71—AMENDED

1. The authority citation for part 71 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.

71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 York, NE [Revised]

York Municipal Airport, NE
(lat. 40°53′47″ N., long. 97°37′26.7″ W.)
York NDB
(lat. 40°53′51″ N., long. 97°37′01″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the York Municipal Airport and within 2.6 miles each side of the 202° bearing from the York NDB extending from the 6.6-mile radius to 7.4 miles southwest of the airport and within 2.6 miles each side of the 334° bearing from the York NDB extending from the 6.6-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 22, 1996.

Christopher R. Blum,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 97–173 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AAL–32]

Revision of Class E Airspace; Buckland, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: It has come to the attention of the FAA that the Class E airspace at Buckland, AK, will not chart correctly. This action revises the Buckland, AK, airspace description by clarifying the airspace required from the Kotzebue Very High Frequency (VHF) omni-directional radio range (VOR) and Distance Measuring Equipment (VOR/DME) and the Selawik VOR/DME to the new Global Positioning System (GPS) waypoint coordinates. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide an accurate airspace description for the Class E airspace supporting IFR operations at Buckland, AK.

EFFECTIVE DATE: Effective 0901 UTC on January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

History

The FAA established Class E airspace at Buckland Airport, AK, as a result of the development of a GPS instrument approach procedure to Runway (RWY) 10 at Buckland Airport, AK. The final rule was published in the Federal Register (61 FR 53848, October 16, 1996). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

It has been brought to the FAA's attention that the airspace description will not chart correctly. The airspace description has been reworded to change the verbage ''10.5 miles northwest on the 303° bearing from the Buckland NDB'' to read ''4 miles eitherside of a line between AKUDY and the Kotzebue VOR/DME, and 4 miles eitherside of a line between AKUDY and the Selawik VOR/DME, excluding that airspace inside Kotzebue, AK, and Selawik, AK, Class E airspace areas.'' This action will clarify the charting problem. National Oceanic and Atmospheric Administration (NOAA) needs this revision before publication of aeronautical charts and manuals with effective date January 30, 1997.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace at Buckland, AK. The Class E airspace description will not chart correctly. The airspace description verbage ''10.5 miles northwest on the 303° bearing from the Buckland NDB'' has been reworded to read ''4 miles eitherside of a line between AKUDY and the Kotzebue VOR/DME, and 4 miles eitherside of a line between AKUDY and the Selawik VOR/DME, excluding that airspace inside Kotzebue, AK, and Selawik, AK, Class E airspace areas.'' This action will clarify the charting problem.

Because the circumstances described in this final rule warrant immediate action by the FAA to provide a corrected description for charting agencies, the FAA concludes that notice and public procedure under 5 U.S.C. section 553(b) are impractical and good cause, pursuant to 5 U.S.C. section 553(d), exists for making this amendment effective in less than 30 days.

The FAA has determined that these proposed regulations only involve 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Buckland, AK [Revised]

Buckland Airport, AK
(lat. 65° 58′ 40″ N, long. 161° 07′ 44″ W)
Buckland NDB
(lat. 65° 58′ 45″ N, long. 161° 08′ 56″ W)
Kotzebue VOR/DME
(lat. 66° 53′ 09″ N, long. 162° 32′ 24″ W)
Selawik VOR/DME
(lat. 66° 36′ 00″ N, long. 159° 59′ 50″ W)
AKUDY
(lat. 66° 04′ 23″ N, long. 161° 30′ 08″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Buckland Airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles southwest and 4 miles northeast of the 303° bearing of the Buckland NDB extending from the 6.5-mile radius to 21 miles northwest, and 4 miles eitherside of a line between AKUDY and the Kotzebue VOR/DME, and 4 miles eitherside of a line between AKUDY and the Selawik VOR/DME, excluding that airspace inside Kotzebue, AK, and Selawik, AK, Class E airspace areas.

* * * * *

Issued in Anchorage, AK, on December 26, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–175 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 96–AAL–16]

Revision of Class E Airspace; Dillingham, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action revises Class E airspace at Dillingham Airport, AK. The development of Global Positioning System (GPS) and Microwave Landing System (MLS) instrument approaches to RWY 1 and RWY 19 at Dillingham, AK, have made this action necessary. The intended effect of this action is to provide adequate controlled airspace for IFR operations at Dillingham Airport, AK.

EFFECTIVE DATE: 0901 UTC, February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

History

On October 16, 1996, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Dillingham was published in the Federal Register (61 FR 53881). The development of GPS and MLS instrument approach procedures to RWY 1 and RWY 19 at Dillingham Airport, AK, has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposals were received. However, the proposal was published with incorrect coordinates which have been corrected to read: Dillingham Airport (lat. 59°02′43″ N, long. 158°30′12″ W). The Federal Aviation Administration has determined that these changes are editorial in nature and will not increase the scope of this rule. Except for the non-substantive changes just discussed, the rule is adopted as written.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas for an airport are published in paragraph 6002 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996; 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996. Paragraphs 6002 and 6005 are incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises Class E airspace located at Dillingham, AK, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing instrument landing and departing procedures.

The Federal Aviation Administration has determined that these proposed regulations only involve 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6002 The Class E airspace areas listed below are designated as a surface area for an airport.

* * * * *

AAL AK E2 Dillingham, AK [Revised]

Dillingham Airport, AK
(lat. 59°02′43″ N, long. 158°30′12″ W)
Dillingham VOR/DME
(lat. 58°59′39″ N, long. 158°33′08″ W)

Within a 4.1-mile radius of the Dillingham Airport and within 3.1 miles each side of the Dillingham VOR/DME 207° radial extending from the 4.1-mile radius to 10.4 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Dillingham, AK [Revised]

Dillingham Airport, AK
(lat. 59°02′43″ N, long. 158°30′12″ W)
Dillingham VOR/DME
(lat. 58°59′39″ N, long. 158°33′08″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Dillingham Airport and within 3.1 miles each side of the 207° radial of the Dillingham VOR/DME extending from the 6.6-mile radius to 14.1 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within a 22-mile radius of the VOR/DME.

* * * * *

Issued in Anchorage, AK, on December 26, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–176 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM95–9–000]

Open Access Same-Time Information System (OASIS) and Standards of Conduct

Issued December 27, 1996.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order granting request for clarification.

SUMMARY: The Federal Energy Regulatory Commission, at the request of the How Working Group, is clarifying its Phase 1 OASIS regulations concerning ''next hour'' reservations of transmission service. The Commission finds that, during Phase 1, a request for transmission service made after 2:00 p.m. of the day preceding the commencement of such service, will be ''made on the OASIS'' if it is made directly on the OASIS, or, if it is made by facsimile or telephone *and* promptly (within one hour) posted on the OASIS by the Transmission Provider. In all other circumstances, requests for transmission service must be made exclusively on the OASIS.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT:
Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 (202) 208–1283

William C. Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0849

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0321

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. CIPS is also available on the Internet through the Fed World system. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and Wordperfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street, N.E., Washington, DC 20426.

Order Granting Request for Clarification

Background

On December 23, 1996, the How Working Group [1] filed a letter seeking clarification of whether the Commission intended, in the OASIS Final Rule,[2] to require that the OASIS serve as a ''next hour'' reservation tool during Phase 1 of OASIS implementation. Specifically, the letter states:

It was the interpretation of the How Working Group that a Provider would accept reservation requests after 2 p.m. of the preceding day, only if practical. Otherwise, these requests would be accepted off-line and posted after-the-fact. It was our view that ''next hour'' functionality was not feasible in Phase 1. The How Working Group asks us to confirm its interpretation.

Discussion

The OASIS Final Rule makes a clear distinction between reserving transmission service and scheduling transmission service.[3] The Phase 1 OASIS regulations create a mechanism for making reservations of transmission service, while the inclusion of energy scheduling as part of the OASIS requirements was left as a Phase 2 OASIS issue. The problem, however, is that for near-term transactions, the distinction between scheduling and reservations tends to blur.

The OASIS regulations provide, at 18 CFR § 37.6(e)(1), that ''[a]ll requests for transmission services offered by Transmission Providers under the *pro forma* tariff must be made on the OASIS.'' Notwithstanding the clear language of this regulation, the How Working Group would like to accommodate requests for service, made after 2:00 p.m. of the day preceding the commencement of such service, off the OASIS and states that it is not feasible to handle such requests on the OASIS during Phase 1.[4]

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[1] The How Working Group is an industry-led group, with diverse industry and customer representatives, working to reach consensus on OASIS-related issues.

[2] Open Access Same-Time Information System and Standards of Conduct, Final Rule, Order No. 889, FERC Stats. & Regs. ¶ 31,037, 61 FR 21737 (May 10, 1996), *reh'g pending.*

[3] *See* 61 FR at 21743.

[4] The 2:00 p.m. deadline is consistent with § 14.6 of the *pro forma* tariff, which provides: ''Schedules for Non-Firm Point-to-Point Transmission Service must be submitted to the Transmission Provider no later than 2:00 p.m. . . . of the day prior to commencement of such service. Schedules submitted after 2:00 p.m will be accommodated, if practicable.''

We find that, during Phase 1, a request for transmission service made after 2:00 p.m. of the day preceding the commencement of such service, will be ''made on the OASIS'' if it is made directly on the OASIS, or, if it is made by facsimile or telephone *and* promptly (within one hour) posted on the OASIS by the Transmission Provider. In all other circumstances, requests for transmission service must be made exclusively on the OASIS.

The Commission orders: The request of the How Working Group for a clarification of the OASIS Final Rule is hereby granted, as discussed in the body of this order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97–140 Filed 1–3–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs; Gentamicin Sulfate Intrauterine Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Pharmaceutical, Inc. The ANADA provides for the use of a generic gentamicin sulfate intrauterine solution for control of bacterial infections of the uterus in horses (metritis) and as an aid in improving conception in mares with uterine infections caused by bacteria sensitive to gentamicin.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Phoenix Pharmaceutical, Inc., 4621 Easton Rd., P.O. Box 6457, Fairleigh Station, St. Joseph, MO 64506–0457, is the sponsor of ANADA 200–137, which provides for the use of a generic gentamicin sulfate intrauterine solution (100 milligrams/milliliter (mg/mL)) for control of bacterial infections of the uterus in horses (metritis) and as an aid in improving conception in mares with uterine infections caused by bacteria sensitive to gentamicin.

Approval of ANADA 200–137 for Phoenix Pharmaceutical's gentamicin sulfate intrauterine solution (100 mg/mL gentamicin) is as a generic copy of Schering's Gentocin® Solution (100 mg/mL gentamicin) in NADA 046–724. The ANADA is approved as of November 13, 1996, and the regulations are amended in 21 CFR 529.1044a to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended to read as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

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

§ 529.1044a [Amended]

2. Section 529.1044a *Gentamicin sulfate intrauterine solution* is amended in paragraph (b) by removing ''000061, 000856, 000864, 054273, and 057561'' and adding in its place ''000061, 000856, 000864, 054273, 057319, and 057561''.

Dated: December 23, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–185 Filed 1–3–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 579

[Docket No. 92F–0317]

Food Additives; Irradiation in the Production, Processing, and Handling of Animal Feed and Pet Food; Ionizing Radiation for Treatment of Poultry Feed or Poultry Feed Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; response to objections and denial of requests for a hearing.

SUMMARY: The Food and Drug Administration (FDA) is responding to objections and is denying the requests for a hearing on the final rule that amended the food additive regulations (animal use) to provide for the safe use of gamma radiation from cobalt-60 for rendering complete poultry feeds or poultry feed ingredients salmonella negative. Four parties filed objections to the final rule and submitted requests for a hearing requesting approval of additional energy sources for this use. After reviewing their submissions, FDA has concluded that the objections do not raise issues of material fact concerning the approval that justify granting a hearing. Therefore, FDA is denying the requests for a hearing.

DATES: The final rule published in the Federal Register of September 28, 1995, at 60 FR 50098 is effective.

FOR FURTHER INFORMATION CONTACT: George Graber, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1724.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the Federal Register of August 20, 1992 (57 FR 37825), FDA announced that a food additive petition (animal use) (FAP 2216) had been filed by Nordion International, Inc., 447 March Rd., P.O. Box 13500, Kanata, ON, Canada K2K lX8. The petition proposed that the feed irradiation regulations be amended to provide for the safe use of gamma radiation from cobalt-60, not to exceed 25 kiloGrays (kGy) (2.5 Mrad), to control salmonella in complete poultry (chickens, turkeys, ducks, geese, cornish hens, pheasant, quail, and fowl) feeds or feed ingredients. The notice of filing of FAP 2216 provided for a 60-day comment period. No comments were received.

In a final rule published in the Federal Register of September 28, 1995 (60 FR 50098), FDA amended the animal feed and pet food irradiation

regulations to provide for the use of 2 to 25 kGy of gamma radiation from sealed units of cobalt-60 to render complete poultry feeds or poultry feed ingredients salmonella negative. The rule added new § 579.40 (21 CFR 579.40) to reflect the new feed additive use.

II. Objections and Requests for a Hearing

AECL Technologies, Inc., AECL Accelerators, 20 Little Lane, Hauppage, NY 11788; E–BEAM Services, Inc., 32 Melrich Rd., Cranbury, NJ 08512; Department of Animal Sciences, Texas A&M University, College Station, TX 77843–2471; and Secretariat of the International Consultative Group on Food Irradiation; each filed objections to the final rule citing failure of that rule to provide for additional energy sources including gamma rays from cesium-137, machine generated electrons not to exceed 10 million electron volts, and machine generated x-rays not to exceed 5 million electron volts, in addition to the use of gamma radiation from cobalt-60. The petition supported use of cobalt-60 energy sources. Information filed in the objections did not object to the conditions of approval of the petition, but the information filed in the objections supported additional energy sources not previously considered. Such information should be the subject of a separate food additive petition filed in accordance with 21 CFR 571.1 to support amending the regulations to provide for the use of these additional energy sources.

III. Standards for Granting a Hearing

Section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(b)(5)) provides for publication of a notice, in general terms, of filing of a food additive petition. That notice contains provisions for a 60-day comment period. Section 409(f)(1) of the act provides for a 30-day comment period after publication of an order (final rule) relating to approval of a food additive petition to permit any person adversely affected by such an order to file objections, specifying with particularity the provisions of the order ''deemed objectionable, stating reasonable grounds therefor,'' and requesting a public a hearing upon such objections.

Specific criteria for determining whether a request for a hearing is justified are set forth in § 12.24(b) (21 CFR 12.24(b)). A hearing will be granted if the material submitted shows that:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commissioner concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, e.g., if the Commissioner concludes that the action would be the same even if the factual issue were resolved in the way sought * * *.

(5) The action requested is not inconsistent with any provision in the act or any regulation in this chapter particularizing statutory standards. The proper procedure in those circumstances is for the person requesting the hearing to petition for an amendment or waiver of the regulation involved.

(6) The requirements in other applicable regulations, e.g., §§ 10.20, 12.21, 12.22, 314.200, 314.300, 514.200, and 601.7(a), and in the notice promulgating the final regulation or the notice of opportunity for hearing are met.

FDA may deny a request for a hearing if the objections to the regulation do not raise genuine and substantial issues of fact that can be resolved at a hearing (*Community Nutrition Institute* v. *Young*, 773 F.2d 1356, 1364 (D.C. Cir. 1985), *cert. denied*, 475 U.S. 1123 (1986)).

A party seeking a hearing is required to meet a ''threshold burden of tendering evidence suggesting the need for a hearing'' (*Costle* v. *Pacific Legal Foundation*, 445 U.S. 198, 214–215 (1980) reh. den., 445 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 620–621 (1973)). An allegation that a hearing is necessary to ''sharpen the issues'' or to ''fully develop the facts'' does not meet this test (*Georgia Pacific Corp.* v. *U.S. E.P.A.*, 671 F.2d 1235, 1241 (9th Cir. 1982)). If a request for a hearing fails to identify any factual evidence that would be the subject of a hearing, then there is no basis for holding a hearing. In judicial proceedings, a court is authorized to issue summary judgment without an evidentiary hearing whenever it finds that there are no genuine issues of material fact in dispute, and a party is entitled to judgment as a matter of law. (See Rule 56, Federal Rules of Civil Procedure.) The same principle applies in administrative proceedings.

A hearing request must not only contain evidence, but that evidence should raise a material issue of fact upon which a meaningful hearing might be held (*Pineapple Growers Association* v. *FDA*, 673 F.2d 1083, 1085 (9th Cir. 1982)). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the agency need not grant a hearing (*Dyestuffs and Chemicals, Inc.* v. *Flemming*, 271 F.2d 281 (8th Cir. 1959) *cert. denied*, 362 U.S. 911 (1960)). FDA need not grant a hearing in each case where an objector submits additional information or posits a novel interpretation of existing information. (See *United States* v. *Consolidated Mines & Smelting Co.*, 455 F.2d 432 (9th Cir. 1971).) In other words, a hearing is justified only if the objections are made in good faith and if they ''draw in question in a material way the underpinnings of the regulation at issue'' (*Pactra Industries* v. *CPSC*, 555 F.2d 677 (9th Cir. 1977)). Finally, courts have uniformly recognized that a hearing need not be held to resolve questions of law or policy. (See *Citizens for Allegan County, Inc.* v. *FPC*, 414 F.2d 1125 (D.C. Cir. 1969); *Sun Oil Co.* v. *FPC*, 256 F.2d 233, 240 (5th Cir.), *cert. denied*, 358 U.S. 872 (1958).)

In sum, a hearing request should present sufficient credible evidence to raise a material issue of fact, and that evidence must be adequate to resolve the issue as requested and to justify the action requested.

IV. Analysis of Objections and Response to Requests for a Hearing

FDA is denying the parties' request for a hearing on their objections for two reasons. First, under § 12.24(b)(5), FDA will not grant a hearing if the action requested is inconsistent with any provision in the act or any FDA regulation. The parties' requested action is inconsistent with the act and FDA's regulations, because the parties have raised an issue regarding additional energy sources for this food additive use that was not previously presented in the petition and have requested a hearing on the issue. Under the act and FDA's regulations, the scope of a proceeding for approval of a food additive use is limited to the terms and conditions of use set forth in the petition.

Under section 409(c) of the act, an action on a petition to establish a food additive use is based on the petition and other available information. The petition that led to the issuance of § 579.40 provided for use of gamma radiation from a cobalt-60 energy source for rendering complete poultry feeds or poultry feed ingredients salmonella

negative. FDA granted this petition, and in the preamble of the final rule (60 FR 50098), the agency specifically addressed each of the issues raised in evaluating the petition. The parties, however, have objected to the failure of the final rule to provide for additional energy sources, including gamma rays from cesium-137, machine generated electrons not exceeding 10 million electron volts, and machine generated x-rays not exceeding 5 million electron volts.

Under section 409(f)(1) of the act, any person adversely affected by a final rule may file objections thereto, specifying with particularity the provisions of the final rule deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections. However, there is nothing in the act or in FDA's regulations that suggests or implies that, or that authorizes, interested persons to use the opportunity to object as an opportunity to expand the authorized use of a food additive beyond that use sought in the petition. On the contrary, 21 CFR 571.6 requires that if, after a petition has been filed, the petitioner submits added information which constitutes a substantive amendment, the petition will be given a new filing date; and the review process will begin anew.

Thus, under the act and FDA's regulations, the scope of a proceeding for approval of a food additive use is limited to the terms and conditions of use set out in the petition. To the extent that a person who is not the petitioner seeks to extend the petitioned-for terms and conditions of use, the person must do so by a separate petition, not by objection to the final rule. To attempt to do so by objection to the final rule, or by comment on the notice of filing, is to attempt to act in a manner that is inconsistent with the act and FDA's regulations. The proper procedure, as stated in § 12.24(b)(5), is for the objecting parties to petition for amendment of § 579.40. Thus, the objecting parties have failed to justify a hearing on the requested action.

Second, under its regulations, FDA will not grant a hearing on the basis of mere allegations (§ 12.24(b)(2)). Consistent with this regulation, the relevant case law provides that where a party requesting a hearing only offers allegations without an adequate proffer to support them, the agency may properly disregard those allegations (*General Motors Corp.* v. *FERC*, 656 F.2d 791, 798 n.20 (D.C. Cir. 1981)). The objecting parties have failed to submit any evidence showing that failure to approve the use of additional energy sources will compromise the approved use of radiation emitted from cobalt-60. Thus, because the parties have failed to offer any support for their allegation, FDA concludes that this objection does not justify a hearing.

V. Summary and Conclusion

The agency is denying the objections and the requests for a hearing on the basis that the request is beyond the scope of the petitioned action and is appropriately resolved through the submission of a separate petition (§ 12.24(b)(5)) and the requested action could not be approved on the basis of a hearing, i.e., not to be granted based on allegations or general descriptions of positions and contentions (§ 12.24(b)(2)).

The filing of the objections and requests for a hearing does not affect the provisions of § 579.40 to which the objections were made.

In the absence of any other objections and requests for a hearing, the agency further concludes that this document constitutes final action on the objections and requests for a hearing received in response to the regulation as prescribed in section 409(f)(1) of the act (21 U.S.C. 348).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409 (21 U.S.C. 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.61), notice is given that the objections and the requests for a hearing filed in response to the final rule § 579.40 that was published in the Federal Register on September 28, 1995 (60 FR 50098), do not form a basis for further amendment of this final rule.

Dated: December 30, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–137 Filed 1–3–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

[Public Notice 2478]

22 CFR Part 42

Bureau of Consular Affairs; Visas: Documentation of Immigrants under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: The Violence Against Women Act of 1994 (Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, 108 Stat. 1902, 1953–1955), amended section 204 of the Immigration and Nationality Act (INA) to allow certain spouses and children of citizens or lawful permanent resident aliens to self-petition for immediate relative and preference classifications. This rule adds classification symbols for this category of immigrants.

EFFECTIVE DATE: This rule takes effect on January 6, 1997.

ADDRESSES: Chief, Legislation and Regulation Division, Visa Office, Washington, D.C. 20522–1013.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, 202–663–1204.

SUPPLEMENTARY INFORMATION: Section 40701 of the Violence Against Women Act of 1994 accords aliens who have been battered and/or abused by a U.S. citizen or alien resident spouse or parent, and who have resided in the United States with that spouse or parent, the right to self-petition for immediate relative or family preference status. *Creation of new immigrant visa categories.*

This rule amends part 42, title 22 of the Code of Federal Regulations by adding the new visa symbols for these immigrant categories: IB1 through IB3, B11 and B12, B21 through B25, BX1 through BX3, and B31 through B33 to the list of immigrant visa symbols at § 42.11. Other minor editorial changes have been made throughout.

Final Rule

This rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). This rule imposes no reporting or record-keeping action on the public subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. No Federalism assessment is required under E.O. 12612. This rule has been reviewed as required by E.O. 12988. This rule is exempted from E.O. 12866 but has been reviewed to ensure consistency therewith. This rule is being promulgated as a final rule pursuant to the ''good cause'' provision of 5 U.S.C. sec. 553(b); notice and comment are not necessary in light of the fact that this rule merely establishes visa symbols and makes no substantive rule changes.

List of Subjects in 22 CFR Part 42

Classification of immigrants, Classification symbols, Visas.

Accordingly, part 42 to title 22 of the Code of Federal Regulations is amended to read as indicated below:

PART 42—[AMENDED]

1. The authority citation for Part 42 continues to read as follows:

Authority: 8 U.S.C. 1104.

§ 42.11 [Amended]

2. In section 42.11 the introductory text and the first seven sections of the table are revised to read as follows:

§ 42.11 Classification Symbols.

A visa issued to an immigrant alien within one of the classes described below shall bear an appropriate visa symbol to show the classification of the alien.

IMMIGRANTS

Symbol	Class	Section of law
	Immediate Relatives	
IR1	Spouse of U.S. Citizen	201(b).
IR2	Child of U.S. Citizen	201(b).
IR3	Orphan Adopted Abroad by U.S. Citizen	201(b).
IR4	Orphan to be Adopted In the United States by U.S. Citizen	201(b).
IR5	Parent of U.S. Citizen at Least 21 Years of Age	201(b).
CR1	Spouse of U.S. Citizen (Conditional Status)	201(b) & 216(a)(1).
CR2	Child of U.S. Citizen (Conditional Status)	201(b) & 216.
IW1	Certain Spouses of Deceased U.S. Citizens	201(b).
IW2	Child of IW1	201(b).
IB1	Self-petition Spouse of U.S. Citizen	204(a)(1)(A)(iii).
IB2	Self-petition child of U.S. Citizen	204(a)(1)(A)(iv).
IB3	Child of IB1	204(a)(1)(A)(iii).
VI5	Parent of U.S. Citizen Who Acquired Permanent Resident Status Under the Virgin Islands Non-immigrant Alien Adjustment Act.	201(b) & sec. 2 of the Virgin Islands, Non-immigrant Alien, Adjustment Act, (P.L. 97–271).
	Vietnam Amerasian Immigrants	
AM1	Vietnam Amerasian Principal	584(b)(1)(A).
AM2	Spouse or Child of AM1	584(b)(1)(B), and
AM3	Natural Mother of Unmarried AM1 (and Spouse or Child of Such Mother), or Person Who has Acted in Effect as the Mother, Father, or Next-of-Kin of Unmarried AM1 (and Spouse or Child of Such Person).	584(b)(1)(C) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (As Contained in sec. 101(e) of P.L 100–202) as amended).
	Special Immigrants	
SB1	Returning Resident	101(a)(27)(A).
SC1	Person Who Lost U.S. Citizenship by Marriage	101(a)(27)(B) & 324(a).
SC2	Person Who Lost U.S. Citizenship by Serving in Foreign Armed Forces	101(a)(27)(B) & 327.
	Family-Sponsored Preferences	
	Family 1st Preference	
F11	Unmarried Son or Daughter of U.S. Citizen	203(a)(1).
F12	Child of F11	203(d).
B11	Self-petition Unmarried Son or Daughter of U.S. Citizen	204(a)(1)(A)(iv) & 203(a)(1).
B12	Child of B11	203(d).
	Family 2nd Preference (Subject to Country Limitations)	
F21	Spouse of Alien Resident	203(a)(2)(A).
F22	Child of Alien Resident	203(a)(2)(A).
F23	Child of F21 or F22	203(d).
F24	Unmarried Son or Daughter of Alien Resident	203(a)(2)(B).
F25	Child of F24	203(d).
C21	Spouse of Alien Resident (Conditional)	203(a)(2)(A) & 216.
C22	Child of Alien Resident (Conditional)	202(a)(2)(A) & 216.
C23	Child of C21 or C22 (Conditional)	203(d) & 216.
C24	Unmarried Son or Daughter of Alien Resident (Conditional)	203(a)(2)(B) & 216.
C25	Child of F24 (Conditional)	203(d) & 216.
B21	Self-petition Spouse of Lawful Permanent Resident	204(a)(1)(B)(ii).
B22	Self-petition Child of Lawful Permanent Resident	204(a)(1)(B)(iii).
B23	Child of B21 or B22	204(a)(1)(B)(ii).
B24	Self-petition Unmarried Son or Daughter of Lawful Permanent Resident	203(d).

IMMIGRANTS

Symbol	Class	Section of law
B25	Child of B24	203(d).
	Family 2nd Preference (Exempt from Country Limitations)	
FX1	Spouse of Alien Resident	202(a)(4)(A) & 203(a)(2)(A).
FX2	Child of Alien Resident	202(a)4)(A) & 203(a)(2)(A).
FX3	Child of FX1 and FX2	202(a)(4)(A) & 203(d) 203(a)(2)(A).
CX1	Spouse of Alien Resident (Conditional)	202(a)(4)(A) & 216.
CX2	Child of Alien Resident (Conditional)	202(a)(4)(A) & 216.
CX3	Child of CX1 & CX2 (Conditional)	202(a)(4)(A) & 203(d) & 216.
BX1	Self-petition Spouse of Lawful Permanent Resident	204(a)(1)(B)(ii).
BX2	Self-petition Child of Lawful Permanent Resident	204(a)(1)(B)(iii).
BX3	Child of BX1 or BX2	203(d).
	Family 3rd Preference	
F31	Married Son or Daughter of U.S. Citizen	203(a)(3).
F32	Spouse of F31	203(d).
F33	Child of F31	302(d).
C31	Married Son or Daughter of U.S. Citizen (Conditional)	216(a)(1).
C32	Spouse of C31 (Conditional)	203(d) & 216.
C33	Child of C31 (Conditional)	203(d) & 216.
B31	Self-petition Married Son or Daughter of U.S. Citizen	204(a)(1)(A)(iv) & 203(a)(3).
B32	Spouse of B31	203(d).
B33	Child of B31	203(d).

* * * * *

Dated: November 21, 1996.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 97–135 Filed 1–3–97; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8709]

RIN 1545–AU44

Inflation-Indexed Debt Instruments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary regulations relating to the federal income tax treatment of inflation-indexed debt instruments, including Treasury Inflation-Indexed Securities. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register. This document also contains amendments to final regulations to reflect the addition of the temporary regulations. The regulations in this document provide needed guidance to holders and issuers of inflation-indexed debt instruments.

EFFECTIVE DATE: The regulations are effective January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Maddrey, (202) 622–3940, or William E. Blanchard, (202) 622–3950 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Department of the Treasury published final rules describing the terms and conditions of new debt instruments that it plans to issue. The payments on these debt instruments (Treasury Inflation-Indexed Securities) will be indexed for inflation and deflation.

On June 14, 1996, the IRS published final regulations in the Federal Register relating to certain debt instruments that provide for contingent payments (61 FR 30133). The preamble to the final regulations indicates that the noncontingent bond method described in § 1.1275–4(b) might be inappropriate for the Treasury Inflation-Indexed Securities. On October 15, 1996, the IRS published Notice 96–51 (1996–42 I.R.B. 6), which announced the IRS's intention to issue temporary and proposed regulations that would provide guidance on the federal income tax treatment of the Treasury Inflation-Indexed Securities and other debt instruments with similar terms. This document contains the temporary regulations described in Notice 96–51.

Explanation of Provisions

A. In General

The temporary regulations provide rules for the treatment of certain debt instruments that are indexed for inflation and deflation, including Treasury Inflation-Indexed Securities. The temporary regulations generally require holders and issuers of inflation-indexed debt instruments to account for interest and original issue discount (OID) using constant yield principles. In addition, the temporary regulations generally require holders and issuers of inflation-indexed debt instruments to account for inflation and deflation by making current adjustments to their OID accruals.

B. Applicability

The temporary regulations apply to inflation-indexed debt instruments. In general, an inflation-indexed debt instrument is a debt instrument that (1) Is issued for cash, (2) is indexed for inflation and deflation (as described

below), and (3) is not otherwise a contingent payment debt instrument. The temporary regulations do not apply, however, to certain debt instruments, such as debt instruments issued by qualified state tuition programs.

C. Indexing Methodology

A debt instrument is considered indexed for inflation and deflation if the payments on the instrument are indexed by reference to the change in value of a general price or wage index over the term of the instrument. Specifically, the amount of each payment on an inflation-indexed debt instrument must equal the product of (1) The amount of the payment that would be payable on the instrument (determined as if there were no inflation or deflation over the term of the instrument) and (2) the ratio of the value of the reference index for the payment date to the value of the reference index for the issue date.

The reference index for a debt instrument is the mechanism for measuring inflation and deflation over the term of the instrument. This mechanism associates the value of a single qualified inflation index for a particular month with a specified day of a succeeding month. For example, under the terms of the Treasury Inflation-Indexed Securities, the reference index for the first day of a month is the value of a qualified inflation index for the third preceding month. The reference index must be reset once a month to the current value of a qualified inflation index. Between reset dates, the value of the reference index is determined through straight-line interpolation.

A qualified inflation index is a general price or wage index that is updated and published at least monthly by an agency of the United States Government. A general price or wage index is an index that measures price or wage changes in the economy as a whole. An index is not general if it only measures price or wage changes in a particular segment of the economy. For example, the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers (CPI–U), which is published by the Bureau of Labor Statistics of the Department of Labor, is a qualified inflation index because it measures general price changes in the economy. By contrast, the gasoline price component of the CPI–U is not a qualified inflation index because it only measures price changes in a particular segment of the economy.

D. Coupon Bond Method

The temporary regulations provide a simplified method of accounting for qualified stated interest and inflation adjustments on certain inflation-indexed debt instruments (the coupon bond method). To qualify for the coupon bond method, an inflation-indexed debt instrument must satisfy two conditions. First, there must be no more than a de minimis difference between the debt instrument's issue price and its principal amount for the issue date. Second, all stated interest on the debt instrument must be qualified stated interest. Because Treasury Inflation-Indexed Securities that are not stripped into principal and interest components satisfy both of these conditions, the coupon bond method applies to these securities.

If an inflation-indexed debt instrument qualifies for the coupon bond method, the stated interest payable on the debt instrument is taken into account under the taxpayer's regular method of accounting. Any increase in the inflation-adjusted principal amount is treated as OID for the period in which the increase occurs. Any decrease in the inflation-adjusted principal amount is taken into account under the rules for deflation adjustments described below.

For example, if a taxpayer holds a Treasury Inflation-Indexed Security for an entire calendar year and the taxpayer uses the cash receipts and disbursements method of accounting (cash method), the taxpayer generally includes in income the interest payments received on the security during the year. In addition, the taxpayer includes in income an amount of OID measured by subtracting the inflation-adjusted principal amount of the security at the beginning of the year from the inflation-adjusted principal amount of the security at the end of the year. If the taxpayer uses an accrual method of accounting rather than the cash method, the taxpayer includes in income the qualified stated interest that accrued on the debt instrument during the year and an amount of OID measured by subtracting the inflation-adjusted principal amount of the security at the beginning of the year from the inflation-adjusted principal amount of the security at the end of the year.

E. Discount Bond Method

If an inflation-indexed debt instrument does not qualify for the coupon bond method (for example, because it is issued at a discount), the instrument is subject to the discount bond method. In general, the discount bond method requires holders and issuers to make current adjustments to their OID accruals to account for inflation and deflation.

Under the discount bond method, a taxpayer determines the amount of OID allocable to an accrual period by using steps similar to those provided in § 1.1272–1(b)(1). First, the taxpayer determines the yield to maturity of the debt instrument as if there were no inflation or deflation over the term of the instrument. Second, the taxpayer determines the length of the accrual periods to be used to allocate OID over the term of the debt instrument, provided no accrual period is longer than one month. Third, the taxpayer determines the percentage change in the value of the reference index during the accrual period by comparing the value at the beginning of the period to the value at the end of the period. Fourth, the taxpayer determines the OID allocable to the accrual period by using a formula that takes into account both the yield of the debt instrument and the percentage change in the value of the reference index during the period. Fifth, the taxpayer allocates to each day in the accrual period a ratable portion of the OID for the accrual period (the daily portions). If the daily portions for an accrual period are positive amounts, these amounts are taken into account under section 163(e) by an issuer and under section 1272 by a holder. If the daily portions for an accrual period are negative amounts, these amounts are taken into account under the rules for deflation adjustments described below.

Under Notice 96–51, the discount bond method would have allowed qualified stated interest. The temporary regulations, however, provide that no interest payments on an inflation-indexed debt instrument subject to the discount bond method are qualified stated interest. The Treasury and the IRS believe that this change simplifies the taxation of an inflation-indexed debt instrument subject to the discount bond method.

F. Deflation Adjustments

The temporary regulations treat deflation adjustments in a manner consistent with the treatment of net negative adjustments on contingent payment debt instruments under § 1.1275–4(b)(6)(iii). If a holder has a deflation adjustment for a taxable year, the deflation adjustment first reduces the amount of interest otherwise includible in income with respect to the debt instrument for the taxable year. If the amount of the deflation adjustment exceeds the interest otherwise includible in income for the taxable

year, the holder treats the excess as an ordinary loss in the taxable year. However, the amount treated as an ordinary loss is limited to the amount by which the holder's total interest inclusions on the debt instrument in prior taxable years exceed the total amount treated by the holder as an ordinary loss on the debt instrument in prior taxable years. If the deflation adjustment exceeds the interest otherwise includible in income by the holder with respect to the debt instrument for the taxable year and the amount treated as an ordinary loss for the taxable year, the excess is carried forward to offset interest income on the debt instrument in subsequent taxable years. Similar rules apply to determine an issuer's interest deductions and income for the debt instrument.

G. Minimum Guarantee

Certain inflation-indexed debt instruments may provide for an additional payment at maturity (a minimum guarantee payment) if the total amount of inflation-adjusted principal paid on the debt instrument is less than the instrument's stated principal amount. Under both the coupon bond method and the discount bond method, a minimum guarantee payment is ignored until the payment is made. If a minimum guarantee payment is made, the payment is treated as interest on the date it is paid.

In general, the temporary regulations only allow a debt instrument that is indexed by reference to the CPI–U to provide for a minimum guarantee payment. The Treasury and the IRS believe that there is only a small possibility that the total amount of principal paid on a debt instrument indexed to the CPI–U will be less than the instrument's stated principal amount. In this case, it is appropriate to ignore the minimum guarantee payment until it is paid.

H. Principal Amount for the Issue Date

For purposes of the temporary regulations, if an inflation-indexed debt instrument is issued with pre-issuance accrued interest, the principal amount of the instrument for the issue date includes an adjustment for inflation or deflation. This adjustment is measured by the change in the value of the reference index between the date on which interest starts to accrue (the dated date in the case of a Treasury Inflation-Indexed Security) and the issue date. The stated principal amount of a debt instrument under the regulations, however, is not adjusted for inflation or deflation between the date on which interest starts to accrue and the issue date. Therefore, the stated principal amount of the debt instrument is the same regardless of whether interest accrues on the instrument from the issue date or from an earlier date. The stated principal amount of a Treasury Inflation-Indexed Security is the par amount of the security, as defined in the final rules published by the Treasury Department describing the terms and conditions of Treasury Inflation-Indexed Securities.

When there is a difference between the stated principal amount of an inflation-indexed debt instrument and its principal amount for the issue date, the instrument's principal amount for the issue date generally is used for purposes of applying the rules in the temporary regulations to the instrument. For example, the debt instrument's principal amount for the issue date is used to determine whether the instrument qualifies for the coupon bond method. The temporary regulations require the use of a debt instrument's stated principal amount rather than its principal amount for the issue date to measure the amount of a minimum guarantee payment.

I. Strips

Treasury Inflation-Indexed Securities are eligible for the Department of the Treasury's Separate Trading of Registered Interest and Principal of Securities (STRIPS) program. Under this program, the interest and principal components of a Treasury Inflation-Indexed Security may be transferred as separate instruments (stripped bonds and coupons). In general, section 1286 treats the holder of a stripped bond (or coupon) as if the holder purchased a newly issued debt instrument that has OID. The temporary regulations provide that the holder of a component of a Treasury Inflation-Indexed Security that is stripped under the Treasury STRIPS program must use the discount bond method to account for the OID on the component.

J. Information Reporting

The temporary regulations do not provide any new information reporting rules for inflation-indexed debt instruments. The OID and any qualified stated interest on an inflation-indexed debt instrument should be reported on Form 1099–OID. The IRS plans to issue guidance for the reporting of OID on Treasury Inflation-Indexed Securities that are stripped under the STRIPS program.

K. Effective Date

The temporary regulations apply to an inflation-indexed debt instrument issued on or after January 6, 1997.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of the regulations is Jeffrey W. Maddrey, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding two entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1275–7T also issued under 26 U.S.C. 1275(d). * * *

Section 1.1286–2T also issued under 26 U.S.C. 1286(f). * * *

Par. 2. Section 1.1271–0 is amended by—

1. Revising the second sentence of paragraph (a);

2. Revising the introductory text of paragraph (b); and

3. Adding entries for § 1.1275–7T in paragraph (b).

The revisions and additions read as follows:

§ 1.1271–0 Original issue discount; effective date; table of contents.

(a) * * * Taxpayers, however, may rely on these sections (as contained in

26 CFR part 1 revised April 1, 1996) for debt instruments issued after December 21, 1992, and before April 4, 1994.

(b) *Table of contents.* This section lists captioned paragraphs contained in §§ 1.1271–1 through 1.1275–7T.

* * * * *

§ 1.1275–7T Inflation-indexed debt instruments (temporary).

(a) Overview.
(b) Applicability.
(1) In general.
(2) Exceptions.
(c) Definitions.
(1) Inflation-indexed debt instrument.
(2) Reference index.
(3) Qualified inflation index.
(4) Inflation-adjusted principal amount.
(5) Minimum guarantee payment.
(d) Coupon bond method.
(1) In general.
(2) Applicability.
(3) Qualified stated interest.
(4) Inflation adjustments.
(5) Example.
(e) Discount bond method.
(1) In general.
(2) No qualified stated interest.
(3) OID.
(4) Example.
(f) Special rules.
(1) Deflation adjustments.
(2) Adjusted basis.
(3) Subsequent holders.
(4) Minimum guarantee.
(5) Temporary unavailability of a qualified inflation index.
(g) Reopenings.
(h) Effective date.

* * * * *

§ 1.1275.4 [Amended]

Par. 3. Section 1.1275–4 is amended by—

1. Removing the word ''or'' from the end of paragraph (a)(2)(vi);

2. Redesignating paragraph (a)(2)(vii) as paragraph (a)(2)(viii); and

3. Adding a new paragraph (a)(2)(vii).

The addition reads as follows:

§ 1.1275–4 Contingent payment debt instruments.

(a) * * *

(2) * * *

(vii) An inflation-indexed debt instrument (as defined in § 1.1275–7T); or

* * * * *

Par. 4. Section 1.1275–7T is added to read as follows:

§ 1.1275–7T Inflation-indexed debt instruments (temporary).

(a) *Overview.* This section provides rules for the federal income tax treatment of an inflation-indexed debt instrument. If a debt instrument is an inflation-indexed debt instrument, one of two methods will apply to the instrument: the coupon bond method (as described in paragraph (d) of this section) or the discount bond method (as described in paragraph (e) of this section). Both methods determine the amount of OID that is taken into account each year by a holder or an issuer of an inflation-indexed debt instrument.

(b) *Applicability*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, this section applies to an inflation-indexed debt instrument as defined in paragraph (c)(1) of this section. For example, this section applies to Treasury Inflation-Indexed Securities.

(2) *Exceptions.* This section does not apply to an inflation-indexed debt instrument that is also—

(i) A debt instrument (other than a tax-exempt obligation) described in section 1272(a)(2) (for example, U.S. savings bonds, certain loans between natural persons, and short-term taxable obligations); or

(ii) A debt instrument subject to section 529 (certain debt instruments issued by qualified state tuition programs).

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Inflation-indexed debt instrument.* An inflation-indexed debt instrument is a debt instrument that satisfies the following conditions:

(i) *Issued for cash.* The debt instrument is issued for U.S. dollars and all payments on the instrument are denominated in U.S. dollars.

(ii) *Indexed for inflation and deflation.* Except for a minimum guarantee payment (as defined in paragraph (c)(5) of this section), each payment on the debt instrument is indexed for inflation and deflation. A payment is indexed for inflation and deflation if the amount of the payment is equal to—

(A) The amount that would be payable if there were no inflation or deflation over the term of the debt instrument, multiplied by

(B) A ratio, the numerator of which is the value of the reference index for the date of the payment and the denominator of which is the value of the reference index for the issue date.

(iii) *No other contingencies.* No payment on the debt instrument is subject to a contingency other than the inflation contingency or the contingencies described in this paragraph (c)(1)(iii). A debt instrument may provide for—

(A) A minimum guarantee payment as defined in paragraph (c)(5) of this section; or

(B) Payments under one or more alternate payment schedules if the payments under each payment schedule are indexed for inflation and deflation and a payment schedule for the debt instrument can be determined under § 1.1272–1(c). (For purposes of this section, the rules of § 1.1272–1(c) are applied to the debt instrument by assuming that no inflation or deflation will occur over the term of the instrument.)

(2) *Reference index.* The reference index is an index used to measure inflation and deflation over the term of a debt instrument. To qualify as a reference index, an index must satisfy the following conditions:

(i) The value of the index is reset once a month to a current value of a single qualified inflation index (as defined in paragraph (c)(3) of this section). For this purpose, a value of a qualified inflation index is current if the value has been updated and published within the preceding six month period.

(ii) The reset occurs on the same day of each month (the reset date).

(iii) The value of the index for any date between reset dates is determined through straight-line interpolation.

(3) *Qualified inflation index.* A qualified inflation index is a general price or wage index that is updated and published at least monthly by an agency of the United States Government (for example, the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers (CPI–U), which is published by the Bureau of Labor Statistics of the Department of Labor).

(4) *Inflation-adjusted principal amount.* For any date, the inflation-adjusted principal amount of an inflation-indexed debt instrument is an amount equal to—

(i) The outstanding principal amount of the debt instrument (determined as if there were no inflation or deflation over the term of the instrument), multiplied by

(ii) A ratio, the numerator of which is the value of the reference index for the date and the denominator of which is the value of the reference index for the issue date.

(5) *Minimum guarantee payment.* In general, a minimum guarantee payment is an additional payment made at maturity on a debt instrument if the total amount of inflation-adjusted principal paid on the instrument is less than the instrument's stated principal amount. The amount of the additional payment must be no more than the excess, if any, of the debt instrument's stated principal amount over the total amount of inflation-adjusted principal paid on the instrument. An additional payment is not a minimum guarantee

payment unless the qualified inflation index used to determine the reference index is either the CPI–U or an index designated for this purpose by the Commissioner in the Federal Register or the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter). See paragraph (f)(4) of this section for the treatment of a minimum guarantee payment.

(d) *Coupon bond method*—(1) *In general.* This paragraph (d) describes the method (coupon bond method) to be used to account for qualified stated interest and inflation adjustments (OID) on an inflation-indexed debt instrument described in paragraph (d)(2) of this section.

(2) *Applicability.* The coupon bond method applies to an inflation-indexed debt instrument that satisfies the following conditions:

(i) *Issued at par.* The debt instrument is issued at par. A debt instrument is issued at par if the difference between its issue price and principal amount for the issue date is less than the de minimis amount. For this purpose, the de minimis amount is determined using the principles of § 1.1273–1(d).

(ii) *All stated interest is qualified stated interest.* All stated interest on the debt instrument is qualified stated interest. For purposes of this paragraph (d), stated interest is qualified stated interest if the interest is unconditionally payable in cash, or is constructively received under section 451, at least annually at a single fixed rate. Stated interest is payable at a single fixed rate if the amount of each interest payment is determined by multiplying the inflation adjusted principal amount for the payment date by the single fixed rate.

(3) *Qualified stated interest.* Under the coupon bond method, qualified stated interest is taken into account under the taxpayer's regular method of accounting. The amount of accrued but unpaid qualified stated interest as of any date is determined by using the principles of § 1.446–3(e)(2)(ii) (relating to notional principal contracts). For example, if the interval between interest payment dates spans two taxable years, a taxpayer using an accrual method of accounting determines the amount of accrued qualified stated interest for the first taxable year by reference to the inflation-adjusted principal amount at the end of the first taxable year.

(4) *Inflation adjustments*—(i) *Current accrual.* Under the coupon bond method, an inflation adjustment is taken into account for each taxable year in which the debt instrument is outstanding.

(ii) *Amount of inflation adjustment.* For any relevant period (such as the taxable year or the portion of the taxable year during which a taxpayer holds an inflation-indexed debt instrument), the amount of the inflation adjustment is equal to—

(A) The sum of the inflation-adjusted principal amount at the end of the period and the principal payments made during the period, minus

(B) The inflation-adjusted principal amount at the beginning of the period.

(iii) *Positive inflation adjustments.* A positive inflation adjustment is OID.

(iv) *Negative inflation adjustments.* A negative inflation adjustment is a deflation adjustment that is taken into account under the rules of paragraph (f)(1) of this section.

(5) *Example.* The following example illustrates the coupon bond method:

Example. (i) *Facts.* On October 15, 1997, X purchases at original issue, for $100,000, a debt instrument that is indexed for inflation and deflation. The debt instrument matures on October 15, 1999, has a stated principal amount of $100,000, and has a stated interest rate of 5 percent, compounded semiannually. The debt instrument provides that the principal amount is indexed to the CPI–U. Interest is payable on April 15 and October 15 of each year. The amount of each interest payment is determined by multiplying the inflation-adjusted principal amount for each interest payment date by the stated interest rate, adjusted for the length of the accrual period. The debt instrument provides for a single payment of the inflation-adjusted principal amount at maturity. In addition, the debt instrument provides for an additional payment at maturity equal to the excess, if any, of $100,000 over the inflation-adjusted principal amount at maturity. X uses the cash receipts and disbursements method of accounting and the calendar year as its taxable year.

(ii) *Indexing methodology.* The debt instrument provides that the inflation-adjusted principal amount for any day is determined by multiplying the principal amount of the instrument for the issue date by a ratio, the numerator of which is the value of the reference index for the day the inflation-adjusted principal amount is to be determined and the denominator of which is the value of the reference index for the issue date. The value of the reference index for the first day of a month is the value of the CPI–U for the third preceding month. The value of the reference index for any day other than the first day of a month is determined based on a straight-line interpolation between the value of the reference index for the first day of the month and the value of the reference index for the first day of the next month.

(iii) *Inflation-indexed debt instrument subject to the coupon bond method.* Under paragraph (c)(1) of this section, the debt instrument is an inflation-indexed debt instrument. Because there is no difference between the debt instrument's issue price ($100,000) and its principal amount for the issue date ($100,000) and because all stated interest is qualified stated interest, the coupon bond method applies to the instrument.

(iv) *Reference index values.* Assume the following table lists the relevant reference index values for 1997 through 1999:

Date	Reference index value
Oct. 15, 1997	100
Jan. 1, 1998	101
Apr. 15, 1998	103
Oct. 15, 1998	105
Jan. 1, 1999	99

(v) *Treatment of X in 1997.* X does not receive any payments of interest on the debt instrument in 1997. Therefore, X has no qualified stated interest income for 1997. X, however, must take into account the inflation adjustment for 1997. The inflation-adjusted principal amount for January 1, 1998, is $101,000 ($100,000 × 101/100). Therefore, the inflation adjustment for 1997 is $1,000, the inflation-adjusted principal amount for January 1, 1998 ($101,000) minus the principal amount for the issue date ($100,000). X includes the $1,000 inflation adjustment in income as OID in 1997.

(vi) *Treatment of X in 1998.* In 1998, X receives two payments of interest: On April 15, 1998, X receives a payment of $2,575 ($100,000 × 103/100 × .05/2), and on October 15, 1998, X receives a payment of $2,625 ($100,000 × 105/100 × .05/2). Therefore, X's qualified stated interest income for 1998 is $5,200 ($2,575 + $2,625). X also must take into account the inflation adjustment for 1998. The inflation-adjusted principal amount for January 1, 1999, is $99,000 ($100,000 × 99/100). Therefore, the inflation adjustment for 1998 is negative $2,000, the inflation-adjusted principal amount for January 1, 1999 ($99,000) minus the inflation-adjusted principal amount for January 1, 1998 ($101,000). Because the amount of the inflation adjustment is negative, it is a deflation adjustment. Under paragraph (f)(1)(i) of this section, X uses this $2,000 deflation adjustment to reduce the interest otherwise includible in income by X with respect to the debt instrument in 1998. Therefore, X includes $3,200 in income for 1998, the qualified stated interest income for 1998 ($5,200) minus the deflation adjustment ($2,000).

(e) *Discount bond method*—(1) *In general.* This paragraph (e) describes the method (discount bond method) to be used to account for OID on an inflation-indexed debt instrument that does not qualify for the coupon bond method.

(2) *No qualified stated interest.* Under the discount bond method, no interest on an inflation-indexed debt instrument is qualified stated interest.

(3) *OID.* Under the discount bond method, the amount of OID that accrues on an inflation-indexed debt instrument is determined as follows:

(i) *Step one: Determine the debt instrument's yield to maturity.* The yield of the debt instrument is determined under the rules of § 1.1272–1(b)(1)(i). In calculating the yield under those rules for purposes of this paragraph (e)(3)(i), the payment schedule of the debt instrument is determined as if there were no inflation or deflation over the term of the instrument.

(ii) *Step two: Determine the accrual periods.* The accrual periods are determined under the rules of § 1.1272–1(b)(1)(ii). However, no accrual period can be longer than 1 month.

(iii) *Step three: Determine the percentage change in the reference index during the accrual period.* The percentage change in the reference index during the accrual period is equal to—

(A) The ratio of the value of the reference index at the end of the period to the value of the reference index at the beginning of the period,

(B) Minus one.

(iv) *Step four: Determine the OID allocable to each accrual period.* The OID allocable to an accrual period (n) is determined by using the following formula:

$$OID_{(n)} = AIP_{(n)} \times [r + inf_{(n)} + (r \times inf_{(n)})]$$

in which,

r = yield of the debt instrument as determined under paragraph (e)(3)(i) of this section (adjusted for the length of the accrual period);

$inf_{(n)}$ = percentage change in the value of the reference index for period (n) as determined under paragraph (e)(3)(iii) of this section; and

$AIP_{(n)}$ = adjusted issue price at the beginning of period (n).

(v) *Step five: Determine the daily portions of OID.* The daily portions of OID are determined and taken into account under the rules of § 1.1272–1(b)(1)(iv). If the daily portions determined under this paragraph (e)(3)(v) are negative amounts, however, these amounts (deflation adjustments) are taken into account under the rules for deflation adjustments described in paragraph (f)(1) of this section.

(4) *Example.* The following example illustrates the discount bond method:

Example. (i) *Facts.* On November 15, 1997, X purchases at original issue, for $91,403, a zero-coupon debt instrument that is indexed for inflation and deflation. The principal amount of the debt instrument for the issue date is $100,000. The debt instrument provides for a single payment on November 15, 2000. The amount of the payment will be determined by multiplying $100,000 by a fraction, the numerator of which is the CPI–U for September 2000, and the denominator of which is the CPI–U for September 1997. The debt instrument also provides that in no event will the payment on November 15, 2000, be less than $100,000. X uses the cash receipts and disbursements method of accounting and the calendar year as its taxable year.

(ii) *Inflation-indexed debt instrument.* Under paragraph (c)(1) of this section, the instrument is an inflation-indexed debt instrument. The debt instrument's principal amount for the issue date ($100,000) exceeds its issue price ($91,403) by $8,597, which is more than the de minimis amount for the debt instrument ($750). Therefore, the coupon bond method does not apply to the debt instrument. As a result, the discount bond method applies to the debt instrument.

(iii) *Yield and accrual period.* Assume X chooses monthly accrual periods ending on the 15th day of each month. The yield of the debt instrument is determined as if there were no inflation or deflation over the term of the instrument. Therefore, based on the issue price of $91,403 and an assumed payment at maturity of $100,000, the yield of the debt instrument is 3 percent, compounded monthly.

(iv) *Percentage change in reference index.* Assume that the CPI–U for September 1997 is 160; for October 1997 is 161.2; and for November 1997 is 161.7. The value of the reference index for November 15, 1997, is 160, the value of the CPI–U for September 1997. Similarly, the value of the reference index for December 15, 1997, is 161.2, and for January 15, 1998, is 161.7. The percentage change in the reference index from November 15, 1997, to December 15, 1997, (inf^1) is 0.0075 (161.2/160–1); the percentage change in the reference index from December 15, 1997, to January 15, 1998, (inf_2) is 0.0031 (161.7/161.2–1).

(v) *Treatment of X in 1997.* For the accrual period ending on December 15, 1997, r is .0025 (.03/12), inf_1 is .0075, and the product of r and inf_1 is .00001875. Under paragraph (e)(3) of this section, the amount of OID allocable to the accrual period ending on December 15, 1997, is $916. This amount is determined by multiplying the issue price of the debt instrument ($91,403) by .01001875 (the sum of r, inf_1, and the product of r and inf_1). The adjusted issue price of the debt instrument on December 15, 1997, is $92,319 ($91,403+$916). For the accrual period ending on January 15, 1998, r is .0025 (.03/12), inf_2 is .0031, and the product of r and inf_2 is .00000775. Under paragraph (e)(3) of this section, the amount of OID allocable to the accrual period ending on January 15, 1998, is $518. This amount is determined by multiplying the adjusted issue price of the debt instrument ($92,319) by .00560775 (the sum of r, inf_2, and the product of r and inf_2). Because the accrual period ending on January 15, 1998, spans two taxable years, only $259 of this amount ($518/30 days×15 days) is allocable to 1997. Therefore, X includes $1,175 of OID in income for 1997 ($916+$259).

(f) *Special rules.* The following rules apply to an inflation-indexed debt instrument:

(1) *Deflation adjustments*—(i) *Holder.* A deflation adjustment reduces the amount of interest otherwise includible in income by a holder with respect to the debt instrument for the taxable year. For purposes of this paragraph (f)(1)(i), interest includes OID, qualified stated interest, and market discount. If the amount of the deflation adjustment exceeds the interest otherwise includible in income by the holder with respect to the debt instrument for the taxable year, the excess is treated as an ordinary loss by the holder for the taxable year. However, the amount treated as an ordinary loss is limited to the amount by which the holder's total interest inclusions on the debt instrument in prior taxable years exceed the total amount treated by the holder as an ordinary loss on the debt instrument in prior taxable years. If the deflation adjustment exceeds the interest otherwise includible in income by the holder with respect to the debt instrument for the taxable year and the amount treated as an ordinary loss for the taxable year, this excess is carried forward to reduce the amount of interest otherwise includible in income by the holder with respect to the debt instrument for subsequent taxable years.

(ii) *Issuer.* A deflation adjustment reduces the interest otherwise deductible by the issuer with respect to the debt instrument for the taxable year. For purposes of this paragraph (f)(1)(ii), interest includes OID and qualified stated interest. If the amount of the deflation adjustment exceeds the interest otherwise deductible by the issuer with respect to the debt instrument for the taxable year, the excess is treated as ordinary income by the issuer for the taxable year. However, the amount treated as ordinary income is limited to the amount by which the issuer's total interest deductions on the debt instrument in prior taxable years exceed the total amount treated by the issuer as ordinary income on the debt instrument in prior taxable years. If the deflation adjustment exceeds the interest otherwise deductible by the issuer with respect to the debt instrument for the taxable year and the amount treated as ordinary income for the taxable year, this excess is carried forward to reduce the interest otherwise deductible by the issuer with respect to the debt instrument for subsequent taxable years. If there is any excess remaining upon the retirement of the debt instrument, the issuer takes the excess amount into account as ordinary income.

(2) *Adjusted basis.* A holder's adjusted basis in an inflation-indexed debt instrument is determined under § 1.1272–1(g). However, a holder's adjusted basis in the debt instrument is decreased by the amount of any

deflation adjustment the holder takes into account to reduce the amount of interest otherwise includible in income or treats as an ordinary loss with respect to the instrument during the taxable year. The decrease occurs when the deflation adjustment is taken into account under paragraph (f)(1) of this section.

(3) *Subsequent holders.* A holder determines the amount of acquisition premium or market discount on an inflation-indexed debt instrument by reference to the adjusted issue price of the instrument on the date the holder acquires the instrument. A holder determines the amount of bond premium on an inflation-indexed debt instrument by assuming that the amount payable at maturity on the instrument is equal to the instrument's inflation-adjusted principal amount for the day the holder acquires the instrument. Any premium or market discount is taken into account over the remaining term of the debt instrument as if there were no further inflation or deflation. See section 171 for additional rules relating to the amortization of bond premium and sections 1276 through 1278 for additional rules relating to market discount.

(4) *Minimum guarantee.* Under both the coupon bond method and the discount bond method, a minimum guarantee payment is ignored until the payment is made. If there is a minimum guarantee payment, the payment is treated as interest on the date it is paid.

(5) *Temporary unavailability of a qualified inflation index.* Notwithstanding any other rule of this section, an inflation-indexed debt instrument may provide for a substitute value of the qualified inflation index if and when the publication of the value of the qualified inflation index is temporarily delayed. The substitute value may be determined by the issuer under any reasonable method. For example, if the CPI–U is not reported for a particular month, the debt instrument may provide that a substitute value may be determined by increasing the last reported value by the average monthly percentage increase in the qualified inflation index over the preceding twelve months. The use of a substitute value does not result in a reissuance of the debt instrument.

(g) *Reopenings.* For purposes of § 1.1275–2(d)(2), a reopening of Treasury Inflation-Indexed Securities is a qualified reopening if—

(1) The terms of the securities issued in the reopening are the same as the terms of the original securities; and

(2) The reopening occurs not more than one year after the original securities were first issued to the public.

(h) *Effective date.* This section applies to an inflation-indexed debt instrument issued on or after January 6, 1997.

Par. 5. Section 1.1286–2T is added to read as follows:

§ 1.1286–2T Stripped inflation-indexed debt instruments (temporary).

Stripped inflation-indexed debt instruments. If a Treasury Inflation-Indexed Security is stripped under the Department of the Treasury's Separate Trading of Registered Interest and Principal of Securities (STRIPS) program, the holders of the principal and coupon components must use the discount bond method (as described in § 1.1275–7T(e)) to account for the original issue discount on the components.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 6, 1996.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

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Fiscal Service

31 CFR Part 354

Regulations Governing Book-Entry Securities of the Student Loan Marketing Association (Sallie Mae)

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury, on behalf of the Student Loan Marketing Association, is publishing final regulations to govern Sallie Mae book-entry securities. This action is being taken in conjunction with similar amendments being made by the Department of the Treasury to the regulations governing book-entry Treasury securities, and by other government-sponsored enterprises (GSEs) for GSE securities that are maintained on the book-entry system operated by the Federal Reserve Banks. The rules incorporate recent and significant changes in commercial law addressing the holding of securities in book-entry form through financial intermediaries.

EFFECTIVE DATE: January 6, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Mary A. Sheehan, Assistant General Counsel, Sallie Mae, (703) 810-7681, or Cynthia E. Reese, Deputy Chief Counsel, Bureau of the Public Debt, (202) 219-3320.

SUPPLEMENTARY INFORMATION: Virtually all government-sponsored enterprises (GSEs) have regulations governing their book-entry securities maintained in the Federal Reserve book-entry system that are nearly identical to the regulations governing marketable Treasury securities.[1]

In the case of the Student Loan Marketing Association (''Sallie Mae''), the Secretary of the Treasury is expressly authorized by the Higher Education Act of 1965, as amended,[2] to promulgate Sallie Mae's book-entry regulations. The current Sallie Mae book-entry regulations were issued by Treasury pursuant to that authority and appear in 31 CFR Part 354.[3] The regulations set forth rules for the transfer, pledge and servicing of book-entry Sallie Mae securities.

The current Treasury regulations will be superseded by new regulations (the ''TRADES regulations'')[4] that will go into effect January 1, 1997. As explained below, the TRADES regulations incorporate recent and significant changes in commercial law addressing the holding of securities in book-entry form through financial intermediaries.[5]

Some commenters on the TRADES regulations were concerned about coordination among Treasury and the GSEs. The commenters urged simultaneous effectiveness of parallel GSE rules. Accordingly, pursuant to Sallie Mae's request, Treasury is issuing revised regulations that will be effective in January, 1997, for Sallie Mae securities maintained on the Federal Reserve book-entry system.

Consistent with the approach in the TRADES regulations, the regulations in this Part contain specific provisions that deal with the rights and obligations of Sallie Mae and the Federal Reserve Banks with respect to Sallie Mae securities and the operation of the book-entry system. The regulations are also based in large part on Revised Article 8 on Investment Securities of the Uniform

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[1] 31 CFR Part 306, Subpart O.

[2] P.L. No. 99–498, 20 U.S.C. § 1087–2(m).

[3] 52 FR 4495 (February 12, 1987). Prior to that time, Treasury had promulgated book-entry regulations only for Sallie Mae securities issued February 25, 1983 through September 30, 1983 (48 FR 8059).

[4] 61 FR 43626 (August 23, 1996).

[5] At the time the Sallie Mae regulations were issued, it was noted in the preamble that once the TRADES regulations were finalized, it was contemplated that the Sallie Mae regulations would be replaced with a similar set of rules.

Commercial Code (''Revised Article 8''). The regulations include certain choice of law rules patterned on Revised Article 8. In the event the jurisdiction specified under the choice of law rules has not adopted Revised Article 8, Revised Article 8 will be applied nonetheless, as though it had been so adopted. At the time of the publication of the final TRADES rule, 28 states had adopted Revised Article 8.[6]

Except with respect to matters related to differences between Sallie Mae securities and Treasury securities,[7] the provisions of these rules are the same as the rules that will apply to Treasury securities. Sallie Mae intends that the analysis contained in the commentary to the TRADES final rule, Appendix B to 31 CFR Part 357, and other interpretations of the TRADES regulations published in the Federal Register, are to be used in interpreting the Sallie Mae regulations.

The most notable differences between these regulations and the TRADES regulations are as follows. First, Sallie Mae maintains no direct ownership system with respect to Sallie Mae securities comparable to the ''TREASURY DIRECT'' [8] system for Treasury securities. Second, Sallie Mae rarely has need to issue securities in definitive (certificated) form; however, Sallie Mae retains the right to issue securities in definitive form if it so chooses. Third, there are some variations in the terminology used in these regulations and in TRADES, particularly with respect to the type of documentation used to establish the terms of the security. Finally, it should be noted that these regulations apply only to Sallie Mae book-entry securities maintained on the Federal Reserve book-entry system. These regulations do not apply to Sallie Mae securities held through any other book-entry clearing systems, such as those operated by the Depository Trust Company, Euroclear or Cedel.

Procedural Requirements

This final rule does not meet the criteria for a ''significant regulatory action'' pursuant to Executive Order 12866.

These regulations are being adopted as a final rule effective upon publication. For the following reasons, the Department finds that notice and public procedure and a 30-day delayed effective date are unnecessary, impracticable, and contrary to the public interest, pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3). First, the rule merely conforms the regulations governing book-entry Sallie Mae securities to the TRADES regulations that will govern book-entry Treasury securities. Second, the TRADES regulations were published in various forms, as a proposed rule four times and as a final rule once. In each instance, the TRADES regulations were accompanied by extensive commentary addressing the background and rule provisions. Third, the comments on the TRADES regulations urged uniformity in substance and effectiveness for regulations for GSEs that issue book-entry securities maintained on the Federal Reserve book-entry system. Fourth, there are compelling reasons for setting the effective date as close as possible to January 1, 1997, when the TRADES regulations and those of the other GSEs will become effective. Having the rules become effective at different times for securities that are all maintained and transferred on the book-entry system would be burdensome and unworkable for market participants.

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply.

There are no collections of information contained in this final rule. Therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 354

Bonds, Electronic funds transfer, Federal Reserve System, Government securities, Incorporation by reference, Securities.

For the reasons set forth in the preamble, Title 31, Chapter II, Subchapter B, Code of Federal Regulations, is amended by revising Part 354 to read as follows:

PART 354—REGULATIONS GOVERNING BOOK-ENTRY SECURITIES OF THE STUDENT LOAN MARKETING ASSOCIATION (SALLIE MAE)

Sec.

Authority: 12 U.S.C. 391; 20 U.S.C. 1087–2(m).

§ 354.0 Applicability; maintenance of Sallie Mae Securities.

(a) A Sallie Mae Security may be maintained in the form of a Definitive Sallie Mae Security or a Book-entry Sallie Mae Security. A Book-entry Sallie Mae Security shall be maintained in the Book-entry System.

(b) The Sallie Mae Securities to which the regulations in this part apply are obligations which, by the terms of their issue, are available exclusively as Book-entry Sallie Mae Securities or which, pursuant to the securities documentation, are convertible from Book-entry Sallie Mae Securities to Definitive Sallie Mae Securities or vice versa.

§ 354.1 Definitions of terms.

(a) *Adverse Claim* means a claim that a claimant has a property interest in a Security and that it is a violation of the rights of the claimant for another Person to hold, transfer, or deal with the Security.

(b) *Book-entry Sallie Mae Security* means a Sallie Mae Security issued or maintained in the Book-entry System.

(c) *Book-entry System* means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for Sallie Mae, on which Book-entry Sallie Mae Securities are issued, recorded, transferred and maintained in book-entry form.

(d) *Definitive Sallie Mae Security* means a Sallie Mae Security in engraved or printed form, or that is otherwise represented by a certificate.

(e) *Eligible Book-entry Sallie Mae Security* means a Book-entry Sallie Mae Security issued or maintained in the Book-entry System which by the terms of its Security Documentation is available in either definitive or book-entry form.

(f) *Entitlement Holder* means a Person to whose account an interest in a Book-entry Sallie Mae Security is credited on the records of a Securities Intermediary.

(g) *Federal Reserve Bank* means a Federal Reserve Bank or Branch.

(h) *Federal Reserve Bank Operating Circular* means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under

[6] California has since also adopted Revised Article 8.

[7] Sallie Mae securities, together with interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than Sallie Mae.

[8] In TREASURY DIRECT, the beneficial owners of Treasury securities hold their securities directly, on the books of the issuer (in contrast to holding through a financial intermediary).

which the Federal Reserve Bank maintains book-entry Securities accounts (including Book-entry Sallie Mae Securities) and transfers book-entry Securities (including Book-entry Sallie Mae Securities).

(i) *Funds Account* means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, book-entry securities transaction fees, or principal and interest payments.

(j) *Participant* means a Person that maintains a Participant's Securities Account with a Federal Reserve Bank.

(k) *Participant's Securities Account* means an account in the name of a Participant at a Federal Reserve Bank to which Book-entry Sallie Mae Securities held for a Participant are or may be credited.

(l) *Person* means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, Sallie Mae, or a Federal Reserve Bank.

(m) *Revised Article 8* means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994 Official Text. Revised Article 8 of the Uniform Commercial Code is incorporated by reference in this Part pursuant to 5 U.S.C. 552(a) and 1 CFR Part 51. Article 8 was adopted by the American Law Institute and the National Conference of Commissioners on Uniform State laws and approved by the American Bar Association on February 14, 1995. Copies of this publication are available from the Executive Office of the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, IL 60611. Copies are also available for public inspection at the Department of the Treasury Library, Room 5030, main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington D.C. 20220, and in the Office of the Federal Register, 800 North Capitol St., N.W., Suite 700, Washington D.C.

(n) *Sallie Mae* means the Student Loan Marketing Association, a stock holder-owned corporation and government-sponsored enterprise established in 1972 by, and operating pursuant to, Section 439 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1087–2.

(o) *Sallie Mae Security* means any security or obligation of Sallie Mae issued in the form of a Definitive Sallie Mae Security or a Book-entry Sallie Mae Security.

(p) *Securities Documentation* means the applicable statement of terms and conditions or other documents establishing the terms of a Book-entry Sallie Mae Security.

(q) *Securities Intermediary* means:

(1) a Person that is registered as a ''clearing agency'' under the federal securities laws; a Federal Reserve Bank; any other Person that provides clearance or settlement services with respect to a Book-entry Security that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority; or

(2) a Person (other than an individual, unless such individual is registered as a broker or dealer under the federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(r) *Security* means any note, bond, debenture, evidence of indebtedness, or, in general, any interest or instrument commonly known as a ''security.''

(s) *Security Entitlement* means the rights and property interest of an Entitlement Holder with respect to a Book-entry Sallie Mae Security.

(t) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(u) *Transfer Message* means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Security (including a Book-entry Sallie Mae Security) maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

§ 354.2 Law governing rights and obligations of Federal Reserve Banks, and Sallie Mae; rights of any Person against Federal Reserve Banks and Sallie Mae.

(a) Except as provided in paragraph (b) of this section, the following are governed solely by the book-entry regulations contained in this Part 354, the Securities Documentation (to the extent not inconsistent with these regulations) and Federal Reserve Bank Operating Circulars:

(1) The rights and obligations of Sallie Mae and the Federal Reserve Banks with respect to:

(i) A Book-entry Sallie Mae Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Sallie Mae Securities; and

(2) The rights of any Person, including a Participant, against Sallie Mae and the Federal Reserve Banks with respect to:

(i) A Book-entry Sallie Mae Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Sallie Mae Securities.

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 354.4(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 354.14(c)(1), is governed by the law determined in the manner specified in § 354.3.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8 (incorporated by reference, see § 354.1), then the law specified in paragraph (b) shall be the law of that State as though Revised Article 8 had been adopted by that State.

§ 354.3 Law governing other interests.

(a) To the extent not inconsistent with the regulations in this Part, the law (not including the conflict-of-law rules) of a Securities Intermediary's jurisdiction governs:

(1) The acquisition of a Security Entitlement from the Securities Intermediary;

(2) The rights and duties of the Securities Intermediary and Entitlement Holder arising out of a Security Entitlement;

(3) Whether the Securities Intermediary owes any duties to an adverse claimant to a Security Entitlement;

(4) Whether an Adverse Claim can be asserted against a Person who acquires a Security Entitlement from the Securities Intermediary or a Person who purchases a Security Entitlement or interest therein from an Entitlement Holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection and priority of a security interest in a Security Entitlement.

(b) The following rules determine a ''Securities Intermediary's jurisdiction'' for purposes of this section:

(1) If an agreement between the Securities Intermediary and its Entitlement Holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(2) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(3) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the Entitlement Holder's account.

(4) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the Entitlement Holder's account as provided in paragraph (b)(3) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the Securities Intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the Person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted Revised Article 8 (incorporated by reference, see § 354.1), then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the Participant's Securities Account is a clearing corporation, and the Participant's interest in a Book-entry Security is a Security Entitlement.

§ 354.4 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book-entry that a Book-entry Sallie Mae Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an ''authorized representative of the United States'' is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) Sallie Mae and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank, Sallie Mae, or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 354.2(b) or § 354.3. The perfection, effect of perfection or non-perfection and priority of a security interest are governed by such applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 354.5 Obligations of Sallie Mae; no adverse claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 354.4(c)(1), for the purposes of this Part 354, Sallie Mae and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Sallie Mae Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such Security, notwithstanding any information or notice to the contrary. Neither the Federal Reserve Banks nor Sallie Mae is liable to a Person asserting or having an Adverse Claim to a Security Entitlement or to a Book-entry Sallie Mae Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Sallie Mae Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of Sallie Mae to make payments of interest and principal with respect to Book-entry Sallie Mae Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest on Book-entry Sallie Mae Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at such Bank or otherwise paid as directed by the Participant.

(2) Book-entry Sallie Mae Securities are redeemed at maturity or pursuant to a call for redemption in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the redemption proceeds, including both principal and interest where applicable, to a Funds Account at such Bank or otherwise paying such principal and interest, as directed by the Participant.

§ 354.6 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of Sallie Mae to perform functions with respect to the issuance of Book-entry Sallie Mae Securities offered and sold by Sallie Mae, in accordance with the Securities Documentation, and Federal Reserve Bank Operating Circulars; to service and maintain Book-entry Sallie Mae Securities in accounts established for such purposes; to make payments of principal and interest with respect to such Book-entry Sallie Mae Securities as directed by Sallie Mae; to effect transfer of Book-entry Sallie Mae Securities between Participants' Securities Account as directed by the Participants; to effect conversions between Book-entry Sallie Mae securities and Definitive Sallie Mae Securities with respect to those securities as to which conversion rights are available pursuant to the applicable Securities Documentation; and to perform such other duties as fiscal agent as may be requested by Sallie Mae.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this Part, governing the details of its handling of Book-entry Sallie Mae Securities, Security Entitlements, and the operation of the Book-entry System under this Part.

§ 354.7 Withdrawal of eligible Book-entry Sallie Mae Securities for conversion to definitive form.

(a) Eligible Book-entry Sallie Mae Securities may be withdrawn from the Book-entry System by requesting delivery of like Definitive Sallie Mae Securities.

(b) A Federal Reserve Bank shall, upon receipt of appropriate instructions to withdraw Eligible Book-entry Sallie Mae Securities from book-entry in the Book-entry System, convert such securities into Definitive Sallie Mae Securities and deliver them in accordance with such instructions. No such conversion shall affect existing interests in such Sallie Mae Securities.

(c) All requests for withdrawal of Eligible Book-entry Sallie Mae Securities must be made prior to the maturity or date of call of such securities.

(d) Sallie Mae Securities which are to be delivered upon withdrawal may be issued in either registered or bearer form, to the extent permitted by the applicable Securities Documentation.

§ 354.8 Waiver of regulations.

The Secretary reserves the right, in the Secretary's discretion, to waive any provision(s) of the regulations in this Part in any case or class of cases for the convenience of Sallie Mae, or in order to relieve any person or entity of unnecessary hardship, if such action is not inconsistent with law, does not adversely affect substantial existing rights, and the Secretary is satisfied that such action will not subject Sallie Mae to any substantial expense or liability.

§ 354.9 Liability of Sallie Mae and Federal Reserve Banks.

Sallie Mae and the Federal Reserve Banks may rely on the information provided in a Transfer Message, and are not required to verify the information. Sallie Mae and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a Transfer Message or evidence submitted in support thereof.

§ 354.10 Additional provisions.

(a) *Additional requirements.* In any case or any class of cases arising under these regulations, Sallie Mae may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of Sallie Mae be necessary for the protection of the interests of Sallie Mae.

(b) *Notice of attachment for Sallie Mae Securities in Book-entry System.* The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. The regulations in this part do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

Dated: December 29, 1996.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 97–129 Filed 1–3–97; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA29

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Clarification of the CHAMPUS Exclusion of Unproven Drugs, Devices and Medical Treatments and Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule clarifies the CHAMPUS exclusion of unproven drugs, devices and medical treatments and procedures and describes the process that the Office of CHAMPUS follows in determining when such drugs, devices, treatments and procedures have moved from the status of unproven to the position of proven medical effectiveness. This clarification is necessary to ensure the CHAMPUS beneficiary and provider population understand the process the Office of CHAMPUS (OCHAMPUS) follows prior to endorsement by CHAMPUS of a new emerging medical technology, drug, or device for which the safety and efficacy have been proven.

DATES: This final rule is effective February 5, 1996.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Rene Morrell, Program Development Branch, OCHAMPUS, telephone (303) 361–1218.

SUPPLEMENTARY INFORMATION:

A. Discussion of Champus Policy

Under statutes governing CHAMPUS, including 10 U.S.C. 1079, CHAMPUS payments are prohibited for health care services that are ''not medically or psychologically necessary.'' The purpose of this provision, common in health care payment programs, is to prevent CHAMPUS beneficiaries from being exposed to less than fully developed and tested medical procedures and to avoid the associated risk of unnecessary or unproven treatment. CHAMPUS regulations and program policies restrict benefits to those procedures for which the safety and efficacy have been proven to be comparable or superior to conventional therapies. In general, the CHAMPUS

regulations and program policies exclude cost-sharing of procedures which are unproven, including those that remain in a developmental status. The evolution of any medical technology or procedure from unproven status to one of national acceptance is often controversial, with those members of the medical community who are using and promoting the procedure arguing that the procedure has national acceptance. In determining whether a procedure has proven medical effectiveness, CHAMPUS uses the following hierarchy of assessment sources:

1. Well-controlled studies of clinically meaningful endpoints, published in refereed medical literature.

2. Formal technology assessments from nationally recognized technology assessment groups, such as the:

—Food and Drug Administration (FDA);
—Agency for Health Care Policy and Research (AHCPR);
—Emergency Care Research Institute (ECRI).

3. National medical policy organization positions such as the:

—Medical Advisory Panel of the National Blue Cross/Blue Shield Association.

4. National professional medical association positions such as those promulgated by the:

—American College of Obstetricians and Gynecologists.

5. National expert opinion organizations such as the:

—Diagnostic and Therapeutic Technology Assessment (DATTA) group of the American Medical Association;
—Health Care Financing Administration.

CHAMPUS policy and benefit structure are never based solely on coverage offered by other third party payers, including Medicare, since each operates under different rules and requirements.

B. Need for the Regulation

This final rule does not present new agency policy. Rather, it reaffirms and clarifies existing CHAMPUS policy in the body of the CHAMPUS regulation. We revise the regulation primarily in response to a series of U.S. district court decisions concerning one particular unproven treatment, high dose chemotherapy (HDC) with stem cell rescue (SCR) as a treatment for breast cancer (discussed more below), in which the courts held that the CHAMPUS determination regarding this treatment was not sufficiently established to be accepted by the courts. For example, in *Hawkins* v. *Mail Handlers Benefit Plan and CHAMPUS,* Civil No. 1:94CV6, W.D.N.C. (Jan. 28, 1994), the court ruled on a motion for a preliminary injunction filed by a beneficiary of both the Mail Handlers Benefit Plan and CHAMPUS, seeking a court order overruling the exclusion in both plans of coverage for HDC/SCR as a treatment for breast cancer. The court ruled in favor of the Mail Handlers Benefit Plan, but against CHAMPUS based on judgment that the determination that this procedure was experimental was not clearly established by CHAMPUS and was not supported by the evidence submitted to the court.

Similarly, in *Wheeler* v. *Dynamic Engineering Inc., and CHAMPUS,* No. 4.94CV16, E.D.Va (April 4, 1994), another case of a beneficiary covered by both an employer plan and CHAMPUS who sought a judgment that both should cover HDC/SCR for breast cancer treatment, the court made a distinction between a new company plan that specifically excluded the procedure and the former company plan and CHAMPUS, both of which did not expressly do so. After determining that the former plan was applicable (based on the date the treatment began), the court ruled that neither the plan nor CHAMPUS could properly exclude coverage of the procedure.

Two Circuit Courts of Appeals have recently addressed this issue, and reached conflicting results. In *Smith* v. *OCHAMPUS,* No. 94–3744, 7th Cir., Sept. 26, 1995, the Seventh Circuit Court of Appeals ruled that the CHAMPUS exclusion for HDC/SCR for breast cancer was justified, but the opposite answer was reached by the Fourth Circuit Court of Appeals in *Wilson* v. *OCHAMPUS,* No. 95–1016, 4th Cir., Sept. 15, 1995. The Seventh Circuit recently granted a motion for rehearing in the *Smith* case.

OCHAMPUS has carefully reviewed the evidence on HDC/SCR as a treatment for breast cancer. It is our conclusion that it continues to be an unproven treatment because the chemotherapy regimen is not approved by FDA, no well-controlled clinical trials have proven the effectiveness of HDC/SCR for breast cancer (and certain other cancers as well), and because formal technology assessment studies have concluded similarly. The CHAMPUS policy regarding the unproven nature of HDC/SCR for breast cancer is based upon a series of reports from four primary sources:

1. The 1988 study entitled ''Public Health Service Reassessment: Autologous Bone Marrow Transplantation'' prepared by the Office of Health Technology Assessment, Agency for Health Care Policy and Research (OHTA/AHCPR) of the Public Health Service, and authored by Harry Handelsman, D.O.;

2. The American Medical Association Diagnostic and Therapeutic Technology Assessment (AMA DATTA) evaluation of January 1990 entitled ''Autologous Bone Marrow Transplantation 0 Reassessment'' by Elizabeth Brown, M.D.;

3. The June 1993 study entitled ''Autologous Bone Marrow Transplant and Peripheral Blood Stem Cell Rescue for the Treatment of Breast Cancer'' copyright by the Emergency Care Research Institute (ECRI) 5200 Butler Pike, Plymouth Meeting, Pa 19462; and

4. The February 1995 ECRI assessment of ''Autologous Bone Marrow Transplant and Peripheral Blood Stem Cell Rescue for the Treatment of Breast Cancer.''

Since the time the 1988 and 1990 reports mentioned above were initially prepared, OCHAMPUS has performed a continuous review of the refereed medical literature on this topic, and has had numerous confirming discussions with the Office of Health Technology Assessment (OHTA) of the Public Health Service regarding their position. The latest of these discussions confirmed the lack of refereed medical literature that would support CHAMPUS coverage of this procedure for treatment of breast carcinoma. Therefore, although the initial policy classifying HDC/SCR as investigational under CHAMPUS was based upon literature and technical assessments dating from the 1988–1990 time-frame, OCHAMPUS continually monitored development of the literature and the status of ongoing well-controlled clinical trials regarding the effectiveness of this form of treatment for breast carcinoma and other carcinomas for which it is not currently authorized as a CHAMPUS benefit. The June 1993 formal assessment by ECRI provided independent reconfirmation of the CHAMPUS position. This independent reconfirmation has been substantially bolstered by the 1995 ECRI studies which indicated that ''results from the experimental procedure are not any better than published results for conventional therapy to treat breast cancer,'' and that ''the impetus for this (treatment) is more political than scientific * * * (It) is a treatment that's becoming mandated by popular opinion.'' This most recent information reconfirms, in even stronger terms and with new studies and literature, the earlier conclusions of previous

technology assessments that HDC/SCR has not been proven to be effective in the treatment of breast cancer. To date there has been no new evidence which would warrant a departure from the original coverage determination to exclude CHAMPUS cost-sharing of this procedure for the treatment of breast carcinoma. The CHAMPUS position is further supported by the Consensus Conference on Intensive Chemotherapy Plus Hematopietic Stem Cell Transplantation in Malignancies [(Journal of Clinical Oncology, Volume 12, Number 1, (January 1994); pages 226–231; (Attachment 5)] which states in part:

* * * Although there is currently insufficient evidence to justify the use of HDC/plus HSC (Hematopietic Stem Cell) transplantation outside the setting of clinical trial for any stage of breast cancer, there is amply scientific background for vigorous clinical investigation in this important area * * *

Based on the evidence regarding this procedure, which demonstrates that it continues to be unproven, and the series of recent court rulings declining to follow an exclusion not clearly established in the governing instruments of the program, we believe this rule is necessary to reaffirm and clarify CHAMPUS policy on unproven drugs, devices, and medical treatments and procedures and to specifically list a number of procedures we have determined are unproven.

The Department shares public and scientific concern about disappointing cure rates under standard cancer therapies. In emphasizing refereed medical literature as the primary source of reliable evidence that a particular treatment or procedure has proven medical effectiveness, we also underscore our support for committed efforts to advance medical research. We have an interest and a responsibility to participate in the appropriate evaluation of improved therapeutic approaches for our patients. A number of military medical centers are engaged in such research protocols. In November 1994, under authority of 10 U.S.C. 1092, the Department of Defense undertook a demonstration project to authorize payment for breast cancer treatment under certain government approved clinical protocols. Initially, the demonstration project applied only to phase III clinical trials under approved National Cancer Institute protocols for high dose chemotherapy with stem cell rescue for breast cancer treatment. It was expanded in January of this year to include a broad range of National Cancer Institute sponsored Phase II and III clinical trials for other cancers. The Department has worked closely with the National Cancer Institute to establish a formal program for interagency cooperation which will provide an important contribution to the continued development of promising new cancer therapies.

C. Provisions of the Final Rule

The final rule describes the criteria we use to identify the proven medical necessity of procedures, treatments, drugs, or devices, includes a partial list of unproven drugs, devices, treatments, and procedures, and makes provision for promptly treating a drug, device, treatment or procedure as no longer unproven when reliable scientific evidence supports that conclusion. Any changes to the partial list will be published periodically as a notice in the Federal Register.

D. Public Comments

This final rule is based on a proposed rule published May 18, 1995 (60 FR 26705–26709). We received seven public comments. Many of the comments were quite similar in wording and content. Some were very detailed and provided helpful insight and analysis. We thank those who provided input on this important issue. Significant items raised by commenters and our analysis of the comments are summarized below:

1. *Definitions of ''Experimental.''* We received a significant number of comments expressing concerns about terminology used in the proposed rule, particularly the use of the term ''experimental'' to describe treatments that had not yet established proven medical effectiveness.

Response: We agree that use of this term causes more confusion than clarification, and have modified the final rule to delete the use of the term ''experimental.''

2. *Effect of CHAMPUS policy on other government agencies or other health care programs.* We wish to underscore that this final rule relates to the CHAMPUS program. It does not directly affect Medicare, Medicaid or other payers. Each program has its own set of rules, requirements, and procedures. Thus, determinations by the Office of CHAMPUS concerning medical treatments that have established proven medical effectiveness and those that have not should be understood as representing the best judgment of the Department of Defense, but not necessarily reflecting the views of any other government agency or other health care program. In addition CHAMPUS policy and benefit structure are never based solely on coverage offered by other third party payers, including Medicare, since each operates under different rules and requirements. In the interest of minimizing regulatory burden and confusion, CHAMPUS seeks to harmonize its coverage policy with other federal programs and the private sector to the extent appropriate.

3. *Discretionary waiver authority.* One commenter suggested this rule provide discretionary waiver authority to the Director, OCHAMPUS, based on coordination at the professional level between the military medical services and OCHAMPUS, to ensure that individuals who might otherwise benefit, would not be unduly penalized by the inflexibility of the rule. Such a provision would be consistent with implementation of the managed care concept, current research protocols at military facilities, and the Department of Defense demonstration programs.

Response: The CHAMPUS Regulation already allows for discretionary waiver authority for rare and unusual cases, consistent with applicable law. However, by law, CHAMPUS can only cost-share medically necessary supplies and services. Any drug, device or medical treatment or procedure whose safety and efficacy have not been established, is unproven and cannot be cost-shared by CHAMPUS.

4. *Definition of Reliable Evidence.* We received several comments expressing concern about the use of the term ''reliable evidence'' in the proposed rule. Many of the types of evidence demanded by the proposed regulation do not exist for many surgical and other procedures. Also, simply stating that randomized controlled trials constitute a form of reliable evidence, does not address the question whether the trial demonstrates efficacy or lack thereof. The commenter believed that CHAMPUS needs to define more clearly how it will determine the boundaries of experimental, i.e., the ''gray zone'' between effective and ineffective treatment.

Response: We agree that the use of this term was easily misunderstood and have modified the definition for clarity. The term ''reliable evidence'' means well controlled studies of clinically meaningful endpoints, published in refereed medical literature; published formal technology assessments; published reports of national professional medical associations; published national medical policy organizations positions; and published reports of national expert opinion organizations. We have also included specific examples of resources *not* included in the meaning of reliable evidence. As stated previously, the

definition of ''experimental'' has been deleted from the rule.

5. *Benefit Limitations.* We received several comments on the denial of payment for a procedure that uses FDA-approved products, and coverage of off-label uses of approved drugs in clinical trials. It was recommended that CHAMPUS cover the patient's care costs associated with any clinical trial (including all ''phases'' of evaluation) involving a life-threatening or other serious condition.

Response: Some procedures, even though the procedure uses an FDA-approved product, do not meet CHAMPUS' criteria for medically necessary treatment. The purpose of this provision is to prevent CHAMPUS beneficiaries from being exposed to less than fully developed and tested medical procedures and to avoid the associated risk of unnecessary or unproven treatment. In addition, services or supplies for which the beneficiary or sponsor has no legal obligation to pay; or for which no charge would be made if the beneficiary or sponsor was not eligible under CHAMPUS, as may be the case in clinical trials, are not covered by CHAMPUS. One of the provisions of this rule allows coverage for a device with an FDA-approved IDE categorized by the FDA as non-experimental/ investigation (FDA Category B) for CHAMPUS beneficiaries participating in FDA-approved clinical trials.

6. *Off-Label Uses of Drugs.* Several commenters were concerned that the proposed regulation does not give automatic coverage to many well-recognized off-label uses. It was recommended that CHAMPUS adopt the approach that Congress utilized in the Medicaid program for all drugs and in the Medicare program for cancer chemotherapy. Under those statutes, off-label drug uses listed in the three major drug-use compendia—U.S. Pharmacopoeia Drug Information, the American Medical Association's Drug Evaluations, and the American Hospital Formulary Service—are automatically covered.

Response: The above listed compendia do not meet the CHAMPUS criteria for ''reliable evidence.'' CHAMPUS can consider coverage of unlabeled or off-label uses of drugs that are otherwise approved by the FDA for use in humans. Approval for reimbursement of unlabeled or off-label uses requires review for medical necessity, and also requires demonstrations from medical literature, national organizations, or technology assessment bodies that the unlabeled or off-label use of the drug is safe, effective and in accordance with nationally accepted standards of practice in the medical community.

7. *List of Excluded Procedures.* We received several comments objecting to several of the items listed. Some comments state that the descriptions used in many of the items were too vague to define accurately which procedures are being excluded for payment and some are of procedures independent of the diseases or conditions that they may treat or mitigate. Several commenters submitted literature regarding intraoperative radiation therapy; single and dual photon absorptiomentry (DEXA); videofluroscopy, herniography, percutaneous balloon valvuloplasty (PBV); interoperative monitoring of sensory evoked potentials (SEP); radioimmunoguided surgery in the detection of cancer; quantitative computed tomography (QCT); percutaneous transluminal angioplasty (PBA); light therapy for seasonal depression; immunotherapy for malignant diseases; intracavity administration of cisplatin; palladium (103Pd) seed brachytherapy; cryosurgery for liver metastases; HLA–DNA typing; and home uterine activity monitoring. The greatest disagreement involved high-dose chemotherapy with stem-cell rescue for breast cancer, ovarian cancer, testicular cancer and multiple myeloma.

Response: The issue of high-dose chemotherapy with stem-cell rescue (HSC/SCR) is addressed extensively in the preamble. The most recent information reconfirms, in even stronger terms and with new studies and literature, the earlier conclusions of previous technology assessments that HSC/SCR is unproven in the treatment of breast cancer. To date there has been no new evidence which would warrant a departure from the original coverage determination.

Since the proposed rule was published, OCHAMPUS has removed herniography, HLA–DNA typing, cryosurgery for liver metastases, bone density studies [single and dual photon absorptiometry and quantitated computed tomography (QCT)], Contigen Bard ® collagen implant, transurethral laser incision of the prostate (TULIP) and intraventricular administration of narcotics from the list of unproven procedures. We will continually monitor the development of the literature and the status of ongoing well-controlled clinical trails regarding the effectiveness of the remaining procedures on the list. If and when the Director, OCHAMPUS determines that, based on reliable evidence, a procedure has proven medical effectiveness, the Director OCHAMPUS will initiate action to remove the procedure from the partial list of unproven drugs, devices or medical treatment or procedures.

E. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any ''significant regulatory action,'' defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have significant impact on a substantial number of small entities. This proposed rule is not a significant regulatory action under Executive Order 12866. This rule will not involve any significant burden on the CHAMPUS beneficiary or provider population. This rule only clarifies the CHAMPUS exclusion of unproven drugs, devices, treatments and procedures and describes the process that the Office of CHAMPUS follows in determining for purposes of benefit coverage when a procedure, treatment, drug, or device has moved from the status of unproven to the position of nationally accepted medical practice. This rule does not impose information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*)

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, and Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; and 10 U.S.C. Chapter 55.

2. Section 199.2 is amended in paragraph (b) by removing the definition of ''Experimental'' and adding the definitions for ''Clinically Meaningful Endpoints'', ''Rare Diseases'', ''Reliable Evidence'', and ''Unlabeled or Off-Labeled Drugs'' and placing them in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Clinically Meaningful Endpoints. As used the definition of *reliable evidence* in this paragraph (b) and § 199.4(g)(15), the term clinically meaningful endpoints means objectively measurable outcomes of clinical interventions or other medical procedures, expressed in

terms of survival, severity of illness or condition, extent of adverse side effects, diagnostic capability, or other effect on bodily functions directly associated with such results.

* * * * *

Rare Diseases. CHAMPUS defines a rare disease as one which affects fewer than one in 200,000 Americans.

* * * * *

Reliable evidence. (1) As used in § 199.4(g)(15), the term reliable evidence means only:

(i) Well controlled studies of clinically meaningful endpoints, published in refereed medical literature.

(ii) Published formal technology assessments.

(iii) The published reports of national professional medical associations.

(iv) Published national medical policy organization positions; and

(v) The published reports of national expert opinion organizations.

(2) The hierarchy of reliable evidence of proven medical effectiveness, established by (1) through (5) of this paragraph, is the order of the relative weight to be given to any particular source. With respect to clinical studies, only those reports and articles containing scientifically valid data and published in the refereed medical and scientific literature shall be considered as meeting the requirements of reliable evidence. Specifically not included in the meaning of reliable evidence are reports, articles, or statements by providers or groups of providers containing only abstracts, anecdotal evidence or personal professional opinions. Also not included in the meaning of reliable evidence is the fact that a provider or a number of providers have elected to adopt a drug, device, or medical treatment or procedure as their personal treatment or procedure of choice or standard of practice.

* * * * *

Unlabeled or Off-Label Drugs. Food and Drug Administration (FDA) approved drugs that are used for indications or treatments not included in the approved labeling. The drug must be medically necessary for the treatment of the condition for which it is administered, according to accepted standards of medical practice.

* * * * *

3. Section 199.4 is amended by revising paragraph (g)(15) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(g) *Exclusions and limitations.* * * *

(15) *Unproven drugs, devices, and medical treatments or procedures.* By law, CHAMPUS can only cost-share medically necessary supplies and services. Any drug, device or medical treatment or procedure, the safety and efficacy of which have not been established, as described in this paragraph (g)(15), is unproven and cannot be cost-shared by CHAMPUS.

(i) A drug, device, or medical treatment or procedure is unproven:

(A) If the drug or device cannot be lawfully marketed without the approval or clearance of the United States Food and Drug Administration (FDA) and approval or clearance for marketing has not been given at the time the drug or device is furnished to the patient.

Note: Although the use of drugs and medicines not approved by the FDA for commercial marketing, that is for use by humans, (even though permitted for testing on humans) is excluded from coverage as unproven, drugs grandfathered by the Federal Food, Drug and Cosmetic Act of 1938 may be covered by CHAMPUS as if FDA approved.

Certain cancer drugs, designated as Group C drugs (approved and distributed by the National Cancer Institute) and Treatment Investigational New Drugs (INDs), are not covered under CHAMPUS because they are not approved for commercial marketing by the FDA. However, medical care related to the use of Group C drugs and Treatment INDs can be cost-shared under CHAMPUS when the patient's medical condition warrants their administration and the care is provided in accordance with generally accepted standards of medical practice.

CHAMPUS can also consider coverage of *unlabeled* or *off-label* uses of drugs that are Food and Drug Administration (FDA) approved drugs that are used for indications or treatments not included in the approved labeling. Approval for reimbursement of *unlabeled* or *off-label* uses requires review for medical necessity, and also requires demonstrations from medical literature, national organizations, or technology assessment bodies that the *unlabeled* or *off-label* use of the drug is safe, effective and in accordance with nationally accepted standards of practice in the medical community.

(B) If a medical device (as defined by 21 U.S.C. 321(h)) with an Investigational Device Exemption (IDE) approved by the Food and Drug Administration is categorized by the FDA as experimental/investigational (FDA Category A).

Note: CHAMPUS will consider for coverage a device with an FDA-approved IDE categorized by the FDA as non-experimental/investigational (FDA Category B) for CHAMPUS beneficiaries participating in FDA approved clinical trials. Coverage of any such Category B device is dependent on its meeting all other requirements of the laws and rules governing CHAMPUS and upon the beneficiary involved meeting the FDA-approved IDE study protocols.

(C) Unless reliable evidence shows that any medical treatment or procedure has been the subject of well-controlled studies of clinically meaningful endpoints, which have determined its maximum tolerated dose, its toxicity, its safety, and its efficacy as compared with standard means of treatment or diagnosis. (See the definition of *reliable evidence* in § 199.2 of this part for the procedures used in determining if a medical treatment or procedure is unproven.)

(D) If the consensus among experts regarding the medical treatment or procedure is that further studies or clinical trials are necessary to determine its maximum tolerated doses, its toxicity, its safety, or its effectiveness as compared with the standard means of treatment or diagnosis. (See the definition of *reliable evidence* in § 199.2 of this part for the procedures used in determining if a medical treatment or procedure is unproven.)

(ii) CHAMPUS benefits for rare diseases are reviewed on a case-by-case basis by the Director, Office of CHAMPUS, or a designee. In reviewing the case, the Director, or a designee, may consult with any or all of the following sources to determine if the proposed therapy is considered safe and effective:

(A) Trials published in refereed medical literature.

(B) Formal technology assessments.

(C) National medical policy organization positions.

(D) National professional associations.

(E) National expert opinion organizations.

(iii) *Care excluded.* This exclusion from benefits includes all services directly related to the unproven drug, device, or medical treatment or procedure. However, CHAMPUS may cover services or supplies when there is no logical or causal relationship between the unproven drug, device or medical treatment or procedure and the treatment at issue or where such a logical or causal relationship cannot be established with a sufficient degree of certainty. This CHAMPUS coverage is authorized in the following circumstances:

(A) Treatment that is not related to the unproven drug, device or medical treatment or procedure; e.g., medically necessary in the absence of the unproven treatment.

(B) Treatment which is necessary follow-up to the unproven drug, device or medical treatment or procedure but which might have been necessary in the absence of the unproven treatment.

(iv) *Examples of unproven drugs, devices or medical treatments or*

procedures. This paragraph (g)(15)(iv) consists of a partial list of unproven drugs, devices or medical treatment or procedures. These are excluded from CHAMPUS program benefits. This list is not all inclusive. Other unproven drugs, devices or medical treatments or procedures, are similarly excluded, although they do not appear on this partial list. This partial list will be reviewed and updated periodically as new information becomes available. With respect to any procedure included on this partial list, if and when the Director, OCHAMPUS determines that based on reliable evidence (as defined in section 199.2) such procedure has proven medical effectiveness, the Director will initiate action to remove the procedure from this partial list of unproven drugs, devices or medical treatment or procedures. From the date established by the Director as the date the procedure has established proven medical effectiveness until the date the regulatory change is made to remove the procedures from the partial list of unproven drugs, devices or medical treatment or procedures the Director, OCHAMPUS will suspend treatment of the procedure as unproven drugs, devices, or medical treatments or procedures. Following is the non-inclusive, partial list of unproven drugs, devices or medical treatment or procedures, all of which are excluded from CHAMPUS benefits:

(A) Radial keratotomy (refractive keratoplasty).

(B) Cellular therapy.

(C) Histamine therapy.

(D) Stem cell assay, a laboratory procedure which allows a determination to be made of the type and dose of cancer chemotherapy drugs to be used, based on in vitro analysis of their effects on cancer cells taken from an individual.

(E) Topical application of oxygen.

(F) Immunotherapy for malignant disease, except when using drugs approved by the FDA for this purpose.

(G) Prolotherapy, joint sclerotherapy, and ligamentous injections with sclerosing agents.

(H) Transcervical block silicone plug.

(I) Whole body hyperthermia in the treatment of cancer.

(J) Portable nocturnal hypoglycemia detectors.

(K) Testosterone pellet implants in the treatment of females.

(L) Estradiol pellet implants.

(M) Epikeratophakia for treatment of aphakia and myopia.

(N) Bladder stimulators.

(O) Ligament replacement with absorbable copolymer carbon fiber scaffold.

(P) Intraoperative radiation therapy.

(Q) Gastric bubble or balloon.

(R) Dorsal root entry zone (DREZ) thermocoagulation or micorcoagulation neurosurgical procedure.

(S) Brain electrical activity mapping (BEAM).

(T) Topographic brain mapping (TBM) procedure.

(U) Ambulatory blood pressure monitoring.

(V) Bilateral carotoid body resection to relieve pulmonary system.

(W) Intracavitary administration of cisplatin for malignant disease.

(X) Cervicography.

(Y) In-home uterine activity monitoring for the purpose of preventing preterm labor and/or delivery.

(Z) Sperm evaluation, hamster penetration test.

(AA) Transfer factor (TF).

(BB) Continuous ambulatory esophageal pH monitoring (CAEpHM) is considered unproven for patients under age 12 for all indications, and for patients over age 12 for sleep apnea.

(CC) Adrenal-to-brain transplantation for Parkinson's disease.

(DD) Videofluoroscopy evaluation in speech pathology.

(EE) Applied kinesiology.

(FF) Hair analysis to identify mineral deficiencies from the chemical composition of the hair. Hair analysis testing may be reimbursed when necessary to determine lead poisoning.

(GG) Iridology (links flaws in eye coloration with disease elsewhere in the body).

(HH) Small intestinal bypass (jejunoileal bypass) for treatment of morbid obesity.

(II) Biliopancreatic bypass.

(JJ) Gastric wrapping/gastric banding.

(KK) Calcium EAP/calcium orotate and selenium (also known as Nieper therapy)—Involves inpatient care and use of calcium compounds and other non-FDA approved drugs and special diets. Used for cancer, heart disease, diabetes, and multiple sclerosis.

(LL) Percutaneous balloon valvuloplasty for mitral and tricuspid valve stenosis.

(MM) Amniocentesis performed for ISO immunization to the ABO blood antigens.

(NN) Balloon dilatation of the prostate.

(OO) Helium in radiosurgery.

(PP) Electrostimulation of salivary production in the treatment of xerostomia secondary to Sjogren's syndrome.

(QQ) Intraoperative monitoring of sensory evoked potentials (SEP). To include visually evoked potentials, brainstem auditory evoked response, somatosensory evoked potentials during spinal and orthopedic surgery, and sensory evoked potentials monitoring of the sciatic nerve during total hip replacement. Recording SEPs in unconscious head injured patients to assess the status of the somatosensory system. The use of SEPs to define conceptional or gestational age in preterm infants.

(RR) Autolymphocyte therapy (ALT) (immunotherapy used for treating metastatic kidney cancer patients).

(SS) Radioimmunoguided surgery in the detection of cancer.

(TT) Gait analysis (also known as a walk study or electrodynogram)

(UU) Use of cerebellar stimulators/pacemakers for the treatment of neurologic disorders.

(VV) Signal-averaged ECG.

(WW) Peri-urethal Teflon injections to manage urinary incontinence.

(XX) Extraoperative electrocorticography for stimulation and recording

(YY) Quantitative computed tomography (QCT) for the detection and monitoring of osteoporosis.

(ZZ) [Reserved]

(AAA) Percutaneous transluminal angioplasty in the treatment of obstructive lesions of the carotoid, vertebral and cerebral arteries.

(BBB) Endoscopic third ventriculostomy.

(CCC) Holding therapy—Involves holding the patient in an attempt to achieve interpersonal contact, and to improve the patient's ability to concentrate on learning tasks.

(DDD) In utero fetal surgery.

(EEE) Light therapy for seasonal depression (also known as seasonal affective disorder (SAD)).

(FFF) Dorsal column and deep brain electrical stimulation of treatment of motor function disorder.

(GGG) Chelation therapy, except with products and for indications approved by the FDA.

(HHH) All organ transplants *except* heart, heart-lung, lung, kidney, some bone marrow, liver, liver-kidney, corneal, heart-valve, and kidney-pancreas transplants for Type I diabetics with chronic renal failure who require kidney transplants.

(III) Implantable infusion pumps, *except* for treatment of spasticity, chronic intractable pain, and hepatic artery perfusion chemotherapy for the treatment of primary liver cancer or metastic colorectal liver cancer.

(JJJ) Services related to the candidiasis hypersensitivity syndrome, yeast syndrome, or gastrointestinal candidiasis (i.e., allergenic extracts of

Candida albicans for immunotherapy and/or provocation/neutralization).

(KKK) Treatment of chronic fatigue syndrome.

(LLL) Extracorporeal immunoadsorption using protein A columns for conditions other than acute idopathic thrombocytopenia purpura.

(MMM) Dynamic posturography (both static and computerized).

(NNN) Laparoscopic myomectomy.

(OOO) Growth factor, including platelet-derived growth factors, for treating non-healing wounds. This includes Procurene®, a platelet-derived wound-healing formula.

(PPP) High dose chemotherapy with stem cell rescue (HDC/SCR) for any of the following malignancies:

(1) Breast cancer, except for metastic breast cancer that has relapsed after responding to a first line treatment.

(2) Ovarian cancer.

(3) Testicular cancer.

Dated: December 30, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–101 Filed 1–6–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

32 CFR Part 813

Schedule of Fees for Copying, Certifying and Searching Records and Other Documentary Material

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule; removal.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 813, Schedule of Fees for Copying, Certifying and Searching Records and Other Documentary Material. This rule is removed because the source document has been rescinded.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AAX, 1720 Air Force Pentagon, Washington DC 20330–1720, telephone (703) 697–4191.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 813

Freedom of information.

Authority: 10 U.S.C. 8013.

PART 813—[REMOVED]

Accordingly, 32 CFR, Chapter VII, is amended by removing part 813.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–88 Filed 1–3–97; 8:45 am]

BILLING CODE 3910–01–P

32 CFR Part 818b

Legal Assistance Program

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule; removal.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 818b, Legal Assistance Program. This rule is removed because it has limited applicability to the general public. This action is the result of departmental review. The intended effect is to ensure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AAX, 1720 Air Force Pentagon, Washington DC 20330–1720, telephone (703) 697–4191.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 818b

Legal services, Military law, Military personnel.

Authority: 10 U.S.C. 8013.

PART 818b—[REMOVED]

Accordingly, 32 CFR, Chapter VII, is amended by removing part 818b.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–87 Filed 1–3–97; 8:45 am]

BILLING CODE 3910–01–P

32 CFR Part 844

Distribution of Literature and Protest and Dissident Activities

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule; removal.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 844, Distribution of Literature and Protest and Dissident Activities. This rule is removed because it has limited applicability to the general public. This action is the result of departmental review. The intended effect is to ensure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AAX, 1720 Air Force Pentagon, Washington DC 20330–1720, telephone (703) 697–4191.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 844

Civil disorders, Military academies, Military personnel.

Authority: 10 U.S.C. 8013.

PART 844—[REMOVED]

Accordingly, 32 CFR, Chapter VII, is amended by removing part 844.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–89 Filed 1–3–97; 8:45 am]

BILLING CODE 3910–01–P

POSTAL SERVICE

39 CFR Part 20

Global Package Link (Formerly International Package Consignment Service)

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service, after considering the comments submitted in response to its requests in 59 FR 65961 (December 22, 1994) for comments on interim regulations implementing International Package Consignment (IPCS) service, and in 60 FR 61660 (December 1, 1995) on an amendment of the interim regulations implementing International Package Consignment Service, hereby gives notice that it is adopting the interim regulations as amended on a permanent basis, without modification. The Postal Service also announces that the name of the service has been changed to Global Package Link (GPL) service.

EFFECTIVE DATE: 12:01, a.m., January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Robert E. Michelson, (202) 268–5731.

SUPPLEMENTARY INFORMATION: On December 22, 1994, the Postal Service published in the Federal Register interim regulations implementing Global Package Link (GPL) to Japan and

requested comments. 59 FR 65,961 (December 22, 1994). GPL is an international mail service designed for mail order companies sending merchandise packages to other countries. The service was initially available to Japan, with Canada to be added as a destination country in the future. Other destination countries would be added as customer needs dictated. To use GPL, a customer would be required to mail at least 25,000 packages in one year to each country to which it wants to use the service, and to agree to link its information systems with the Postal Service's so that the Postal Service could extract certain information about the contents of the customer's packages for customs clearance and other purposes. The notice stated that implementation of GPL would benefit (1) U.S. mail order companies and other customers that export goods by making it easier and less costly to do so; and (2) all other users of the Postal Service by increasing the total contribution to fixed costs realized by the Postal Service from its international operations. Comments were due on or before January 31, 1995.

On December 1, 1995, the Postal Service published an amendment of the interim regulations. 60 FR 61660 (December 1, 1995). Under the original proposal, the Postal Service would pick up parcels from GPL users within 500 miles of the GPL processing facility at John F. Kennedy Airport in New York. Customers farther away from JFK would be responsible for bringing their parcels to the JFK facility. Under the amended interim regulations, the Postal Service would provide work stations to customers farther away than 500 miles that would prepare packages as required by the Postal Service. Packages would then be verified and picked up from these customers' plants and would be taken to the nearest appropriate international exchange office for dispatch to Japan. Comments were due on or before January 2, 1996.

I. Original Regulations

The Postal Service received comments on the original interim regulations from four organizations: a mail order company which sends merchandise to Japan and other countries, Lands' End; two companies engaged in the international transportation of merchandise, United Parcel Service (UPS) and Federal Express Corporation; and an association of companies engaged in the international transportation of merchandise, the Air Courier Conference of America (ACCA).

Lands' End expressed support for GPL service because GPL would help it to export goods to Japan more efficiently and cheaply. It also stated that it would eagerly evaluate similar programs to additional destination countries. It did not object to taking its packages to New York's JFK airport for posting but would like to have additional acceptance points in the Midwest and the West Coast. In particular, it suggested Chicago O'Hare airport as an additional acceptance point. These comments confirm the Postal Service's belief that GPL service will benefit U.S. exporters. Additional destinations will be considered depending on customer need. Additional acceptance points will also be considered, again depending on customer need. See 61 FR 39,592 (July 30, 1996). In addition, under the amendment of the original interim regulations, the Postal Service permits mailers to do some of the work associated with preparing packages for dispatch in exchange for the Postal Service picking up the packages at the customer's facility more than 500 miles from the JFK facility. This new option should make the service more convenient for mailers who are more than 500 miles from JFK.

UPS, Federal, and ACCA oppose GPL service on various grounds and urge that it be terminated immediately. UPS asserts that the regulations implementing GPL service are arbitrary and capricious because the Postal Service did not publish any cost or other data to support GPL rates. It asserts that such support is necessary because GPL rates appear to be below cost. Federal Express also asserts that GPL rates may not cover costs and likewise criticizes the Postal Service for not releasing cost data underlying the rates. Both companies assert that GPL rates will adversely affect mailers which do not qualify for GPL service. UPS states that the current international package mix includes both relatively higher-cost and lower-cost mail. As unit revenue decreases as presumably lower-cost mail migrates to GPL, other package rates will have to increase to cover the relatively higher-cost mail that remains in the other rate schedules to avoid cross-subsidization of package mail by other mail. Other mailers would also be injured if GPL rates were below cost, because they would be subsidizing GPL rates. Federal Express states that in the event that GPL rates are below cost or fail to make an adequate contribution to overhead, domestic mailers will be worse off. ACCA also criticizes GPL rates and asserts that they are unreasonable because the Postal Service did not state that the rates would produce a reasonable contribution to overhead.

The Postal Service does not agree with these assertions. First, no statute requires the Postal Service to publish cost or other data to support international postage rates. Such data are recognized by all in the international package business as commercially sensitive. Second, GPL rates produce revenues greater than costs. They are not subsidized by other mail. As at least one of these commenters appears to have recognized, higher volume customers mail packages that are lower cost than single piece packages. Insofar as these packages cause the Postal Service to incur lower costs, lower rates are also justified. In addition, higher volume customers have more options in selecting service providers, and will use other companies if they provide a better combination of service and price. If the Postal Service does not offer competitive rates and services, these customers will use competitive service providers, with the result that lower-cost packages will leave the other mailstreams anyway, and rates for those services will rise. Likewise, to the extent that higher-volume customers turn to other carriers because Postal Service international package rates are not competitive, the burden of overhead that they would have covered will fall in some part on other mailers. In sum, the high-volume packages carried by the Postal Service today are likely to migrate from the other mailstreams in any event, so that if users of other services are going to receive any benefit it is better that those packages migrate to another Postal Service mailstream where contribution can be maintained rather than to another service provider where the Postal Service will receive no contribution at all.

The Postal Service's experience to date also undermines the assertions of adverse impact on non-GPL mailers. A large part of the volume that GPL has attracted is new to the Postal Service, and, indeed, appears to be new volume to Japan. In this respect, this new volume is doing what the Postal Service intended it to do: adding new contribution to offset the need for obtaining contribution from other mailers.

UPS, Federal Express, and ACCA also assert that GPL rates are unduly discriminatory or preferential in violation of 39 U.S.C. § 403(c). ACCA asserts that the rates are discriminatory because they are significantly lower than single-piece rates. ACCA and UPS assert that the rates are discriminatory because in certain rate steps the rates for express parcels are lower than the rates

for standard air parcels, and because the rates for some standard air parcels are lower than for economy air parcels. UPS asserts that GPL rates are unduly discriminatory because the discounts are tied to the annual volume tendered by the mailer rather than to per-mailing volumes. UPS and Federal Express further assert that the rates are discriminatory because customers within 500 miles of JFK are provided ground transportation to JFK while those more than 500 miles from JFK must transport their packages at their own expense. Federal Express asserts that the rates are discriminatory because the interconnection of the customers' and the Postal Service's computer systems must be negotiated and agreed.

The Postal Service again does not agree. Section 403(c) does not prohibit all discriminations or preferences, only those that are undue or unreasonable. *UPS Worldwide Forwarding* v. *U.S. Postal Service*, 66 F.3d 621 (3d Cir. 1995). Single-piece mailers and higher-volume mailers are not similarly situated. They require different kinds of services and different types of service features. For example, mailers which use GPL service forgo service features such as mailing at a local post office in favor of bulk entry of mail at the New York gateway or performing some of the dispatch preparation work in exchange for pick up at their facility. In addition, it is not possible to be all things to all customers. Judgments must be made as to which services, and how much of them, can be provided at specified rates, and the 500 mile limit on providing ground transportation to JFK reflects such a judgment. It is also important to note that the Postal Service received no comment from any potential user of GPL service objecting to the 500 mile limit. In the Postal Service's view, this disparate treatment is reasonable. In addition, as pointed out above, under the amended regulation the Postal Service will pickup packages for customers outside the 500 mile limit if the customer is willing to do some of the package preparation. That should alleviate some of the burden on such customers.

Likewise, in any task as complex as linking different computer systems, it is impossible to treat any two customers exactly alike. Even though each customer's computer system is different from another's, it cannot be reasonably said that the two customers are not similarly situated. Accordingly, any differences in the computer links does not create any undue discrimination or preference.

The differences in rates for the different levels of service reflect differences in the cost structures for those services. Economy service is available only for items which qualify as small packets for which the Postal Service pays the Japanese postal administration AO terminal dues rates. Standard Air service items are postal parcels for which the Japanese postal administration charges a per-kilogram inward land rate it establishes that is different from the per-kilogram rate for small packets. Express items are EMS items for which the Japanese postal administration charges a per-item charge it establishes. The differences in the manner in which the Japanese postal administration is compensated for the services it provides are reflected in the rates the Postal Service charges its GPL customers.

Finally, it is not unduly discriminatory to tie discounts to a customer's annual volume. First, at the higher annual volumes customers do in fact tender more parcels per mailing than do customers with lower annual volumes, which results in some cost savings. In addition, because higher-volume customers have more options than lower-volume customers, their price sensitivity is greater than lower-volume customers, which makes them not similarly situated. It is not unduly discriminatory to offer different rates to mailers who are not similarly situated.

It should also be noted that these arguments of charging the same rate to mailers who allegedly receive different services were a necessary consequence of the District Court's decision in *UPS Worldwide Forwarding, Inc.* v. *Postal Service*, 853 F. Supp. 800 (D. Del. 1994), which held that the Postal Service was not authorized to negotiate customized services and rates with large-volume customers. Rather, the court said that the Postal Service was required to offer only categories of mail services to different types of mail and mail users. That required the Postal Service to group mailers together for the purpose of providing services and establishing rates even though those mailers might have unique needs and might not actually use all the service features that might be available. This ''averaging'' of services rendered and rates charged is a common feature of postal services in which significantly different services can be rendered at the same price, *e.g.*, mailing a letter across the street versus mailing a letter across the country. The District Court's decision has now been reversed, but the Postal Service has decided to continue GPL as originally conceived.

Federal Express asserts that GPL to Japan is cream skimming because it is offered only to Japan. The reasoning behind this assertion is unclear, especially since Japan is not a low-cost destination. In any event, that GPL was initially offered only to Japan is not an indication that it will only be offered to Japan. Every service has to start somewhere, and since there was an expressed need for such a service to Japan, that made Japan the logical place to start. Since then, service has been implemented to Canada and the U.K. and other destination countries will be added as demand justifies them.

Federal Express and ACCA assert that the Japanese postal administration's charges for delivery in Japan might not include all the costs incurred by that administration for delivery and that, therefore, the total economic cost for GPL service might not be included in the GPL cost base. ACCA urges that the cost base for GPL rates be revised to include any costs that the Japanese postal administration might have omitted. Neither cites any data source that might support their assertions, nor is the Postal Service aware of any data that might relate to them. While Federal Express is correct in saying that Japan charges UPU terminal dues rates for those packages that are small packets, the Japanese postal administration sets its own inward land rate for parcels and imbalance charges for EMS items. It would appear unlikely that Japan would set those charges at levels that would not cover their costs. Further, the UPU Convention authorizes postal administrations to negotiate terminal dues rates different from those in the Convention. The Japanese postal administration could negotiate different rates for small packets if it believed that those rates were inadequate. It has not raised that issue with the Postal Service. Accordingly, there is no basis for believing that the Japanese postal administration's charges do not cover the costs of delivery in Japan, and no basis to make any adjustment even if there were some rational economic reason to include any cost other than what the Japanese postal administration in fact charges for its services.

Similarly, ACCA urges that the costs of GPL service be adjusted upward to account for the economic value of the customs clearance services provided by the Japanese postal administration which ACCA asserts might not be correctly priced because such customs clearance services are not available to other international transportation service providers. The Postal Service disagrees. First, there is no basis for believing that the cost of customs clearance is not included in the charges established by the Japanese postal administration, since such services are

provided to all mail of the kind sent by GPL regardless of the rate charged by the Postal Service. Moreover, there are no data which could be used to make such an adjustment even if it were appropriate.

In a similar argument, Federal Express asserts that GPL is unfair competition because it receives postal customs clearance that it asserts is simpler than commercial customs clearance. The Postal Service disagrees. Just because postal customs clearance is different does not make it either better or worse than commercial customs clearance. In some respects the two are alike in that commercial invoices are required for both commercial and postal express shipments. In some respects, postal customs clearance is more burdensome because a customs declaration must be affixed to each item, a requirement that commercial customs clearance does not have. This is additionally burdensome for express items because the customs declaration is in addition to an invoice. It is also true that postal customs clearance requires individual inspection of each item, whereas commercial customs clearance relies on a manifest and typically only limited inspection of individual items, which also makes postal customs clearance more burdensome.

UPS asserts that the Postal Service did not comply with the Administrative Procedures Act (APA) in implementing GPL rates. In short, the APA does not apply to the establishment of international rates. Except as otherwise specifically provided by law, the APA does not apply to the Postal Service. 39 U.S.C. § 410(a). No provision of the Postal Reorganization Act or other statute makes the APA applicable to international ratemaking, even though there are provisions making the APA applicable in specific instances. *See* 39 U.S.C. § 3001(j).

UPS further asserts that even if the APA did not apply to the Postal Service, the Postal Service violated its own regulations by not publishing GPL rates until after their effective date. Part 20 of 39 C.F.R., to which UPS refers, does not specify when regulations must be published, and in fact contemplates that regulations will be published periodically regardless of their effective date. Moreover, Part 20 does not govern whether regulations can be made effective retroactively, which was the case in this instance.

UPS also asserts that there was no indication in the Federal Register notice announcing GPL service that the Postal Service had obtained the consent of the President to establish GPL rates. By a December 15, 1994, memorandum published in the Federal Register on December 19, 1994, 59 FR 65,471, the President delegated to the Governors of the Postal Service whatever authority he had under 39 U.S.C. § 407 to consent to the establishment of international postage rates. In accordance with that delegation, the Postal Service obtained the consent of the Governors of the Postal Service to establish GPL rates before implementing them, which consent was confirmed in Governors Resolution No. 95–4 adopted on March 6, 1995. In addition, the formality of obtaining the Governors' approval as the delegatee of the President has been rendered immaterial insofar as the Court of Appeals in the UPS Worldwide Forwarding case held that the prior practice of the Postal Service implementing international postage rates without the objection of the President was an acceptable interpretation of 39 U.S.C. § 407 based on over 120 years of practice.

ACCA not only asserts that GPL rates are illegal because they were not approved by the President, but also asserts that the President's delegation of authority to the Governors is unconstitutional because it violates the Due Process clause of the Fifth Amendment. ACCA cites several cases it believes support its position: *Carter* v. *Carter Coal Company,* 298 U.S. 238 (1936); *Gibson* v. *Berryhill,* 411 U.S. 564 (1973); *In re Murchison,* 349 U.S. 133 (1955); *Ward* v. *Village of Monroeville,* 409 U.S. 57 (1972); and *Tumey* v. *Ohio,* 273 U.S. 510 (1927). The Postal Service disagrees.

Tumey, Ward, and *Murchison* each involved judicial officers or city officials acting in a judicial capacity and stand for the principle that a person cannot act as a judge in a case in which he or she has a personal interest. The establishment of international rates is not a judicial act, nor are the Governors of the Postal Service, who are appointed to represent the public interest generally, 39 U.S.C. § 202(a), acting in a judicial capacity when they give consent to the establishment of international rates. Moreover, the Governors of the Postal Service do not have any personal stake in the revenues from the international postage rates charged by the Postal Service because they receive a fixed salary of $10,000 per year and $300 per meeting up to a total of $30,000 per year regardless of what action they take with respect to international postage rates.

Gibson involved a state optometry board proceeding in which the board, composed entirely of independent optometrists and acting in a quasi-judicial capacity, sought to revoke the licenses of all optometrists who worked for optical companies, approximately half of the optometrists in the state. The Court held that the board was biased and incompetent to proceed in view of the pecuniary benefit the board members would receive if they eliminated half of their competition. *Gibson* does not apply because the Governors of the Postal Service have no pecuniary interest in approving international postage rates.

Carter involved a New Deal program that was intended to stabilize the coal industry by regulating prices, wages, and working conditions. The Court struck down most of the legislation on the theory that coal production and sale did not involve interstate commerce. It also struck down a feature of the legislation that gave regional boards made up of coal executives and union representatives power to regulate the wages and working conditions of employees of all coal companies in the region. The Court concluded that this gave the large companies and unions the power to regulate their smaller competitors and therefore delegated a governmental function, regulation of the production of coal, to private persons. *Carter* does not apply in this case because the establishment of international rates does not involve the regulation of anyone's business other than the Postal Service, and the Governors are government officials appointed by the President with the advice of the Senate, not private persons acting in a private capacity.

ACCA also asserts that GPL is a new classification of international mail and must be submitted to the Postal Rate Commission for consideration and a recommended decision. ACCA asserts that *Air Courier Conference of America* v. *Postal Service,* 959 F.2d 1213 (3d Cir. 1992), held that 39 U.S.C. 407 excepted only international rates from submission to the Postal Rate Commission, not international classifications. ACCA is mistaken.

Section 407 has been consistently interpreted as applying to both international rates and classifications since the two things are largely inseparable from a practical point of view: one cannot establish rates without reference to the items to which the rates apply. Moreover, international mail classifications and services are established in postal treaties and conventions.

The basic classifications of LC, AO including both printed matter and small packets, and parcels are established in the Universal Postal Convention and Postal Parcels agreement, which are postal treaties ratified by the President

of the United States. The levels of service, surface, surface air lift (SAL), airmail, and EMS are also established in the Convention. GPL matches these classes and services with volume-discount rates that are attractive to large volume mailers. It does not create any new classes of mail or service. It should also be noted that the Postal Rate Commission has never asserted jurisdiction over either international rates or classifications.

II. Amendment

The Postal Service received one comment on the amendment of the original interim regulations. This commenter, United Parcel Service, reiterated the comments it made with respect to the original interim regulations. It also alleged that the amendment was unduly discriminatory because only some mailers would receive workstations with which to perform package preparation. In addition, it alleged that the Postal Service would incur additional surface transportation costs in transporting mail to the nearest airmail facility, and would incur additional air transportation costs in transporting mail from airmail facilities other than JFK, but would not charge rates different from those it established originally. Finally, UPS alleges that the reasons given in support of the amended interim regulations are contrary to the reasons given in the original interim regulations for the lower costs of GPL service.

Insofar as the comments with respect to the amendment are the same as the comments on the original interim regulations, the same responses apply, and will not be repeated.

UPS alleges that the amendment is defective because the Postal Service would provide workstations only to ''selected'' mailers. According to UPS, this would lead to discriminatory treatment of mailers. The Postal Service disagrees. The option of receiving work stations and performing the package preparation is selected by the mailer, not the Postal Service. Insofar as the option is available to all similarly situated mailers, there is no undue discrimination or preference.

UPS also alleges that the Postal Service would incur additional surface and air transportation expenses compared to the original proposal. The Postal Service might incur some additional transportation costs, but it will also save mail processing costs based on the package preparation performed by the mailer. These savings should largely off-set the additional expenses incurred, if any. In addition, the new option should attract new customers which would not have used GPL service as originally conceived. This additional revenue and contribution more than compensate for any additional expense that might be incurred.

UPS also asserts that the amendment is inconsistent with the original interim rule. According to UPS, the original rule was based on the rationale that the Postal Service would incur lower costs in processing GPL parcels because of greater availability of direct air transportation from JFK airport, efficiencies from processing all GPL parcels at a single facility designed for that purpose, efficiencies from dispatching all GPL shipments from a single facility, and that general operational and managerial considerations supported handling all GPL shipments at a single facility.

UPS's assertions in this regard are incorrect. The original interim rule was not based on the rationale that the Postal Service would incur lower costs because of the four factors cited. The original interim rule was based on a rationale stated in section II. A. of the Federal Register notice, which said that the Postal Service was implementing this new international service ''In order more closely to meet the needs of mail order companies and other customers that send merchandise packages from the United States to multiple international addressees.'' The four factors cited by UPS were, indeed, factors that led to the decision to process and dispatching GPL parcels from the JFK Processing Plant. That decision provided economies of scale and allowed the implementation of this new service in an efficient manner. As clearly stated in the amendment to the interim rule, however, the Postal Service subsequently determined, as volumes grew, that it could further reduce costs and improve service by allowing mailers to share the package processing workload if they met certain conditions. GPL is growing, both in numbers of mailers using the service and in volume, and the Postal Service will continue to develop procedures that will facilitate the use of this service by its customers.

Accordingly, the Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1. All other changes in the original interim rule for Global Package Link which were published in the Federal Register as amendments of the interim rule remain in effect as interim rules.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

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

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

2. Chapter 6 of the International Mail Manual is amended by adding new subchapter 620 to read as follows:

CHAPTER 6—SPECIAL PROGRAMS

* * * * *

SUBCHAPTER 620—GLOBAL PACKAGE LINK

621 Description

621.1 General

Global Package Link (GPL) is a bulk mailing system that provides fast, economical international delivery of packages containing merchandise. GPL is designed to make it easier and less costly for mail order companies to export goods. The Postal Service provides GPL on a destination county-specific basic pursuant to the terms and conditions stipulated in 620.

621.2 Admissible Items

621.21 Prohibited Enclosures

GPL packages may not contain:

a. Typewritten and handwritten communications having the character of current correspondence.

b. Any item that is prohibited in international mail. Refer to the Country Conditions of Mailing in the Individual Country Listings for individual destination country prohibitions.

621.22 Exceptions

GPL packages may contain an invoice as long as the invoice is limited to the particulars that constitute an invoice.

621.3 Availability

GPL is available only to destination countries identified in 620.

622 Qualifying Mailers

To qualify, a mailer must enter into a service agreement containing the commitments stipulated in 625.2 and must be able to meet the general and destination country-specific preparation requirements stipulated in 620.

623 General

623.1 Special Services

The special services provided for in Chapter 3 are not available for packages sent by GPL unless specifically provided for in 620.

623.2 Customs Documentation

The requirements for customs forms vary by destination country as stipulated in 620.

623.3 Size and Weight Limits

Size and weight limits for packages sent by GPL vary by destination country as stipulated in 620.

623.4 Postage

623.41 Rates

Rates vary by destination country as stipulated in 620.

623.42 Postage Payment Method

Postage must be paid by permit imprint.

623.43 Documentation

Each mailing of GPL packages must be accompanied by a manifest and other documentation in the form specified by the Postal Service.

624 Preparation Requirements

624.1 General Requirements

624.11 Barcode

Every GPL package must bear a barcode, in a format acceptable to the Postal Service, that identifies the package by a unique number. The mailer must place the barcode on the address side of the package.

624.12 Addressing

See 122. The name and address of the mailer and of the addressee also should be recorded on a separate slip enclosed in the package.

624.13 Sealing

Every GPL package must be sealed by the mailer. Wax, gummed-paper tape, nails, screws, wire, metal bands, or other materials may be used as suitable. The seal must be sufficient to allow detection of tampering.

624.14 Packaging

Every GPL package must be securely and substantially packed. In packing, the mailer should consider the nature of the contents, the climate, and the delivery method. The Postal Service will determine whether the contemplated packaging is suitable prior to the mailer's use of GPL.

624.15 Nonpostal Documentation

Forms required by nonpostal export regulations are described in Chapter 5.

624.2 Destination Country-Specific Requirements

Certain preparation requirements vary by destination country as stipulated in 620.

625 GPL Service Agreements

625.1 General

The mailer must enter into a separate service agreement for each destination country to which it wants to use GPL.

625.2 Required Provisions

Each service agreement must contain the following:

a. The mailer's commitment to send at least 25,000 packages by GPL during the next 12 months to the specified destination country.

b. The mailer's commitment to designate the Postal Service as its carrier of choice to the specified destination country.

c. The mailer's commitment to link its information systems with the Postal Service's so that (1) the Postal Service and the mailer can exchange data transmissions concerning the mailer's packages, and (2) by scanning the mailer-provided barcode on each package, the Postal Service can extract, on an as-needed basis, certain information about the package. The package-specific information that the mailer is required to make available varies by destination country as stipulated in 620.

d. For a mailer processing packages at the mailer's plant, the mailer's commitment to use Postal Service provided workstations to process all GPL packages and to sort and prepare those packages for dispatch as specified by the Postal Service.

625.3 Optional Provisions

Each service agreement may set forth any GPL-related arrangements between the Postal Service and the mailer that are technical in nature.

626 GPL to Japan

626.1 Description

626.11 General

GPL to Japan provides the mailer with three delivery options, and with preparation by the Postal Service (or on Postal Service-provided equipment) of the customs forms required by Japan Post.

626.12 JFK Processing Facility

All GPL packages processed by the Postal Service are processed at, and dispatched to Japan from, a dedicated facility located at JFK International Airport (the JFK Processing Facility).

626.13 Delivery Options

626.131 Express Service

Packages sent through Express Service are transported by air to Japan, where they receive special handling by Japan Post and expedited delivery. The mailer can track Express Service packages through delivery. Reports of delivery performance are furnished to the mailer in the formats and at the frequencies agreed upon by the Postal Service and the mailer.

626.132 Standard Air Service

Packages sent through Standard Air Service are transported by air to Japan, where they enter Japan Post's domestic airmail system for delivery. The mailer can track Standard Air Service packages through dispatch from the JFK Processing Facility or the appropriate airmail facility.

626.133 Economy Air Service

Packages sent through Economy Air Service are transported by air to Japan, where they enter Japan Post's domestic surface mail system for delivery. The mailer can track Economy Air Service packages through dispatch from the JFK Processing Facility or the appropriate airmail facility.

626.2 Acceptance

626.21 Within 500 Miles of JFK

If the plant at which the mailer's GPL packages originate is located within 500 miles of the JFK Processing Facility, the Postal Service accepts the packages at the plant and transports them by truck to the JFK Processing Facility according to a schedule agreed upon by the Postal Service and the mailer.

626.22 More Than 500 Miles From JFK

626.221 Drop Shipment to JFK

If the plant at which the mailer's GPL packages originate is more than 500 miles from the JFK Processing Facility, the mailer may present the packages for verification at the plant and transport them as a drop shipment to the JFK Processing Facility according to a schedule agreed upon by the Postal Service and the mailer.

626.222 Transport to Airmail Facility

Alternatively, the mailer may process the packages, using Postal Service-provided workstations, and prepare dispatches as specified by the Postal Service. The Postal Service verifies and accepts the dispatches at the mailer's plant according to a schedule agreed upon by the mailer, and the Postal Service transports the packages to an appropriate airmail facility for dispatch to Japan.

626.3 Required Package-Specific Information

The mailer must make available to the Postal Service, by means of data

transmissions in the formats and at the frequencies agreed upon by the Postal Service and the mailer, the following information about each GPL package:

a. Order number.
b. Package identification number.
c. Delivery option used for package.
d. Buyer's name and address.
e. Recipient's name and address.
f. Total weight.
g. Total value.
h. Total number of items in package.
i. Number of each individual item in package.
j. SKU and/or key-word description of each item.
k. Value of each item.
l. Country of origin (if available) of each item.

626.4 Insurance and Indemnity

626.41 Express Service

Packages sent through Express Service are insured against loss, damage, or rifling at no additional cost. Indemnity will be paid by the Postal Service as provided in DMM S500. However, Express Service packages are not insured against delay in delivery. Neither indemnity payments nor postage refunds will be made in the event of delay.

626.42 Standard Air Service

Packages sent through Standard Air Service weighing more than 1 pound may be insured at an additional cost. See 320.

626.43 Economy Air Service

Packages sent through Economy Air Service may not be insured.

626.5 Postage

626.51 Base Rates

See Exhibit 626.51. Postage is paid on a per-package basis.

GLOBAL PACKAGE LINK TO JAPAN BASE RATES EXHIBIT 626.51

Weight not over lbs.	Express service	Standard air service	Economy air Service
1	$14.35	$6.64	$5.43
2	15.69	9.23	9.35
3	17.80	13.63	13.27
4	19.91	15.74	17.20
5	22.02	20.14	
6	27.03	24.93	
7	29.39	29.86	
8	31.76	32.22	
9	34.12	37.15	
10	36.49	39.52	
11	38.85	41.88	
12	41.21	46.81	
13	43.58	49.17	
14	45.94	54.10	
15	48.31	56.47	
16	54.29	65.78	
17	56.82	68.32	
18	59.36	73.60	
19	61.89	76.13	
20	64.42	81.42	
21	71.42	89.55	
22	74.12	92.25	
23	76.83	97.88	
24	79.53	100.58	
25	82.23	106.22	
26	84.93	108.92	
27	87.63	114.56	
28	90.34	117.26	
29	93.04	122.89	
30	95.74	125.59	
31	104.59	139.43	
32	107.47	142.30	
33	110.34	145.17	
34	113.21	151.16	
35	116.08	154.03	
36	118.95	160.02	
37	121.82	162.89	
38	124.69	168.88	
39	127.56	171.75	
40	130.43	177.73	
41	141.15	191.23	
42	144.19	197.57	
43	147.23	200.61	
44	150.27	203.65	

626.52 Discounts

Postage is reduced by the following additive discounts once the applicable volume thresholds are reached during a 12-month period:

a. 25,000 to 100,000 packages: 0.00%.
b. 100,001 to 250,000 packages: 4.75%.
c. 250,001 to 500,000 packages: additional 5.75%.
d. 500,001 to 1,000,000 packages: additional 6.00%.
e. More than 1,000,000 packages: additional 6.25%.

626.6 Size and Weight Limits

626.61 Size Limits

626.611 Express Service

Express Service packages must meet these size limits:

a. Minimum length and width: large enough to accommodate the necessary labels and customs forms on the address side.

b. Maximum length: 42 inches (36 inches until January 9, 1995).

c. Maximum length and girth combined: 90 inches (79 inches until January 9, 1995).

626.612 Standard Air Service

Standard Air Service packages must meet these size limits:

a. Minimum length and width: large enough to accommodate the necessary labels and customs forms on the address side.

b. Maximum length: 42 inches (24 inches for packages weighing 1 pound or less).

c. Maximum length and girth combined: 90 inches (79 inches until January 9, 1995). Maximum length, height, depth (thickness) combined for packages weighing 1 pound or less is 36 inches.

626.613 Economy Air Service

Economy Air Service packages must meet these size limits:

a. Minimum length and width: large enough to accommodate the necessary labels and customs forms on the address side.

b. Maximum length: 24 inches.

c. Maximum length, height, depth (thickness) combined: 36 inches.

626.62 Weight Limits

626.621 Express Service

Maximum weight: 44 pounds.

626.612 Standard Air Service

Maximum weight: 44 pounds.

626.613 Economy Air Service

Maximum weight: 4 pounds.

627 Customs Forms Required

The mailer is not normally required to affix customs forms to GPL packages sent to Japan if the packages are processed at the JFK Processing Facility. In such cases, the Postal Service prints the necessary customs forms based on the package-specific information transmitted by the mailer, and affixes them to the packages. If the packages are processed at the mailer's plant on Postal Service-provided workstations, those workstations print the necessary forms that the mailer normally affixes to the packages. During the interim period in which the Postal Service and the mailer are establishing the information systems linkages to enable the Postal Service to accomplish this, the mailer is required to affix the appropriate customs forms to the packages, as follows:

a. Express Service: Form 2966–A, *Parcel Post Customs Declaration—United States of America.*

b. Standard Air Service: Form 2966–A, Parcel Post Customs Declaration—United States of America (packages weighing 1 pound or less must bear Form 2976, Customs—Douane C1).

c. Economy Air Service: Form 2976, Customs—Douane C1.

628 Preparation Requirements

628.1 Express Service

628.11 Processing at JFK

Every package sent through Express Service must bear a label identifying it as an Express Service package. The mailer is not normally required to affix this label when such packages are processed at the JFK Processing Facility. In this case, the Postal Service prints the necessary label and affixes it to the Express Service package. During the interim period in which the Postal Service and the mailer are establishing the information systems linkages to enable the Postal Service to accomplish this, the mailer is required to affix Label 11–B, Express Mail Service Post Office to Addressee, or an alternative label as instructed by the Postal Service, to every Express Service package.

628.12 Processing at Mailer's Plant

When packages are processed at the mailer's plant on Postal Service-provided workstations, the workstations print the necessary label, and the mailer affixes it to the Express Service package.

628.2 Standard Air Service

There are no Japan-specific preparation requirements for packages sent through Standard Air Service (packages weighing 1 pound or less must bear the SMALL PACKET marking). See 264.21.

628.3 Economy Air Service

Packages sent through Economy Air Service must bear the SMALL PACKET marking. See 264.21.

* * * * *

A transmittal letter making the changes in the pages of the International Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the Federal Register as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–107 Filed 1–3–97; 8:45 am]

BILLING CODE 7710–12–P

39 CFR Part 20

Global Package Link (Formerly International Package Consignment Service)

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service, after considering the comments submitted in response to its request in 61 FR 13,765 (March 28, 1996) for comments on interim regulations implementing International Package Consignment (IPCS) service to Canada and the United Kingdom, hereby gives notice that it is adopting the interim regulations as amended on a permanent basis, without substantive modification. The name of this service has subsequently been changed to Global Package Link (GPL).

EFFECTIVE DATE: 12:01 a.m., January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Michelson, (202) 268–5731.

SUPPLEMENTARY INFORMATION: On March 28, 1996, the Postal Service published in the Federal Register interim regulations implementing Global Package Link (GPL) to Canada and the United Kingdom and requested comments (61 FR 13765 (March 28, 1996)). GPL is an international mail service designed for mail order companies sending merchandise packages to other countries. The service was initially available to Japan.

For the service to Canada, a customer would be required to mail at least 25,000 packages annually and to connect its information systems to the Postal Service so that the Postal Service and the customer could exchange information about the customer's packages. The customer would also be required to designate the Postal Service as its carrier of choice to Canada. There were two levels of service to Canada and there were rate discounts for sending larger numbers of parcels during the year.

For service to the United Kingdom, a customer would be required to mail at least 10,000 packages annually and to connect its information systems to the Postal Service so that the Postal Service and the customer could exchange information about the customer's packages. The customer would also be required to designate the Postal Service as its carrier of choice to the United Kingdom. There were three levels of service to the United Kingdom and there were rate discounts for sending more than 100,000 packages annually.

Comments were due on or before May 31, 1996. Comments were received from two commenters, a company engaged in international package delivery, WorldPak, Inc., and an association of companies engaged in international package delivery, the Air Courier Conference of America (ACCA). After considering these comments, the Postal Service has decided to adopt the regulations without substantive change.

WorldPak asserts that GPL rates to Canada and the United Kingdom are not permitted under the Acts of the Universal Postal Union because the rates for the highest level of GPL service are lower than domestic rates for single-piece Express Mail. No citation of authority is given, but the Postal Service believes that the commenter is referring to article 6.2, of the Universal Postal Convention, which provides, ''The charges collected, including those laid down for guideline purposes in the Acts, shall be at least equal to those collected on internal service items presenting the same characteristics (category, quantity, handling time, etc.).'' The Postal Service does not agree that GPL rates are inconsistent with article 6.2. In the Postal Service's view, it is inappropriate to compare rates for the highest level of GPL service with single-piece Express Mail rates. GPL is a bulk service, in which customers tender many packages at one time. There is no bulk Express Mail service and therefore no bulk Express Mail rates. Insofar as quantity is specifically a characteristic that article 6.2 recognizes as making a difference, article 6.2 does not require a comparison with single-piece rates. In addition, GPL does not guarantee delivery within any specific time. Express Mail guarantees delivery within one or two days, depending on destination, and postage is refunded if the service standard is not met. This also makes any comparison with domestic Express Mail rates inappropriate. Accordingly, the Postal Service concludes that GPL rates are not lower than the rates for any service having the same characteristics.

WorldPak also asserts that GPL service to Canada is unauthorized because it is a freight service, not a postal service. WorldPak asserts that GPL is a freight service because GPL items are delivered by a private sector contractor, not Canada Post Corporation, and GPL items are cleared through customs using commercial customs clearance procedures. The commenter also asserts, contrary to its argument that GPL rates are illegal because they are lower than domestic Express Mail rates, that GPL delivery by private contractors is not authorized by the Universal Postal Convention because it is not EMS service. The Postal Service does not agree that GPL service is unauthorized. The distinction this commenter attempts to draw does not appear to have any significance. Delivery by a private contractor is, and long has been, one of the ways mail is delivered. Moreover, in the current environment in which postal administrations in other countries are being privatized, e.g., Netherlands and

Germany, delivery of international mail by privately owned companies is becoming more commonplace. The use of commercial customs clearance procedures is likewise not a consideration in determining whether GPL service is authorized. While the Acts of the Universal Postal Union provide for documentation that is used for clearing most postal items through customs, the procedures that are followed in the destination country are prescribed by that country. In most cases, the main difference between commercial and postal customs clearance is the preparation of a manifest. For most postal items, customs clearance can be accomplished using documents on the package without preparing a manifest, although nothing in the Acts precludes the preparation of a manifest if the law of the destination country requires it. Finally, this argument does not take into account that the Postal Service is authorized to provide nonpostal as well as postal services. 39 U.S.C. § 404(a)(6). Even if GPL could be correctly characterized as not being a postal service, that would not make it unauthorized.

ACCA also asserts that GPL service is unauthorized, but argues that it is unauthorized because it is a new classification of mail and must be recommended by the Postal Rate Commission before it can be established. The association asserts that *Air Courier Conference of America* v. *Postal Service*, 959 F.2d 1213 (3d Cir. 1992), held that 39 U.S.C. § 407 excepted only international rates from submission to the Postal Rate Commission, not international classifications. The association is mistaken. Section 407 has been consistently interpreted as applying to both international rates and classifications since the two things are largely inseparable from a practical point of view: one cannot establish rates without reference to the items to which the rates apply. Moreover, most international mail classifications and services are established in postal treaties and conventions. The basic classifications of LC, AO including both printed matter and small packets, and parcels are established in the Universal Postal Convention and Postal Parcels agreement, which are postal treaties ratified by the President of the United States. The levels of service, surface, surface air lift (SAL), airmail, and EMS are also established in the Convention. GPL matches these classes and services with volume-discount rates that are attractive to large volume mailers. It does not create any new classes of mail or service. It should also be noted that the Postal Rate Commission has never asserted jurisdiction over either international rates or classifications.

Both WorldPak and the ACCA assert that GPL rates do not make an appropriate contribution to overhead and do not take into account all of the cost attributable to the service. WorldPak asserts that the Postal Service's measurement of costs do not take into account the program managers of the service, do not take into account the travel, marketing, and related costs of the service, and do not take into account the costs of contractors to operate the GPL and CPAS information systems. ACCA asserts that the costs are understated because they use terminal dues expense as opposed to the actual cost of delivery incurred by the country of destination and do not take into account the value of services provided in the country of destination that are not generally available to the public. The Postal Service disagrees.

WorldPak appears not to understand which costs are attributable and which are not. It also appears not to understand that cost evaluations are done at a service or category level, i.e. GPL as a whole, not at a country specific level. In general, attributable costs are those that vary with volume. The costs of program managers, travel, marketing, etc., do not vary with volume and are not attributable. The other costs that are attributable are those that, while not volume variable, are exclusively associated with a particular service. An example of this from the domestic context is Express Mail advertising. Since postal managers, regardless of title, perform duties pertaining to more than one service or category of mail, there are no such costs exclusively associated with GPL service as a whole, much less GPL service to any one country. Insofar as GPL incurs contractor costs to operate the GPL and CPAS information systems, to the extent that these costs are volume variable they are included in the costs of the service.

ACCA argues that the charges for delivery in the destination country might not include all the costs incurred by the delivery agent for delivery and that, therefore, the total economic cost for GPL service might not be included in the GPL cost base. ACCA urges that the cost base for GPL rates be revised to include any costs that the delivery agent might have omitted. The association does not cite any data source that might support its assertion, nor is the Postal Service aware of any data that might relate to them. Accordingly, there is no basis for believing that the charges do not cover the costs of delivery in the destination country, and no basis to make any adjustment even if there were some rational economic reason to include any cost other than what the delivery agent in fact charges for its services.

Similarly, ACCA urges that the costs of GPL service be adjusted upward to account for the economic value of the customs clearance services provided by the delivery agent, which ACCA asserts might not be correctly priced because such customs clearance services are not available to other international transportation service providers. The Postal Service disagrees. First, insofar as Canada is concerned, the Postal Service uses commercial customs clearance procedures using a customs broker. This is the same customs clearance that private sector delivery companies use. Second, insofar as the United Kingdom is concerned, there is no basis for believing that the cost of customs clearance is not included in the charges established by the United Kingdom postal administration, since such services are provided to all mail of the kind sent by GPL regardless of the rate charged by the Postal Service. Moreover, there are no data which could be used to make such an adjustment even if it were appropriate.

ACCA asserts that the contribution to overhead could be as low as one cent, and that such a low contribution would not be appropriate. ACCA provided no data or analysis to support its position. The Postal Service has reviewed the cost and revenue for GPL and has concluded that in view of the competitive nature of the parcel market, GPL does make a reasonable and appropriate contribution to overhead.

ACCA asserts that the rates for GPL to Canada and the United Kingdom are unduly discriminatory because they are lower than rates for single-piece EMS to those countries. The Postal Service disagrees. Rates for GPL service reflect differences in the markets for bulk parcels and single-piece parcels. The market for bulk parcels is highly competitive and is characterized by substantial discounting by the various competitors. No such discounting is present in the market for single-piece parcels. The costs of the two kinds of service are also different, with the bulk parcels being less costly to handle. These differences in costs and market conditions lead the Postal Service to conclude that the rates for GPL to Canada and the United Kingdom are not unduly discriminatory.

WorldPak asserts that the interim regulations are unlawful because they contain misstatements and lend

themselves to unreasonable discrimination. As an example, WorldPak asserts that the regulations are inaccurate in that they state that the Postal Service's Customs Pre-Advisory System (CPAS) electronically advises the GPL delivery agent and Canadian Customs of the contents of each package. According to WorldPak, the information is transmitted customs clearance information is transmitted electronically to a customs broker. The Postal Service agrees that this provision is technically inaccurate, in that the data is transmitted to a customs broker who is an agent for the Postal Service's delivery agent and who provides the data to Canadian Customs. The technical inaccuracy does not, in the Postal Service's view, make the interim regulations illegal. The provision will be amended, however, to remove the reference to transmitting data to the delivery agent and Canadian Customs.

As a second example, WorldPak asserts that the provisions concerning Air Courier Service are inaccurate in that they state that Air Courier Service packages will be transported to Canada overnight. According to WorldPak, overnight air transportation to Canada depends on a number of variables, and in certain hypothetical cases, might not be transported overnight. The Postal Service disagrees with this assertion. Overnight transportation to Canada is the service commitment for Air Courier Service and the Postal Service sees no problem in meeting this commitment.

As a third example, WorldPak asserts that the interim regulations suggest that there are or will be more GPL processing facilities than the one at New York's JFK Airport. According to WorldPak, this could be unduly discriminatory in that additional facilities could be located close to favored customers. WorldPak also asserts that the use in the regulations of the term ''in general'' suggests that subjective criteria would govern where facilities would be located. The Postal Service concludes that these objections have no merit. The phrase ''in general'' allows the possibility for customers who are more than 500 miles from a GPL processing facility to process packages at their facility for pickup by the Postal Service. At the time the interim regulations were published, the Postal Service was constructing an additional GPL facility near the Dallas-Fort Worth International Airport and was planning facilities in Chicago, San Francisco, Seattle, and Miami. Those new facilities were announced in the Federal Register on July 30, 1996, 61 FR 39592–93. Whatever concern might have been engendered by the wording of the provision in question was addressed in that publication.

As a fourth example, WorldPak asserts that GPL to Canada and the United Kingdom will not benefit all postal customers by generating revenues which will contribute to fixed costs because the Postal Service does not know enough about the costs of these new services. According to WorldPak, GPL to Canada and GPL to the United Kingdom should be considered as separate services which should individually satisfy the requirements of the Postal Reorganization Act. The Postal Service disagrees. First, the prices for GPL to Canada and the United Kingdom take into account the variable costs and are designed to make a contribution to fixed costs on an individual basis. However, the Postal Reorganization Act does not require that the rates of international postal services be evaluated on a country by country basis. It requires only that each type or category of service cover its variable costs and make a contribution to fixed costs. GPL as a whole certainly meets this requirement. Moreover, differences in the details of how a service is provided to different countries do not change how the requirements of the Act are applied to the service as a whole.

Accordingly, the Postal Service adopts the following amendments to the International Mail Manual which is incorporated by reference in the Code of Federal Regulations, See 39 CFR 20.1. All other interim changes in the rule for Global Package Link service which were published in the Federal Register as amendments of this interim rule remain in effect as interim rules.

List of Subjects in 39 CFR part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

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

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

2. Subchapter 620 of the International Mail Manual, Issue 16, is amended as follows:

6 Special Programs

* * * * *

620 Global Package Link

621 Description

621.1 General

Global Package Link is a bulk mailing system that provides fast, economical international delivery of packages containing merchandise. Global Package Link is designed to make it easier and less costly for mail-order companies to export goods. The Postal Service provides Global Package Link on a destination country-specific basis pursuant to the terms and conditions stipulated in 620 and the Individual Country Listings.

* * * * *

621.3 Availability

Global Package Link is available only to destination countries identified in 620 and the Individual Country Listings.

622 Qualifying Customers

To qualify, a customer must enter into a service agreement containing the commitments stipulated in 625.2 and must be able to meet the general and destination country-specific preparation requirements stipulated in 620 and the Individual Country Listings.

623 General

623.1 Special Services

The special services provided for in Chapter 3 are not available for packages sent by Global Package Link unless specifically provided for in 620 or the Individual Country Listings.

623.2 Customs Documentation

The requirements for customs forms vary by destination country as stipulated in 620 and the Individual Country Listings.

623.3 Size and Weight Limits

Size and weight limits for packages sent by Global Package Link vary by destination country as stipulated in 620 and the Individual Country Listings.

623.41 Rates

Rates vary by destination country as stipulated in 620 and the Individual Country Listings.

623.42 Postage Payment Method

Postage must be paid by permit imprint or any other Postal Service approved method.

624 Preparation Requirements

624.1 General Requirements

* * * * *

624.2 Destination Country-Specific Requirements

Certain preparation requirements vary by destination country as stipulated in 620 and the Individual Country Listings.

625 Global Package Link Service Agreements

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625.2 Required Provisions

a. The customer's commitment to send at least 25,000 packages (or 10,000 to the United Kingdom) by Global Package Link during the next 12 months to the specified destination country.

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626 Global Package Link to Japan

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[Change 627 to 626.7 Customs Forms Required]

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[Change 628 to 626.8 Preparation Requirements]

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[Change 628.1 to 626.81 Express Service]

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[Change 628.11 to 626.811 Processing at JFK]

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[Change 628.12 to 626.812 Processing Mailer's Plant]

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[Change 628.2 to 626.82 Standard Air Service]

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[Change 628.3 to 626.83 Economy Air Service]

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3. Effective immediately, chapter 6 of the International Mail Manual, Issue 16, is amended by adding new section 627 as follows:

6 Special Programs

* * * * *

620 Global Package Link

* * * * *

627 Global Package Link to Other Destination Countries

Information concerning Global Package Link for the following designated countries is detailed in the Individual Country Listings (ICLs) section.

a. Canada.

b. Great Britain and Northern Ireland.

* * * * *

4. Effective immediately, the Individual Country Listing for Canada in the International Mail Manual, Issue 16, is amended by adding the following information, concerning Global Package Link, to the end of the listing.

Global Package Link

Description

Global Package Link to Canada provides the customer with two delivery options and with preparation by the Postal Service of the customs forms and delivery labels required by Canada.

Delivery Options

Air Courier Service

Air Courier Service is the fastest option. The Postal Service will transport Air Courier Service packages from the customer's plant or from the designated Global Package Link processing facility to Canada overnight where they will receive expeditious customs clearance and be released to the delivery agent. From there, the packages will receive courier service throughout Canada and be delivered to major population centers overnight. Normal delivery times will be two to three days from dispatch to final delivery.

Ground Courier Service

Ground Courier Service will offer overnight transportation to Canada and ground transportation to final destination in Canada. It will receive the same expeditious customs clearance as Air Courier Service and normal delivery times for 95 percent of all Canadian addresses will be three to six days after dispatch from the customer's plant, depending on the location of final destination. (For addresses in the Maritimes and extreme northern territories where distance and poor roads affect transportation, delivery times could be as long as eight days.)

Processing and Acceptance

Within 500 Miles of a Global Package Link Processing Facility

If the plant at which the customer's Global Package Link packages originate is located within 500 miles of a Global Package Link processing facility, the Postal Service will verify and accept the packages at the customer's plant and transport them to the Global Package Link processing facility according to a schedule agreed upon by the Postal Service and the customer.

More than 500 Miles from a Global Package Link Processing Facility

If the customer's plant from which the Global Package Link packages will originate is located more than 500 miles from a Global Package Link processing facility, the customer can choose one of two processing options.

Option One: The customer will be required to present the packages to the Postal Service for verification at the customer's plant and transport them as a drop shipment to a Global Package Link processing facility according to a schedule agreed upon by the Postal Service and the customer.

Option Two: The customer will process the packages using Postal Service-provided computer system workstations and sort and prepare the packages as required by the Postal Service. Then, the Postal Service verifies and accepts the packages at the customer's plant and transports them by truck to the nearest air mail facility according to a schedule agreed upon by the Postal Service and the customer. From the air mail facility, the Postal Service dispatches the Global Package Link packages to Canada, bypassing a Global Package Link processing facility.

Required Package Specific Information

Requirements are the same as those detailed in Section 626.3.

Insurance and Indemnity

Air Courier Service

Packages sent through Air Courier Service are insured against loss, damage, or rifling at no additional cost. Indemnity will be paid by the Postal Service as provided in DMM S500. However, packages are not insured against delay in delivery. Neither indemnity payments nor postage refunds will be made in event of delay.

Ground Courier Service

Packages sent through Economy Service may be insured at an additional cost. See 320.

Postage

General

The base rates for the two currently available options are set forth below. These rates may be reduced by one or more of the three additive annual discounts depending on how many packages the customer mails to Canada using either of the two Global Package Link delivery options in a twelve month period.

Base Rates

The Postal Service will charge the base rates, in 1-pound increments, for the first 100,000 packages mailed by the customer during a 12-month period.

Rate Reductions

Number of packages	Percent discount
Up to 100,000	Base Rate.
100,001 to 500,000 ...	3% off base rates.
500,001 to 1,000,000	4% off previously discounted rates.
1,000,001 and over ...	5% off previously discounted rates.

GLOBAL PACKAGE LINK TO CANADA

Pounds to:	Base Rates <100k		101k–500k 3.00%		Volume Discounts 501k–1m 4.00%		>1m 5.00%	
	Air	Ground	Air	Ground	Air	Ground	Air	Ground
1	10.15	8.55	9.85	8.29	9.45	7.96	8.98	7.56
2	11.09	9.37	10.76	9.09	10.33	8.72	9.81	8.29
3	12.74	10.92	12.36	10.60	11.86	10.17	11.27	9.66
4	14.38	11.93	13.95	11.57	13.39	11.10	12.73	10.55
5	16.03	12.95	15.55	12.56	14.93	12.06	14.18	11.46
6	17.55	13.98	17.03	13.56	16.35	13.02	15.53	12.37
7	19.19	14.93	18.61	14.48	17.87	13.90	16.98	13.20
8	20.83	15.85	20.20	15.38	19.39	14.76	18.42	14.03
9	22.46	16.80	21.79	16.29	20.92	15.64	19.87	14.86
10	24.10	17.72	23.37	17.19	22.44	16.51	21.32	15.68
11	25.55	18.55	24.78	17.99	23.79	17.27	22.60	16.41
12	27.17	19.49	26.36	18.91	25.30	18.15	24.04	17.25
13	28.81	20.45	27.95	19.84	26.83	19.05	25.49	18.09
14	30.44	21.40	29.52	20.76	28.34	19.93	26.92	18.93
15	32.06	22.36	31.10	21.69	29.85	20.82	28.36	19.78
16	33.68	23.86	32.67	23.14	31.37	22.21	29.80	21.10
17	35.32	24.84	34.26	24.09	32.89	23.13	31.25	21.97
18	36.95	25.81	35.84	25.03	34.40	24.03	32.68	22.83
19	38.57	26.99	37.41	26.18	35.92	25.14	34.12	23.88
20	40.19	27.97	38.99	27.13	37.43	26.05	35.56	24.74
21	41.53	28.74	40.29	27.88	38.68	26.76	36.74	25.43
22	43.15	29.71	41.85	28.82	40.18	27.67	38.17	26.28
23	44.76	30.69	43.42	29.77	41.68	28.58	39.59	27.15
24	46.37	31.66	44.98	30.71	43.18	29.48	41.02	28.01
25	48.00	32.65	46.56	31.67	44.69	30.40	42.46	28.88
26	49.61	33.61	48.12	32.61	46.20	31.30	43.89	29.74
27	50.85	34.60	49.32	33.56	47.35	32.22	44.98	30.61
28	52.83	35.57	51.25	34.50	49.20	33.12	46.74	31.46
29	54.46	36.55	52.83	35.45	50.71	34.03	48.18	32.33
30	56.07	37.52	54.39	36.39	52.21	34.94	49.60	33.19
31	57.27	38.21	55.55	37.06	53.33	35.58	50.66	33.80
32	58.87	39.17	57.10	37.99	54.82	36.47	52.08	34.65
33	60.49	40.14	58.67	38.94	56.32	37.38	53.51	35.51
34	62.09	41.11	60.22	39.87	57.81	38.28	54.92	36.36
35	63.69	42.08	61.78	40.82	59.31	39.19	56.34	37.23
36	65.29	43.04	63.33	41.75	60.80	40.08	57.76	38.08
37	66.90	44.02	64.90	42.70	62.30	40.99	59.18	38.94
38	68.50	45.33	66.45	43.97	63.79	42.21	60.60	40.10
39	70.10	46.49	68.00	45.09	65.28	43.29	62.02	41.12
40	71.70	47.64	69.55	46.21	66.77	44.36	63.43	42.14
41	72.79	48.26	70.60	46.81	67.78	44.94	64.39	42.69
42	74.38	49.23	72.15	47.75	69.26	45.84	65.80	43.55
43	75.97	50.21	73.69	48.71	70.74	46.76	67.20	44.42
44	77.56	51.57	75.23	50.03	72.22	48.02	68.61	45.62
45	79.16	52.56	76.78	50.99	73.71	48.95	70.03	46.50
46	80.16	53.13	77.75	51.54	74.64	49.48	70.91	47.00
47	81.74	54.94	79.28	53.29	76.11	51.16	72.31	48.60
48	83.31	56.77	80.81	55.06	77.58	52.86	73.70	50.22
49	84.78	58.64	82.24	56.88	78.95	54.60	75.00	51.87
50	86.48	60.96	83.89	59.13	80.53	56.76	76.51	53.92
51	88.06	62.45	85.42	60.58	82.00	58.15	77.90	55.24
52	89.65	63.97	86.96	62.05	83.48	59.57	79.31	56.59
53	91.23	65.52	88.49	63.56	84.95	61.01	80.70	57.96
54	92.82	67.08	90.04	65.06	86.43	62.46	82.11	59.34
55	94.40	68.64	91.57	66.58	87.90	63.92	83.51	60.72
56	95.28	69.28	92.42	67.20	88.73	64.51	84.29	61.29
57	96.85	70.37	93.94	68.26	90.19	65.53	85.68	62.25
58	98.43	71.48	95.48	69.34	91.66	66.56	87.07	63.24
59	99.99	72.58	96.99	70.40	93.11	67.58	88.46	64.20
60	101.57	74.18	98.53	71.96	94.59	69.08	89.86	65.62
61	103.14	75.30	100.05	73.04	96.04	70.12	91.24	66.61
62	104.72	76.40	101.58	74.11	97.51	71.14	92.64	67.59
63	105.51	77.48	102.35	75.16	98.25	72.15	93.34	68.54
64	107.07	78.55	103.85	76.19	99.70	73.15	94.71	69.49
65	108.63	79.70	105.37	77.31	101.16	74.22	96.10	70.51
66	110.19	80.85	106.88	78.42	102.61	75.29	97.48	71.52

Size and Weight Limits

All Air Courier and Ground Courier Service packages must meet the following size and weight limits:

Size Limits

a. Minimum length and width: large enough to accommodate the necessary labels and customs forms on the address side.

b. Maximum length: 60 inches.

c. Maximum length and girth combined: 108 inches.

Weight Limit

Maximum weight: 66 pounds.

Customs

Customs Forms

Normally all necessary Canadian customs forms will be automatically generated by the Postal Service computer workstations. Packages mailed to Canada through a Global Package Link facility will not be required to bear customs forms when they are tendered to the Postal Service. The Postal Service will verify, accept, and transport these packages to a designated Global Package Link processing facility. After scanning the customer-printed barcode on each package and correlating it with the package-specific information transmitted by the customer, the Postal Service will print the necessary customs forms and then affix them to the customer's packages as part of the processing operation at the Global Package Link processing facility. However, during the interim period in which the Postal Service and the customer are working together to establish the information systems linkages to enable the Postal Service to accomplish this, the customer may be required to prepare the necessary customs forms on its own and affix the forms to the packages before tendering them to the Postal Service. In those cases where the computer workstations are located at the customer's plant and operated by customer employees, the USPS computer will print the customs forms, and the customer will be required to affix these forms to the appropriate packages as instructed by the Postal Service prior to verification and acceptance of the mail.

Customs Clearance

The Postal Service has developed the Customs Pre-Advisory System (CPAS) as part of Global Package Link processing. This electronic system collects package-specific data to satisfy customs requirements as packages are processed using the USPS computer workstations located at either a Global Package Link facility or the customer's plant. The system electronically advises the USPS agent of the contents of each package mailed. Since this advisory information arrives before the mail, CPAS facilitates and simplifies customs clearance. Electronic pre-notification of the package contents and automatic preparation of required customs declarations assures the fastest clearance through Canadian Customs and reduces costs for the customer and the Postal Service.

Preparation Requirements

Air Courier Service

Every package sent through Air Courier Service must bear a label identifying it as an Air Courier Service package. The customer is not normally required to affix this label. The Postal Service prints the necessary label and affixes it to the Air Courier Service package. However, during the interim period in which the Postal Service and the customer are establishing the information systems linkages to enable the Postal Service to accomplish this, the customer is required to affix an alternative label as instructed by the Postal Service to every Air Courier Service package.

Ground Courier Service

There are no Canada-specific preparation requirements for packages sent through Ground Courier Service. Packages weighing 1 pound or less must bear the Small Packet marking (see 264.21).

* * * * *

5. Effective immediately, the Individual Country Listing for the Great Britain and Northern Ireland in the International Mail Manual, Issue 16, is amended by adding the following information, concerning Global Package Link, to the end of the listing.

Global Package Link

Description

Global Package Link to the United Kingdom (U.K.) provides the customer with three delivery options and with preparation by the Postal Service of the customs and delivery labels required by the British Post Office.

Delivery Options

Premium Service

The Postal Service will transport Premium packages to the U.K. by air. Once a package is dispatched from the customer's facility, it should clear Customs and be delivered in the U.K. by close of business on the third working day. The customer can track packages through delivery and reports on delivery performance are furnished to the customer in the formats and at the frequencies agreed upon by the Postal Service and the customer.

Standard Service

The Postal Service will transport Standard packages to the U.K. by air. Once a package is dispatched from the customer's facility, it should clear Customs and be delivered by close of business on the fourth working day. The customer can track packages through delivery and reports on delivery performance are furnished to the customer in the formats and at the frequencies agreed upon by the Postal Service and the customer.

Economy Service

The Postal Service will transport Economy packages to the U.K. by air. Once a package is dispatched from a customer's facility, it should clear Customs and be delivered by close of business the fifth or sixth working day. Tracking and tracing is available to the point of entry into the U.K. domestic mail stream.

Processing and Acceptance

Within 500 Miles of a Global Package Link Processing Facility

If the plant at which the customer's Global Package Link packages originate is located within 500 miles of a Global Package Link processing facility, the Postal Service will accept the packages at the customer's plant and transport them by truck to the Global Package Link processing facility according to a schedule agreed upon by the Postal Service and the customer.

More than 500 Miles from a Global Package Link Processing Facility

If the customer's plant from which the Global Package Link packages will originate is located more than 500 miles from a Global Package Link processing facility, the customer can choose one of two processing options.

Option One: The customer will be required to present the packages to the Postal Service for verification at the customer's plant and transport them as a drop shipment to a Global Package Link processing facility according to a schedule agreed upon by the Postal Service and the customer.

Option Two: The customer will process the packages using Postal Service-provided computer system workstations and sort and prepare the packages as required by the Postal Service. Then, the Postal Service accepts the packages at the customer's plant and transports them by truck to

the nearest air mail facility according to a schedule agreed upon by the Postal Service and the customer. From the air mail facility, the Postal Service dispatches the Global Package Link packages to the U.K., bypassing a Global Package Link processing facility.

Required Package-Specific Information

Requirements are the same as those detailed in Section 626.3.

Insurance and Indemnity

Premium and Standard Services

Packages sent through the Premium or Standard Services are insured against loss, damage, or rifling at no additional cost. Indemnity will be paid by the Postal Service as provided in DMM S500. However, Premium and Standard packages are not insured against delay in delivery. Neither indemnity payments nor postage refunds will be made in event of delay.

Economy Service

Packages sent through Economy Service may be insured at an additional cost. See 320.

Postage

General

The base rates for the three available delivery options are set forth below. These rates may be reduced by an annual discount depending on how many packages the customer mails to the U.K. using any of the three Global Package Link delivery options in a twelve month period.

Base Rates

The Postal Service will charge the base rates, in 1-pound increments, for the first 100,000 packages mailed by the customer during a 12-month period.

RATE REDUCTIONS

Number of packages	Percent discount
Up to 100,000	Base Rate.
100,001 and over	2%

GLOBAL PACKAGE LINK

Pounds to:	Base rates			For volumes > 100,000		
	Premium	Standard	Economy	Premium	Standard	Economy
1	13.87	11.17	9.95	13.59	10.95	9.75
2	15.21	12.46	11.19	14.90	12.21	10.97
3	16.54	13.75	12.43	16.21	13.47	12.18
4	17.88	15.04	13.67	17.52	14.73	13.39
5	19.21	16.32	14.91	18.83	16.00	14.61
6	20.55	17.61	16.15	20.14	17.26	15.82
7	21.88	18.90	17.39	21.44	18.52	17.04
8	23.71	20.18	18.63	23.24	19.78	18.25
9	25.08	21.47	19.87	24.58	21.04	19.47
10	26.63	22.76	21.11	26.09	22.30	20.68
11	28.00	24.05	22.35	27.44	23.57	21.90
12	29.37	25.33	23.59	28.79	24.83	23.11
13	30.96	26.62	24.82	30.34	26.09	24.33
14	32.34	27.91	26.06	31.70	27.35	25.54
15	33.96	29.20	27.30	33.28	28.61	27.76
16	35.35	30.48	28.54	34.64	29.87	27.97
17	36.99	31.77	29.78	36.25	31.13	29.19
18	38.66	33.06	31.02	37.88	32.40	30.40
19	40.61	34.35	32.26	39.80	33.66	63.62
20	42.04	35.63	33.50	41.20	34.92	32.83
21	43.47	36.92	34.74	42.60	36.18	34.05
22	44.90	38.21	35.98	44.00	37.44	35.26
23	46.33	39.49	37.22	45.40	38.70	36.48
24	47.76	40.78	38.46	46.81	39.97	37.69
25	49.19	42.07	39.70	48.21	41.23	38.91
26	50.62	43.36	40.94	49.61	42.49	40.12
27	53.44	44.64	42.18	52.37	43.75	41.34
28	54.91	45.93	43.42	53.81	45.01	42.55
29	56.38	47.22	44.66	55.25	46.27	43.77
30	57.85	48.51	45.90	56.69	47.54	44.98
31	59.31	49.79	47.14	58.13	48.80	46.20
32	60.78	51.08	48.38	59.57	50.06	47.41
33	62.25	52.37	49.62	61.01	51.32	48.63
34	63.72	53.65	50.86	62.45	52.58	49.84
35	65.19	54.94	52.10	63.88	53.84	51.06
36	66.66	56.23	53.34	65.32	55.10	52.27
37	68.13	57.52	54.58	66.76	56.37	53.48
38	69.59	58.80	55.82	68.20	57.63	54.70
39	72.45	60.09	57.06	71.00	58.89	55.91
40	73.94	61.38	58.30	72.46	60.15	57.13
41	75.44	62.67	59.54	73.93	61.41	58.34
42	76.94	63.95	60.77	75.40	62.67	59.56
43	78.44	65.24	62.01	76.87	63.94	60.77
44	79.93	66.53	63.25	78.33	65.20	61.99
45	81.43	67.82	64.49	79.80	66.46	63.20
46	82.93	69.10	65.73	81.27	67.72	64.42
47	84.42	70.39	66.97	82.74	68.98	65.63
48	85.92	71.68	68.21	84.20	70.24	66.85
49	87.42	72.96	69.45	85.67	71.51	68.06

GLOBAL PACKAGE LINK—Continued

Pounds to:	Base rates			For volumes > 100,000		
	Premium	Standard	Economy	Premium	Standard	Economy
50	88.91	74.25	70.69	87.14	72.77	69.28
51	90.41	75.54	71.93	88.60	74.03	70.49
52	91.91	76.83	73.17	90.07	75.29	71.71
53	93.41	78.11	74.41	91.54	76.55	72.92
54	94.90	79.40	75.65	93.01	77.81	74.14
55	96.40	80.69	76.89	94.47	79.07	75.35
56	97.90	81.98	78.13	95.94	80.34	76.57
57	99.39	83.26	79.37	97.41	81.60	77.78
58	100.89	84.55	80.61	98.87	82.86	79.00
59	102.39	85.84	81.85	100.34	84.12	80.21
60	103.89	87.13	83.09	101.81	85.38	81.43
61	105.38	88.41	84.33	103.28	86.64	82.64
62	106.88	89.70	85.57	104.74	87.91	83.86
63	108.38	90.99	86.81	106.21	89.17	85.07
64	109.87	92.27	88.05	107.68	90.43	86.29
65	111.37	93.56	89.29	109.14	91.69	87.50
66	112.87	94.85	90.53	110.61	92.95	88.72

Size and Weight Limits

All packages must meet the following size and weight limits:

Size Limits

a. Minimum length and width: large enough to accommodate the necessary customs/delivery label on the address side.

b. Maximum length: 60 inches.

c. Maximum length and girth combined: 108 inches.

Weight Limit

Maximum weight: 66 pounds.

Customs

Customs Forms

Normally all necessary U.K. customs forms will be automatically generated by the Postal Service computer workstations. Packages mailed to the U.K. through a Global Package Link processing facility will not be required to bear customs forms when they are tendered to the Postal Service. The Postal Service will verify, accept, and transport these packages to a designated Global Package Link processing facility. After scanning the customer-printed barcode on each package and correlating it with the package-specific information transmitted by the customer, the Postal Service will print the necessary customs forms and then affix them to the customer's packages as part of the processing operation at the Global Package Link Processing Facility. However, during the interim period in which the Postal Service and the customer are working together to establish the information systems linkages to enable the Postal Service to accomplish this, the customer may be required to prepare the necessary customs forms on its own and affix the forms to the packages before tendering them to the Postal Service. In those cases where the computer workstations are located at the customer's plant and operated by customer employees, the USPS computer workstations will print the customs forms, and the customer will be required to affix these forms to the appropriate packages as instructed by the Postal Service prior to verification and acceptance of the mail.

Customs Clearance

The Postal Service has developed the Customs Pre-Advisory System (CPAS) as part of Global Package Link processing. This electronic system collects package-specific data to satisfy customs requirements as packages are processed using the USPS computer workstations located at either a Global Package Link facility or the customer's plant. The system electronically advises the USPS delivery agent and Customs in the U.K. of the contents of each package mailed. Since this advisory information arrives before the mail, CPAS facilitates and simplifies customs clearance. Electronic pre-notification of the package contents and automatic preparation of required customs declarations assures the fastest clearance through U.K. Customs and reduces costs for the customer and the Postal Service.

Preparation Requirements

Every package sent through Premium, Standard or Economy Service must bear a label identifying it as a Premium, a Standard or an Economy Service package. The customer is not normally required to affix this label. The Postal Service prints the necessary label and affixes it to the package. However, during the interim period in which the Postal Service and the customer are establishing the information systems linkages to enable the Postal Service to accomplish this, the customer is required to affix an alternative label as instructed by the Postal Service to every package.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–106 Filed 1–3–97; 8:45 am]

BILLING CODE 7710–12–P

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments; Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published in the Federal Register on December 6, 1996 (61 FR 64618–64622). That rule announced minor amendments to mailing standards and updated references to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations under 39 CFR 111.1.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Neil Berger, (202) 268–2859.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual (DMM), incorporated by reference in title 39, Code of Federal Regulations, part 111, contains the basic standards of the U.S. Postal Service governing its domestic mail services; descriptions of the mail classes and special services and conditions governing their use; and

standards for rate eligibility and mail preparation. The final rule that is the subject of these corrections summarizes minor amendments to mailing standards and updated references to the contents of the DMM. As published, the final rule contains minor errors and omissions that do not accurately reflect the contents of the DMM. Accordingly, the publication on December 6, 1996, of the final rule, which was the subject of FR Doc. 96–31116, is corrected as set forth below:

§ 111.5 [Corrected]

1. On page 64620, in the third column, in § 111.5, on a separate line above the heading ''A000 Basic Addressing'', add the module heading ''A—Addressing''.

2. On page 64620, in the third column, in § 111.5, the table of contents entry ''A920 Addressing Sequencing Service'' is corrected to read ''A920 Address Sequencing Services''.

3. On page 64620, in the third column, in § 111.5, on a separate line above the heading ''C000 General Information'', add the module heading ''C—Characteristics and Content''.

4. On page 64621, in the first column, in § 111.5, on a separate line above the heading ''D000 Basic Information'', add the module heading ''D—Deposit, Collection, and Delivery''.

5. On page 64621, in the first column, in § 111.5, on a separate line above the heading ''E000 Special Eligibility Standards'', add the module heading ''E—Eligibility''.

6. On page 64621, in the first column, in § 111.5, on a separate line above the heading ''F000 Basic Services'', add the module heading ''F—Forwarding and Related Services''.

7. On page 64621, in the second column, in § 111.5, on a separate line above the heading ''G000 The USPS and Mailing Standards'', add the module heading ''G—General Information''.

8. On page 64621, in the second column, in § 111.5, on a separate line above the heading ''L000 General Use'', add the module heading ''L—Labeling Lists''.

9. On page 64621, in the second column, in § 111.5, on a separate line above the heading ''M000 General Preparation Standards'', add the module heading ''M—Mail Preparation and Sortation''.

10. On page 64621, in the third column, in § 111.5, on a separate line above the heading ''P000 Basic Information'', add the module heading ''P—Postage and Payment Methods''.

11. On page 64621, in the third column, in § 111.5, the table of contents entry ''P760 Fist-Class or Standard Mail Mailings With Different Payment Methods'' is corrected to read ''P760 First-Class or Standard Mail Mailings With Different Payment Methods''.

12. On page 64621, in the third column, in § 111.5, on a separate line above the heading ''R000 Stamps and Stationery'', add the module heading ''R—Rates and Fees''.

13. On page 64621, in the third column, in § 111.5, on a separate line above the heading ''S000 Miscellaneous Services'', add the module heading ''S—Special Services''.

14. On page 64621, in the third column, in § 111.5, on a separate line above the heading ''I000 Information'', add the module heading ''I—Index Information''.

15. On page 64621, in the third column, in § 111.5, the table of contents entry ''1021 Forms Glossary'' is corrected to read ''I021 Forms Glossary''.

16. On page 64622, in the first column, in § 111.5, the table of contents entry ''1022 Subject Index'' is corrected to read ''I022 Subject Index''.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–105 Filed 1–3–97; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH69–2–6680a; FRL–5646–2]

Approval and Promulgation of Air Quality Implementation Plans Ohio; Revision to the Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA approves submitted changes to Ohio's enhanced vehicle inspection and maintenance program (known as E-Check) as a revision to the State Implementation Plan (SIP) for ozone in all areas where the State's inspection and maintenance (I/M) program is operated. The EPA's action is based upon a request for a revision which was received by EPA from Ohio on August 29, 1996. The revision includes a vehicle repair spending cap and a temporary hardship extension of time for automobile owners with failed vehicles to perform necessary repairs on vehicles which fail the E-Check test. The repair spending cap does not affect vehicles which require repairs and are under manufacturer warranty; it also does not apply to owners whose vehicles have been mal-maintained or whose emission control devices have been tampered with. The extension of time applies to the automobile owner to which the immediate repair of the failed vehicle would present a hardship.

The changes to the E-Check program are the result of concerns expressed by citizens affected by the program in the areas where E-Check has been implemented, and by Ohio legislators representing them. The rule changes do not affect the emission reduction potential of the measure, and, therefore, do not affect the expected emission reductions in the maintenance plan for Cleveland and Dayton or in the 15 percent reasonable further progress plan for Cincinnati. Therefore, the EPA is approving the changes to the rule.

DATES: This action is effective March 7, 1997 unless adverse or critical comments are received by February 5, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (A–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and EPA's analysis are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (A–18J), Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Air Programs Branch, Regulation Development Section (A–18J), United States Environmental Protection, Region 5, Chicago, Illinois 60604, (312) 886–6084.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On August 29, 1996, the Director, Ohio Environmental Protection Agency, (Ohio EPA) submitted a revision to the previously approved [1] E-Check program. The submittal was reviewed for completeness and was found to meet all of the requirements of appendix V necessary to obtain EPA approval under section 110 of the Clean Air Act. The SIP revision included: copy of the rule changes, notice of public hearing, transcripts, analysis of impact, and

[1] Enhanced Motor Vehicle Inspection and Maintenance Program, 60 FR 16989, dated April 4, 1995.

responses to public comments. The legal authority was previously established, and a schedule for implementation was not required since the State had already begun to implement the changes. The revision, which is expected to provide for broader consumer acceptance of the E-Check program, is expressed in two of the State's rules: Ohio Administrative Code (OAC) 3745–26–01 and OAC 3745–26–12.

II. Analysis of State Submittal

The rule amendments include: broadening the definition of ''extension certificate'' which has the effect of providing a temporary hardship extension of time for qualified vehicle owners to perform necessary repairs on failed vehicles, and adds a vehicle repair spending cap. The amendments also define ''low income'' in the context of the E-Check program in order to qualify for the temporary hardship extension.

The Director of the Ohio EPA issued a notice to amend rule 3745–26–01 and rule 3745–26–12 which govern the E-Check I/M program in the 14 affected counties in the State. The rule amendments are intended to address the concerns of citizens affected by the I/M program and are a result of the opinions expressed by the public in the State's outreach program. Public hearings were announced and held in the three affected areas of Cincinnati, Cleveland and Dayton.

The USEPA reviewed the proposed amendments to determine the impact the changes will have on emissions in the affected areas. Further, the EPA reviewed the proposed changes for their impact on the maintenance plan in the Cleveland and Dayton areas and the 15 percent plan in the Cincinnati area. The amendments include a vehicle repair spending cap and a temporary hardship extension of time for automobile owners to perform necessary repairs on vehicles which fail the E-Check test. Neither of the changes have a direct impact on the emission reductions available from the program. The only emissions assessment method available at present is the MOBILE5a model. This model does not accommodate the program changes in this case and therefore changes in emissions, if any, cannot be determined by its use. Indirectly, the amendments may have some impact on the ability of the program to achieve total reductions expected as discussed below. However, there are no data available to show the effect of these indirect results.

The repair spending cap applies in situations where an automobile owner is required to obtain repairs because of failure of the vehicle to pass an I/M test. The spending cap, which is set at $300, represents the maximum dollar amount required to be spent for emission related repair. It includes the diagnostic fees, labor and parts, as well as any costs incurred prior to the test if performed within 60 days prior to the test and if related to the vehicle's emission control equipment. The spending cap does not include the cost of repair of tampering, nor does it include the cost of repair of any item covered by a dealer or manufacturer recall or warranty.

The temporary hardship extension is available to a vehicle owner whose vehicle fails the emissions test and meets certain criteria. The extension allows an extra six months from the date of the test to have the repairs performed. The hardship extension is not available for gas cap failures nor is it available for vehicles covered by warranty or if the failure is covered by a recall. The ''low income'' test is met if the applicant for a hardship extension can demonstrate the household income for the previous 12 months is not more than one-hundred fifty percent of the poverty threshold level established by the U.S. Department of Health and Human Services.

The Ohio EPA contacted EPA for assistance in assessing the impact of the amendments. However, the changes proposed by Ohio EPA do not lend themselves to assessment of emission impacts in the traditional manner using the MOBILE5a emission factor model. The extent of the temporary hardship extension cannot be accurately determined or estimated because Ohio EPA has no historical data with respect to the number of vehicle owners or lessees who would be eligible for this delay in compliance. However, the compliance extension is for a short duration relative to the compliance period, and vehicles in this category will eventually be repaired. Although delayed, vehicle emission reductions are assured. Further, the scarcity of available information on the number of vehicle owners who would take advantage of the limit to the spending cap prevents Ohio EPA from making a useful estimate of the effect on emissions. This spending cap does not affect vehicles which require repairs and are under manufacturer emissions warranty; it also, does not apply to owners whose vehicles have been mal-maintained or tampered. All tampering or mal-maintenance are to be repaired by the owner.

The EPA believes that the rule changes proposed by Ohio EPA will not have a significant impact on the emission reduction potential of the E-Check program and will improve citizen acceptability of this mobile source emission reduction program. The EPA finds there is good cause for this direct final approval to become effective thirty days from date of publication, and that a delayed effective date is unnecessary due to the noncontroversial nature of the changes.

III. Rulemaking Action

The EPA is publishing this action without prior proposal because EPA views this action as a noncontroversial revision and anticipates no adverse comments. The changes were made to address concerns expressed by citizens and legislators in Ohio and are expected to be received favorably. Since this action is in response to previously expressed public concerns, no adverse comments are expected. However, EPA is publishing a separate document in this Federal Register publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely significant adverse or critical comments are filed. The ''direct final'' approval shall be effective on March 7, 1997, unless EPA receives adverse or critical comments (which have not been already addressed) by February 5, 1997.

If EPA receives such comments adverse to or critical of the approval discussed above, EPA will publish a Federal Register document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking action.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, EPA hereby advises the public that this action will be effective on March 7, 1997.

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

IV. Administrative Requirements

A. Executive Order 12866

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

Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

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

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

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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. 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 the private sector, result from this action.

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, 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. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 7, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 16, 1996.

William E. Muno,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart KK, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401—7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(112) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(112) On August 29, 1996, the United States Environmental Protection Agency received from the Ohio Environmental Protection Agency, changes to the approved vehicle inspection and maintenance (I/M) program which control the release of volatile organic compounds from vehicles. These changes provide a repair spending cap of $300 and a temporary hardship extension of time up to 6 months for owners to perform needed repairs on vehicles which fail the I/M program test.

(i) Incorporation by reference.

(A) Rule 3745–26–01—Definitions effective May 15, 1996.

(B) Rule 3745–26–12—Requirements for motor vehicle owners in the enhanced or opt-in enhanced automobile inspection and maintenance program, effective May 15, 1996.

[FR Doc. 97–194 Filed 1–3–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[LA–34–1–7300; FRL–5670–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Correction of Classification; Approval of the Maintenance Plan; Redesignation of Pointe Coupee Parish to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 22, 1996, EPA simultaneously published a direct final notice of rulemaking and a notice of proposed rulemaking in which EPA published its decision to approve a revision to the Louisiana State Implementation Plan (SIP) to redesignate Pointe Coupee Parish to attainment for ozone. During the 30-day comment period, EPA received an adverse comment letter in response to the July 22, 1996, rulemaking. This final rule summarizes the comments and EPA's responses, and finalizes EPA's decision to correct the classification of Pointe Coupee Parish from a serious to a marginal ozone nonattainment area. This action also approves the redesignation of Pointe Coupee Parish, Louisiana to attainment for ozone.

EFFECTIVE DATE: This action is effective on December 20, 1996.

ADDRESSES: Copies of the State's request and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

Anyone wishing to review this petition at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–

L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

I. Background

On July 22, 1996, EPA published a direct final rulemaking approving a revision to the existing Louisiana SIP to redesignate Pointe Coupee Parish to attainment for ozone (61 FR 37833). At the same time that EPA published the direct final rule, a separate notice of proposed rulemaking was published in the Federal Register (61 FR 37875). This proposed rulemaking specified that EPA would withdraw the direct final rule if adverse or critical comments were filed on the rulemaking within 30 days of its publication. The EPA received a letter containing adverse comments regarding the direct final rule on August 21, 1996, and published the withdrawal of the direct final rule on September 25, 1996 (61 FR 50238).

The specific rationale EPA used to approve the redesignation of Pointe Coupee Parish to attainment for ozone was explained in the direct final rule and will not be restated here. This final rule addresses the comments received during the public comment period and announces EPA's final action regarding approval of the redesignation request.

II. Response to Public Comments

The EPA received an adverse comment letter dated August 21, 1996, from the Citizens Commission for Clean Air in the Lake Michigan Basin, and thus proceeded to withdraw the direct final rule and adequately address each comment. The EPA's responses to each comment are detailed below.

A. Comments on the Correction Action

Comment: The commenters challenge the authority of the Administrator under section 110(k)(6) of the Clean Air Act (the Act) to reclassify an ozone nonattainment area by asserting that the original classification was made in error. The EPA failed to pause and consider section 110(k)(6) in conjunction with section 107(d)(4)(A).

Response: The EPA disagrees with the commenter's contention that the Administrator exceeded her authority in correcting the classification of Pointe Coupee Parish from serious to marginal. Section 110(k)(6) of the Act clearly allows the Administrator to revise an area's classification when a determination is made that the original classification was made in error. Section 107(d)(4)(A) of the Act discusses nonattainment designations for ozone and carbon monoxide. Section 107(d)(4)(A)(iv) of the Act requires that the boundaries of any such area classified as serious, severe, or extreme nonattainment for ozone shall include the entire Metropolitan Statistical Area (MSA) or Consolidated Metropolitan Statistical Area (CMSA), unless notice is received by the Administrator from the Governor of the State that additional time is necessary to evaluate the application of this clause. This notice must be received within 45 days of the initial classification. It should be noted that MSA and CMSA boundaries are established by the Bureau of the Census. Section 107(d)(4)(A)(v) of the Act further states that, in order to make a finding that a portion of the MSA or CMSA should be excluded from the nonattainment area boundaries, the Administrator should take into account such factors as population density, traffic congestion, commercial development, meteorological conditions, and pollution transport. The EPA agrees that these requirements must be considered when evaluating a proposed change to an existing MSA's or CMSA's boundary condition. As detailed in the July 22, 1996, Federal Register, EPA considered all of the aforementioned factors prior to making the decision to correct Pointe Coupee Parish's classification. However, it should be noted once again that Pointe Coupee Parish is not part of the Baton Rouge CMSA, and thus the requirements of 107(d)(4)(A)(iv) and 107(d)(4)(A)(v) of the Act do not demand our consideration when correcting this error under section 110(k)(6)of the Act.

B. Comments on the Urban Airshed Modeling (UAM) Study

Comment: The Baton Rouge UAM study utilized an outdated and underestimated biogenic volatile organic compound (VOC) inventory, which recent EPA modeling guidance and Ozone Transport Assessment Group (OTAG) participants concluded warranted replacement with the Biogenic Emission Inventory System–2 (BEIS–2) inventory of biogenic VOCs. The Baton Rouge UAM study would likely not model nitrogen oxides (NO_X) reduction disbenefits if it incorporated the BEIS–2 inventory.

Response: Biogenic hydrocarbon emissions have been determined to play an important role in the chemistry of urban ozone formation, especially in warm southern cities. In light of this, the State developed the biogenic emission inventory for the Baton Rouge area based on area-specific data rather than using EPA BEIS–2 program. The area-specific land-use database used in the biogenic emission development was derived from four different sources: the Louisiana Department of Transportation and Development; a study of Baton Rouge's biogenic hydrocarbon emissions by Carlos Cardolino and William Chameides at the Georgia Institute of Technology using LANDSAT imagery; the U.S. Geological Survey's geo-ecology database; and the U.S. Forest Service's 1991 forest statistics for the southeast Louisiana parishes and forest statistics of south delta Louisiana parishes. The emission factors used in estimating biogenic emissions in the Baton Rouge area were obtained from the Rasmussen and Khalil and Zimmermann studies of biogenic sources. The emission factors from the Rasmussen and Khalil and Zimmermann studies were derived from direct measurements of various types of vegetation in the Baton Rouge and Tampa Bay, Florida areas, respectively.

In addition, the correction factors based on Guenther, *et. al.*, were used to adjust both temperature and solar radiation for isoprene, while the correction factors developed by Tingey, *et. al.*, were used to address temperature concerns for alpha-pinene and beta-pinene. The EPA believes this approach represents a site-specific approach which describes the VOC biogenic source inventory in Baton Rouge more accurately than BEIS–2.

Comment: The Baton Rouge UAM study lacked an updated chemistry component (CB–4). The EPA would be remiss in not reconsidering these improvements in UAM capability and reevaluating the accuracy of the Baton Rouge UAM study.

Response: The updated CB–4 has been developed for use with BEIS–2. As explained above, the Louisiana Department of Environmental Quality (LDEQ) developed its VOC biogenic inventory based on area-specific data instead of the BEIS–2 program. In addition, the updated chemistry component was not available at the time when LDEQ conducted the Baton Rouge UAM study.

Comment: It appears unreasonable for EPA to claim sufficient confidence in the accuracy of the Baton Rouge UAM study, that reliance upon it warrants reclassification of Pointe Coupee under section 110(k)(6) of the Act.

Response: The LDEQ used UAM version IV, an EPA-approved photochemical grid model, for reclassification of Point Coupee under section 110(k)(6) of the Act. The State has followed EPA guidance on the application of UAM. As required, the State performed quality assurance testing of model inputs and diagnostic testing of the base meteorological

episode simulation to ensure that the model functioned properly and that accurate results were obtained for the right reasons. The State applied a number of performance evaluation techniques such as diagnostic analyses to examine the effects of uncertainty and identify possible deficiencies in the model input. The sensitivity analysis investigated the sensitivity of the model to the various model inputs and ensured that the response of the model to changes in the inputs was physically realistic. In addition, the State conducted a model performance evaluation using graphical and statistical analyses to demonstrate that its model results acceptably replicated the historical ozone episodes.

Comment: The commenters believe that the Baton Rouge UAM study is equivocal and disputed by other peer-reviewed UAM studies and field research. The commenters cited a recent analysis prepared by ENVIRON Corporation which reviewed the Baton Rouge UAM study. This review commented that the model-predicted peak always occurred late in the afternoon (5 p.m.), whereas the observed peak occurred late in the morning (11 a.m. or noon). This suggested that there were meteorological and/or chemical phenomena occurring that were not being captured by the model.

Response: The mistiming of the observed peak with the simulated peak at one monitoring site is not as important a criterion in evaluating performance as the model's ability to simulate the concentrations of the observed peaks. The base case model simulations provided a good representation of the spatial and temporal characteristics of the episodes as a whole. There was good replication of the average ozone concentration throughout the entire domain and the observed peaks were well simulated. Model performance is judged by the overall statistics at all the monitoring sites, not by a microscale effect of the model being able to simulate the exact timing of the observed peak at one monitoring site. All EPA model performance criteria fell well within the limits established by EPA to judge model performance. The EPA has confidence in the accuracy of the UAM study and its results.

Comment: The commenters were concerned that the Baton Rouge UAM study excluded potentially significant contributions of ozone precursor emissions from Pointe Coupee in the Baton Rouge boundary conditions.

Response: The LDEQ selected a large modeling domain to ensure that it allowed resolution of ozone and precursor advection upwind and downwind of the area of interest. The Baton Rouge modeling domain covers all or part of 20 parishes in Louisiana, including Point Coupee Parish. The ozone precursor emissions from all the parishes in the Baton Rouge modeling domain were taken into consideration in the UAM study. The Baton Rouge boundary conditions were based on aircraft measurements, surface based measurements, and EPA-recommended background values.

C. Comments on the Redesignation Action

Comment: The commenters noted that between December 1, 1990, and June 1, 1995, EPA had approved approximately forty-one (41) redesignation requests nationwide. Several of these redesignated areas, such as Kansas City, Kansas/Missouri, Detroit, Michigan, San Francisco, California, Charlotte, North Carolina; Huntington-Ashland, West Virginia/Kentucky, and Grand Rapids violated the ozone standard after redesignation. The commenters state that the application of EPA's diluted redesignation guidance in reviewing these maintenance plans contributed to the violations. The commenters also noted that the Baton Rouge area observed 11 exceedances of the ozone standard in 1995.

Response: To date EPA has redesignated a total of 41 areas to attainment for ozone. Of these areas, only five (Detroit, Michigan, Memphis, Tennessee, San Francisco, California, Kansas City, Kansas-Missouri, and Lafourche Parish, Louisiana) subsequently monitored violations of the ozone standard. The EPA believes that this demonstrates that for the vast majority of instances the redesignation policy is appropriate, since most of the redesignated areas have not violated the ozone standard to date. Furthermore, the Act and Congress contemplated that such events may occur and therefore, required that the Administrator fully approve a maintenance plan for the area consistent with the requirements of section 175A of the Act before the area can be redesignated to attainment. Section 175A(d) of the Act requires that a maintenance plan contain contingency provisions deemed necessary by the Administrator to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area to attainment. Clearly, the Act and Congress anticipated that areas redesignated to attainment may violate the National Ambient Air Quality Standard (NAAQS) in the future and ensured that control measures to remedy the violation are available. Areas redesignated to attainment have approved maintenance plans with contingency measures that are and will be implemented in order to address any violations monitored in the area after redesignation. The maintenance plans for these areas were deemed appropriate and adequate for purposes of addressing a future violation as they were fully approved into the area's SIPs. Furthermore, if the contingency measures implemented by the State do not address future violations of the NAAQS, EPA has the authority to call for a plan revision requiring the adoption of additional control measures and/or redesignate the area to nonattainment which in turn would require the area to adopt and implement additional control measures appropriate for its classification. *See* sections 110(k)(5) and 107(d)(3).

Comment: The commenters state that EPA should stay approval of the redesignation until all specified Act requirements are met. Further, EPA should stay action on ozone redesignation requests from States participating in the OTAG until regional ozone precursor emission strategies are proposed and implemented.

Response: As discussed in the July 22, 1996, rulemaking action, EPA has identified five general criteria which must be met prior to any approval of a redesignation request. Redesignation requests which meet these five criteria have demonstrated compliance with the ozone standard and all the necessary requirements of the Act. As discussed in the July 22, 1996, rulemaking action, EPA believes that the Pointe Coupee Parish redesignation request has met all of the Act requirements and the redesignation criteria. Therefore, EPA is compelled to approve the request. However, it should be noted that redesignation to attainment does not necessarily preclude an area from any future control strategy developed by OTAG.

Comment: Exception was taken to the use of EPA's redesignation guidance, entitled *Reasonable Further Progress; Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard* (Seitz memo), John S. Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), dated May 10, 1995. The Pointe Coupee redesignation is exempted from sections 172(c)(2) and 172(c)(6) of the Act, apparently pursuant to the Seitz memo. The EPA apparently utilized the 1995 Seitz memo in determining that Pointe Coupee Parish had attained the ozone standard.

Response: The EPA's interpretation of the requirements of sections 172(c)(2) and (c)(6) of the Act was not based upon the May 10, 1995 Seitz memo, but rather upon the consistent rationale articulated much earlier in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498) and the guidance memorandum entitled *Procedures for Processing Requests to Redesignate Areas to Attainment* (Calcagni memo), dated September 4, 1992. As the Tenth Circuit recently observed:

> In that preamble, the Environmental Protection Agency determined that certain general nonattainment plan requirements do not apply in evaluating a request for redesignation to attainment under circumstances where (1) an area has in fact monitored attainment of the standard, and (2) those requirements are expressly linked by statutory language with the notion of reasonable further progress. *See* 57 FR 13564. The Environmental Protection Agency rezoned that when an area requests redesignation to attainment status, ''at a minimum, the air quality data for the area must show that the area has already attained [the National Ambient Air Quality Standards]. Showing the State will make [reasonable further progress] towards attainment will, therefore, have no meaning at that point.''

See 57 FR 13564. *Sierra Club* v. *EPA*, No. 95–9541 (10th Cir. November 13, 1996) Slip Opinion at 12–13.

Similarly, the General Preamble found that, with respect to section 172(c)(6)of the Act, ''since attainment will have been reached, no other measures are needed to provide for attainment.'' *See* 57 FR 13564.

The Calcagni memo reiterated EPA's reading of sections 172 (c)(2) and (c)(6) of the Act. The Calcagni memo stated that ''the requirements for reasonable further progress * * * and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.'' *See* Calcagni memo at page 6.

The commenters cite the May 10, 1995, Seitz memo as the basis for EPA's interpretation that sections 172 (c)(2) and (c)(6) do not require area to adopt additional control strategies if that area has attained the standard. However, this cite is misdirected. Although the May 10, 1995, Seitz memo and determinations that rely upon it are ''a logical extension of EPA's original, general interpretation of the 1990 Clean Air Act Amendments'' *Sierra Club* v. *EPA*, supra at 13, the Seitz memo concerns provisions applicable to designations of moderate and above. Thus, EPA does not rely upon the Seitz memo here, but rather upon the longstanding rationale articulated in the General Preamble and the Calcagni memo.

Comment: The Administrative Procedures Act (APA) requires that ''substantive rules of general applicability'' be subjected to public comment before promulgation. The EPA's guidance interpreting section 107(d)(3)(E) of the Act's requirements constitutes substantive rules of general applicability and thus, required to be subjected to public comment.

Response: The EPA's reference to and reliance on guidance documents interpreting section 107(d)(3)(E) of the Act, all of which are either published or publicly available and a part of the record of the July 22, 1996, rulemaking and this rulemaking, is in no way illegal under provisions of either the Act or the APA. The commenters cite the APA's requirement that ''substantive rules of general applicability'' be published in the Federal Register and subject to public comment before promulgation. These documents do not purport to be anything but guidance. That is precisely why EPA instituted a notice and comment rulemaking to take comment on its statutory interpretations and factual determinations in order to make a binding and enforceable determination regarding the Pointe Coupee reclassification and redesignation. The EPA explained the legal and factual basis for its rulemaking in the July 22, 1996, rulemaking and afforded the public a full opportunity to comment on EPA's proposed interpretation and determination fully consistent with the applicable procedural requirements of the APA.

Comment: The 1993 Nichols and 1995 Seitz memoranda are inconsistent with earlier redesignation guidance (General Preamble, Calcagni and Shapiro memoranda) pertaining to required SIP revisions for redesignations.

Response: The October 1994 Nichols memorandum and the May 1995 Seitz memorandum represented modifications of earlier policies. That does not necessarily mean these memoranda were by any means completely inconsistent with prior policies. For example, the May 1995 Seitz memorandum interpreted the more specific RFP requirements of section 182(b)(1) of the Act in a manner consistent with EPA's previous interpretation of the more general section 171 and 172 Act requirements. Furthermore, EPA notes that it is permissible to revise its policies provided that the revised policies, as is the case with these, are legally justified and reasonable.

Comment: Exempting marginal ozone nonattainment areas from compliance with applicable Title I, part D requirements, for purposes of facilitating redesignation requests for these areas is inconsistent and illegal under section 107(d)(3)(E) of the Act.

Response: The EPA has not exempted marginal ozone nonattainment areas from the applicable requirements of Title I, part D of the Act. As discussed in the July 22, 1996, rulemaking action, Pointe Coupee would be subject to the marginal requirements of section 182(a) of the Act rather than section 182(c) of the Act. Therefore, in order to be redesignated, the State must have met the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176 of the Act, as well as the applicable requirements of subpart 2 of part D. As explained in the July 22, 1996, Federal Register (61 FR 37835), EPA evaluated the redesignation request against those applicable part D requirements and determined that those requirements had been met.

D. Miscellaneous Comments

Comment: There is a strong argument that the Louisiana State and Local Air Monitoring Network is inadequate for Pointe Coupee Parish.

Response: The Air quality surveillance plan developed for the Baton Rouge area included Pointe Coupee Parish. The EPA evaluated the established air quality monitoring network and the surveillance plan against the 40 CFR part 58 Ambient Air Quality Surveillance requirements, determined its compliance with all applicable part 58 requirements, and approved the plan. The EPA performs annual reviews of this established air quality surveillance plan to ensure its continued compliance with part 58. The EPA believes that the current monitoring location in New Roads adequately represents ambient ozone levels in Pointe Coupee Parish.

III. Final Rulemaking Action

In this final action EPA is promulgating a revision to the Louisiana SIP and the Code of Federal Regulations, parts 52 and 81, to correct the classification of Pointe Coupee Parish from serious to marginal, and to redesignate the Parish to attainment for ozone. This redesignation request was submitted by the Governor to EPA by letter dated December 20, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific

technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Regulatory Flexibility Act

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

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

C. Unfunded Mandates

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

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting 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.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 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 this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 7, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air Pollution control, Designation of areas for air quality planning purposes.

Dated: December 20, 1996.

Carol M. Browner,

Administrator.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(70) to read as follows:

§ 52.970 Identification of Plan.

* * * * *

(c) * * *

(70) The Louisiana Department of Environmental Quality submitted a redesignation request and maintenance plan for Pointe Coupee Parish on December 20, 1995. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) of the Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Louisiana ozone State Implementation Plan for Pointe Coupee Parish. The EPA therefore approved the request for redesignation to attainment with respect to ozone for Pointe Coupee Parish on December 20, 1996.

(i) *Incorporation by reference*. Letter dated August 31, 1995, from Mr. Gustave Von Bodungen, P.E., Assistant Secretary, Louisiana Department of Environmental Quality, transmitting a copy of the Pointe Coupee Parish maintenance plan for the EPA's approval.

(ii) *Additional material.* (A) Letter dated August 28, 1995, from Governor Edwin E. Edwards of Louisiana to Ms. Jane Saginaw, Regional Administrator, requesting the reclassification and redesignation of Pointe Coupee Parish to attainment for ozone.

(B) The ten year ozone maintenance plan, including emissions projections and contingency measures, submitted to EPA as part of the Pointe Coupee Parish redesignation request on December 20, 1995.

3. Section 52.975 is amended by adding paragraph (d) to read as follows:

§ 52.975 Redesignations and Maintenance Plans: Ozone.

* * * * *

(d) Approval—The Louisiana Department of Environmental Quality submitted a redesignation request and maintenance plan for Pointe Coupee Parish on December 20, 1995. The redesignation request and maintenance

plan meet the redesignation requirements in section 107(d)(3)(E) of the Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Louisiana ozone State Implementation Plan for Pointe Coupee Parish. The EPA therefore approved the request for redesignation to attainment with respect to ozone for Pointe Coupee Parish on December 20, 1996.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.319, the ozone table is amended by revising the entry for the Baton Rouge area and by adding an entry for the Pointe Coupee area to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Baton Rouge Area:				
Ascension Parish		Nonattainment		Serious.
East Baton Rouge Parish		Nonattainment		Serious.
Iberville Parish		Nonattainment		Serious.
Livingston Parish		Nonattainment		Serious.
West Baton Rouge Parish		Nonattainment		Serious.
* * *	*	*	*	*
Pointe Coupee Area:				
Pointe Coupee Parish	Dec. 20, 1996			

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 97–42 Filed 1–3–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[WT Docket No. 96–148; GN Docket No. 96–113; FCC 96–474]

Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees; and Implementation of Section 257 of the Communications Act; Elimination of Market Entry Barriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order in WT Docket No. 96–148, the Commission adopts rules concerning geographic partitioning and spectrum disaggregation by broadband personal communications service (PCS) licensees. The rules adopted for broadband PCS will permit partitioning and disaggregation by all broadband PCS licensees. This will provide broadband PCS licensees with desirable flexibility to determine the amount of spectrum they will occupy and the geographic area they will serve. Such flexibility will: facilitate the efficient use of spectrum by providing licensees with the flexibility to make offerings directly responsive to market demands for particular types of service; increase competition by allowing market entry by new entrants; and expedite the provision of service to areas that otherwise may not receive broadband PCS service in the near term.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Shaun A. Maher, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This Report and Order in WT Docket No. 96–148 and GN Docket No. 96–113, adopted on December 13, 1996, and released December 20, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 234, 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800. Synopsis of Report and Order.

I. Background

1. The Commission's initial regulations and policies for broadband PCS were adopted in the Broadband PCS Second Report and Order, Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90–314, Second Report and Order, 58 FR 59174 (November 8, 1993) (Broadband PCS Second Report and Order), and amended in the Broadband PCS Memorandum Opinion and Order, Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90–314, Memorandum Opinion and Order, 59 FR 32830 (June 24, 1994) (Broadband PCS Memorandum Opinion and Order). In the Broadband PCS Memorandum Opinion and Order, the Commission declined to adopt unrestricted geographic partitioning for broadband PCS based on its concern that licensees might use partitioning as a means of circumventing construction requirements. However, the Commission stated that it would consider the issue of geographic partitioning for rural telephone companies (rural telcos) and other designated entities in a future proceeding to establish competitive bidding rules for broadband PCS. The Commission then permitted broadband PCS geographic partitioning for rural telcos in the Competitive Bidding Fifth Report and Order, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 59 FR 37566 (July 22, 1995) (Competitive Bidding Fifth Report and Order). The Commission observed that partitioning was one method to satisfy Congress' mandate to provide an opportunity for rural telcos to participate in the provision of broadband PCS. The Commission also found that rural telcos could take advantage of their existing infrastructure to provide broadband PCS services, thereby speeding service to rural areas. In the Competitive Bidding Further Notice of Proposed Rule Making, Implementation of Section

309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Further Notice of Proposed Rule Making, 59 FR 41426 (August 12, 1994) (Competitive Bidding Further Notice of Proposed Rule Making), the Commission sought comment on whether to extend post-auction geographic partitioning of broadband PCS licenses to women- and minority-owned businesses.

2. Section 24.229(c) of the Commission's rules permits a broadband PCS licensee that has met its five-year construction requirement to disaggregate its licensed PCS spectrum after January 1, 2000. In the Broadband PCS Memorandum Opinion and Order, the Commission reasoned that this limit on spectrum disaggregation for broadband PCS would allow the PCS market to develop and prevent anti-competitive practices with regard to disaggregation.

3. The Commission believes that it is appropriate at this time to liberalize its rules to allow partitioning and disaggregation for broadband PCS. The rules adopted in the Report and Order will provide licensees with the flexibility to use their spectrum more efficiently, will increase opportunities for small businesses and other entities to enter into the broadband PCS market, and will speed service to underserved or unserved areas.

II. Discussion

A. Partitioning

1. License Eligibility

4. The Commission concludes that relaxing its PCS geographic partitioning rules, as discussed herein, will help to (1) remove potential barriers to entry thereby increasing competition in the PCS marketplace; (2) encourage parties to use PCS spectrum more efficiently; and (3) speed service to unserved and underserved areas. Parties that were unsuccessful bidders or that did not participate in the PCS auctions will be able to use partitioning as a method to acquire PCS licenses after the auctions. Smaller or newly-formed entities, for example, may enter the PCS market for the first time through partitioning. Under the prior rules, such entities would have been unable to qualify for partitioning because of the Commission's rural telco restriction. By eliminating that restriction, these entities will be able to negotiate for licenses for portions of the original service area at a cost that is proportionately less than that of the full geographic market.

5. The Commission also finds that increasing the number of parties that may obtain partitioned PCS licenses will lead to more efficient use of PCS spectrum and will speed service to underserved or rural areas. PCS licensees will be able to partition portions of their markets to entities more willing to serve niche markets instead of postponing service to those areas. The Commission believes that retaining the existing partitioning restrictions, as recommended by the rural telco commenters, would prevent additional small businesses and other entities from using partitioning to enter the broadband PCS market. In addition, restricting the number of parties that are eligible for partitioned PCS licenses only serves to unreasonably reduce the number of potential entrants into the PCS marketplace without any corresponding public interest benefit.

6. The rural telco commenters claim that changing the current partitioning rules would be inconsistent with the mandate set forth in Section 309(j)(3)(B) of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. 309(j)(3)(B), to ensure that licenses are disseminated among a wide variety of applicants including rural telcos. They contend that partitioning was the sole means by which the Commission sought to fulfill the mandate of Section 309(j)(3)(B) of the Communications Act, 47 U.S.C. 309(j)(3)(B) for rural telcos. The Commission disagrees. Rural telcos are able to take advantage of the special provision for small businesses the Commission designed in its auction rules to obtain licenses in the entrepreneur block auctions. Furthermore, Sections 309(j)(3)(A), (B), and (D) of the Communications Act, 47 U.S.C. 309(j)(A), (B) & (D), direct the Commission to further the rapid deployment of new technologies for the benefit of the public including those residing in rural areas, to promote economic opportunity and competition, and to ensure the efficient use of spectrum. While encouraging rural telco participation in PCS service offerings is an important element in meeting these goals, Congress did not dictate that this should be the sole method of ensuring the rapid deployment of service in rural areas. The Commission concludes that allowing open partitioning will further the goals of Section 309(j)(3) of the Communications Act, 47 U.S.C. 309(j)(3), by allowing PCS licensees to partition to multiple entities within their markets rather than limiting partitioning to a small number of rural telcos.

7. The rural telcos argue further that they will not be able to compete for partitioned PCS licenses unless the Commission retains its current restriction because PCS licensees will be unwilling to partition their licenses to rural telcos and will choose to partition to Commercial Mobile Radio Service (CMRS) providers with greater financial resources. The rural telco commenters also argue that they relied to their detriment upon the current partitioning restrictions when devising their business plans and that many of them chose not to participate in the broadband PCS auctions because they believed that they would be the only parties that could obtain partitioned PCS licenses. The Commission is unpersuaded that its action herein will harm the rural telcos' business plans. Under the new rules adopted herein, rural telcos will be fully able to obtain partitioned PCS licenses, as they were previously. Moreover, in many instances, rural telcos are likely to be in a superior position to obtain partitioned licenses.

8. The Commission declines to adopt the rural telcos' proposal to require a right of first refusal. Granting the rural telcos a right of first refusal would limit the number of parties that could obtain partitioned PCS licenses which would be at odds with the Commission's goals of encouraging participation in the PCS marketplace by as many parties as possible and reducing barriers to entry for small businesses. The Commission finds that increasing the number of potential entities that can acquire partitioned PCS licenses will result in better service and increased competition which may result in lower prices for PCS service.

9. The Commission also finds that the right of first refusal would be difficult to administer and could discourage partitioning. The area proposed in a partitioning agreement may not coincide exactly with the area for which a rural telco would have a right of first refusal or a single partitioning transaction may encompass more than one rural telcos' service area. In those cases, the consent of multiple rural telcos would be required before a partitioning transaction could be consummated. Additionally, a partitioning agreement may be part of a larger assignment transaction. If a rural telco were to exercise its right of first refusal to acquire the partitioned area, it may not be possible to separate out the partitioning agreement to stand on its own and the entire assignment transaction could not be consummated.

2. Available License Area, Restrictions on Timing of Partitioning, and Matters Related to Entrepreneur Block Licensees

a. *License Area.* 10. The Commission is persuaded by the commenters' arguments that limiting geographic partitioning of PCS licenses to those areas defined by county lines may not be reflective of market realities and may otherwise inhibit partitioning. As the commenters note, parties seeking a partitioned license may not desire to serve an entire county but rather a smaller niche market. The Commission believes that permitting partitioning along any service area defined by the partitioner and partitionee is the most logical approach, provided they submit sufficient information to the Commission to maintain its licensing records. This will be the rule for all parties, including rural telcos.

11. Partitioning applicants will be required to submit, as separate attachments to the partial assignment application, a description of the partitioned service area and a calculation of the population of the partitioned service area and licensed market. The partitioned service area must be defined by coordinate points at every 3 seconds along the partitioned service area agreed to by both parties, unless either (1) an FCC-recognized service area is utilized (i.e., Major Trading Area, Basic Trading Area, Metropolitan Service Area, Rural Service or Economic Area) or (2) county lines are followed. These geographical coordinates must be specified in degrees, minutes and seconds to the nearest second of latitude and longitude, and must be based upon the 1927 North American Datum (NAD27). Applicants may also supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required based on NAD27. This coordinate data should be supplied as an attachment to the partial assignment application, and maps need not be supplied. In cases where an FCC recognized service area or county lines are being utilized, applicants need only list the specific area(s) (through use of FCC designations) or counties that make up the newly partitioned area. Allowing partitioning along any agreed-upon service area will provide an opportunity for PCS licensees to design flexible and efficient partitioning agreements. By providing such flexibility to licensees for determining partitioned areas, the Commission will permit the market to decide the most suitable service areas.

b. *Non-entrepreneur block licenses.* 12. The Commission concludes that the public interest will be served by allowing non-entrepreneur block licensees to freely partition their licenses to any other qualifying entity following the issuance of the license. Since non-entrepreneur block licensees are permitted to assign their entire license after grant, the Commission finds they should be able to assign a portion of their license following the issuance of their license. PCS licensees will be permitted to partition their licensed market areas without limitation on the overall size of the partitioned areas consistent with the Commission's rules.

c. *Entrepreneur block licenses.* 13. The Commission will permit entrepreneur block PCS licensees to partition at any time to other parties that would be eligible for licenses in those blocks. Partitioning of entrepreneur block license areas to non-entrepreneurs will not be permitted for the first five years of an entrepreneur block license term. This restriction is necessary in order to ensure that entrepreneurs do not circumvent the Commission's restrictions on full license transfers by attempting to immediately partition a portion of their licenses to non-entrepreneurs.

14. The Commission finds that its unjust enrichment requirements should be applied if an entrepreneur block licensee partitions a portion of its license area to a non-entrepreneur, after the initial five-year license term. The Commission will apply its unjust enrichment rules to transactions where entrepreneurs obtain partitioned licenses from other entrepreneurs and subsequently seek to assign their partitioned license to a non-entrepreneur. The Commission will also apply the unjust enrichment provisions to an entrepreneur block licensee that qualifies as a small business who partitions to an entity that satisfies the entrepreneur block eligibility criteria but is not a small business that would be eligible for bidding credits or installment payments.

15. The Commission will use population as the objective measure to calculate the relative value of the partitioned area for determining all of its unjust enrichment obligations. Population will be calculated based upon the latest census data.

16. In partitioning cases involving installment payments, the Commission finds that separating the payment obligations and default provisions of the original licensee and partitionee is the best approach because it reduces each party's risk and creates payment obligations that can be enforced separately against the defaulting party without adversely affecting the other licensee. The Commission adopts the following rules to address the various combinations of parties and the relative obligations for each in the event an entrepreneur seeks to partition its license:

(a) *No Continued Installment Payments.* When an entrepreneur block licensee with installment payments partitions its license after the five-year holding period to a party that would not qualify for installment payments under our rules or to an entity that does not desire to pay for its share of the license with installment payments, the Commission will first apportion the percentage of the remaining government obligation (including accrued and unpaid interest calculated on the date the partial assignment application is filed) between the partitionee and original licensee based upon the ratio of the population of the partitioned area to the population of the entire original licensed area. Under this procedure, both parties will be responsible to the U.S. Treasury for their proportionate share of the balance due including accrued and unpaid interest calculated on the date the partial assignment application is filed. The Commission will require, as a condition of grant of the partial assignment application, that the partitionee pay its entire *pro rata* amount within 30 days of Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The partitioner will receive new financing documents (promissory note and security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. These financing documents will replace the partitioner's existing financing documents which will be marked ''superseded'' and returned to the licensee upon receipt of the new financing documents. The original interest rate, established at the time of the issuance of the initial license in the market, will continue to be applied to the partitioner's portion of the remaining government obligation. The Commission will require, as a further condition to approval of the partial assignment application, that the partitioner execute and return to the U.S. Treasury the new financing documents within 30 days of the Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. A

default on an obligation will only affect that portion of the market area held by the defaulting party. The payments to the U.S. Treasury are required notwithstanding any additional terms and conditions agreed to between or among the parties.

(b) *Partitioning With Continued Installment Payments.* Where both parties to the partitioning arrangement qualify for installment payments under § 24.720(b)(1), 47 CFR 24.720(b)(1), the Commission will permit the partitionee to make installment payments on its portion of the remaining government obligation. Partitionees are free, however, to make a lump sum payment of their *pro rata* portion of the remaining government obligation within 30 days of the Public Notice conditionally granting the partial assignment application. Should a partitionee choose to make installment payments, the Commission will require, as a condition to approval of the partial assignment application, that both parties execute financing documents (promissory note and security agreement) agreeing to pay the U.S. Treasury their pro rata portion of the balance due (including accrued and unpaid interest on the date the partial assignment application is filed) based upon the installment payment terms for which they would qualify. These documents must be executed and returned to the U.S. Treasury within 30 days of the Public Notice conditionally granting the partial assignment application. Either party's failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The original interest rate, established at the time of the issuance of the initial license in the market, will apply to both parties' portion of the remaining government obligation. Each party will receive a license for its portion of the market area and each party's financing documents will provide that a default on its obligation would only affect their portion of the market area. These payments to the U.S. Treasury are required notwithstanding any additional terms and conditions agreed to between or among the parties.

3. Construction Requirements

17. The Commission will adopt two alternative construction options for broadband PCS partitioning. Under the first option, the partitionee certifies that it will satisfy the same construction requirements as the original licensee. The partitionee then must meet the same five- and ten-year service requirements as the original 10 MHz or 30 MHz licensee in its partitioned area, while the partitioner remains responsible for meeting those requirements in the area it has retained. Under the second option, the partitioner certifies that it has already met or will meet its five-year construction requirement and that it will meet the ten-year construction requirement for the entire market. Because the partitioner retains the responsibility for meeting the construction requirements for the entire market, the partitionee will only be required to meet the substantial service requirement for its partitioned area at the end of the ten-year license term. The definition of substantial service will be that definition found at § 24.16(a) of the rules, 47 CFR 24.16(a). If a partitionee fails to meet its construction requirements, the license for the partitioned area will automatically cancel without further Commission action.

18. At the five- and ten-year benchmarks, partitionees are required to file supporting documentation showing compliance with the construction requirements. Licensees failing to meet the coverage requirements will be subject to forfeiture, license cancellation, or other penalties.

B. Disaggregation

1. Timing of Disaggregation

19. The Commission concludes that disaggregation of broadband PCS spectrum should be allowed prior to January 1, 2000, and that the condition that the licensee must first satisfy the five-year build out requirement before disaggregating should be eliminated. To the extent that disaggregation would enable other entities to provide broadband PCS within geographic market areas, the Commission finds that allowing immediate disaggregation would encourage rather than impede competition by enabling the entry of new competitors. Moreover, the current prohibition on disaggregation may constitute a barrier to entry for small businesses that lacked the resources to participate successfully at auction for 30 MHz and 10 MHz spectrum blocks. In furtherance of the mandate prescribed by Section 257 of the Communications Act, the Commission is eliminating such market entry barriers by permitting non-entrepreneur block (A, B, D, and E block) PCS licensees to disaggregate spectrum at any time to other entities with minimum eligibility qualifications. Entrepreneur block (C and F block) licensees may disaggregate at any time to other entrepreneurs, or to non-entrepreneurs after a five-year holding period. While the Commission concludes that disaggregation should generally be allowed, it emphasizes that all proposed disaggregation agreements, like partitioning agreements, will be subject to Commission review and approval under the public interest standard of Section 310 of the Act. In addition, as discussed below, disaggregatees will be subject to the CMRS spectrum cap to ensure that disaggregation is not used to accumulate large amounts of spectrum in order to preclude entry by other competitors.

2. Amount of Spectrum to Disaggregate

20. The Commission concludes that there should be no restriction on the amount of broadband PCS spectrum that can be disaggregated. Providing the flexibility to allow parties to decide the exact amount of spectrum to be disaggregated is preferable because it will encourage more efficient use of spectrum and will permit the deployment of a broader mix of service offerings, leading to a more competitive wireless marketplace. The Commission finds that requiring parties to obtain disaggregated spectrum in a predetermined amount, such as a block of 1 MHz, may result in parties obtaining more spectrum they need, leaving some spectrum unused, and may foreclose some parties from using disaggregation as a means of obtaining the spectrum they need to provide their service offerings. Therefore, the Commission will not restrict the amount of broadband PCS spectrum that can be disaggregated. Similarly, it will not require the disaggregator to retain a minimum amount of spectrum.

21. The Commission is not adopting a limit on the maximum amount of spectrum that licensees may disaggregate, provided that the disaggregatee complies with the CMRS spectrum cap. The Commission finds no evidence at this time that a maximum limitation for disaggregation is necessary. PCS licensees shall be permitted to disaggregate spectrum without limitation on the overall size of the disaggregation as long as such disaggregation is otherwise consistent with the rules.

3. Matters Relating to Entrepreneur Block Licensees

22. In keeping with the proposals the Commission is adopting for partitioning, it will permit entrepreneur block licensees to disaggregate at any time to other parties that qualify as entrepreneurs. Disaggregation to entities that do not qualify as entrepreneurs is not permitted for the first five years of a license term. Allowing unrestricted entrepreneur block disaggregation

would be inconsistent with the five-year restriction on full license transfers to non-entrepreneurs which was designed to ensure that entrepreneurs do not take advantage of special entrepreneur block provisions by immediately seeking to transfer their licenses to non-entrepreneurs. The Commission believes the same rationale would apply to entrepreneur block disaggregation, as licensees who have benefited from such provisions could immediately disaggregate spectrum to parties that would not qualify for such benefits.

23. The Commission declines to permit entrepreneur block licensees to swap equivalent blocks of entrepreneur spectrum with non-entrepreneurs within the same market area. The administrative burden of keeping track of such arrangements would far outweigh any benefit to the public.

24. The Commission will follow the approach outlined for partitioning and apply unjust enrichment payments to entrepreneur block licensees that disaggregate to non-entrepreneurs after the five-year holding period and to entrepreneur block licensees that qualified for bidding credits and installment payments and that disaggregate to other entrepreneurs that would not have qualified for such benefits. All such unjust enrichment payments will be calculated based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum retained by the original licensee. With respect to disaggregation from an entrepreneur block licensee to another entrepreneur that would also qualify for installment payments, the Commission adopts an approach similar to the one it adopted for partitioning. The Commission will apportion the payment obligations between the disaggregator and disaggregatee based upon the amount of spectrum disaggregated and require separate payment obligations, promissory notes and default liabilities for each party.

4. Construction Requirements

25. The Commission concludes that the proposed construction requirements for disaggregation set forth in the NRPM would be inconsistent with the approach adopted in its partitioning rules, and that a more flexible approach is appropriate. Because the rules do not dictate a minimum level of spectrum usage by the original PCS licensee, the Commission believes it would be inconsistent to impose separate construction requirements on both disaggregator and disaggregatee for their respective spectrum portions. At the same time, the Commission wishes to ensure that the parties do not use disaggregation to circumvent its underlying construction requirements. Therefore, the Commission adopts a flexible approach analogous to its approach in the partitioning context: to retain the underlying five- and ten-year construction requirements for the spectrum block as a whole, but allow either party to meet the requirements on its disaggregated portion. Thus, a PCS licensee who disaggregates a portion of its spectrum may elect to retain responsibility for meeting the five- and ten-year coverage requirements, or it may negotiate a transfer of this obligation to the disaggregatee. In either case, the rules ensure that the spectrum will be developed to at least the same degree that was required prior to disaggregation.

26. To ensure compliance with the rules, the Commission will require that parties seeking Commission approval of a disaggregation agreement include a certification as to which party will be responsible for meeting the applicable five- and ten-year construction requirements. Parties may also propose to share the responsibility for meeting the construction requirements. The specific requirements to be met will depend on whether the spectrum being disaggregated was originally licensed as a 30 MHz block or a 10 MHz block. In the event that only one party agrees to take responsibility for meeting the construction requirement and later fails to do so, that party's license will be subject to forfeiture, but the other party's license will not be affected. Should both parties agree to share the responsibility for meeting the construction requirements and either party later fails to do so, both parties' licenses will be subject to forfeiture. So that the CMRS rules remain consistent and competitively neutral, disaggregatees that already hold a broadband PCS license or other CMRS license in the same geographic market will be subject to the same coverage requirements as disaggregatees who do not hold other licenses for disaggregated spectrum.

C. Related Matters

1. Combination of Partitioning and Disaggregation

27. To allow parties flexibility to design the types of agreements they desire, the Commission will permit combined partitioning and disaggregation. For example, this will allow a party to obtain a license for a single county of an A block market with only 15 MHz of spectrum. In the event that there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules should prevail. For the purpose of applying the unjust enrichment requirements and/or for calculating obligations under installment payment plans, when a combined partitioning and disaggregation is proposed, the Commission will use a combination of both population of the partitioned area and amount of spectrum disaggregated to make these *pro rata* calculations.

2. Licensing

28. The Commission will follow existing partial assignment procedures for broadband PCS licenses in reviewing requests for geographic partitioning, disaggregation, or a combination of both. Such applications will be placed on Public Notice and will be subject to petitions to deny. A licensee will be required to file an FCC Form 490 that is signed by both the licensee and the qualifying entity. With respect to partitioning, the FCC Form 490 must include the attachment defining the partitioned license area and an attachment demonstrating the population of the partitioned license area. Partial assignment applications that are filed seeking partitioning or disaggregation in the entrepreneur blocks must include an attachment demonstrating compliance with the five year entrepreneur block holding period. The qualifying entity will also be required to file an FCC Form 430 unless a current FCC Form 430 is already on file with the Commission. An FCC Form 600 must be filed by the qualifying entity to receive authorization to operate in the market area being partitioned or to operate the disaggregated spectrum or to modify an existing license of the qualifying entity to include the new/additional market area being partitioned or the spectrum that is disaggregated. Any requests for a partitioned license or disaggregated spectrum must contain the FCC Forms 490, 430, and 600 and be filed as one package under cover of the FCC Form 490.

29. The 45 MHz CMRS spectrum cap contained in Section 20.6 of the rules applies to partitioned license areas and disaggregated spectrum.

3. License Term

30. The Commission will allow partitionees and disaggregatees to hold their licenses for the remainder of the original licensee's ten-year license term. Partitionees and disaggregatees may also earn a renewal expectancy on the same basis as other PCS licensees.

31. The Commission will not permit an existing broadband PCS licensee acquiring a partitioned license or disaggregated spectrum in a market in

which it is already a licensee to apply its original license term to the partitioned license or spectrum. Such a proposal would be burdensome to administer because the processing staff would be required to determine the licensee's other licenses in the market and calculate the correct expiration date for the partitioned or disaggregated license. The Commission finds that such an administrative burden would outweigh the benefit that may result from such a proposal.

4. Technical Rules

32. The Commission finds that its existing technical rules are sufficient for application in the partitioning and disaggregation contexts and that no additional technical rules are required at this time. Should technical difficulties arise, however, the Commission will take whatever action is necessary to alleviate any technical or interference problems that result from partitioning or disaggregation, including appropriate modifications to its technical rules.

5. Microwave Relocation

33. The Commission concludes that partitionees and disaggregatees should be treated the same as all other PCS licensees with respect to microwave relocation issues. In particular, partitionees will have the same rights and obligations as other broadband PCS licensees under the cost-sharing plan adopted in Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95–157, Report and Order and Further Notice of Proposed Rulemaking, 61 FR 24470 (May 15, 1996). Thus, partitionees and disaggregatees may seek reimbursement under the plan if they relocate incumbents and they will be required to pay their share of microwave relocation costs if they benefit from the spectrum-clearing efforts of another party, according to the cost-sharing formula adopted by the Commission.

34. The Commission declines to require that the original PCS licensee guarantee payments under the cost-sharing plan by the partitionee or disaggregatee. To require licensees to guarantee such payments would be unfair because the original licensees would have no control over the actions of the partitionees and disaggregatees.

6. Clearinghouse for Spectrum

35. The Commission declines to create a Commission-based resource of information, but will continue to make available, in a user-friendly manner, information contained in its existing databases, concerning geographic areas open to partitioning and spectrum that would be available through disaggregation. Although a few entities offered to serve as commercial clearinghouses of PCS spectrum information, the Commission declines to establish an official Commission clearinghouse.

VI. Conclusion

36. The partitioning and disaggregation proposals the Commission has adopted are consistent with a pro-competitive policy framework. These rules will eliminate barriers to entry for small businesses seeking to enter the PCS marketplace and will promote the rapid creation of a competitive market for the provision of PCS services. These rules also meet the Congressional objectives to further the rapid development of new technologies for the benefit of the public including those residing in rural areas, without administrative delay, to promote economic opportunity and competition, and to ensure that new technologies are available by avoiding excessive concentration of licenses.

VII. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Act

Summary

As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NRPM) in WT Docket No. 96–148. The Commission sought written public comment on the proposals in the NPRM, including the IRFA. The Commission's Final Regulatory Flexibility Analysis in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.

Need for and Purpose of this Action

In this Report and Order the Commission modifies the broadband PCS rules to permit partitioning and disaggregation for all Part 24 licenses. The proposals adopted herein also implement Congress' goal of giving small businesses the opportunity to participate in the provision of spectrum-based services in accordance with 47 U.S.C. 309(j)(4)(D) and to reduce entry barriers for small businesses in accordance with 47 U.S.C. 257. With more open partitioning and disaggregation, additional entities, including small businesses, may participate in the provision of broadband PCS service without needing to acquire wholesale an existing license (with all of the bundle of rights currently associated with the existing license). Acquiring less than the current license will presumably be a more flexible and less expensive alternative for entities desiring to enter these services.

Summary of Issues Raised in Response to the Initial Regulatory Flexibility Analysis

Only one commenter, National Telephone Cooperative Association (NTCA), submitted comments that were specifically in response to the IRFA. NTCA argues that the Commission is required under the RFA to identify significant alternatives to the proposed rules in order to accomplish the stated objectives of Sections 309(j) and 257 of the Communications Act of 1934, as amended (Communications Act). Specifically, NTCA argues that the Commission must consider the right of first refusal approach suggested by some commenters as an alternative to allowing open partitioning of PCS licenses and how it might minimize significant economic impacts on rural telcos. NTCA contends that, for the purposes of determining which businesses are to be included in an RFA analysis, the Commission should adopt the U.S. Small Business Administration's (SBA) definition of small business, which is any company with fewer than 1,500 employees.

In the Report and Order, significant alternatives were identified and considered in order to further the mandates of Sections 309(j) and 257 of the Communications Act. In addition, significant consideration was given to the rural telcos' right of first refusal approach for partitioning; however, the Commission concluded that such an approach was unworkable and would actually discourage partitioning. Finally, the Commission declined to adopt NTCA's suggestion to utilize the SBA definition of small business (businesses with fewer than 1,500 employees). As noted below, the existing definition of small business (firms with revenues of less than $40 million in each of the last three years) was used in the PCS C-Block auction and was approved by the SBA. The Commission also notes that it has found incumbent LECs to be ''dominant in their field of operation'' since the early 1980's, and it has consistently certified under the RFA that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses. The Commission has made similar determinations in other areas.

Description and Number of Small Entities Involved

The rules adopted in the Report and Order will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding broadband PCS licenses who choose to partition and/or disaggregate, and small businesses who may acquire licenses through partitioning and/or disaggregation. The rules will also affect rural telephone companies which, under the current rules, have the exclusive right to obtain partitioned broadband PCS licenses. Small businesses will be defined for these purposes as firms that have revenues of less than $40 million in each of the last three calendar years. This definition was used in the PCS C-Block auction and approved by the SBA. The definition of rural telephone company shall be that definition found at § 24.720(e) of the rules, 47 CFR 24.720(e).

The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has auctioned broadband PCS licenses in blocks A, B, and C. The Commission does not have sufficient information to determine whether any small businesses within the SBA-approved definition bid successfully for licenses in the A or B block PCS auctions. There were 89 winning bidders that qualified as small businesses in the C block PCS auctions. Based upon this information, the Commission concludes that the number of broadband PCS licensees affected by the rules adopted herein includes the 89 winning bidders that qualified as small entities in the block C broadband PCS auctions.

The Commission anticipates that a total of 10,370 PCS licensees or potential licensees could take the opportunity to partition or disaggregate a license or obtain a license through partitioning and/or disaggregation. This estimate is based on the total number of broadband PCS licenses auctions and subject to auction, 2,074, and the Commission's estimate that each license would probably not be partitioned and/or disaggregated to more than five parties. Currently, the C and F block licensees and potential licensees (holding a total of 986 licenses) must be small businesses or entrepreneurs with average gross revenues over the past three years of less than $125 million. Under the rules adopted in the Report and Order, they will be permitted to partition and/or disaggregate to other qualified entrepreneurs at any time and to non-entrepreneurs after the first five years of their license term. The A, B, D, and E block licensees and potential licensees (holding a total of 1,088 licenses) will also be permitted under the proposed rules to partition and/or disaggregate to small businesses.

The Commission is presently conducting auctions for the D, E, and F blocks of broadband PCS spectrum. The Commission anticipates that a total of 1,479 licenses will be awarded in the D, E, and F block PCS auctions. Eligibility for the F block licenses is limited to entrepreneurs with average revenues of less than $125 million. It is not possible to estimate the number of licenses that will be awarded to small businesses in the F block nor is it possible to estimate how many small businesses will win the D or E block licenses. The Commission believes that it is possible that small businesses will constitute a significant number of the up to 10,370 PCS licensees or potential licensees who could take the opportunity to partition and/or disaggregate or who could obtain a license through partitioning and/or disaggregation.

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

The rules adopted in the Report and Order will impose reporting and recordkeeping requirements on small businesses seeking licenses through partitioning and disaggregation. The information requirements will be used to determine whether the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. This information will be given in a one-time filing by any applicant requesting such a license. The information will be submitted on the FCC Form 490 (or 430 and/or 600 filed as one package under cover of the Form 490) which are currently in use and have already received OMB clearance. The Commission estimates that the average burden on the applicant is three hours for the information necessary to complete these forms. The Commission estimates that 75 percent of the respondents (which may include small businesses) will contract out the burden of responding. The Commission estimates that it will take approximately 30 minutes to coordinate information with those contractors. The remaining 25 percent of respondents (which may include small businesses) are estimated to employ in-house staff to provide the information.

Steps Taken To Minimize Burdens on Small Entities

The rules adopted in the Report and Order are designed to implement Congress' goal of giving small businesses, as well as other entities, the opportunity to participate in the provision of spectrum-based services and are consistent with the Communications Act's mandate to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications services.

Allowing non-restricted partitioning of PCS licenses will facilitate market entry by parties who may lack the financial resources for participation in PCS auctions, including small businesses. Some small businesses may have been unable to be winning bidders at the PCS auctions due to high bidding and would have been unable to qualify for partitioning because of our current restriction which permits partitioning of PCS licenses to only rural telephone companies (rural telcos). By eliminating this restriction, small businesses will be able to obtain partitioned PCS licenses for smaller service areas at presumably reduced costs, thereby providing a method for small businesses to enter the PCS marketplace.

Similarly, allowing immediate disaggregation of PCS licenses will facilitate the entry of new competitors to the provision of PCS services, many of whom will be small businesses seeking to acquire a smaller amount of PCS spectrum at a reduced cost.

Allowing geographic partitioning of PCS licenses by services areas defined by the parties rather than only by county lines will provide an opportunity for small businesses to obtain partitioned PCS license areas designed to serve smaller, niche markets. This will permit small businesses to enter the PCS marketplace by reducing the overall cost of acquiring a partitioned PCS license.

Allowing disaggregation of spectrum in any amount will also promote participation by small businesses who may seek to acquire a smaller amount of PCS spectrum tailored to meet the needs of their proposed service.

The Commission's proposals to allow non-entrepreneur block licensees to partition or disaggregate to any party and to allow entrepreneurs to partition or disaggregate to other entrepreneurs at any time and to non-entrepreneurs after a five year holding period will significantly increase the opportunities for small businesses to enter the PCS marketplace. Allowing entrepreneur partitionees and disaggregatees to pay their proportionate share of the remaining government obligation through installment payments will provide a further opportunity for small

businesses to participate in the provision of PCS services.

The Commission's decision to allow partitioning parties to choose between two construction requirements will provide small businesses with more flexibility to construct their systems at a rate that is determined by market forces, thus allowing them to conserve their resources.

Significant Alternatives Considered and Rejected

The Commission considered and rejected a number of alternative proposals concerning partitioning and disaggregation.

The rural telephone companies (rural telcos) argued that the Commission should either retain the current partitioning restriction or adopt a right of first refusal approach that would require partitioning parties to notify the rural telco and offer it the partitioned license area under similar terms and conditions. The Commission found that retaining the current partitioning restriction would prevent small businesses from using partitioning to enter the broadband PCS market. Since retaining the partitioning restriction would constitute a significant barrier to entry for small businesses, the Commission declined to continue to limit partitioning to rural telcos.

The Commission found that the right of first refusal would be difficult to implement and could discourage partitioning. Areas proposed in partitioning agreements may not coincide exactly with areas for which a rural telco may have a right of first refusal. A single partitioning transaction may encompass more than one rural telco's service area, or a partitioning agreement may be part of a larger assignment transaction. Parties would be unwilling to enter into partitioning agreements not knowing how much of an area would ultimately be partitioned or whether they could consummate the transaction. This determination will make it easier for non-rural-telcos, including some small business entities, to enter partitioning agreements.

The Commission declined to adopt the proposal set forth in the NPRM to limit partitioning to areas defined by county lines. The Commission was convinced by the majority of commenters that geographic partitioning along county lines is too restrictive. The Commission found that parties seeking a partitioned license may not desire to serve an entire county but rather a smaller niche market. Therefore, the Commission found that allowing partitioning along service areas defined by the parties would allow the parties to design flexible partitioning agreements.

The Commission rejected proposals to permit partitioning and disaggregation during the first five years of an entrepreneur's license term. While allowing entrepreneurs to immediately partition or disaggregate to non-entrepreneurs may have resulted in additional entities participating in the provision of PCS services, the Commission concluded that the five year holding period restriction is necessary in order to ensure that entrepreneurs do not take advantage of the special entrepreneur block benefits by immediately partitioning a portion of their licenses or disaggregating a portion of their spectrum to parties that would not have qualified at auction, on their own merits, for such benefits. Furthermore, limiting partitioning and disaggregation during the first five years of an entrepreneur's license term will increase the possibility that small businesses will be able to acquire PCS licenses.

The Commission declined to adopt proposals to apply a new license term to partitioned license areas and disaggregated spectrum. Under this approach, entities obtaining partitioned licenses or disaggregated spectrum would receive a new ten-year license term beginning from the date the Commission approved the partitioning or disaggregation. The Commission found that permitting parties to ''re-start'' their license term would effectively allow a licensee to extend its license term and could lead to circumvention of our license term rules.

The Commission rejected the proposal to require disaggregation of broadband PCS spectrum in blocks of 1 MHz of paired frequencies (500 kHz plus 500 kHz). The Commission found that requiring parties to obtain that large a block of spectrum could act as a barrier to entry for entities that do not require that much spectrum to provide service.

Finally, the Commission declined the proposal put forth by some commenters that PCS licensees be required to assume the obligations and responsibilities for microwave relocation costs for their entire license area and spectrum block even if they partition a portion of their license area or disaggregate a portion of their spectrum to another party. The Commission found that requiring licensees to guarantee the payments of partitionees and disaggregatees would be unfair because licensees would not have control over the actions of partitionees and disaggregatees and because there was no reason to treat those parties differently than other late-entrant PCS licensees with respect to microwave relocation costs.

Report to Congress:

The Commission shall include a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Final Regulatory Flexibility Analysis will also be published in the Federal Register.

B. Ordering Clauses

Accordingly, *it is ordered* That, pursuant to the authority of Sections 4(i), 257, 303(g), 303(r) and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(g), 303(r), and 332(a), Part 24 of the Commission's Rules, 47 CFR 24, is amended as set forth below.

It is further ordered That the rules adopted herein will become effective March 7, 1997. This action is taken pursuant to 4(i), 303(r) and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 332(a).

List of Subjects in 47 CFR Part 24

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 24 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332, unless otherwise noted.

§ 24.229 [Amended]

2. Section 24.229 is amended by removing paragraph (c).

§ 24.707 [Amended]

3. Section 24.707 is amended by removing the phrase from the third sentence: ''(and applicants seeking partitioned licenses pursuant to agreements with auction winners under § 24.714).''

4. Section 24.714 is revised to read as follows:

§ 24.714 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 24.839.

(2) Broadband PCS licensees in spectrum blocks A, B, D, and E may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(3) Broadband PCS licensees in spectrum blocks C and F may not partition their licensed geographic service area or disaggregate their licensed spectrum for the first five years of the license term unless it is to an entity that meets the eligibility criteria set forth in § 24.709 at the time the request for partial assignment of license is filed or to an entity that holds license(s) for frequency blocks C and F that met the eligibility criteria set forth in § 24.709 at the time of receipt of such license(s). Partial assignment applications seeking partitioning or disaggregation of broadband PCS licenses in spectrum blocks C and F must include an attachment demonstrating compliance with this section.

(b) *Technical standards*—(1) *Partitioning.* In the case of partitioning, requests for authorization for partial assignment of a license must include, as attachments, a description of the partitioned service area and a calculation of the population of the partitioned service area and the licensed geographic service area. The partitioned service area shall be defined by coordinate points at every 3 seconds along the partitioned service area unless an FCC recognized service area is utilized (i.e., Major Trading Area, Basic Trading Area, Metropolitan Service Area, Rural Service Area or Economic Area) or county lines are followed. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1927 North American Datum (NAD27). Applicants may supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required (NAD27). In the case where an FCC recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(2) *Disaggregation.* Spectrum may be disaggregated in any amount.

(3) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *Unjust enrichment*—(1) *Installment payments.* Licensees in frequency Blocks C and F making installment payments that partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for installment payments, will be subject to the provisions concerning unjust enrichment as set forth in §§ 1.2111 of this chapter and 24.716(d).

(2) *Bidding credits.* Licensees in frequency Blocks C and F that received a bidding credit and partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in §§ 1.2110(f) of this chapter and 24.717(c).

(3) *Apportioning unjust enrichment payments.* Unjust enrichment payments for partitioned license areas shall be calculated based upon the ratio of the population of the partitioned license area to the overall population of the license area and by utilizing the most recent census data. Unjust enrichment payments for disaggregated spectrum shall be calculated based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum held by the licensee.

(d) *Installment payments*—(1) *Apportioning the balance on installment payment plans.* When a winning bidder elects to pay for its license through an installment payment plan pursuant to §§ 1.2110(e) of this chapter or 24.716, and partitions its licensed area or disaggregates spectrum to another party, the outstanding balance owed by the licensee on its installment payment plan (including accrued and unpaid interest) shall be apportioned between the licensee and partitionee or disaggregatee. Both parties will be responsible for paying their proportionate share of the outstanding balance to the U.S. Treasury. In the case of partitioning, the balance shall be apportioned based upon the ratio of the population of the partitioned area to the population of the entire original license area calculated based upon the most recent census data. In the case of disaggregation, the balance shall be apportioned based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum allocated to the licensed area.

(2) *Parties not qualified for installment payment plans.* (i) When a winning bidder elects to pay for its license through an installment payment plan, and partitions its license or disaggregates spectrum to another party that would not qualify for an installment payment plan or elects not to pay for its share of the license through installment payments, the outstanding balance owed by the licensee (including accrued and unpaid interest) shall be apportioned according to § 24.714(d)(1).

(ii) The partitionee or disaggregatee shall, as a condition of the approval of the partial assignment application, pay its entire pro rata amount within 30 days of Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in a rescission of the grant of the partial assignment application.

(iii) The licensee shall be permitted to continue to pay its pro rata share of the outstanding balance and shall receive new financing documents (promissory note, security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. These financing documents will replace the licensee's existing financing documents which shall be marked ''superseded'' and returned to the licensee upon receipt of the new financing documents. The original interest rate, established pursuant to § 1.2110(e)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the licensee's portion of the remaining government obligation. We will require, as a further condition to approval of the partial assignment application, that the licensee execute and return to the U.S. Treasury the new financing documents within 30 days of the Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application.

(iv) A default on the licensee's payment obligation will only affect the licensee's portion of the market.

(3) Parties qualified for installment payment plans. (i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligation, as calculated according to § 24.714(d)(1).

(ii) Each party will be required, as a condition to approval of the partial assignment application, to execute separate financing documents (promissory note, security agreement) agreeing to pay their pro rata portion of

the balance due (including accrued and unpaid interest) based upon the installment payment terms for which they qualify under the rules. The financing documents must be returned to the U.S. Treasury within thirty (30) days of the Public Notice conditionally granting the partial assignment application. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(e)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for their portion of the partitioned market or disaggregated spectrum.

(iii) A default on an obligation will only affect that portion of the market area held by the defaulting party.

(iv) Partitionees and disaggregatees that qualify for installment payment plans may elect to pay some of their pro rata portion of the balance due in a lump sum payment to the U.S. Treasury and to pay the remaining portion of the balance due pursuant to an installment payment plan.

(e) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 24.15.

(f) *Construction requirements*—(1) *Requirements for partitioning.* Parties seeking authority to partition must meet one of the following construction requirements:

(i) The partitionee may certify that it will satisfy the applicable construction requirements set forth in § 24.203 for the partitioned license area; or

(ii) The original licensee may certify that it has or will meet its five-year construction requirement and will meet the ten-year construction requirement, as set forth in § 24.203, for the entire license area. In that case, the partitionee must only satisfy the requirements for ''substantial service,'' as set forth in § 24.16(a), for the partitioned license area by the end of the original ten-year license term of the licensee.

(iii) Applications requesting partial assignments of license for partitioning must include a certification by each party as to which of the above construction options they select.

(iv) Partitionees must submit supporting documents showing compliance with the respective construction requirements within the appropriate five- and ten-year construction benchmarks set forth in § 24.203.

(v) Failure by any partitionee to meet its respective construction requirements will result in the automatic cancellation of the partitioned or disaggregated license without further Commission action.

(2) *Requirements for disaggregation.* Parties seeking authority to disaggregate must submit with their partial assignment application a certification signed by both parties stating which of the parties will be responsible for meeting the five- and ten-year construction requirements for the PCS market as set forth in § 24.203. Parties may agree to share responsibility for meeting the construction requirements. Parties that accept responsibility for meeting the construction requirements and later fail to do so will be subject to license forfeiture without further Commission action.

[FR Doc. 97–98 Filed 1–3–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 51

[CC Docket No. 96–98; FCC 96–483]

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule; motion for stay and notification of court stay.

SUMMARY: The Order released December 18, 1996 dismisses the motion for stay of three rules adopted in the *First Report and Order,* (August 29, 1996), filed by the Rural Telephone Coalition (RTC) to the extent that RTC seeks a stay of 47 CFR 51.809, and otherwise denies the motion for stay. Denial of the motion for stay allows the rules relating to local competition which have not been stayed by the United States Court of Appeals for the Eighth Circuit (*Iowa Utilities Board* v. *Federal Communications Commission,* No. 96–3321 *et al.,* 1996 WL 589284 (8th Cir. 1996 Oct. 15, 1996)) to go into effect without delay.

EFFECTIVE DATE: Sections 51.501–51.515 (inclusive), 51.601–51.611 (inclusive), 51.705–51.715 (inclusive), and 51.809 are stayed effective October 15, 1996 pursuant to court order. Motion for stay by the Rural Telephone Coalition is dismissed effective January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Lisa Gelb, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted December 18, 1996, and released December 18, 1996. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc96483.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Regulatory Flexibility Analysis

There are no new rules or modifications to existing rules adopted in this Order.

Paperwork Reduction Act

There are no new or modified collections of information required by this Order.

Synopsis of Order

I. Introduction

1. On August 1, 1996, the Commission adopted rules implementing the local competition provisions of the Telecommunications Act of 1996 (1996 Act). On October 2, 1996, the Rural Telephone Coalition (RTC) filed a motion for stay of three rules adopted in the *First Report and Order,* 61 FR 45476 (August 29, 1996), pending judicial review. Oppositions to the motion for stay were filed by MCI, the Association for Local Telecommunications Service (ALTS), and the National Cable Television Association (NCTA). For the reasons set forth below, we dismiss the motion in part, and otherwise deny the motion for stay.

II. Background

2. Section 251(c) of the Communications Act of 1934, as amended, (the Act) imposes on incumbent local exchange carriers (LECs) obligations regarding interconnection, resale of services, and unbundled network elements. Section 251(f)(1) of the Act provides that a rural telephone company is exempt from the requirements of section 251(c) unless the state commission finds that the rural carrier has received a bona fide request for interconnection, services, or network elements, and the state commission determines that the request ''is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).'' Section 251(f)(2) of the Act permits LECs ''with fewer than 2 percent of the Nation's subscriber lines installed nationwide'' to petition a state commission for suspension or modification of application of one or more requirements of sections 251(b) or 251(c). The petition

shall be granted to the extent that, and for such duration as, the state commission determines that the suspension or modification:

(A) is necessary—

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

3. In the *First Report and Order*, and in § 51.405 of the Commission's rules, the Commission held that, once a requesting carrier has made a bona fide request for interconnection, services, or network elements, incumbent rural LECs bear the burden of proving that they should continue to be exempt from the requirements of section 251(c). The Commission also offered guidance on what would constitute an ''unduly'' economically burdensome requirement for purposes of sections 251(f)(1) and 251(f)(2), holding that the incumbent rural carrier must offer evidence that the application of the requirements of section 251(c) of the Act would be likely to cause economic burden ''beyond the economic burden that is typically associated with efficient competitive entry.''

4. Section 252(a) of the Act, entitled ''Agreements Arrived at Through Negotiation,'' provides, in part, that, ''[t]he agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.'' In the *First Report and Order*, and as set forth in Section 51.303 of its rules, the Commission concluded that interconnection agreements that were reached before the 1996 Act was enacted must be submitted to the state commission for review under section 252, including agreements between adjacent incumbent local service providers. In addition, section 252(i) of the Act requires an LEC to make available ''any interconnection, service, or network element provided under an agreement approved under'' section 252 to which the LEC is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. In the *First Report and Order* and § 51.809 of its rules, the Commission interpreted that provision to require an incumbent LEC to make available to a requesting telecommunications carrier, upon the same rates, terms, and conditions, any individual interconnection, service, or network element arrangement contained in any agreement approved by the state under section 252 to which the incumbent LEC is a party.

III. Summary of the Motion and Oppositions

5. RTC requests a stay of the Commission rules described above. RTC contends that the Commission unlawfully modified the standard to be used by states in considering whether to terminate the rural exemption. RTC contends that placing the burden of proof on the incumbent LEC, and the Commission's definition of ''unduly economically burdensome,'' will cause rural LECs to suffer irreparable harm. RTC claims that certain rural LECs will lose exemptions that they would not have lost if the requesting carrier bore the burden of proof. RTC also asserts that the Commission's rules will cause rural LECs to incur costs and expend resources to retain exemptions from section 251(c) obligations. RTC further argues that the Commission's rules ignore two of the three statutory factors that must be considered in deciding whether to terminate a rural LEC's exemption. RTC also contends that the Commission failed to give adequate public notice of its intent to establish a test concerning the burden of proof and its intent to establish a rule interpreting the phrase ''unduly economically burdensome.''

6. In addition, RTC maintains that the Commission exceeded its authority by requiring incumbent LECs to file with state commissions interconnection agreements with neighboring LECs that predate the 1996 Act, and by requiring incumbent LECs to make the individual provisions of such agreements available to competing carriers. RTC asserts that requiring incumbent LECs to file interconnection agreements negotiated prior to the 1996 Act ultimately will force rural LECs to pay higher interconnection rates that in turn will result in higher rates for rural LEC's customers.

7. In general, parties opposing the stay motion contend that RTC's motion does not meet the four-part test for granting a stay of an agency order. These parties contend that RTC is unlikely to prevail on the merits of its claims; that it will suffer no irreparable harm if a stay is not granted; that grant of a stay will harm third parties; and that the public interest weighs in favor of denying a stay.

IV. Discussion

8. As a threshold matter, the United States Court of Appeals for the Eighth Circuit granted a stay of certain rules the Commission adopted in the *First Report and Order* (*i.e.*, 47 CFR 51.501–51.515, 51.601–51.611, 51.705–51.715, and 51.809). Therefore, we need not address RTC's motion for administrative stay of § 51.809.

9. We examine the remaining portions of RTC's motion for stay pursuant to well-established legal principles. A party seeking a stay is required to demonstrate: (1) That it is likely to prevail on the merits; (2) that it will suffer irreparable harm if a stay is not granted; (3) that other interested parties will not be harmed if the stay is granted; and (4) that the public interest favors the grant of a stay.

10. With respect to RTC's motion for stay of §§ 51.303, concerning filing of interconnection agreements negotiated before the 1996 Act became law, and 51.405, concerning rural carriers' burden of proof under section 251(f)(1) of the Act, we conclude that RTC has not shown that it will suffer irreparable harm absent a stay. A concrete showing of irreparable harm is an essential factor in any request for a stay. As the U.S. Court of Appeals for the District of Columbia Circuit has observed, ''economic loss does not, in and of itself, constitute irreparable harm.'' Moreover, competitive harm is merely a type of economic loss, and ''revenues and customers lost to competition which can be regained through competition are not irreparable.'' Even if the alleged harm is not fully remediable, the irreparable harm factor is not satisfied absent a demonstration that the harm is ''both certain and great; * * * actual and not theoretical.'' We find that RTC's claims of harm do not satisfy these exacting standards.

11. RTC argues that certain rural LECs will be irreparably harmed by our finding that the LECs seeking to avoid application of section 251(c) bear the burden of proof under section 251(f), and by our interpretation that, in order for a requirement to be ''unduly economically burdensome'' within the meaning of section 251(f), it must cause economic burden beyond the economic burden typically associated with efficient competitive entry. RTC complains that the Commission's ''burden of proof and standards requirements substantially increase the probability that the exemption will be terminated.''

12. We find that RTC has not demonstrated that application of these rules has caused or will cause harm to rural incumbent LECs that is certain, irreparable, or great. As NCTA and MCI assert, RTC has not shown that rural LECs would otherwise be exempt from the obligations of section 251(c), absent

the Commission's rules. Moreover, even if RTC could establish with certainty that rural carriers would lose exemptions as a result of the Commission's rules, its contention that LECs would be irreparably harmed is speculative. First, economic harm that results from loss of customers to competitors does not constitute irreparable harm. Second, the Commission stated in the *First Report and Order* that requesting carriers must compensate the incumbent LEC for the costs of services, interconnection, or unbundled elements that the incumbent provides upon request, and RTC has not shown why, in light of such compensation, it would suffer irreparable harm from complying with the requirements of section 251(c). Nor has RTC demonstrated that any harm a rural LEC arguably might suffer would be substantial.

13. RTC also asserts that, because the Commission has placed the burden of proof on rural carriers that seek to retain exemptions from section 251(c), they will incur costs that they would not otherwise bear. For example, RTC contends that rural LECs will need to bear costs of hiring attorneys, cost consultants, and economists. If the Commission's rule is overturned by the court, RTC argues, rural LECs will have suffered irreparable harm by incurring these costs. NCTA and MCI contend that RTC has provided no evidence that, absent our rules, it would not bear similar or identical costs to respond to *bona fide* requests for interconnection, services or network elements. We find no basis for concluding that rural carriers will bear costs as a result of our rules that they would not otherwise bear. Moreover, courts have held that ''[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury.''

14. RTC further argues that the rule requiring the filing of interconnection agreements that predate the 1996 Act will irreparably harm rural LECs and their customers by ''threaten[ing] higher rates, more toll calls, or both, for the affected rural customers.'' This argument is speculative, because it assumes without substantiation that existing agreements will have to be renegotiated, and that the resulting terms will be significantly less favorable to affected rural LECs. As the District of Columbia Circuit has noted, in evaluating a petitioner's allegations of irreparable harm, ''[b]are allegations of what is likely to occur are of no value'' because the critical issue is ''whether the harm will *in fact* occur.'' RTC provides no evidence to support its allegation that higher rates for customers will in fact occur if § 51.303 of the Commission's rules is not stayed.

15. Because, as discussed above, RTC has failed to demonstrate that any rural telephone company would suffer irreparable harm due to the application of § 51.303 or 51.405 of our rules, we need not address RTC's remaining arguments concerning the other three parts of the test governing a motion for stay. Nevertheless, we take this opportunity to clarify certain aspects of § 51.405(c) of our rules that RTC challenges in its petition for stay. Section 51.405(c) states:

> In order to justify continued exemption under section 251(f)(1) of the Act once a bona fide request has been made, an incumbent LEC must offer evidence that the application of the requirements of section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

RTC erroneously contends that the Commission's rules implementing § 251(f)(1) improperly ignore two of the three statutory criteria that a state commission must consider in determining whether to remove a rural incumbent LEC's exemption from the requirements of § 251(c) of the Act. RTC's argument is not based on any affirmative statement in our rules that state commissions may disregard evidence of technical infeasibility or harm to universal service in deciding whether to remove an exemption. Rather, RTC incorrectly infers from the fact that our rules address only one of the statutory criteria for evaluating such issues that we intended for state commissions to ignore the other two criteria. In § 51.405(c) of our rules, we interpreted the meaning of the statutory term ''unduly'' as it modifies ''economically burdensome,'' because we found that this phrase is susceptible to differing interpretations. We did not find it necessary to adopt rules that addressed the meaning of ''technical feasibility'' or ''universal service.'' That decision, however, does not in any way affect a state's responsibility to consider all three of the factors set forth in § 251(f)(1)(A). We similarly interpreted the phrase ''unduly economically burdensome'' in adopting 47 CFR 51.405(d), and did not thereby intend to limit LECs' rights to seek suspensions or modifications by other means provided in § 251(f)(2).

V. Ordering Clause

16. Accordingly, It is ordered that the motion for stay filed by the Rural Telephone Coalition is dismissed to the extent that it seeks a stay of 47 CFR 51.809, and otherwise is Denied.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–50 Filed 1–3–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 93–28, RM–8172, RM–8299]

FM Broadcasting Services; Whitley City, KY, Colonial Heights, Morristown and Tazewell, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Chief, Policy and Rules Division granted the petition for reconsideration, filed by Murray Communications, of the *Report and Order in* this proceeding, 59 FR 60077, published November 22, 1994, by rejecting the rule making proposal (RM–8172) granted by the *Report and Order,* and, instead, granting the counterpropopsal (RM–8299), substituting Channel 240C2 for 290A at Colonial Heights, Tennessee, Channel 290A for Channel 231A at Tazewell, Tennessee, Channel 231A for Channel 240A at Morristown, Tennessee, and Channel 252A for Channel 290A at Whitley City, Kentucky. The *Report and Order* denied Murray's counterproposal, RM–8299, to upgrade Channel 290A at Colonial Heights, Tennessee by substituting Channel 240C2, but granted its initial proposal, RM–8172, to effect an upgrade to Channel 240C3. With this action, the proceeding is terminated.

EFFECTIVE DATE: February 3, 1997.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: The following channels can be allotted in compliance with the Commission's minimum distance separation requirements:

Channel 240C2 to Colonial Heights at Station WLJQ(FM)'s existing transmitter site, restricted to 16.7 kilometers (10.4 miles) northwest of the community at coordinates 36–35–35 North Latitude and West Longitude 82–37–16, and, to accommodate that allotment, Station WAEY(FM), Channel 240A, Princeton, West Virginia, can be relocated to a new transmitter site at coordinates North Latitude 37–25–00 and West Longitude 81–02–00 in compliance with the minimum distance separation requirements; Channel 290A to Tazewell at Station WCTU(FM)'s existing site at coordinates 36–27–32 and West Longitude 83–35–07; Channel

231A to Morristown at Station WMXK(FM)'s existing site at coordinates North Latitude 36–13–40 and West Longitude 83–19–58; and Channel 252A to Whitley City at Station WHAY(FM)'s existing site at North Latitude 36–44–39 and West Longitude 84–28–37.

This is a summary of the Commission's *Memorandum Opinion and Order,* MM Docket No. 93–28, adopted December 13, 1996 and released December 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 reads as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, under Tennessee, is amended by removing Channel 290C3 at Colonial Heights and adding Channel 240C2; by removing Channel 231A at Tazewell and adding Channel 290A; and by removing Channel 240A at Morristown and adding Channel 231A.

3. Section 73.202(b), the Table of FM Allotments, under Kentucky, is amended by removing Channel 290A at Whitley City and adding Channel 252A.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–171 Filed 1–3–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD11

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Wetland Species Found in Southern Arizona and Northern Sonora, Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines endangered status for the Canelo Hills ladies-tresses (*Spiranthes delitescens*), the Huachuca water umbel (*Lilaeopsis schaffneriana* ssp. *recurva*), and the Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*) pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). These species occur in a limited number of wetland habitats in southern Arizona and northern Sonora, Mexico. They are threatened by one or more of the following—collecting, disease, predation, competition with nonnative species, and degradation and destruction of habitat resulting from livestock overgrazing, water diversions, dredging, and groundwater pumping. All three taxa also are threatened with extirpations or extinction from naturally occurring climatic and other environmental events, such as catastrophic floods and drought, a threat that is exacerbated by habitat alteration and small numbers of populations or individuals. This rule implements Federal protection provided by the Act for these three taxa.

EFFECTIVE DATE: February 5, 1997.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021, telephone (602/640–2720), or facsimile (602/640–2730).

FOR FURTHER INFORMATION CONTACT: Jim Rorabaugh or Angie Brooks (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

Cienegas in southern Arizona and northern Sonora, Mexico, are typically mid-elevation wetland communities often surrounded by relatively arid environments. These communities are usually associated with perennial springs and stream headwaters, have permanently or seasonally saturated highly organic soils, and have a low probability of flooding or scouring (Hendrickson and Minckley 1984). Cienegas support diverse assemblages of animals and plants, including many species of limited distribution, such as the three taxa addressed in this final rule (Hendrickson and Minckley 1984, Lowe 1985, Ohmart and Anderson 1982, Minckley and Brown 1982). Although *Spiranthes delitescens* (*Spiranthes*), *Lilaeopsis schaffneriana* spp. *recurva* (*Lilaeopsis*), and the Sonora tiger salamander typically occupy different microhabitats, they all occur or once occurred in cienegas. *Lilaeopsis* is also found along streams and rivers and occurs at mid-elevations, from 1,148–2,133 meters (m) (3,500–6,500 feet (ft)). The Sonora tiger salamander occurs mostly in cattle tanks and impounded cienegas, but presumably was associated primarily with natural cienegas and other wetlands prior to human settlement.

Cienegas, perennial streams, and rivers in the desert southwest are extremely rare. The Arizona Game and Fish Department (AGFD)(1993) recently estimated that riparian vegetation associated with perennial streams comprises about 0.4 percent of the total land area of Arizona, with present riparian areas being remnants of what once existed. The State of Arizona (1990) estimated that up to 90 percent of the riparian habitat along Arizona's major desert watercourses has been lost, degraded, or altered. *Spiranthes, Lilaeopsis,* and the Sonora tiger salamander occupy small portions of these rare habitats.

Spiranthes is a slender, erect, terrestrial orchid that, when in flower, reaches approximately 50 centimeters (cm) (20 inches (in.)) tall. Five to 10, linear-lanceolate, grass-like leaves, 18 cm (7.1 in.) long and 1.5 cm (0.6 in.) wide, grow basally on the stem. The fleshy, swollen roots are approximately 5 mm (0.2 in.) in diameter. The top of the flower stalk contains up to 40 small white flowers arranged in a spiral. This species is presumed to be perennial, but mature plants rarely flower in consecutive years and, in some years, have no visible above ground structures (McClaran and Sundt 1992, Newman 1991).

Martin first collected *Spiranthes delitescens* in 1968 at a site in Santa Cruz County, Arizona (Sheviak 1990). This specimen was initially identified as *Spiranthes graminea,* a related Mexican species. Sheviak (1990) found that the *Spiranthes* specimens in Arizona, previously thought to be *S.*

graminea, displayed a distinct set of morphological and cytological characteristics and named them *S. delitescens.*

This species is known from five sites at about 1,525 m (5,000 ft.) elevation in the San Pedro River watershed in Santa Cruz and Cochise Counties, southern Arizona (Newman 1991). The total amount of occupied habitat is less than 81 hectares (ha) (200 acres (ac)). Four of the populations are on private land less than 37 kilometers (km) (23 miles (mi)) north of the U.S./Mexico border; one additional small site containing four individuals was discovered on public land in 1996 (Mima Falk, Coronado National Forest, pers. comm. 1996). This site is located near a previously known population. Potential habitat in Sonora, Mexico, has been surveyed but no *S. delitescens* populations have been found (Sheviak 1995, Newman 1991).

The dominant vegetation associated with *Spiranthes* includes grasses, sedges (*Carex* spp.), rushes (*Juncus* spp.), spike rush (*Eleocharis* spp.), cattails (*Typha* spp.), and horsetails (*Equisetum* spp.) (Cross 1991, Warren *et al.* 1991). Associated grass species include bluegrass (*Poa pratensis*), Johnson grass (*sorghum halepense*), *Muhlenbergia asperifolia,* and *Muhlenbergia utilis* (Fishbein and Gori 1994). The surrounding vegetation is semidesert grassland or oak savannah.

All *Spiranthes* populations occur where scouring floods are very unlikely (Newman 1991). Soils supporting the populations are finely grained, highly organic, and seasonally or perennially saturated. Springs are the primary water source, but a creek near one locality contributes near-surface groundwater (McClaran and Sundt 1992). As with most terrestrial orchids, successful seedling establishment probably depends on the successful formation of endomycorrhizae (a symbiotic association between plant root tissue and fungi) (McClaran and Sundt 1992). The time needed for subterranean structures to produce above ground growth is unknown. Plants may remain in a dormant, subterranean state or remain vegetative (nonflowering) for more than one consecutive year. Plants that flower one year can become dormant, vegetative, or reproductive the next year (McClaran and Sundt 1992, Newman 1991). The saprophytic/autotrophic state of orchid plants may be determined by climatic fluctuations and edaphic factors, such as pH, temperature, and soil moisture (Sheviak 1990).

Estimating *Spiranthes* population size and stability is difficult because nonflowering plants are very hard to find in the dense herbaceous vegetation, and yearly counts underestimate the population because dormant plants are not counted. McClaran and Sundt (1992) twice monitored marked individuals in a *Spiranthes* population during 2–3 year periods. They concluded that both monitored sites were stable between 1987 and 1989, although Newman (1991) later reported that one monitored site was reduced to one nonflowering plant in 1991. Due to the propensity of *Spiranthes* to enter and remain in a vegetation state and the lack of new flowering plants at one monitoring site, overall population numbers are believed to be declining. McClaran and Sundt (1992) also speculated that population numbers may be declining.

Lilaeopsis schaffneriana spp. *recurva* is an herbaceous, semiaquatic perennial plant with slender, erect leaves that grow from creeping rhizomes. The leaves are cylindrical, hollow with no pith, and have septa (thin partitions) at regular intervals. The yellow-green or bright green leaves are generally 1–3 millimeters (mm) (0.04–0.12 in.) in diameter and often 3–5 centimeters (cm) tall (1–2 in.), but can reach up to 20 cm (8 in.) tall under favorable conditions. Three to 10 very small flowers are borne on an umbel that is always shorter than the leaves. The fruits are globose, 1.5–2 mm (0.06–0.08 in.) in diameter, and usually slightly longer than wide (Affolter 1985). The species reproduces sexually through flowering and asexually from rhizomes, the latter probably being the primary reproductive mode. An additional dispersal opportunity occurs as a result of the dislodging of clumps of plants, which then may reroot in a different site along aquatic systems.

Lilaeopsis schaffneriana spp. *recurva* was first described by A.W. Hill based on the type specimen collected near Tucson in 1881 (Hill 1926). Hill applied the name *Lilaeopsis recurva* to the specimen, and the name prevailed until Affolter (1985) revised the genus. Affolter applied the name *L. schaffneriana* ssp. *recurva* to plants found east of the continental divide.

Lilaeopsis has been documented from 22 sites in Santa Cruz, Cochise, and Pima counties, Arizona, and in adjacent Sonora, Mexico, west of the continental divide (Saucedo 1990, Warren *et al.* 1989, Warren *et al.* 1991, Warren and Reichenbacher 1991). The plant has been extirpated from 6 of the 22 sites. The 16 extant sites occur in 4 major watersheds—San Pedro River, Santa Cruz River, Rio Yaqui, and Rio Sonora. All sites are between 1,148–2,133 m (3,500–6,500 ft) elevation.

Nine *Lilaeopsis* populations occur in the San Pedro River watershed in Arizona and Sonora, on sites owned or managed by private landowners, Fort Huachuca Military Reservation, the Coronado National Forest, and the Bureau of Land Management's (BLM) Tucson District. Two extirpated populations in the upper San Pedro watershed occurred at Zinn Pond in St. David and the San Pedro River near St. David. Cienega-like habitats were probably common along the San Pedro River prior to 1900 (Hendrickson and Minckley 1984, Jackson *et al.* 1987), but these habitats are now largely gone. Surveys conducted for wildlife habitat assessment have found several discontinuous clumps of *Lilaeopsis* within the upper San Pedro River where habitat was present in 1996 prior to recent flooding (Mark Fredlake, Bureau of Land Management, pers. comm. 1996).

The four *Lilaeopsis* populations in the Santa Cruz watershed probably represent very small remnants of larger populations, which may have occurred in the extensive riparian and aquatic habitat formerly along the river. Before 1890, the spatially intermittent, perennial flows on the middle Santa Cruz River most likely provided a considerable amount of habitat for *Lilaeopsis* and other aquatic plants. The middle section of the Santa Cruz River mainstem is about a 130 km (80 mi) reach that flowed perennially from the Tubac area south to the U.S./Mexico border and intermittently from Tubac north to the Tucson area (Davis 1986). Davis (1982) quotes from the July 1855, descriptive journal entry of Julius Froebel while camped on the Santa Cruz River near Tucson: ''* * * rapid brook, clear as crystal, and full of aquatic plants, fish, and tortoises of various kinds, flowed through a small meadow covered with shrubs. * * *'' This habitat and species assemblage no longer occurs in the Tucson area. In the upper watershed of the middle Santa Cruz River, the species is now represented only by a single population in two short reaches of Sonoita Creek. A population at Monkey Spring in the upper watershed of the middle Santa Cruz River has been extirpated, although suitable habitat exists (Warren *et al.* 1991).

Two *Lilaeopsis* populations occur in the Rio Yaqui watershed. The species was recently discovered at Presa Cuquiarichi, in the Sierra de los Ajos, several miles east of Cananea, Sonora (Tom Deecken, Coronado National Forest, pers. comm. 1994). The species remains in small areas (generally less than 1 m^2 (10.8 ft^2) in Black Draw,

Cochise County, Arizona. Transplants from Black Draw have been successfully established in nearby wetlands and ponds. Recent renovation of House Pond on private land near Black Draw extirpated the *Lilaeopsis* population. A population in the Rio San Bernardino in Sonora was also recently extirpated (Gori *et al.* 1990). One *Lilaeopsis* population occurs in the Rio Sonora watershed at Ojo de Agua, a cienega in Sonora at the headwaters of the river (Saucedo 1990).

Lilaeopsis has an opportunistic strategy that ensures its survival in healthy riverine systems, cienegas, and springs. In upper watersheds that generally do not experience scouring floods, *Lilaeopsis* occurs in microsites where interspecific plant competition is low. At these sites, *Lilaeopsis* occurs on wetted soils interspersed with other plants at low density, along the periphery of the wetted channel, or in small openings in the understory. The upper Santa Cruz River and associated springs in the San Rafael Valley, where a population of *Lilaeopsis* occurs, is an example of a site that meets these conditions. The types of microsites required by *Lilaeopsis* were generally lost from the main stems of the San Pedro and Santa Cruz Rivers when channel entrenchment occurred in the late 1800's. Habitat on the upper San Pedro River is recovering, and *Lilaeopsis* has recently recolonized small reaches of the main channel.

In stream and river habitats, *Lilaeopsis* can occur in backwaters, side channels, and nearby springs. After a flood, *Lilaeopsis* can rapidly expand its population and occupy disturbed habitat until interspecific competition exceeds its tolerance. This response was recorded at Sonoita Creek in August 1988, when a scouring flood removed about 95 percent of the *Lilaeopsis* population (Gori *et al.* 1990). One year later, *Lilaeopsis* had recolonized the stream and was again co-dominant with watercress (*Rorippa nasturtium-aquaticum*) (Warren *et al.* 1991). The expansion and contraction of *Lilaeopsis* populations appears to depend on the presence of ''refugia'' where the species can escape the effects of scouring floods, a watershed that has an unaltered hydrograph, and a healthy riparian community that stabilizes the channel. Two patches of *Lilaeopsis* on the San Pedro River were lost during a winter flood in 1994 and had still not recolonized that area as of May of 1995, demonstrating the dynamic and often precarious nature of occurrences within a riparian system (Al Anderson, Grey Hawk Ranch, *in litt.* 1995).

Density of *Lilaeopsis* plants and size of populations fluctuate in response to both flood cycles and site characteristics. Some sites, such as Black Draw, have a few sparsely distributed clones, possibly due to the dense shade of the even-aged overstory of trees and deeply entrenched channel. The Sonoita Creek population occupies 14.5 percent of a 500.5 m^2 (5,385 ft^2) patch of habitat (Gori *et al.* 1990). Some populations are as small as 1–2 m^2 (11–22 ft^2). The Scotia Canyon population, by contrast, has dense mats of leaves. Scotia Canyon contains one of the larger *Lilaeopsis* populations, occupying about 57 percent of the 1,450 m (4,756 ft) perennial reach (Gori *et al.* 1990; Jim Abbott, Coronado National Forest, *in litt.* 1994).

While the extent of occupied habitat can be estimated, the number of individuals in each population is impossible to determine because of the intermeshing nature of the creeping rhizomes and the predominantly asexual mode of reproduction. A population of *Lilaeopsis* may be composed of one or many individuals.

Introduction of *Lilaeopsis* into ponds on the San Bernardino National Wildlife Refuge (Refuge) appears to be successful (Warren 1991). In 1991, *Lilaeopsis* was transplanted from Black Draw into new ponds and other Refuge wetlands. Transplants placed in areas with low plant density expanded rapidly (Warren 1991). In 1992, *Lilaeopsis* naturally colonized a pond created in 1991. However, as plant competition increased around the perimeter of the pond, the *Lilaeopsis* population decreased. This response seems to confirm observations (Kevin Cobble, San Bernardino National Wildlife Refuge, pers. comm. 1994; and Peter Warren, Arizona Nature Conservancy, pers. comm. 1993) that other species such as *Typha* sp. will outcompete *Lilaeopsis*.

The Sonora tiger salamander is a large salamander with a dark venter and light colored blotches, bars, or reticulation on a dark background. Snout/vent lengths of metamorphosed individuals vary from approximately 6.7 to 12.5 cm (2.6–4.9 in.) (Jones *et al.* 1988, Lowe 1954). Larval salamanders are aquatic with plume-like gills and well-developed tail fins (Behler and King 1980). Larvae hatched in the spring are large enough to metamorphose into terrestrial salamanders from late July to early September, but only an estimated 17 to 40 percent metamorphose annually. Remaining larvae mature into branchiates (aquatic and larval-like, but sexually mature salamanders that remain in the breeding pond) or over-winter as larvae (Collins and Jones 1987; James Collins, Arizona State University, pers. comm. 1993).

The Sonora tiger salamander was discovered in 1949 at the J.F. Jones Ranch stock tank in Parker Canyon, San Rafael Valley, Arizona (Reed 1951). Based on color patterns of metamorphosed animals, Lowe (1954) described the Sonora tiger salamander from southern Santa Cruz County, Arizona, as the subspecies *stebbinsi* of the broad-ranging tiger salamander (*Ambystoma tigrinum*). However, again based on color patterns, Gelhbach (1965, 1967) synonomized *Ambystoma tigrinum stebbinsi* and *Ambystoma tigrinum tahense* (from the Rocky Mountains region) with *Ambystoma tigrinum nebulosum* (from northern Arizona and New Mexico). Nevertheless, *Ambystoma tigrinum stebbinsi* continued to be recognized in the scientific literature (Jones *et al.* 1988).

Jones *et al.* (1988) found that Lowe's description of color patterns in *Ambystoma tigrinum stebbinsi* was only accurate for recently metamorphosed individuals. About 40 percent of metamorphosed adults exhibit a unique reticulate pattern, while 60 percent are marked with light colored blotches, spots, or bars on a dark background that is indistinguishable from *Ambystoma tigrinum mavortium*, found in the central United States and adjacent portions of Mexico (Jones *et al.* 1995). Starch gel electrophoresis of 21 presumptive gene loci of *Ambystoma tigrinum stebbinsi* were compared with gene loci of *Ambystoma rosaceum* (from Sonora), *Ambystoma tigrinum mavortium*, and *Ambystoma tigrinum nebulosum* (Jones *et al.* 1988). Based on this analysis, distinctive reticulate color patterns, low heterozygosity, and apparent geographic isolation, subspecific designation of *Ambystoma tigrinum stebbinsi* was considered warranted by Collins and Jones (1987) and Jones *et al.* (1988). Further analysis of mitochondrial DNA reaffirmed subspecific designation (Collins *et al.* 1988). Color pattern and allozyme data suggests that *Ambystoma tigrinum stebbinsi* is closely related to *Ambystoma tigrinum mavortium*; however, the *Ambystoma tigrinum stebbinsi* haplotype is derived from *Ambystoma tigrinum nebulosum*. The most likely explanation for these observations is that *Ambystoma tigrinum stebbinsi* arose from a hybridization between *Ambystoma tigrinum mavortium* and *Ambystoma tigrinum nebulosum* (Jones *et al.* 1995).

The grassland community of the San Rafael Valley and adjacent montane

slopes, where all extant populations of *Ambystoma tigrinum stebbinsi* occur, may represent a relict grassland and therefore a refugium for grassland species. Tiger salamanders in this area became isolated and, over time, genetically distinct from ancestral *Ambystoma tigrinum mavortium* and *Ambystoma tigrinum nebulosum* (Jones *et al.* 1995).

Based on color patterns and electrophoretic analysis, *Ambystoma* collected in Mexico at one site in Sonora and 17 sites in Chihuahua were all *Ambystoma rosaceum*, not *Ambystoma tigrinum stebbinsi* (Jones *et al.* 1988). Reanalysis of reported *Ambystoma tigrinum stebbinsi* collected in Sonora (Hansen and Tremper 1979) and at Yepomera, Chihuahua (Van Devender 1973) revealed that these specimens were actually *Ambystoma tigrinum rosaceum* (Jones *et al.* 1988).

Collins *et al.* (1988) list 18 sites for the Sonora tiger salamander. Additional extensive survey work from 1993 through 1996 revealed another 18 sites, for a total of 36 (Collins 1996; James Collins, Arizona State University, pers. comm. 1996). Salamanders tentatively identified as Sonora tiger salamanders also have been found at Portrero del Alamo at the Los Fresnos cienega in the headwaters of the San Pedro River, San Rafael Valley, Sonora, Mexico (Sally Stefferud, U.S. Fish and Wildlife Service, pers. comm. 1993) and at the lower Peterson Ranch Tank in Scotia Canyon, Cochise County, Arizona. No salamanders have been observed in recent visits to Scotia Canyon (Service files, Phoenix, AZ; James Collins, pers. comm. 1996); thus, this population may be extirpated. A single terrestrial Sonora tiger salamander was found near Oak Spring in Copper Canyon of the Huachuca Mountains (Jeff Howland, Arizona Game and Fish Department pers. comm. 1993). This individual likely moved to this site from a population at the ''Game and Fish Tank'' located approximately 1 km (0.6 mi) to the southwest.

All sites where Sonora tiger salamanders have been found are located in the Santa Cruz and San Pedro river drainages, including sites in the San Rafael Valley and adjacent portions of the Patagonia and Huachuca mountains in Santa Cruz and Cochise counties, Arizona. All confirmed historical and extant aquatic populations are found in cattle tanks or impounded cienegas within 31 km (19 mi) of Lochiel, Arizona. If the Los Fresnos population is the subspecies, *stebbinsi*, it is the only population known to occur in a cienega. Historically, the Sonora tiger salamander probably inhabited springs, cienegas, and possibly backwater pools where permanent or nearly permanent water allowed survival of mature branchiates.

A total of 79 aquatic sites in the San Rafael Valley and adjacent slopes of the Huachuca and Patagonia mountains have been surveyed for salamanders (Collins and Jones 1987, Collins 1996, James Collins, pers. comm. 1996). These include most potential aquatic habitats on public lands. However, private lands in the center of the San Rafael Valley have not been surveyed intensively.

Thirty sites in northeastern Sonora and 26 sites in northwestern Chihuahua, Mexico, were surveyed by Collins and Jones (1987). No Sonora tiger salamanders were found at these sites. *Ambystoma rosaceum* and *Ambystoma tigrinum velasci* occur at localities in Sonora and Chihuahua to the south and east of the extant range of the Sonora tiger salamander (Collins 1979, Collins and Jones 1987, Van Devender and Lowe 1977). *Ambystoma tigrinum mavortium* occurs at scattered localities to the east in the San Pedro, Sulphur Springs, and San Simon valleys of Arizona (Collins and Jones 1987), but at least some of these populations were introduced by anglers and bait collectors (Collins 1981, Lowe 1954, Nickerson and Mays 1969).

Populations are dynamic. In particular, drought and disease periodically extirpate or greatly reduce populations. Several tanks supporting aquatic populations went dry during drought in 1994 and again in 1996. As tanks dry out, some larval and branchiate salamanders metamorphose and leave the tanks; others desiccate and die. Disease killed all aquatic salamanders at least three sites in 1985 (Collins *et al.* 1988), and also was evident in aquatic populations at seven tanks in 1995–1996 (James Collins, pers. comm. 1996). Tanks in which salamanders have been eliminated may be recolonized through reproduction by terrestrial metamorphs. Drying of tanks also may eliminate nonnative predators and create sites suitable for salamander colonization.

Because populations are dynamic, the number and location of extant aquatic populations change over time, as exhibited by the differences between survey results in 1985 and 1993–1996 (Collins and Jones 1987; Collins 1996; James Collins, pers. comm. 1996). Determining whether a population is extant is problematic. If numbers are low, salamanders may not be detected during sampling. Also, aquatic salamanders may have been recently eliminated due to drought or disease, but terrestrial salamanders may be present in the area. Of the 36 sites where aquatic Sonora tiger salamanders were recorded since the mid or early 1980's and no salamanders have been found at 4 tanks during the last 3 visits from 1993 to 1996. Salamanders were probably extirpated from these sites. Salamanders also were found to be extirpated from the J.F. Jones Ranch Tank, the type locality (Collins and Jones 1987). Salamanders have not been found during the last three visits from 1993 through 1996 at five other tanks. Salamanders may be extirpated from these sites. Another three sites where salamanders were found from 1980 to 1983 have not been surveyed since that time. The status of populations at these tanks is unknown. At the remaining 23 tanks, salamanders have been found during 1 or more of the last 3 visits from 1993 through 1996. These populations are probably extant.

Populations of aquatic salamanders include as many as several hundred individuals. However, 10 or more salamanders in any 1 visit were found at only 16 of 32 occupied sites examined by Collins from 1993 through 1996 (James Collins, pers. comm. 1996). Large, reproducing populations of Sonora tiger salamanders were more concentrated in the southeastern portion of the San Rafael Valley in the 1990's as compared to the 1980's. Sampling during 1993–1996 revealed few populations and low numbers of salamanders in the northern portion of the valley (Collins 1996).

A variety of factors threaten the Sonora tiger salamander. Disease and predation by introduced nonnative fishes and bullfrogs (*Rana catesbeiana*) are probably the most serious and immediate threats, both of which have been implicated in the elimination of aquatic populations (Collins and Jones 1987, Collins 1996). Tiger salamanders also are widely used in Arizona as fishing bait, and this use poses additional threats. Other subspecies of tiger salamander introduced into habitats of the Sonora tiger salamander for bait propagation or by anglers could, through interbreeding, genetically swamp distinct *Ambystoma tigrinum stebbinsi* populations (Collins and Jones 1987, Collins 1996). Collecting Sonora tiger salamanders for bait could extirpate or greatly reduce populations. Furthermore, moving of salamanders among tanks by anglers or bait collectors also could transmit disease. Additional threats include habitat destruction, reduced fitness resulting from low genetic heterozygosity, and increased probability of chance extirpation characteristic of small populations.

Previous Federal Actions

Federal government action on *Spiranthes delitescens, Lilaeopsis schaffneriana* ssp. *recurva,* and Sonora tiger salamander began with their inclusion in various Service notices of review for listing as endangered or threatened species. The Sonora tiger salamander was included as a category 2 candidate in the first notice of review of vertebrate wildlife (December 30, 1982; 47 FR 58454), and in subsequent notices published September 18, 1985 (50 FR 37958) and January 6, 1989 (54 FR 554). Category 2 candidates were those species for which the Service had some evidence of vulnerability, but for which there was insufficient scientific and commercial information to support a proposed rule to list them as threatened or endangered. In notices of review published November 21, 1991 (56 FR 58804) and November 15, 1994 (59 FR 58982), the Sonora tiger salamander was included as a category 1 candidate. Category 1 includes those taxa for which the Service has sufficient information to support proposed rules to list them as threatened or endangered.

Lilaeopsis schaffneriana ssp. *recurva,* then under the name *L. recurva,* was included as a category 2 candidate in the November 28, 1983 (45 FR 82480) and September 27, 1985 (50 FR 39526) plant notices. It was included as a category 1 candidate in the February 21, 1990 (55 FR 6184) and September 30, 1993 (58 FR 51144) notices. *Spiranthes delitescens* was included as a category 1 candidate in the September 30, 1993, plant notice.

On June 3, 1993, the Department of the Interior, Washington, D.C., received three petitions, dated May 31, 1993, from a coalition of conservation organizations (Suckling et al. 1993). The petitioners requested the listing of *Spiranthes, Lilaeopsis,* and the Sonora tiger salamander as endangered species pursuant to the Act. On December 14, 1993, the Service published a notice of three 90-day findings that the petitions presented substantial information indicating that listing these three species may be warranted, and requested public comments and biological data on the status of the species (58 FR 65325). On April 3, 1995, the Service published a proposal (60 FR 16836) to list *Spiranthes, Lilaeopsis,* and the Sonora tiger salamander as endangered species, and again requested public comments and biological data on their status.

The processing of this final listing rule conforms with the Service's Final Listing Priority Guidance for Fiscal Year 1997, published on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings following two related events, the lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2.

Summary of Comments and Recommendations

In the April 3, 1995, proposed rule (60 FR 16836) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. The original comment period closed June 2, 1995, then was reopened from June 24, 1995, to July 24, 1995 (60 FR 32483), and again from September 11, 1995, to October 27, 1995 (60 FR 47340). Appropriate State agencies and representatives, County and City governments, Federal agencies and representatives, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper/media notices inviting public comment were published in the following newspapers—Arizona Daily Star, Arizona Republic, Bisbee Daily Review, Eastern Arizona Courier, Environmental Network News, Green Valley News/Sun, Nogales International, Sierra Vista Herald-Dispatch, The Phoenix Gazette, The Weekly Bulletin, Tombstone Tumbleweed, and Tucson Citizen. The inclusive dates of publications were April 20 and 21, 1995, for the initial comment period; and June 28 to July 4, 1995, and September 15, 1995, to September 20, 1995, for the first and second public hearings and reopening of the comment period, respectively.

In response to requests from the public, the Service held two public hearings. Notices of hearing dates and locations were published in the Federal Register on June 22, 1995 (60 FR 32483) and September 12, 1995 (60 FR 47340). Appropriate State agencies and representatives, County and City governments, Federal agencies and representatives, scientific organizations, and other interested parties were contacted regarding the hearings. Approximately 790 people attended the hearings, including approximately 90 people at a July 13, 1995, hearing in Patagonia, Arizona; and 700 at a September 27, 1995, hearing in Sierra Vista, Arizona. Transcripts of these hearings are available for inspection (see **ADDRESSES**).

A total of 229 written comment letters were received—40 supported the proposed listing, 164 opposed listing, and 25 others commented on information in the proposed rule but expressed neither support nor opposition, provided additional information only, or were nonsubstantive or irrelevant to the proposed listing. Oral comments were received from 51 parties at the hearings—11 supported listing, 20 opposed listing, and 20 expressed neither support nor opposition, provided additional information only, or were nonsubstantive or irrelevant to the listing. In total, oral or written comments were received from 4 Federal and State agencies and officials, 14 local officials, and 262 private organizations, companies, and individuals. All comments, both oral and written, received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into a number of general issues. The Service's response to each comment is discussed below.

Issue 1: Other processes, especially conservation agreements in lieu of listing, could be more effective at protecting these species, and would impose fewer regulations and restrictions on land use as compared to Federal listing. Also, additional steps or processes, particularly closer working relationships among the Service, local governments, and landowners, should be incorporated into the listing process.

Comment: Several commenters suggested preparing a conservation agreement among the Service, other Federal agencies, State agencies, local governments, and private landowners, in lieu of listing one or more of the three species. Environmental education is needed to raise local awareness of the plight of these species. A cooperative research and conservation program should be developed. Possible components of the cooperative effort could include conservation easements, or landowners could apply for membership in Oregon Stronghold, a corporation dedicated to conservation practices on private land.

Service Response: The Service considered conservation agreements in lieu of listing for all three species. Discussions with the Coronado National

Forest, Fort Huachuca, and AGFD on development of a conservation agreement for the Sonora tiger salamander began in September 1995. Meetings were held November 28, 1995 and January 24, 1996, among landowners, Fort Huachuca, the Coronado National Forest, experts on the salamander, and the Service to discuss development of the agreement. The participants in the meetings and discussions, including the Service, generally agreed that a properly crafted and promptly-implemented conservation agreement could provide for the long-term viability of the species.

In May 1996, the Service wrote all 13 private landowners within the range of the salamander to solicit their participation. Only two landowners have agreed to participate, and only one is known to have salamander populations on their property. These populations are on lands proposed for exchange to the Coronado National Forest. The Service estimates that approximately 31 percent of the range of the salamander are owned by individuals not currently interested in participating in a conservation agreement. Because a limited conservation agreement would not protect the species throughout its range, and because no conservation actions have actually been developed or implemented, these efforts are inadequate to preclude listing. However, the Service will continue to work with and encourages the participation of any interested parties in the conservation of this species.

No interest in the development of a conservation agreement for *Spiranthes* was expressed by the owners of the species' habitat. Some interest in the development of a conservation agreement for *Lilaeopsis* was expressed; however, only a few sites would have been protected leaving the majority of the populations unprotected. Additionally, the complex nature of the water issues involving *Lilaeopsis* made it difficult for the Service to assure the few interested parties that listing would necessarily be precluded through a conservation plan. This lack of assurance was unacceptable to one of the Federal agencies. Currently, Fort Huachuca is the only Federal entity working on a conservation plan for *Lilaeopsis*. This plan would be part of a larger land use plan.

Comment: One commenter stated that the Service was trying to coerce private landowners into compliance with the Act through the use of conservation agreements. This commenter also stated that the Service was, through the use of conservation agreements, attempting to halt all ranching, farming, mining, logging, surface water diversion, groundwater pumping, and urban development, without the due process of listing the species. This commenter believed this was an attempt by the Service to gain greater control over activities on private lands. This commenter also stated that the purpose for the inclusion of the Sonora tiger salamander in the cienega species listing package was to provide a means for regulatory action on private lands for the two plants.

Service Response: Conservation agreements are voluntary plans for the conservation and recovery of species. They can preclude the need to list species by removing threats. However, any actions developed and implemented are a result of discussion and concurrence of all parties to the agreement. If decisions were made to halt or limit ranching, groundwater pumping, or other activities, these commitments would be made by the property owners and managers where these activities occur. If such commitments were unacceptable to one or more parties, they would have the option not to sign the agreement and not implement such activities. The Service characterizes conservation agreements as positive opportunities for landowners and managers to voluntarily take actions to conserve species being considered for listing and alleviate the need for listing and any resulting regulatory requirements.

The Service and other possible agencies in conservation agreements administer programs to fund and assist landowners in the implementation of conservation actions. The salamander is not known to occur with *Lilaeopsis* or *Spiranthes*, with the possible exceptions of Scotia Canyon and Los Fresnos. However, the salamanders at these sites have not been identified to subspecies. Because the salamander generally does not occur with the plants, regulatory protection afforded the salamander would have no effect on the plants.

Comment: Several commenters recommended that the Service comply with a resolution adopted by the National Association of Counties and the Arizona County Supervisors Association in regard to implementation of the Act. The ''Resolution on Amending the Endangered Species Act'' recommends increased participation of counties in species conservation, prelisting activities, listing and recovery decisions; analysis of economic, social and cultural impacts of listing; consultation with and compensation to affected landowners; and other provisions. Local governments should decide if species should be listed. Listing should be decided by a vote of the residents of Cochise County.

Service Response: Section 4(a) of the Act clearly assigns the responsibility of making listing decisions to the Secretaries of the Interior and Commerce, not to local governments or a voting body. However, in making those decisions, the Secretaries are required to take into account conservation actions (section 4(b)(1)(A)), notify and invite comment from states, counties, and others on the proposed rules (section 4(b)(5)), hold one public hearing on the proposed rule, if requested (section 4(b)(5)(E)), and take other steps to ensure that the concerns of local governments, citizens, and others are considered in the listing decision. The Service appreciates the concern of local governments and citizens of southeastern Arizona in regard to this and other listings. The Service will work closely with residents and officials in the management and recovery of these species.

Comment: One commenter stated that beaver reintroduction on the upper San Pedro River, proposed by AGFD and the BLM, would create pond and marsh habitat for *Lilaeopsis* and make listing unnecessary.

Service Response: The potential effects of beaver reintroduction on the upper San Pedro River have not been fully analyzed as yet; however, it is possible that a successful reintroduction could create pond and marsh habitats. While a successful reintroduction may provide increased habitat for *Lilaeopsis*, this action alone does not remove the complex threats necessitating listing *Lilaeopsis* as endangered. Water issues on the San Pedro River are discussed later in this rule. Additionally, *Lilaeopsis* has not shown an ability to successfully compete with many aquatic plant species. *Lilaeopsis* may be able to opportunistically colonize such habitats early in their development; however, other plant species may dominate the habitat at later stages in the absence of some mild disturbance holding the system in an early seral stage.

Comment: One commenter suggested planning efforts for the San Rafael Valley could be used to conserve these species.

Service Response: The Coronado National Forest has produced a draft Lone Mountain Ecosystem Plan and discussions are underway to develop ecosystem plans for other portions of the San Rafael Valley. The Service has participated in these planning efforts and believes that they have a potential to contribute to recovery of the Sonora tiger salamander, *Lilaeopsis*, and

perhaps *Spiranthes.* However, these plans have yet to be finalized and potential benefits of these planning efforts have not yet been realized. Thus, these efforts have not yet affected the status of the species. The Service will continue to work with landowners and managers in the San Rafael Valley on conservation actions. These actions are expected to contribute to recovery.

Comment: One commenter stated that *Spiranthes* is and can be propagated in botanical gardens. Growing the species in gardens should be pursued, rather than Federal listing. It might be more cost-effective to propagate the species and introduce them into a beneficial environment. Another commenter stated that *Lilaeopsis* could not be an endangered species since it could be successfully transplanted.

Service Response: The Service places priority on conservation of species in the wild rather than pursuing horticultural programs for species. The cultivation of plants with subsequent outplanting may be done for reintroduction purposes; however, that type of activity alone does not provide for conservation or recovery of a species, nor does it address the habitat modification or destruction threats to a species. The listing of a species is not evaluated on cost-effectiveness, but on the best available scientific and commercial data available. The ability to transplant a species has no bearing as to whether or not that species warrants listing.

Comment: One commenter stated that Arizona Department of Water Resources (1991) found that 50 percent of the water available in the San Pedro basin is used by riparian vegetation. The commenter stated that if the BLM would remove 60 percent of the trees in the basin, there would be ample water to supply the needs of these three species and many others.

Service Response: Clearing of riparian vegetation would be counter to the purposes of the San Pedro River Riparian National Conservation Area. In the legislation establishing the Conservation Area, the BLM was charged with conservation, protection, and enhancement of the riparian area. To clear the riparian vegetation for water salvage would counter a Congressional mandate. As noted in Stromberg *et al.* (1996), Bock and Bock (1986), McQueen and Miller (1972), Yavitt and Smith (1983), and Dawson (1993), trees in a riparian system provide for increased soil fertility and increased soil moisture as a result of hydraulic lift and serve to temper environmental extremes such as temperature. This function of the overstory in a riparian system is likely to benefit *Lilaeopsis.* Therefore, the removal of this system component could result in the loss of *Lilaeopsis* from the riparian area once the soil fertility and moisture levels drop and temperature extremes occur. In addition, riparian ecosystems are extremely important to numerous other species. Removal of large numbers of trees would damage other species' habitat and would not be a viable conservation measure.

Comment: One commenter asked why the Service placed plants on the Endangered Species list if the Act does not apply to plants on private lands.

Service Response: Under the Act private landowners have essentially no responsibilities regarding conservation or management of endangered plants located on their property; however, the Act provides for consultation by Federal entities under section 7 of the Act if their actions may affect a listed plant, regardless of whether that plant occurs on private or Federal lands. Therefore, while a private landowner may not have responsibility to protect, conserve, or manage for a listed plant, a Federal action agency is responsible if an action it authorizes, funds, or carries out may affect a listed species or its critical habitat.

Issue 2: Critical habitat should be proposed and designated for one or more of the three species. The Service did not comply with its own regulations when proposal of critical habitat was found to be not determinable for the Sonora tiger salamander and *Lilaeopsis.* Critical habitat designation is necessary to protect the habitat of these species.

Comment: Several commenters stated that the Service failed to follow its own regulations by not proposing critical habitat for all three species in the proposed rule. Another commenter requested we reissue the proposed rule with critical habitat proposed for all three species, all areas known to be occupied by the species, all historical habitat, and all areas that could be restored and reoccupied by the species.

Service Response: The Service's position on critical habitat for these species is detailed in the ''Critical Habitat'' section of this final rule.

Comment: One commenter stated that collecting is a relatively minor threat compared to other factors that threaten the survival and recovery of *Spiranthes;* thus the benefits of critical habitat outweigh the costs and critical habitat should be proposed. Another commenter was concerned that protection of *Spiranthes* and its habitat would be impossible without critical habitat designation. This commenter was concerned that there would be a potential threat to *Spiranthes* from continued livestock grazing of cienega habitats.

Service Response: The Service does not believe this potential benefit of critical habitat designation outweighs the threat of collection given the extreme rarity of this orchid. Due to this species' cryptic nature, potential threats or impacts to its habitat would be addressed within the consultation process. As this is a plant species provided with a different, and lesser protection than an animal, pursuant to section 9 of the Act, the Service would not address continued use of a cienega as part of a livestock operation, except through the consultation process, regardless of whether critical habitat were designated or not. Additionally, preliminary indications are that *Spiranthes* may benefit from a responsible land management plan involving light disturbance from grazing.

Comment: Several commenters stated that habitat and species protection and recovery afforded through consultation in accordance with section 7 of the Act would be inadequate without critical habitat designation.

Service Response: Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Secretaries of the Interior and Commerce, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. It is the opinion of the Service that the designation of critical habitat for these three species would not be beneficial and therefore, not prudent.

Issue 3: Economic, social, and cultural impacts of listing need to be evaluated and considered in the listing process.

Comment: Several commenters requested that the Service study the indirect and direct economic, social, and/or cultural effects of listing these three species. Concern was expressed that listing of the species would affect use and value of private property, result in increased taxes and reduced investment in the local community, and adversely affect grazing permittees on state and Federal lands. Some commenters stated that the results of this analysis should be weighed with threats, status, and other listing factors in determining whether these species should be listed.

Service Response: 50 CFR 424.11(b) requires the Secretaries of the Interior and Commerce to make decisions on listing based on ''the best available scientific and commercial information regarding a species' status, without

reference to possible economic or other impacts of such determination.'' The Service has determined that the designation of critical habitat for these three species is not prudent.

Comment: One commenter stated that the listing and establishment of critical habitat would give the Federal government control over water use where the species occur. This commenter also stated that the species and their critical habitat would be given a higher priority than humans in a drought situation.

Service Response: Federal actions, such as groundwater use by Fort Huachuca or actions by the BLM that may alter San Pedro River flows or hydrology, would be subject to the section 7 consultation process, which may result in changes to proposed actions to avoid jeopardizing the continued existence of a listed species. (For further discussion, see the ''Available Conservation Measures'' section of this final rule.) Private actions would generally be exempt from the regulatory provisions of the Act, unless Federal funds or authorization are needed, or if the action would result in the taking of a Sonora tiger salamander. In the latter case, a private party could seek a section 10(a)(1)(B) incidental take permit to legally take salamanders incidental to otherwise lawful activities. The Service is not proposing or designating critical habitat in this rule. Designation of critical habitat for these three species was determined to be not prudent (see ''Critical Habitat'' section).

Comment: One commenter stated that the listing of these species would eliminate mineral exploration and exploitation in the unique and rare Cananea geologic trend.

Service Response: The Service assumes the commenter refers to mineralization, particularly copper deposits, in the quartz/monzonite/porphyry/copper deposit belt in southeastern Arizona, southwestern New Mexico, and adjacent portions of Mexico, including the copper deposits near Cananea, Sonora. As discussed elsewhere herein, if mining activities involved a discretionary Federal action, that action would be subject to section 7 consultation. For instance, consultation could result in modifications to mining plans of operation. Prospecting and mining of hardrock minerals, such as copper, on Federal lands is governed by the Mining Act of 1872 (16 U.S.C. 21 *et seq.*). Under this law, Federal agencies have limited discretion over mining activities. Thus, many activities would not be subject to section 7 consultation. If mining might result in the taking of a Sonora tiger salamander, this take could be permitted through the incidental take statement in a section 7 consultation for Federal actions, or through a section 10(a)(1)(B) permit for private actions. The listing would not affect mining activities in Mexico. The Service is unaware of any current or proposed copper mines or other mineral mines in the quartz/monzonite/porphyry/copper deposit belt in Arizona or New Mexico that may affect any of the three species. These listings would not eliminate mineral exploration and exploitation of the quartz/monzonite/porphyry/copper deposit belt.

Comment: One commenter stated that the impact of this listing would decimate the Babacomari Ranch's historical livestock operation along the Babacomari River and would eliminate this viable agricultural enterprise.

Service Response: Involvement with the Service regarding operation of this ranch would only occur within the context of the consultation process if a Federal action agency were to fund, authorize, or carry out an activity related to the operation of the ranch, or if the ranch owners wished to work with the Service on voluntary conservation actions. While the Service does not analyze economic effects of a listing action, it is not anticipated that the listing of *Spiranthes* will have an adverse effect on the ranching operations.

Comment: Commenters stated that the Service intends to close Fort Huachuca and undermine the local economy and well-being of citizens with these listings. The listings will result in a cessation of Federal highway funds and home mortgages in Sierra Vista. Another commenter stated that the proposed listing of these three species was an attempt to halt growth, grazing, and multiple use of public and private lands. One commenter reported hearsay that it was the intent of the Service to control the water and lives of the people with this listing, which is an inappropriate purpose of the listing process.

Service Response: The purpose of these listings is to extend the protection of the Act to the Sonora tiger salamander, *Lilaeopsis*, and *Spiranthes*. This protection does not authorize the Service to close Fort Huachuca or assert jurisdiction over water rights, and the Service does not anticipate significant impacts to local economies or to the well-being of citizens. As described in ''Available Conservation Measures'' herein, with the promulgation of this rule, Federal agencies, including Fort Huachuca and those that administer Federal highway funds and Federal loans, will be required to comply with section 7 of the Act to ensure their activities do not jeopardize the continued existence of these species. Consultations with Federal agencies, such as the Coronado National Forest, Fort Huachuca, and others, may result in changes to proposed actions that are at the discretion of the action agency. For instance, in accordance with section 7, the Coronado National Forest has conferenced with the Service on proposed reissuance of several grazing permits within the range of the Sonora tiger salamander. The Service has recommended that the Forest develop and implement stock tank management plans for tanks supporting salamanders. These plans would include timing maintenance activities to reduce effects to salamanders, minimizing removal or damage to bankline cover, adding brush and logs for cover, restricting access by cattle to selected tanks or portions of tanks, public information, and monitoring and periodic removal of nonnative predators. Similar outcomes are expected from future formal section 7 consultations for all three species. Further discussion of water issues are addressed in the following comments.

Comment: One commenter stated that a moratorium on the pumping of groundwater would be financially devastating to families.

Service Response: As discussed elsewhere, pumping of groundwater or other actions by private individuals on private lands would not be affected by this listing, with the possible exception of groundwater pumping that would drain a stock tank occupied by Sonora tiger salamanders and result in taking, or other activities that might result in the taking of salamanders. The Service is unaware of any planned or ongoing groundwater pumping anywhere within the range of the Sonora tiger salamander that would result in taking. If such an action were proposed, the proponent could seek authorization from the Service for an incidental take permit. If groundwater pumping involves a Federal authorization, funding, or other discretionary Federal action, that pumping would be subject to section 7 consultation if the action may affect a listed species.

Comment: One commenter noted that the listing of these species will complicate the issues surrounding the general adjudication. In particular, this commenter believed it would add another obstacle to reaching a negotiated settlement of some water rights with Federal agencies.

Service Response: A general adjudication of water rights in the Gila River system and its source is

underway, pursuant to Arizona Revised Statutes 45–251 to 45–260. This adjudication includes the San Pedro River watershed. Major water rights holders, particularly in the Sierra Vista subwatershed (in the river's watershed from Fairbank to the international border), are attempting to negotiate a settlement agreement. Listing of these three species would not directly affect water rights. Uses of water may be subject to section 7 consultation if such use involves a discretionary Federal action. Subsequent enforcement actions in regard to take of Sonora tiger salamanders could potentially also result in the modification or cessation of water use at specific sites, but the salamander occurs almost exclusively outside of the subwatershed. Although water rights are not directly affected by these listings, the Service agrees that listing could be a factor in the issues surrounding the settlement negotiations. The Service is involved in the negotiations and is likely to be a party to any settlement agreement. Compliance with the Act in regard to water use may be addressed in the agreement, and thus could provide a framework for addressing endangered species issues to which all parties to the agreement would have input. Of the three species listed, only *Lilaeopsis* is well-represented in the subwatershed.

Comment: One commenter stated that, as a result of this listing, the section 7 consultation process will add time and expense to any urbanization project.

Service Response: If a Federal agency is involved in urbanization, it would need to evaluate its actions and possible effects on listed species. The Service is required to deliver a biological opinion, which concludes consultation, to the action agency within 135 days of receipt of a request for consultation (50 CFR 402.14(e)). If the action agency incorporates consultation into their planning process and consultation is initiated early, project delays are unlikely. Some additional costs may accrue resulting from meetings with the Service, preparation of documents, and implementation of any reasonable and prudent alternatives or measures in the biological opinion. Private actions that do not require Federal funds, actions, or authorization, such as a private individual building a house with private funds, are not subject to section 7.

Issue 4: Information presented in the proposed rule was insufficient to support listing or was in error.

Comment: Several commenters stated that the status and population trends of *Spiranthes* cannot be determined because population size is unknown and cannot be accurately determined because an unknown percentage of plants are dormant and nonflowering plants are difficult to find.

Service Response: While the Service believes that additional long-term studies are needed to more accurately determine the stability of *Spiranthes* populations, data as a result of monitoring suggest that the populations may be declining based on the tendency of plants to remain in a nonflowering state, the low numbers of new flowering plants, and the reduction to a single nonflowering individual at one site in 1991 (McClaren and Sundt 1992, Newman 1991). The definitive answers on population biology that the commenters believe necessary would involve destructive methodology in order to determine the exact number of plants and percentages of absent individuals. Such a destructive methodology would be devastating to an extremely rare species such as this one and could result in the extirpation of some populations. Mark Fishbein (University of Arizona, *in litt.* 1996), a researcher who has studied *Spiranthes* extensively, notes that the life history of this species provides difficulties in censusing; however, years of observation have enabled him to estimate the total number of individuals at somewhere below 5,000, and perhaps less than 2,000.

Comment: Several commenters stated that surveys for the Sonora tiger salamander have not been extensive enough to adequately determine its status. Many potential habitat sites on private lands have not been surveyed and the taxonomy of salamanders found in adjacent portions of Sonora needs to be clarified. The recent discovery of a population at Fort Huachuca suggests the range of the species may be greater than originally thought. The salamander is thriving in stock tanks.

Service Response: Additional survey work conducted since the proposed rule was published further clarifies the status of the Sonora tiger salamander (Collins 1996) and is summarized in ''Background'' and ''Summary of Factors Affecting the Species.'' As of late 1995, Dr. James Collins (Arizona State University) and Tom Jones (Grand Canyon University) (pers. comm. 1995) estimated that roughly 75 percent of public lands within the range of the salamander had been surveyed. Additional extensive surveys occurred in 1996. Surveys of private lands, most of which are in the center of the San Rafael Valley on the historic San Rafael de la Zanja land grant and comprise about 31 percent of the range of the salamander, have been sporadic and incomplete. The Service estimates that perhaps 60 percent of lands within the range of the salamander have been thoroughly surveyed. If we consider the 23 sites where salamanders have been found during one or more of the last three visits from 1993 through 1996 as extant populations, and if breeding populations occur on unsurveyed lands in a density similar to surveyed lands, then conceivably as many as 35 to 40 ''extant'' breeding populations could exist in Arizona. Regardless, a limited geographic range, very limited breeding habitat, and threats to the species described herein warrant protection as an endangered species.

The Service agrees that the taxonomy of the tiger salamander population at Los Fresnos in Sonora should be clarified; however, presence of Sonora tiger salamanders at this site is not unexpected (the salamander locality at Los Fresnos is within 1.3 mi (2.2 km) of the international boundary and 2.2 mi (3.6 km) of three extant localities in Arizona). The recently discovered population at Fort Huachuca also is not unexpected. It is approximately 1.4 mi (2.2 km) west of a salamander locality (presumed to be the Sonora tiger salamander) in Scotia Canyon. Neither of these new populations constitute significant range extensions, or lead the Service to believe that the range of the salamander is much greater than indicated in the proposed rule. Other potential habitats have been surveyed outside of the known range in Arizona and Sonora, but no Sonora tiger salamanders have been found (Collins and Jones 1987).

The Service disagrees with the general statement that the salamander is thriving in stock tanks. Many tanks within the range of the salamander are occupied by nonnative predatory fish that eliminate salamander populations and prevent colonization by salamanders. Bullfrogs, which also prey on salamanders, are well-established in the San Rafael Valley and have become more widely distributed since 1985 (Collins 1996). Virtually no recruitment of salamanders was noted by Collins (1996) during his surveys in 1993–1994. Furthermore, disease killed all aquatic salamanders at 3 tanks in the 1980's and recently killed salamanders at 7 tanks, and less than 10 salamanders were found during any 1 visit at 16 of 32 sites surveyed from 1993 through 1996 (James Collins, pers. comm. 1996).

Comment: Commenters stated that data are inadequate to determine the status of any of the three species. The information upon which the proposed listing is based is subjective and premised by qualifiers such as ''might be,'' ''may,'' etc. One commenter stated

that presumptions rather than science were the basis for listing. The same information could be interpreted that the species are not endangered.

Service Response: All three species are of very limited distribution and occupy very limited and sensitive aquatic habitats. The reasons for their limited distributions are not fully understood; however, the Service has attempted to describe all known and potential threats to the species in the proposed and final rules. Potential threats are described as possibly affecting the species and are treated as uncertainties, with qualifiers such as ''may'' and ''might be.'' Despite these uncertainties, sufficient surveys have been conducted to adequately assess the current status of the species and whether they warrant listing. The Service makes listing determinations on the basis of the best scientific and commercial data available as required under section 4(b)(1)(A) of the Act.

Comment: One commenter stated that the status of the species cannot be determined without further study and survey in Mexico.

Service Response: Collins and Jones (1987) surveyed 30 sites in northeastern Sonora and 26 sites along the eastern slope of the Sierra Madre Occidental in northwestern Chihuahua without locating Sonora tiger salamanders. Other researchers have conducted casual surveys for salamanders in northern Sonora as well, without finding Sonora tiger salamanders, with the exception of the tiger salamander population of unknown subspecies at Los Fresnos. The Service believes that if the salamander occurs in Sonora, it probably has a limited distribution and occurs at very few sites. The species is most likely to occur in tanks or cienegas near the international boundary in the Sonoran portion of the San Rafael Valley.

Three populations of *Lilaeopsis* are known from Sonora (Warren, *et al.* 1991); however, recent efforts have failed to locate additional populations of this subspecies. Mark Fishbein (University of Arizona, *in litt.* 1995) has conducted extensive floristic surveys of the Sierra de los Ajos (site of one recently-discovered *Lilaeopsis* population reported herein) and believes the potential for additional new populations in that region to be low, although not all potential habitat for the species has been surveyed. Fishbein also notes that threats to wetland habitats in Mexico are similar to those in Arizona and, therefore, *Lilaeopsis* is probably as rare and threatened there as it is in Arizona.

Surveys for *Spiranthes* species in Mexico have not located populations of *Spiranthes delitescens*. While Sheviak (1990) noted that P.M. Catling had not found *Spiranthes delitescens* in his work in Mexico, Sheviak still believed that the species likely occurred in Mexico at that time. Recently, Charles Sheviak (University of New York at Albany, *in litt.* 1995) stated that the species appears '' * * * to be very restricted and critically rare.'' Jones, *et al.* (1995), in a discussion on the phylogenetic origins and taxonomy of the Sonora tiger salamander, also note the unique occurrences of *Spiranthes* and the Huachuca springsnail (*Pyrgulopsis thompsoni*) within the San Rafael Valley. Sheviak (*in litt.* 1995) noted in reference to this publication that it ''* * * suggests that this restricted distribution is real and the result of biogeographic processes that have produced a suite of similarly restricted organisms.''

Comment: One commenter stated that *Lilaeopsis* populations are increasing, thus endangered status is not warranted.

Service Response: The size of *Lilaeopsis* populations fluctuate depending on flood cycles, refugia, habitat availability, and interspecific competition. Since publication of the proposed rule, some populations of *Lilaeopsis* have been found to be more extensive in their aquatic systems, i.e. scattered throughout a canyon system or in upstream tributaries; however, only one new population has been found. The other populations to which the commenter is referring are actually new areas of clumps of plants within a larger, connected system already known to contain *Lilaeopsis*. Probably the most extensive expansion of *Lilaeopsis* in a system has been within the upper San Pedro River. At the time of the proposed rule, the Service only knew of two springs along the San Pedro River containing *Lilaeopsis*. Mark Fredlake (BLM, pers. comm. 1996) documented 43 scattered patches of plants in the upper San Pedro River prior to the 1996 monsoon floods. Regardless of this information, the Service has not seen a reduction in threats to *Lilaeopsis*. Past and present habitat modification and destruction are significant issues in the Service decision to list *Lilaeopsis* as endangered.

Comment: Spiranthes is not endangered. It has existed for years on mostly Federal grazing lands that have been well-managed by permittees.

Service Response: With the exception of four individual plants recently found on public lands, all of the known sites for *Spiranthes* occur on private land.

Comment: AGFD herpetologist Jeff Howland is cited in the proposed rule as the source for the Sonora tiger salamander localities in Scotia and Copper canyons. Mr. Howland has not identified the salamanders at these locales to subspecies; thus, these localities are in question.

Service Response: The Copper Canyon locality is the same as ''Game and Fish Tank,'' which Collins (1996) identifies as a Sonora tiger salamander locality. Salamanders from Scotia Canyon have not yet been identified to subspecies. This has been noted and corrected in this final rule.

Comment: One commenter noted that loss of *Lilaeopsis* habitat was the result of natural rather than human-caused processes. This commenter further stated that the San Pedro River and cienega habitats have been altered by natural climatic change, the 1887 earthquake, and cattle. The commenter stated that these changes were primarily the result of the geologic cycle and did not warrant listing *Lilaeopsis* as an endangered species. The commenter further stated that *Lilaeopsis* habitats were stable, but would now be subject to lawsuits by radical environmentalists and unknown decisions by judges.

Service Response: The Service is unaware of evidence supporting the comment that natural geologic cycles are the cause behind the modification and loss of cienega and riparian habitats containing *Lilaeopsis*. The 1887 earthquake affected the distribution of cienega habitats and spring flow along the upper San Pedro River (Hendrickson and Minckley 1984), but whether *Lilaeopsis* habitats increased or decreased as a result of the earthquake is unknown. Documented loss of *Lilaeopsis* habitat has resulted from habitat modification and destruction resulting from human-related activities; however, there has been a synergistic effect of overuse of habitats coupled with drought. The Service is unaware of long-term research indicating that *Lilaeopsis* habitats are stable. The Service is unable to predict the extent (if any) that *Lilaeopsis* habitats will now be subject to legal actions; however, we believe that cooperative partnerships to help conserve and restore riparian habitats will provide a positive basis for community interaction in the recovery of *Lilaeopsis*.

Comment: One commenter requested that the Service provide the mathematical equation used in determining whether or not a species is endangered.

Service Response: No equation, mathematical or otherwise, is used to determine a species' status. An

endangered species is one that is in danger of extinction throughout all or a significant portion of its range (50 CFR 424.02(e)). Determination of whether a taxon meets the definition of an endangered species is based on the best scientific and commercial data available after conducting a review of the species' status. Species are found to be threatened or endangered based on an analysis of the five listing factors evaluated in the section ''Summary of Factors Affecting the Species,'' herein.

Comment: One commenter found that the Service failed to prove these species are declining and also failed to establish that they perform vital biological services for their ecosystem, are necessary to maintain a balance of nature, or that they contribute to biological diversity needed for legitimate scientific purposes.

Service Response: As described in the previous response, the Act and its implementing regulations require status review and analyses to determine if species meet the definition of a threatened or endangered species. Documented declines are one line of evidence that may contribute to a decision to list a species; other factors may be important. Documented declines are not a requirement for listing. Neither do endangered species need not perform vital biological functions for their ecosystems or contribute to biological diversity (section 4(a) and 4(b) of the Act).

Comment: One commenter questioned the historical reference to habitat qualities of the Santa Cruz River and stated that the river is still a ''rapid brook, clear and crystal'' now, following heavy rains.

Service Response: The Service searched historical references to provide answers to the specific questions and has fully incorporated that information into the rule; however, the Service is unaware of any instances where the reach of the Santa Cruz River near Tucson presently meets the historical habitat description.

Comment: One commenter stated that information provided in the notice was not the result of scientific research nor did any of the persons referenced in the notice have scientific training or expertise. Another commenter stated that the Service either misrepresented the best scientific and commercial data available or ignored these data altogether.

Service Response: The Service considered all known sources of information in its decisions to list these species. As required in 50 CFR 424.11(b), the best scientific and commercial data available formed the basis for these decisions. These data included published and unpublished reports by qualified and reputable biologists, personal communications with researchers and biologists, and comments from the public. For instance, much of the status information on the Sonora tiger salamander is based on papers by, and communications with, Drs. James Collins and Thomas Jones. Dr. Collins is chair of the Zoology Department at Arizona State University. Dr. Jones is a professor at Grand Canyon University.

The published and unpublished data supporting listing of *Lilaeopsis* and *Spiranthes* were the result of the work of a number of experienced biologists recognized in their fields. Much of the literature cited in the proposed and final rule was published in peer reviewed scientific journals. Peer reviewed scientific journals provide a level of scrutiny that ensures publication of the best information available.

Issue 5: Threats to the three species were not adequately described or supported by the best available information. In some cases, the discussions of threats or other information presented in the proposed rule were confusing, unclear, and contradictory to available information.

Comment: One commenter questioned the reference to a loss of 90 percent of the riparian habitat in southern Arizona. This commenter stated that the loss figure was extrapolated from a study of cottonwood-willow habitat along the Colorado River in the Yuma area and does not represent an actual inventory of historical riparian areas in the Arizona. Another commenter also stated that this figure was inaccurate.

Service Response: The proposed rule stated ''The State of Arizona (1990) estimates that up to 90 percent of the riparian habitat along Arizona's major desert watercourses has been lost, degraded, or altered in historic times.'' The Service believes this is an accurate statement. The exact percentage of riparian habitat lost, degraded, or altered cannot be determined, because knowledge of predevelopment conditions is often anecdotal or incomplete. However, numerous factors have cumulatively resulted in habitat loss and degradation throughout most of the major desert watercourses in Arizona, particularly the Colorado, Gila, Salt, Santa Cruz, and Verde rivers. These include—introduction of nonnative plants, such as salt cedar (*Tamarix* spp.); carrizo (*Phragmites australis*), and watercress (*Rorippa nasturtium-aquaticum*); construction and operation of dams, which have altered flow and flooding regimes, sedimentation, water temperatures, and channel characteristics; water withdrawals; channelization; and construction of levees and other flood or bankline structures.

In contrast, the riparian habitats of the San Pedro River are surprisingly unaltered, and provide conditions that do not occur, or are very rare, on other desert watercourses. Thus there is great biodiversity on this river and many rare species, such as *Lilaeopsis*, occur there.

Comment: One commenter stated that there were no significant current threats to any of these species in the San Rafael Valley with the exception of potential unmonitored and increased recreation that could cause habitat degradation.

Service Response: As discussed in the ''Summary of Factors Affecting the Species'' section, threats to the species in the San Rafael Valley are many. The Service acknowledges that recreational activities, such as off-road vehicle use, fishing that would involve illegal use or transportation of bait fish or salamanders, fire caused by recreationists and subsequent watershed erosion and degradation, wood cutting, and other activities are threats to the Sonora tiger salamander, *Lilaeopsis*, and/or *Spiranthes*, in and near the San Rafael Valley. However, these species face many other threats in the San Rafael Valley, as well. As discussed herein, all three species are vulnerable to chance extinction owing to limited numbers of populations and individuals, and climatic and other environmental variability. The Sonora tiger salamander is threatened by introduction of nonnative predators, disease, habitat degradation due to heavy use by livestock at some tanks, and a variety of other factors, all of which operate in the San Rafael Valley. Subdivision of ranches into ranchettes or housing tracts is an additional threat to all three species within the San Rafael Valley. Subdivision could result in fragmentation of cienega habitats and increased groundwater pumping.

Comment: One commenter stated that discussions of threats to the Sonora tiger salamander described by the Service at the Patagonia public hearing and in the proposed rule differed. In particular, the proposed rule indicated the salamander faced many more serious threats than were indicated at the public hearing.

Service Response: The Service's presentation at Patagonia on the proposed listing was abbreviated to allot as much time as possible to hear public comment. Rather than discuss all known or potential threats in detail, the Service presented an overview of the status of the taxa based on information in the proposed rule.

Comment: One commenter stated that two of the three species are abundant and not in peril in Mexico, and therefore listing is not warranted.

Service Response: Neither *Spiranthes* nor the Sonora tiger salamander have been confirmed from Mexico, although a population of tiger salamanders suspected to be of the subspecies *stebbinsi* was observed at Los Fresnos, Sonora. *Lilaeopsis schaffneriana* ssp. *recurva* is known from three sites in Sonora; all of these sites face similar threats to those north of the international border, in the United States.

Comment: One commenter stated that *Lilaeopsis* occurs in some areas without perennial flows and with a regulated hydrograph, contrary to information presented in the proposed rule.

Service Response: The Service is unaware of any sites containing *Lilaeopsis* that do not have perennial flows.

Comment: One commenter believed statements in the proposed rule suggesting development in the upper San Pedro River Valley will result in increased erosion and other detrimental hydrologic effects are inaccurate and unsupported.

Service Response: Development can result in elevated runoff rates, such as from parking lots and roadways, and increased erodibility of soils due to soil disturbance, removal of vegetation, and disturbance of natural drainageways. Increased runoff rates and erosion in the Sierra Vista subwatershed can lead to more frequent ''flash'' floods and deposition and movement of sediment in the San Pedro River. This increased hydrologic instability would be detrimental to *Lilaeopsis*, which does not tolerate high levels of disturbance or channel instability. Additionally, flash floods could scour existing *Lilaeopsis* out of the system and could occur with frequency or intensity that would not allow for refugia sites for *Lilaeopsis* and subsequent recolonization.

The city of Sierra Vista has adopted a Surface Water Plan to address regional management of surface runoff. The plan includes construction of flood detention/retention basins at 30 locations (ASL Hydrologic & Engineering Services (ASL) 1995). New construction also includes provisions for stormwater retention and increased infiltration. Fort Huachuca also is investigating stormwater recharge as a part of their Mountain Front Recharge Project (Fort Huachuca 1995). However, development is occurring outside of the Sierra Vista/Fort Huachuca areas without these same controls, the city's plan has not been fully implemented, and the Fort is in the planning stages. Thus, the Service still considers erosion caused by development in the watershed a threat to the habitat of *Lilaeopsis* in the San Pedro River.

Comment: One commenter stated that, contrary to statements in the proposed rule, stock tank maintenance is beneficial to the Sonora tiger salamander because it removes nonnative fish. Concern also was expressed that listing would result in removal of grazing and cessation of stock tank maintenance. Another commenter stated that habitat conditions for these species, especially the salamander, have improved in the past 30 years because landowners have directly benefitted and increased the extent of habitat through stock tank construction.

Service Response: Maintenance of the tanks is necessary not only to preserve their value for livestock but also to benefit salamander populations. Tanks would silt in and aquatic habitats would be lost without periodic maintenance. The Service acknowledges that maintenance also may help remove nonnative fish species that prey upon the Sonora tiger salamander. Silt is typically removed from tanks when they are dry or nearly dry. Remaining fish might be dredged out of the tanks or killed during silt removal. As described in the proposed rule, salamanders present in the tanks would probably also be killed. The Service believes that certain mitigating precautions are possible to reduce adverse effects to salamander populations resulting from removal of silt or other maintenance activities. These mitigation measures will be addressed through the section 7 consultation process and in recovery planning. As discussed elsewhere in this final rule, the Service believes well-managed livestock grazing is compatible with viable salamander populations. Thus, listing will not result in removal of grazing or the need for well-maintained water sources, such as stock tanks.

Comment: Several commenters stated that the analysis of threats in the proposed rule did not take into account efforts by the City of Sierra Vista and the town of Patagonia to maintain flows in the San Pedro River and Sonoita Creek, respectively. Groundwater pumping by Patagonia does not affect Sonoita Creek. One commenter stated that the Service had been contemptuous and arrogant by not documenting in the proposed rule the City of Sierra Vista's efforts to protect the riparian habitat of the San Pedro River.

Service Response: The ''Summary of Factors Affecting the Species section'' has been revised to include efforts by the City of Sierra Vista and Fort Huachuca to maintain flows in the San Pedro River. The proposed rule did not specifically mention groundwater pumping by the Town of Patagonia as a threat to any of the three species. However, the Service acknowledges and appreciates efforts by the Town of Patagonia to avoid possible adverse effects to listed species and to maintain flows in Sonoita Creek.

Comment: One commenter stated that testimony by Dr. Thomas Maddox, Department of Hydrology and Water Resources, University of Arizona, refutes information presented in the proposed rule in regard to the effects of groundwater pumping on the San Pedro River. Another commenter noted that Maddock and Vionnet (1991) found that ''the mean depletion rate of the regional aquifer in the Sierra Vista area from pumping is very small and that pumping from the regional aquifer is not the major factor imperilling stream flow.'' This commenter also stated that the conservation measures for recharge and reuse of sewage effluent recommended in this study will not be implemented if the listing process is finalized. One commenter stated that groundwater pumping does not pose an immediate threat to populations of *Lilaeopsis* at Lewis Spring and south of Boquillas Road.

Service Response: The point of the Service's discussion in the proposed and final rules in regard to groundwater pumping in the Sierra Vista subwatershed is that withdrawal of water from the aquifer in excess of recharge threatens the baseflow of the upper San Pedro River and, in turn, threatens *Lilaeopsis* habitat. Nothing in Dr. Maddox's testimony nor in Maddock and Vionnet (1991) refute this claim. On page 46 of Dr. Maddock's testimony he states that if pumping continues ''the cone of depression continues to expand. It actually turns the stream (the San Pedro River), which is in some cases perennial in the reaches, to intermittent.'' On pages 65 and 66 of the testimony he states that if pumping continues the San Pedro River may become like reaches of the Santa Cruz River that are now dry and devoid of riparian vegetation due to groundwater pumping. He goes on to say on page 84 of the testimony that during the period of his study, groundwater pumping in the Palominas area had reversed the flow of groundwater so that the groundwater was flowing to the cone of depression there, rather than into the San Pedro River, which directly reduced river flows.

Much of the pumping in the Palominas area has been halted in recent years, and this condition may have changed. However, it illustrates the potential that groundwater pumping has to affect flows in the San Pedro River. The problem is not trivial. ASL (1995) calculated that the cone of depression in the Sierra Vista/Fort Huachuca area in 1995 was in excess of 36.6 m (120 ft) deep with drawdown levels of more than 6.1 m (20 ft) extending from north of Huachuca City and the Babacomari River to well south of Highway 90, a distance of approximately 18 km (11 mi). Water and Environmental Systems Technology, Inc. (1994) estimated that even if all pumping stopped in the Sierra Vista/Fort Huachuca area, the cone of depression would continue to spread toward the river as it flattened out and river flows would continue to decline through the year 2088.

Groundwater modeling indicates that effects to upper San Pedro River baseflows may not occur for 25 years or more (ASL 1995), thus the Service concurs that groundwater pumping in the Sierra Vista/Fort Huachuca area does not pose an immediate threat to *Lilaeopsis*. However, adverse effects are likely to occur in the foreseeable future unless mitigating actions are implemented very soon. These measures could include water conservation, effluent recharge, watershed improvements, stormwater recharge, and others, many of which are in the planning stages or are being implemented to some degree in the subwatershed. Modeling suggests that if effluent recharge and other measures are implemented, flows may actually increase in some reaches over the next 100 years (ASL 1995, Water and Environmental Systems Technology, Inc. 1994). However, in the long term, unless water withdrawals are brought into balance with recharge, growing cones of depression will eventually capture effluent recharge and river flows, and *Lilaeopsis* habitat in the San Pedro River will be lost.

Groundwater elevation has already declined under portions of the Babocomari River (ASL 1995), thus *Spiranthes* occurring on that river may also be threatened in the long-term, The Service is unaware of studies or modeling that specifically addresses areas where the species occurs. Loss of *Lilaeopsis* on the San Pedro River and *Spiranthes* on the Babocomari River would not, alone, likely result in the extinction of these species. However, loss of these populations and habitats would significantly increase the likelihood of extinction and substantially reduce or preclude recovery options.

The Service does not believe that listing these three species will result in the City of Sierra Vista, Fort Huachuca or others in the Sierra Vista subwatershed abandoning efforts to reduce water use and increase recharge. These efforts are probably driven by projected increased pumping costs as groundwater elevations decline, the Gila River water rights adjudication, and other considerations. To the contrary, efforts by the City of Sierra Vista, Fort Huachuca, and other water users to conserve water, develop effluent recharge, enhance mountain front recharge, etc., complement actions to recover *Lilaeopsis* and *Spiranthes*.

Comment: Several commenters stated that, contrary to information presented in the proposed rule, livestock grazing is not detrimental to *Spiranthes*. Populations in grazed areas are larger and healthier than at a site where grazing has been excluded since 1969. Grazing may have replaced fire as a form of disturbance in cienegas. Removing or restricting grazing would be detrimental to *Spiranthes*.

Service Response: Discussions of well-managed livestock grazing and *Spiranthes* presented in the proposed rule did not indicate a detrimental effect. The Service stated that our preliminary conclusion is that well-managed livestock grazing does not harm *Spiranthes* populations. Additionally, the Service acknowledges that *Spiranthes* may favor some form of mild disturbance and would not recommend the removal of grazing as a component of responsible stewardship. However, negative effects of overgrazing remain a concern. The Service has tried to differentiate responsible, well-managed, livestock grazing from poor livestock management and overgrazing.

Comment: One commenter stated that the following statement in the proposed rule is incorrect; groundwater pumping in the Hereford-Palominas area has the largest impact on the aquifer of any groundwater pumping in the upper San Pedro River basin.

Service Response: Wells in the Hereford-Palominas area are or were located in the floodplain of the San Pedro River and draw water directly from the shallow aquifer and, in some cases, from deeper regional aquifers. Wells farther from the river, such as those at Fort Huachuca, draw water from deep aquifers, and not directly from the floodplain aquifer. Wells that draw water from the floodplain aquifer are more likely to directly affect river flow, but wells elsewhere in the watershed may intercept groundwater flow that would otherwise be discharged to the floodplain aquifer (ASL 1994). As of 1990, pumping in the Palominas-Hereford area exceeded slightly that in the Sierra Vista-Fort Huachuca area (ASL 1994, Arizona Department of Water Resources 1991). Pumping at Palominas-Hereford has probably declined since then, while pumping at Sierra Vista-Fort Huachuca has likely increased, but the former would still be the major impact on the floodplain aquifer because it extracts water primarily from that aquifer, whereas water pumped in the Sierra Vista-Fort Huachuca area comes from deeper aquifers.

Comment: One commenter stated that the drying of stock tanks inhabited by Sonora tiger salamanders is not a serious threat because the larval salamanders metamorphose and return to breed when the tanks refill.

Service Response: If tanks dry out slowly, some salamanders will metamorphose into terrestrial adults and leave the tank. Young larval salamanders, perhaps less than 6 months of age, and some branchiate salamanders (mature aquatic forms), particularly older branchiates, are incapable of metamorphosing into a terrestrial form and would be lost. The percentage of aquatic salamanders lost when a tank dries out would depend on the age structure of the population and the dryness of the season. If a tank dried during May or June, which is the dry season in the San Rafael Valley, most or all salamanders hatched that spring would not be able to metamorphose. Survival of salamanders during metamorphosis or after they leave the tank is unknown, but predation of larvae may be high as water levels decline (Webb and Roueche 1971). If aquatic habitat in a tank is lost rapidly due to sedimentation after a storm or breaching of the impoundment, salamanders would not be capable of metamorphosing into terrestrial forms and all aquatic salamanders would be lost. Terrestrial adults in the area may return to the tank when it refills, breed, and repopulate the tank with larvae and branchiates. This has apparently occurred at several sites, including Campini Mesa North Tank, Huachuca Tank, Parker Canyon Tank #1, and Inez Tank; (Collins 1996, Collins *et al.* 1988). However, as noted in the ''Summary of Factors Affecting the Species'' section, if a tank were dry for several years and isolated from other salamander populations, insufficient terrestrial salamanders may remain and immigration from other populations may be inadequate to recolonize a tank. In any case, drying of a tank and loss of

any salamanders may reduce the number of breeding individuals and further reduce genetic heterogeneity, which is very low in this subspecies. Further reduction of genetic diversity increases the chance of local extirpations, as described in ''Summary of Factors Affecting the Species'' section. The Service acknowledges, and discussions herein have been modified, to recognize that drying of tanks can control some nonnative predators, particularly fish.

Comment: One commenter recommended not listing *Spiranthes* because endangered status will increase the demand for specimens and result in increased collecting pressure.

Service Response: The Service acknowledges that listing could potentially increase demand for specimens; however, the Service believes that the benefits of listing *Spiranthes* outweigh any additional potential collecting pressures that listing may create.

Comment: One commenter stated that the three species have coexisted with cattle grazing for over 300 years, and historical grazing intensity was much greater than it is today. As a result, cattle grazing cannot be a threat. Another commenter stated that studies have shown salamander populations decline when grazing is halted.

Service Response: The Service acknowledges that these species have coexisted with cattle grazing for up to 300 years. At times in the past and in certain areas, stocking levels were much greater than today (Hadley and Sheridan 1995). However, we disagree that this long coexistence is evidence that cattle grazing has no adverse effects and does not threaten these species. As discussed in the ''Summary of Factors Affecting the Species,'' the effects of improper cattle grazing practices on these species are many, and depending on the species and the circumstances, may have varying impacts on the three species. The Service is unaware of any studies that found salamander populations declined when grazing was halted. With the exception of the population at Fort Huachuca, the entire range of the salamander has been grazed by cattle for many years.

Comment: One commenter suggested that declining salamander populations may be attributable to predation by various birds and mammals rather than factors indicated in the proposed rule.

Service Response: Predation by coyotes, bobcats (Webb and Roueche 1971), badgers (Long 1964), raccoons, gulls, and wading birds (Degenhardt *et al.* 1996) has been documented for other subspecies of tiger salamander, and predation by a variety of birds and mammals likely contributes to mortality of Sonora tiger salamanders. However, population declines and extirpations of this subspecies have not been attributed to bird and mammal predation; the most apparent and direct causes are predation by nonnative fish and mortality due to disease (Collins and Jones 1987, Collins 1996).

Comment: The species are not adversely affected by threats because they are capable of moving to other locations.

Service Response: All three species have limited distributions and are found only in rare wetland habitats with very specific characteristics. For instance, aquatic populations of the Sonora tiger salamander only occur in stock tanks and impounded cienegas in the San Rafael Valley and adjacent areas where nonnative predators are rare or absent and other subspecies of salamander are absent. The salamander possesses limited mobility and may not be able to move outside of its current range due to competition and/or interbreeding with other subspecies or for other reasons.

Spiranthes has an extremely limited distribution that may be the result of a unique evolutionary history in the San Rafael Valley as discussed previously in this rule. There are few sites remaining that may be capable of supporting a population, were the species able to colonize them.

The ability of *Lilaeopsis* to colonize new areas within an aquatic system is dependent on the availability of habitat and the existence of refugia within that system. This has been discussed previously in this final rule. None of these three species are able to move to other locations when threats occur. The species cannot move elsewhere because there are few, if any, suitable habitats to which they can move with limited mobility.

Comment: One commenter stated that it made no sense to reestablish *Lilaeopsis* in the San Pedro River as that habitat is subject to scouring and flooding and would not be an appropriate habitat.

Service Response: Various microsites providing refugia for *Lilaeopsis* along the San Pedro River have enabled this plant to reestablish itself within the main channel in areas providing appropriate habitat.

The experts referenced in the proposed rule are reputable biologists with an extensive knowledge of *Spiranthes.* The extent of their qualifications as fire ecologists is unknown to the Service; however, as these experts (McClaren, Sundt, Gori, and Fishbein) are taxonomists and ecologists with recognition in their fields, the Service sees no reason to question their expertise because data on the effects of fire is inconclusive at this time.

Comment: One commenter stated that consumptive water use by sand and gravel operations was inadequately evaluated. The commenter stated that the Service has no substantive evidence that sand and gravel mining and processing could cause *Spiranthes* or *Lilaeopsis* habitat or population losses either upstream or downstream of a mining operation. The commenter further added that the Service failed to provide information on how sand and gravel mining at the Babacomari Ranch could affect at least one *Spiranthes* population.

Service Response: Mining of sand and gravel within riparian systems can destabilize stream banks and channels, resulting in loss of riparian vegetation and increased stream sediment loads. The Service has described herein the pumping of groundwater to process mined materials near the Babacomari River as a potential threat to one *Spiranthes* site. This groundwater pumping, combined with an expanding cone of depression in the aquifer at Sierra Vista and Fort Huachuca, could dewater portions of the Babacomari River, and the *Spiranthes* population located near the river could be lost with the elimination of surface water.

Comment: One commenter stated that the San Pedro River would not be suitable habitat for the species because it is a dynamic system, and thus would not provide habitat for successful reestablishment.

Service Response: The San Pedro River is outside of the range of the Sonora tiger salamander and *Spiranthes.* The Service does not consider the San Pedro River as recovery habitat for either of these species. While the San Pedro River is a dynamic system, *Lilaeopsis* has been able to remain established within the system because of refugia sites that have not yet undergone massive scouring or loss of perennial waters. An opportunistic species *Lilaeopsis,* has been able to recolonize some of the disturbed habitats resulting from the dynamic nature of the system. The San Pedro River is an important recovery habitat for *Lilaeopsis.*

Issue 6: The three species should be listed as threatened rather than endangered.

Comment: One commenter stated that the three species should be listed as threatened rather than endangered because threats are localized and some populations are secure. Another

commenter stated that the proposed rule should be withdrawn because there is no biological evidence that the species meet the statutory definition of endangered species. The best available scientific information does not support the contention that they are endangered throughout a significant portion of their range.

Service Response: An endangered species is one that is in danger of extinction throughout all or a significant portion its range (50 CFR 424.02(e)). A threatened species is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (50 CFR 424.02(m)). The three species listed here are endangered because of widespread and serious threats that are thoroughly discussed in the '' Summary of Factors Affecting the Species'' section of this rule.

Issue 7: The Service failed to follow Federal or other regulations in regard to the listing of these species.

Comment: The proposed rule is void because this final rule was not published within 12 months of receipt of the listing petitions.

Service Response: The Service published a proposed rule to list these species on April 3, 1995. In accordance with 50 CFR 424.17, the Service is required to publish a final determination, withdrawal, or extension within 1 year of the date of the proposed rule. In this case, the final rule was published well over a year after the proposed rule; however, this was due in part to legislation preventing the Service from issuing final rules from April 10, 1995, to October 1, 1995; a near cessation of listing actions from October 1, 1995, to April 26, 1996, due to budget limitations. The Service disagrees that this invalidates this final rule.

Comment: One commenter stated that the Service did not provide adequate time for the public to comment on the proposed rule. The Service violated the Act and the Administrative Procedure Act (APA) by not providing the public with sufficient opportunity to comment. The Service also violated both Acts by denying public access to materials upon which the proposed rule was based. One commenter stated that the first public hearing was held in a small town located in a different county, and far away from the major population area impacted by the proposed listing—a transparent attempt to prevent public awareness in the City of Sierra Vista.

Service Response: The Service is required to allow 60 days for public comment on proposed rules (50 CFR 424.16(c)(2)). Three comment periods were provided on the proposed rule, including a 60-day period from April 3 to June 2, 1995; 30 days from June 24 to July 24, 1995; and 45 days from September 11 to October 27, 1995; a total of 135 days.

The Service is required to hold at least one public hearing if any person so requests within 45 days of publication of a proposed rule (50 CFR 424.16(c)(3)). The Service received two requests for a public hearing within the 45 day request period. In response, a public hearing was held in Patagonia, the closest town with facilities for a hearing to the residents requesting the hearing and only 36 highway miles from Sierra Vista. Additional requests for a public hearing in Sierra Vista were received more than 45 days after publication of the proposed rule. The Service granted those requests and held a second public hearing in Sierra Vista.

In response to requests from the public, and in accordance with the Act and its implementing regulations, the Freedom of Information Act, and the APA, the Service provided copies of documents to several members of the public and loaned the administrative record to the City of Sierra Vista for copying. Some requests for information were not promptly addressed because they were contained within comment letters on the proposed rule. In accordance with Service guidance on implementation of Public Law 104–06 that halted work on final rules, comment letters were filed and not read; thus granting of some information requests were delayed. However, the Service did not deny any information requests, with the exception of information withheld in accordance with exemptions to disclosure under the Freedom of Information Act.

Comment: One commenter stated that people without proper biological training influenced the listing process, and thus the process is flawed.

Service Response: The Service is required to consider all comments and information received regardless of the extent of any biological training of the people submitting them. The Service recognizes that non-biologists may have valid comments or information that may contribute to a final determination. However, the Service's decision to list these species were based only on the best scientific and commercial information available, in accordance with 50 CFR 424.11(b).

Comment: Several commenters stated that the Service failed to comply with its own regulations governing public notification of hearings on the proposed rule. Other commenters believed more public hearings were necessary and that public meetings on the proposed rule should be held in all areas potentially affected. Hearing times and locations were inconvenient and not conducive to public participation.

Service Response: In regard to public notification of public hearings, 50 CFR 424(c)(3) and provisions of the APA require the Service to publish a notice in the Federal Register not less than 15 days before the hearing is held. Notices announcing a public hearing were published in the Federal Register 21 days before the July 13, 1995, hearing in Patagonia (June 22, 1995) and 15 days before the September 27, 1995, public hearing in Sierra Vista (September 12, 1995). The Service's Listing Handbook, which is internal agency guidance, requires that notifications of public hearings be published in major and local newspapers within 20 days of the hearing. This requirement was met; publication dates and newspapers where notices were published are listed in ''Summary of Comments and Recommendations'' section. Hearings were held in the evenings during the week, when most people are not working and can attend. The hearing locations were in Patagonia and Sierra Vista, which are major population centers near the center of the distribution of these species, and near the homes of citizens requesting hearings.

Comment: Commenters stated that the Service, in violation of its own regulations, failed to give notice to and consult with local authorities in the Republic of Mexico, on development of the proposed rule and failed to notify Mexico of publication of the proposed rule.

Service Response: A letter notifying the Director General, Direccion General de Vida Silvestre, Mexico City, Mexico of this final determination, along with a copy of the proposed rule (60 FR 16836) was sent to for review and comment. As of December 9, 1996, no comments were received from the Mexican government.

Comment: Listing of the three species would constitute a violation of the National Environmental Policy Act of 1969 (NEPA), because the Service did not analyze the economic impacts of the action. Because the Service did not provide adequate notice and opportunity to the public to comment on the proposed rule, the Service must complete an NEPA analysis to guard against an arbitrary and capricious decision. An environmental assessment or impact statement should be completed prior to listing.

Service Response: As discussed in the ''National Environmental Policy Act'' section in this rule, the Service has determined that neither environmental

assessments nor environmental impact statements need to be prepared for proposed or final listing actions.

Comment: The Act is expired and thus these species should not be listed.

Service Response: No laws or regulations limit the duration of the Act's provisions. Section 15(a) of the Act authorizes appropriations for implementation only through fiscal year 1992, but Congress has appropriated funds in each fiscal year since 1992 to fund activities such as this final rule.

Comment: De facto division of species into separate populations at the international border is unsupported by either biology or the Act, and runs counter to the 1984 Agreement of Cooperation of Wildlife between Mexico and the Service.

Service Response: The Service has not attempted to split species into separate populations with the international boundary as a dividing line. Each species or subspecies is being listed throughout its range. The term ''population'' is used in this rule only as a term of convenience when referring to a particular part of a taxon's range.

Comment: One commenter stated that the notice was irretrievably flawed on a legal and technical basis by its use of an obsolete address to which comments and requests for public hearings on the proposed rule were to be sent. Additionally, this commenter stated that comments and materials received were not available for public inspection at the old address; therefore, the Service must, by law, withdraw the proposed rule.

Service Response: Between the time the proposed rule was prepared and its publication, the Service moved its office location within Phoenix, Arizona. The proposed rule listed the old address and facsimile number and the correct telephone number. The Service received some comment letters mailed to the old address, indicating that the Post Office was forwarding the mail. A recorded phone message at the old phone number also informed callers of the new number in the event the old office was contacted. The Service is unaware of any comment letters, requests for hearings, or requests to inspect records that were returned to the sender, or telephone callers that were not informed of our new number. In Federal Register notices announcing subsequent comment periods, from June 24 to July 25, 1995, and September 12 to October 27, 1995, the correct address and phone numbers were published. The Service thus believes the public was provided adequate opportunity to provide comment on the proposed rule and inspect supporting information.

Comment: One commenter believed the Service violated Section 4(b)(1)(A) of the Act. This commenter stated that we misrepresented the known requirements of the salamander, therefore, violating the Act. This commenter said our discussion of the threats of rural and urban development, road building, chaining, agriculture, mining, and other watershed degrading activities to *Lilaeopsis* was speculation and a violation of the Act.

Service Response: Habitat and other requirements of the Sonora tiger salamander presented here and in the proposed rule were based on the best scientific and commercial information available.

Comment: One commenter questioned whether persons conducting studies on these species had landowner permission to access sites. This commenter also questioned whether landowners had been given information on what work was being done and the reasons behind the research.

Service Response: Surveys and studies on these species were conducted by many individuals over many years. The Service used the results from those studies, but the Service has no control over the conduct of independent researchers, and thus we cannot answer this question definitively. Nearly all survey work for these species conducted by Service personnel has focused on Federal lands. The few surveys conducted by the Service on private lands were with the permission of the landowner.

Comment: One commenter stated that the listing of these three species would violate State water law.

Service Response: The listing of these species does not restrict groundwater pumping or water diversions, or usurp water rights, or violate State water law.

Issue 8: The Sonora tiger salamander is a hybrid organism and all three species are recent introductions to the San Rafael Valley, and as such should not be considered for listing.

Comment: The species are not native but were introduced within the last 300 years. One commenter stated the salamander was introduced into the San Rafael Valley earlier in this century and that there is no verifiable evidence that it ever occurred in any significance in cienegas. Stock tanks are the natural habitat of the salamander. One commenter stated that the Sonora tiger salamander was introduced for use as fish bait.

Service Response: All evidence suggests the species have occurred within their present ranges for much longer than 300 years. Fossil *Ambystoma* found in the Canelo Hills date from at least 31,000 years ago (Jones *et al.* 1995). Additional *Ambystoma tigrinum* fossils dating from the late Pliocene, more than 2 million years ago, have been found in the San Pedro River Valley, east of the Huachuca Mountains (Brattstrom 1955). Hybridization is an important evolutionary process from which new taxa can arise (Harlan 1983, review in Jones *et al.* 1995). The Sonora tiger salamander likely resulted from a hybridization between the subspecies *mavortium* and *nebulosum*. The latter no longer occurs in southeastern Arizona; its range has shifted to the north, an event that likely occurred during climatic and vegetational shifts during the Pleistocene (Jones *et al.* 1995). The absence of this ancestral subspecies in southeastern Arizona is further evidence that the Sonora tiger salamander originated long before historical times. Because stock tanks are a recent phenomenon, Sonora tiger salamanders must have occupied other habitats at one time. Throughout its range, *Ambystoma tigrinum* breeds in various types of wetlands, including ponds, lakes, slow streams, and backwaters (Bishop 1943). Habitats such as these were present in the San Rafael Valley during presettlement times in the form of cienegas and streams. Although no Sonora tiger salamanders have been collected from cienegas or streams (with the possible exception of the specimen from Los Fresnos, Sonora), these wetlands are the most likely presettlement breeding habitats of the salamander.

There is no evidence that supports the commenter's claim that *Lilaeopsis* and *Spiranthes* are recent introductions by humans into the San Rafael Valley. *Lilaeopsis* has been noted from sites within the Santa Cruz, San Pedro, Rio Yaqui, and Rio Sonora watersheds. *Lilaeopsis* was first described based on a specimen collected near Tucson in 1881 (Hill 1926). There is no indication that this inconspicuous plant was introduced by humans. *Spiranthes* was not discovered until 1968; however, evidence suggests this species has a unique evolutionary history associated with the San Rafael Valley and may have arose through hybridization between *Spiranthes vernalis* (a species of the southern Great Plains) and either *Spiranthes porrifolia* (a California-Northern Cordilleran species) or *Spiranthes romanzoffiana* (a species of high elevations in northern Arizona, the southern Rockies, and Pleistocene relict habitats in the Pinalenos (Sheviak 1990, Jones *et al.* 1995; Charles Sheviak, *in litt.* 1995)).

Issue 9: Experts on *Lilaeopsis* and the Sonora tiger salamander believe these species do not warrant listing.

Comment: Several commenters stated that experts on the Sonora tiger salamander (Dr. James Collins) and *Lilaeopsis* (Dr. Peter Warren) do not believe these species should be listed. Mexico also disagrees with the proposed endangered status. This expert testimony should convince the Service not to list these species, or the Service should publish a notice in the Federal Register extending the listing process to resolve differences among experts in regard to the status of these species.

Service Response: The Service discussed the listing of the salamander with Dr. Collins in October, 1996, and asked him to clarify his position. Dr. Collins has found that the status of the salamander has been stable from the mid 1980's to the present, based on numbers of occupied breeding sites. However, he believed that continued spread of nonnative predators, presence of a reoccurring, lethal disease, and other factors warrant concern and that some conservation measures are needed.

The Service has discussed the statements attributed to Dr. Warren with him. Dr. Warren has worked towards developing and implementing conservation measures in order to provide for the recovery of *Lilaeopsis* or possibly preclude its listing. As a staff member of The Nature Conservancy (TNC), neither Dr. Warren nor TNC has taken an official stand in support or opposition to the listing of *Lilaeopsis* (Peter Warren, Arizona Nature Conservancy, pers. comm. 1996).

The Mexican government has not taken or expressed an official position regarding listings of these three species. As stated previously, the Service has not received comments from Mexico. Mexico considers the tiger salamander, *Ambystoma tigrinum*, a species of special protection.

Issue 10: Current actions of the City of Sierra Vista and Fort Huachuca do not affect the species, and planned actions are not expected to affect the salamander or *Spiranthes.* Habitat of *Lilaeopsis* would not be affected for several decades.

Comment: The Director of Public Works for the City of Sierra Vista requested that the following information be included in the Federal Register to correct the proposed rule—''(1) Groundwater use by Sierra Vista and Fort Huachuca currently is not endangering any habitat critical to the survival of the umbel, lily, salamander, or any other listed or proposed species; is not expected to ever affect any habitat critical to the survival of the lily or the salamander; and is not expected to affect any habitat critical to the survival of the umbel for several decades; (2) Sierra Vista has determined that recharging the City's sewage effluent can protect the San Pedro River from adverse effects caused by groundwater pumping to support expected growth of the City and Fort Huachuca for at least 100 years, and probably much longer; (3) Sierra Vista is actively pursuing projects to recharge its sewage effluent and increase floodwater recharge. Fort Huachuca also is actively working to recharge effluent and increase floodwater recharge. Both the City and Fort Huachuca are making real efforts to protect the San Pedro River riparian habitat and the species that live there; and (4) the growth and development of Sierra Vista, including Fort Huachuca, does not pose any immediate threat to any critical habitat or endangered species currently under consideration, and it is anticipated that action will be taken by both entities to eliminate any such threat before it occurs.''

Service Response: Information in the ''Summary of Factors Affecting the Species Section'' has been revised based on new information in regard to the effects of groundwater pumping in and near Sierra Vista, and efforts by Sierra Vista and Fort Huachuca to conserve water, recharge effluent, and implement other measures to reduce the potential effects of their activities on the San Pedro River and habitat of *Lilaeopsis.*

The Service has determined that designation of critical habitat for these three species is not prudent. For discussion relating to critical habitat (Item 1), see the ''Critical Habitat'' section of this rule. The Service concurs with item 3, but cannot concur with portions of items 2 and 4. In regard to item 2, ASL (1995) found that if effluent is recharged adjacent to the San Pedro River or at the Sierra Vista wastewater treatment plan, flows would be maintained or increased on the San Pedro River from Lewis Springs to Charleston Bridge (downslope and downstream of the recharge areas, respectively) for at least 100 years. However, in all scenarios modeled by ASL, river flow declined between Palominas and Lewis Spring. Furthermore, the model assumed that water demands outside of Sierra Vista are held at 1995 levels, which is highly unlikely. With increasing water demands throughout the subwatershed, river flows between Palominas and Lewis Spring will decline more than indicated by ASL's results, and flows between Lewis Spring and Charleston Bridge also may decline under any recharge scenario. Effective mitigation of the effects of groundwater pumping on San Pedro River flows depends on development and implementation of the effluent recharge program as outlined in ASL (1995) for at least 100 years. ASL (1995) notes that questions remain before the feasibility of long-term recharge can be assessed. Also, we are unaware of any long-term funding commitments to operate such a program. Finally, the cone of depression under Sierra Vista/Fort Huachuca continues to grow in all scenarios. The Service is concerned that as it grows, the cone will in time (perhaps more than 100 years) capture the effluent recharge and then the river itself, unless water recharge is balanced with use. With regard to item 4, and as discussed in the ''Summary of Factors Affecting the Species'' section growth and development at Sierra Vista and Fort Huachuca, particularly groundwater pumping, but other activities as well, potentially threaten *Lilaeopsis.* In addition, activities at Fort Huachuca could potentially affect Sonora tiger salamander and *Lilaeopsis* populations on the Fort. As of this writing, the Service is in informal conferencing with Fort Huachuca with regard to implementation of their Master Plan and possible effects to *Lilaeopsis* and the salamander. The Service's opinion on the Master Plan will be based on the effects of current and planned activities at Fort Huachuca on *Lilaeopsis,* the salamander, and other listed species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Spiranthes delitescens, Lilaeopsis schaffneriana* spp. *recurva,* and the Sonora tiger salamander should be classified as endangered species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Spiranthes delitescens* Sheviak (Canelo Hills ladies'-tresses), *Lilaeopsis schaffneriana* spp. *recurva* (A.W. Hill) Affolter (Huachuca water umbel), and the Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*) are as follows:

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

Human activities have affected southwestern riparian systems over a

period of several thousand years. From prehistoric times, settlements in southern Arizona centered on oasis-like cienegas, streams, and rivers. Prior to the early 1800's, indigenous peoples and missionaries used southern Arizona cienegas and riparian areas mostly for subsistence purposes, including wood-cutting, agriculture (including livestock grazing), and food and fiber harvesting. In the early 1800's, fur trappers nearly eliminated beaver from southern Arizona streams and rivers (Davis 1986), significantly changing stream morphology. In addition, human-caused fire and trails may have significantly altered riparian systems (Bahre 1991, Dobyns 1981). Hadley and Sheridan (1995) suggest that use of fire by native Americans may have helped maintain grassland communities in the San Rafael Valley, a practice which undoubtedly affected riparian and cienega habitats, as well.

European settlement of southern Arizona and northern Sonora probably did not begin to significantly affect natural communities until the late 1600's or early 1700's when cattle were introduced (Hadley and Sheridan 1995). However, resistance by Apaches and other tribes discouraged settlement until the early to mid-1800's, after which human populations and associated livestock production and agriculture increased significantly. By the late 1800's, many southern Arizona watersheds were in poor condition due to uncontrolled livestock grazing, mining, hay harvesting, timber harvesting, and other management practices, such as fire suppression (Martin 1975, Bahre 1991, Humphrey 1958, Hadley and Sheridan 1995).

Watershed degradation caused by these management practices led to widespread erosion and channel entrenchment when above-average precipitation and flooding occurred in the late 1800's (Bahre 1991, Bryan 1925, Dobyns 1981, Hastings and Turner 1980, Hendrickson and Minckley 1984, Martin 1975, Sheridan 1986, Webb and Betancourt 1992). These events contributed to long-term or permanent degradation and loss of cienega and riparian habitat throughout southern Arizona and northern Mexico. Physical evidence of losses and changes in cienegas and other riparian areas can be found in the black organic soils of cut banks in the San Rafael Valley (Hendrickson and Minckley 1984), San Pedro River (Hereford 1992), Black Draw (Sue Rutman, Organ Pipe National Monument, pers. comm. 1992), and elsewhere. Between the 1860's and mid-1890's, the lush grasslands and cienegas of San Rafael Valley disappeared or became highly localized (Hadley and Sheridan 1995). Although these events took place nearly a century ago, the ecosystem has not yet fully recovered and, in some areas, may never recover.

Wetland degradation and loss continues today. Human activities such as groundwater overdrafts, surface water diversions, impoundments, channelization, improper livestock grazing, agriculture, mining, road building, nonnative species introductions, urbanization, wood cutting, and recreation all contribute to riparian and cienega habitat loss and degradation in southern Arizona. The local and regional effects of these activities are expected to increase with the increasing human population. Each threat is discussed in more detail below.

The largest area currently available for recovery of *Lilaeopsis* is the San Pedro River along the perennial reach from Hereford to about 4 miles north of Charleston. Whether or not the species can recover there depends largely on future perennial surface flows in the river and a natural, unregulated hydrograph. Perennial flow in the upper San Pedro River is derived from precipitation runoff and interflow through the unsaturated soil horizon, and baseflow in the form of groundwater flow from deep regional aquifers and a shallower floodplain aquifer (Arizona Department of Water Resources 1991, Arizona Department of Water Resources 1994, ASL 1994, Jackson *et al.* 1987, Vionnet and Maddock 1992).

Groundwater pumping has increased dramatically since the early 1960's (ASL 1994). Annual water use exceeds supplies by approximately 11,200 acre-feet and has resulted in cones of depression in the aquifer at areas with significant groundwater pumping. These areas include Sierra Vista and Fort Huachuca, Huachuca City, and the Hereford-Palominas areas (Water and Environmental Systems Technology, Inc. 1994). Although the relationships between groundwater pumping and river flow are complicated, continued unmitigated groundwater withdrawal threatens to reduce or eliminate baseflows in the San Pedro River (Arizona Department of Water Resources 1991, ASL 1995, Water and Environmental Systems Technology, Inc. 1994). A reduction in baseflow as a result of groundwater pumping in the Sierra Vista-Fort Huachuca area could occur within 25 years, but such effects could be reduced by water conservation, watershed management, effluent recharge or other measures to reduce water use or increase recharge (ASL 1995, Water and Environmental Systems Technology, Inc. 1994).

Such measures are being developed and implemented, including development of a Surface Water Plan and Effluent Recharge Plan, and adoption of water conservation measures by the City of Sierra Vista; and implementation of water conservation measures, enhancement of mountain front recharge, effluent recharge, and other actions by Fort Huachuca (ASL 1995, Fort Huachuca 1995). However, these measures may not be adequate to balance use with recharge, halt the eventual interception of the river by cones of depression, and ultimately, maintain baseflow throughout the upper San Pedro River (Water and Environmental Systems Technology, Inc. 1994, ASL 1995). If baseflow in the river decreases, a desertification of the riparian flora will occur (Stromberg *et al.* 1996). If the groundwater drops below the elevation of the channel bed, the wetland plant (herb) association where *Lilaeopsis* is found will be the first plant association to be lost (Arizona Department of Water Resources 1994, Stromberg *et al.* 1996).

Fort Huachuca also relies on a well and springs in Garden Canyon (Arizona Department of Water Resources 1991). These diversions and pumping could dewater the stream and damage or destroy the *Lilaeopsis* population in the canyon, particularly during below-average rainfall periods. The City of Sierra Vista is exploring means for implementing conservation and habitat restoration actions for *Lilaeopsis* and other rare plants.

Perennial flows in certain reaches of the Santa Cruz River remained perennial until groundwater pumping caused the water table to drop below the streambed. In 1908, the water table near Tucson was above the streambed, but from 1940–1969, the water table was 6.0–21.0 m (20–70 feet) below the streambed (De la Torre 1970). Recovery of perennial flow in the Santa Cruz River and of *Lilaeopsis* near Tucson is unlikely, given the importance of groundwater for the metropolitan area.

Groundwater pumping in Mexico threatens populations of *Lilaeopsis* on both sides of the border. South of the San Bernardino National Wildlife Refuge, groundwater is being pumped to irrigate farmlands in Mexico, and this pumping threatens to dry up the springs and streams that support several listed endangered fish and a population of *Lilaeopsis*. The large copper mine at Cananea, Sonora, pumps groundwater for processing and support services. Although little is known about how groundwater pumping near Cananea

may affect the spring at Ojo de Agua de Cananea, it is likely that overdrafts would decrease springflow or dewater the spring, extirpating the *Lilaeopsis* population. The spring at Ojo de Agua de Cananea is also the main source of municipal water for the town of Cananea. This water diversion, particularly if increased, may adversely affect *Lilaeopsis*. In the past, large contaminant spills from the mine have occurred, resulting in fish kills for many miles of the San Pedro River in Mexico and the United States. The effects of such spills on *Lilaeopsis* are unknown, but could be detrimental.

Reaches of many southern Arizona rivers and streams have been channelized for flood control purposes, which disrupts natural channel dynamics and promotes the loss of riparian plant communities. Channelization modifies the natural hydrograph above and below the channelized reach, which may adversely affect *Lilaeopsis* and *Spiranthes*. Channelization will continue to contribute to riparian habitat decline. Additional channelization will accelerate the loss and/or degradation of *Spiranthes* and *Lilaeopsis* habitat. Dredging extirpated *Lilaeopsis* at House Pond, near the extant population in Black Draw (Warren *et al.* 1991). The *Lilaeopsis* population at Zinn Pond in St. David near the San Pedro River was probably lost when the pond was dredged and deepened. This population was last documented in 1953 (Warren *et al.* 1991).

Livestock grazing potentially affects *Lilaeopsis* at the ecosystem, community, population, and individual levels. Cattle generally do not eat *Lilaeopsis* because the leaves are too close to the ground, but they can trample plants. *Lilaeopsis* is capable of rapidly expanding in disturbed sites and could recover quickly from light trampling by extending undisturbed rhizomes (Warren *et al.* 1991). Light trampling also may keep other plant density low, providing favorable *Lilaeopsis* microsites. Well-managed livestock grazing and *Lilaeopsis* are compatible. The fact that *Lilaeopsis* and its habitat occur in the upper Santa Cruz and San Pedro river systems in the San Rafael Valley attests to the good land stewardship of past and current landowners.

Poor livestock grazing management can destabilize stream channels and disturb cienega soils, creating conditions unfavorable to *Lilaeopsis*, which requires stable stream channels and cienegas. Such management can also change riparian structure and diversity, causing a decline in watershed condition. Poor livestock grazing management is widely believed to be one of the most significant factors contributing to regional channel entrenchment in the late 1800's.

Livestock management in Mexico has severely degraded riparian areas along Black Draw and its watershed. The degraded habitat most likely contributed to the severity of a destructive scouring flood on San Bernardino Creek in 1988, which extirpated two patches of *Lilaeopsis*. Overgrazing is occurring immediately adjacent to the San Bernardino National Wildlife Refuge and has destabilized the channel of Black Draw. A headcut moving upstream threatens to undermine the riparian area recovery that has occurred since the refuge was acquired. The refuge is implementing management to avoid the destructive effects of downstream grazing.

Sand and gravel mining along the San Pedro, Babacomari, and Santa Cruz rivers in the United States has occurred and probably will continue, although no mining occurs within the San Pedro Riparian National Conservation Area. Sand and gravel operations remove riparian vegetation and destabilize the system, which could cause *Spiranthes* or *Lilaeopsis* population and habitat losses upstream or downstream from the mining. These mines also pump groundwater for processing purposes, and could locally affect groundwater reserves and perennial stream baseflow. Since 1983, groundwater has been used to wash sand and gravel mined near the Babacomari River, 0.8 km (0.5 mi) west of Highway 90 (Arizona Department of Water Resources 1991). This activity could affect at least one *Spiranthes* population.

Rural and urban development, road building and maintenance, agriculture, mining, and other land disturbances that degrade watersheds can adversely affect *Lilaeopsis*. These activities are common in the middle Santa Cruz basin but much less prevalent in the San Pedro basin. For these reasons, conservation and recovery of the middle Santa Cruz River is unlikely but still possible in the upper San Pedro watershed, given region-wide planning decisions favorable to good watershed management. Increased development in the upper San Pedro Valley, including the expansion of existing cities and increased rural building, will likely increase erosion and have other detrimental watershed effects.

Watershed-level disturbances are few in the upper Santa Cruz and Black Draw drainages. Irrigated farm fields were present in the Black Draw watershed, but these were abandoned when the Service acquired the area as a refuge. The fields are returning to natural vegetation. The San Rafael Valley, which contains portions of the headwaters of the Santa Cruz and San Pedro rivers, is well-managed, and currently undeveloped, with few watershed-disturbing activities. However, there is potential for commercial development in the San Rafael Valley and resulting watershed effects.

Riparian areas and cienegas offer oasis-like living and recreational opportunities for residents of southern Arizona and northern Sonora. Riparian areas and cienegas such as Sonoita Creek, the San Pedro River, Canelo Hills cienega, and the perennial creeks of the Huachuca Mountains receive substantial recreational visitation, and this is expected to increase with an increasing southern Arizona population. While well-managed recreational activity is unlikely to extirpate *Spiranthes* or *Lilaeopsis* populations, severe impacts in unmanaged areas can compact soils, destabilize stream banks, and decrease riparian plant density, including densities of *Spiranthes* and *Lilaeopsis*.

Stream headcutting threatens the *Lilaeopsis* and presumed Sonora tiger salamander populations at Los Fresnos cienega in Sonora. Erosion is occurring in Arroyo Los Fresnos downstream from the cienega and the headcut is moving upstream. The causes of this erosion are uncertain, but are presumably livestock grazing and roads in this sparsely populated region. If the causes of this erosion are left unchecked and headcutting continues, it is likely that the cienega habitat will be lost within the foreseeable future. The loss of Los Fresnos cienega may extirpate the *Lilaeopsis* and tiger salamander populations. If the salamanders at the Los Fresnos cienega are Sonora tiger salamanders, this would represent the only known natural cienega habitat occupied by an aquatic population of this species.

All confirmed Sonora tiger salamander populations have been found in stock tanks or impounded cienegas constructed to collect runoff for livestock. Many tanks probably date from the 1920's and 1930's when government subsidies were available to offset construction costs (Brown 1985); however, some tanks were constructed as early as the 1820's and as late as the 1960's (Hadley and Sheridan 1995). These stock tanks, to some degree, have created and replaced permanent or semipermanent Sonora tiger salamander water sources.

Although the tanks provide suitable aquatic habitats, current management and the dynamic nature of these artificial impoundments compromise their ability to support salamander populations in the long term. The tanks collect silt from upstream drainages and must be cleaned out periodically, typically with heavy equipment. This maintenance is done when stock tanks are dry or nearly dry, at an average interval of about 15 years (Laura Dupee, Coronado National Forest, pers. comm. 1993). As the tanks dry out, a proportion of aquatic salamanders typically metamorphose and migrate from the pond. However, if water is present during maintenance, eggs, branchiate, and larval salamanders may be present and would be lost as a result of the excavation of remaining aquatic habitat. Aquatic salamanders also may occur in the mud of dry or nearly dry tanks and would be affected. Any terrestrial metamorphs at the tank or in areas disturbed would be lost during maintenance activities.

Flooding and drought pose additional threats to stock tank populations of Sonora tiger salamanders. The tanks are simple earthen impoundments without water control structures. Flooding could erode and breach downstream berms or deposit silt, resulting in a loss of aquatic habitat. Long-term drought could dry up stock tanks, as witnessed in 1994 and 1996. Fires in watersheds above the tanks may lead to increased erosion and sedimentation following storms and exacerbate the effects of flooding.

Sonora tiger salamanders have persisted in stock tanks despite periodic maintenance, flooding, and drought. If the tanks refill soon after drought or other events that result in loss of aquatic habitat, they could presumably be recolonized through terrestrial metamorph reproduction. However, if a tank was dry for several years and isolated from other salamander localities, insufficient terrestrial salamanders may remain and immigration from other populations may be inadequate to recolonize the stock tank. Potential grazing practice changes also threaten aquatic Sonora tiger salamander populations. Stock tanks could be abandoned or replaced by other watering facilities, such as troughs supplied by windmills or pipelines. Troughs do not provide habitat for Sonora tiger salamanders.

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

No commercial, recreational, or educational uses of *Lilaeopsis* are known. A limited amount of scientific collecting is likely to occur but is expected to pose no threat to the species.

Although no specific cases of illegal commercial *Spiranthes delitescens* collecting have been documented, commercial dealers, hobbyists, and other collectors are widely known to significantly threaten natural orchid populations. The commercial value of an orchid already threatened by illegal commercial collection may increase after it is listed as threatened or endangered. To limit the possible adverse effects of illegal collecting, no specific *Spiranthes* population locations are discussed in this rule, nor will critical habitat be designated. No recreational or educational uses for *Spiranthes* currently are known. The small amount of legitimate scientific collecting that has occurred was regulated by the Arizona Native Plant Law (A.R.S. Chapter 7, Article 1).

Collecting of *Ambystoma* in the San Rafael Valley of Arizona is prohibited by Arizona Game and Fish Commission Order 41. Collins and Jones (1987) reported an illegal *Ambystoma* collection from the San Rafael Valley and suspected that bait collectors and anglers often move salamanders among stock tanks. The extent of this activity and its threat to populations is unknown. However, all Sonora tiger salamanders populations are relatively small (Collins and Jones 1987, Collins 1996). Collecting may significantly reduce recruitment, the size of branchiate or larval populations, and genetic diversity within a tank. This may increase the likelihood of extirpations.

C. Disease or Predation

Neither the *Lilaeopsis* nor *Spiranthes* are known to be threatened by disease or predation.

Sonora tiger salamanders populations are eliminated by nonnative fish predation, particularly sunfish and catfish (Collins and Jones 1987, Collins 1996). In laboratory studies, bullhead, mosquito fish, and sunfish ate Sonora tiger salamander eggs, hatchlings, and small larvae (Collins 1996). Introduced nonnative fish are well-established in the San Rafael Valley and have been implicated in apparent Sonora tiger salamander extirpations from five stock tanks, including the type locality (Collins *et al.* 1988, Collins 1996). Nonnative fish are known to occur at only one of 23 sites where salamanders have been found during one or more of the last three visits from 1993 through 1996. However, nonnative fish occur at 7 of 10 sites where the salamander is thought to be extirpated or where it has not been found during the last three visits. The effect of native fishes on salamander populations is unknown (Collins *et al.* 1988), some native species have a potential to prey on Sonora tiger salamanders. No native fish are known to occur with aquatic populations of salamanders.

Bullfrogs occur with Sonora tiger salamanders at 16 of 23 sites at which salamanders have been found during one or more of the last three visits from 1993 through 1996. Adult bullfrogs are known to prey on salamanders; however, bullfrog tadpoles do not eat viable salamander eggs or hatchlings (Collins 1996; James Collins, pers. comm. 1996). Bullfrogs were found to be more widely distributed in the San Rafael Valley in the 1990's as compared to 1985 (Collins 1996). The effect of predation by bullfrogs on salamander populations is unknown; however, increased mortality attributable to bullfrog predation may reduce population viability.

Virtually no recruitment was noted in recent surveys, as evidenced by a lack of surviving larvae in tanks where eggs were known to have been deposited (Collins 1996). Lack of recruitment appeared to be a result of predation by overwintering branchiate and larval salamanders. This predation may occur due to a lack of structural complexity, such as emergent and shoreline vegetation, logs, and rocks, that would provide cover and protection from predation (Collins 1996). Lack of shoreline and emergent vegetation is at least partially due to trampling and foraging by cattle.

A disease characterized by sloughing of skin and hemorrhaging killed all branchiate salamanders at Huachuca Tank, Parker Canyon Tank #1, and Inez Tank in 1985 (Collins *et al.* 1988) and has been detected at seven tanks in 1995–1996 (James Collins, pers. comm. 1996). The disease may be caused by a combination of a virus and *Aeromonas* (a bacteria) infections (James Collins, pers. comm. 1996). Parker Canyon Tank #1 and Inez Tank were recolonized by 1987, and salamanders were found once again at Huachuca Tank in 1994. These tanks were presumably recolonized by reproducing terrestrial metamorphs that survived the disease or that moved to these tanks from adjacent populations. At the seven tanks where the disease was found in 1995–1996, the effects on the populations will not be known until the disease runs its course. If the disease recurs with enough frequency, populations could be lost due to lack of recruitment of juveniles into the adult cohort. The disease also has the potential to reduce genetic variability,

which is already very low in this taxon (Jones *et al.* 1995). Low genetic variability increases the chances of population extirpation (Shafer 1990). Bullfrogs, wading birds, waterfowl, and other animals that move among tanks may facilitate spread of the disease.

D. The Inadequacy of Existing Regulatory Mechanisms

Federal and state laws and regulations can protect these three species and their habitat to some extent. However, Federal and state agency discretion allowed under the authority of these laws still permits adverse effects to listed and rare species. Adding *Lilaeopsis*, *Spiranthes*, and the Sonora tiger salamander to the endangered species list will help to reduce adverse affects to these species.

Lilaeopsis and *Spiranthes* are not classified as rare, threatened, or endangered species by the Mexican government; nor do their habitats receive special protection in Mexico. However, *Ambystoma tigrinum*, including the Sonora tiger salamander, is a species of special protection. This designation affords certain protections to the species and its habitat (Secretario de Desarrollo Urbano y Ecologia 1994).

On July 1, 1975, all species in the Orchid family (including *Spiranthes delitescens*) were included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international treaty established to prevent international trade that may be detrimental to the survival of plants and animals. A CITES export permit must be issued by the exporting country before an Appendix II species may be shipped. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not regulate take or domestic trade. CITES provides no protection to *Lilaeopsis* or the Sonora tiger salamander.

The Lacey Act (16 U.S.C 3371 *et seq.*), as amended in 1982, provides limited protection for these three species. Under the Lacey Act it is prohibited to import, export, sell, receive, acquire, purchase, or engage in the interstate or foreign commerce of any species taken, possessed, or sold in violation of any law, treaty, or regulation of the United States, any Tribal law, or any law or regulation of any state. Interstate transport of protected species occurs despite the Lacey Act because enforcement is difficult.

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) and National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) direct the Bureau of Land Management and the U.S. Forest Service respectively, to prepare programmatic-level management plans that will guide long-term resource management decisions. The goals of the Coronado National Forest Plan (Plan) include a commitment to maintain viable populations of all native wildlife, fish, and plant species within the Forest's jurisdiction through improved habitat management (Coronado National Forest 1986a). The Plan provides a list of rare plants and animals found on the Forest, but gives only a very general description of programmatic-level management guidelines and expected effort (Coronado National Forest 1986a). The Coronado National Forest is committed to multiple use and, where the demands of various interest groups conflict, the Forest must make decisions that represent compromises among these interests (Coronado National Forest 1986b) which could result in adverse effects to listed species.

The Plan's endangered species program includes participation in reaching recovery plan objectives for listed species, habitat coordination and surveys for listed species, and habitat improvement (Coronado National Forest 1986b). After acknowledging budget constraints, the Plan states that studies of endangered plants will occur at approximately the 1980 funding level.

Three populations of *Lilaeopsis* and four individual *Spiranthes* are known to occur on the Coronado National Forest. The Forest also manages the habitat of 17 of the 23 aquatic sites at which Sonora tiger salamanders have been observed during one or more of the last three visits during 1993 through 1996. Twenty-six of the 36 aquatic sites at which salamanders have been found are on Coronado National Forest land, underscoring the importance of Forest Service management. However, these numbers are somewhat misleading in that salamander surveys have focused on National Forest lands. Other aquatic sites likely occur on private lands, which to date have not been intensively surveyed. Nevertheless, the Coronado National Forest is the most important land manager of aquatic sites known to be occupied by Sonora tiger salamanders. The Forest considers the salamander a sensitive species and a management indicator species, which receive special consideration in land management decisions (Coronado National Forest 1986a). The ability of the Forest Service to manage the three species addressed here is limited because many of the populations do not occur on Forest Service lands and/or require ecosystem-level management that in some cases is beyond Forest Service control.

In accordance with Army Regulation 200–3, Fort Huachuca is preparing an Integrated Natural Resources Management Plan that will require preparation of Endangered Species Management Plans (ESMPs) for all listed and proposed species and critical habitat (Sheridan Stone, Fort Huachuca, pers. comm. 1996). The ESMPs are expected to provide management recommendations for conservation of Sonora tiger salamander and *Lilaeopsis* populations and habitat at Fort Huachuca. An ESMP is being prepared for the Fort Huachuca Sonora tiger salamander population. Although salamanders are known from only a single site at Fort Huachuca, the ESMP is expected to have recommendations that could be extended to other populations.

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370a) requires Federal agencies to consider the environmental impacts of their actions. NEPA requires Federal agencies to describe a proposed action, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve the public in the decision-making process. It does not require Federal agencies to select the alternative having the least significant environmental impacts. A Federal action agency may decide to choose an action that will adversely affect listed or candidate species provided these effects were known and identified in a NEPA document.

All three species addressed in this rule inhabit wetlands that are afforded varying protection under section 404 of the Federal Water Pollution Control Act of 1948 (33 U.S.C. 1251–1376), as amended; and Federal Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). Cumulatively, these Federal regulations are not sufficient to halt population extirpation and habitat losses for the three species addressed in this rule.

The Arizona Native Plant Law (A.R.S. Chapter 7, Article 1) protects *Spiranthes delitescens* and *Lilaeopsis schaffneriana* ssp. *recurva* as highly safeguarded species. A permit from the Arizona Department of Agriculture (ADA) must be obtained to legally collect these species on public or private lands in Arizona. Permits may be issued for scientific and educational purposes only. It is unlawful to destroy, dig up, mutilate, collect, cut, harvest, or take any living, ''highly safeguarded,'' native plant from private, State, or Federal

land without a permit. However, private landowners and Federal and State agencies may clear land and destroy habitat after giving the ADA sufficient notice to allow plant salvage. Despite the protections of the Arizona Native Plant Law, legal and illegal damage and destruction of plants and habitat occur.

Collecting *Ambystoma* in the San Rafael Valley is prohibited under Arizona Game and Fish Commission Order 41, except under special permit. Nevertheless, some illegal collecting occurs (Collins and Jones 1987). The species is considered a species of special concern by the State of Arizona (Arizona Game and Fish Department 1996); however, this designation affords the species and its habitat no legal protection. Transport and stocking of live bullfrogs and fishing with live bait fish or *Ambystoma* within the range of this salamander in Arizona is prohibited by Arizona Game and Fish Commission Order 41 and R12–4–316, respectively. However, bullfrogs and nonnative fish are present at numerous extant and historical Sonora tiger salamander localities (Collins and Jones 1987, Collins 1996), suggesting continued illegal introductions. Furthermore, abandonment, modification, or breaching of stock tanks is allowed on private and public lands. Such actions could eliminate Sonora tiger salamander populations.

State of Arizona Executive Order Number 89–16 (Streams and Riparian Resources), signed on June 10, 1989, directs state agencies to evaluate their actions and implement changes, as appropriate, to allow for riparian resources restoration. Implementation of this regulation may ameliorate adverse effects of some state actions on the species addressed in this rule.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Arizona anglers and commercial bait dealers often introduce larval tiger salamanders into ponds and tanks for future bait collecting (Collins *et al.* 1988, Lowe 1954). Collins and Jones (1987) reported that tiger salamanders were illegally collected from the San Rafael Valley and transported to at least two tanks in the northern Patagonia Mountains. Bait dealers or others moving Sonora tiger salamanders to new localities could establish new populations. Collins and Jones (1987) suggest that transport and introduction of salamanders within the San Rafael Valley may have greatly influenced their present distribution. Moving could also transmit disease and cause unintentional introductions of fish or bullfrogs, which might reduce or extirpate populations.

Transport and introduction of salamanders poses an additional threat. *Ambystoma tigrinum mavortium* is common in stock tanks and ponds to the east of the San Rafael Valley. Bait dealers and anglers probably introduced many of these populations (Collins 1981, Collins and Jones 1987). If *Ambystoma tigrinum mavortium* is introduced into Sonora tiger salamander localities, populations could be lost due to genetic swamping by interbreeding of the two subspecies.

Two populations of *Lilaeopsis* have been lost from unknown causes. Despite the presence of apparently suitable conditions, the species has not been observed at Monkey Spring near Sonoita Creek since 1965. *Lilaeopsis* was collected in 1958 in deep water along the San Pedro River by Highway 80 near St. David, but no longer exists there, nor is there now suitable habitat (Warren *et al.* 1990).

Aggressive nonnative plants disrupt native riparian plant communities. Nonnative Johnson grass (*Sorghum halepense*) is invading one *Spiranthes* site (Dave Gori, Arizona Nature Conservancy, *in litt.* 1993). This tall grass forms a dense monoculture, displacing less competitive native plants. If Johnson grass continues to spread, the *Spiranthes* population may be lost (Dave Gori, *in litt.* 1993). Bermuda grass (*Cynodon dactylon*) also displaces native riparian plants, including cottonwoods and willows that stabilize stream channels. Bermuda grass forms a thick sod in which many native plants are unable to establish. In certain microsites, Bermuda grass may directly compete with *Lilaeopsis* or *Spiranthes.* There are no known effective methods for eliminating Bermuda grass or Johnson grass from natural plant communities on a long term basis. Watercress (*Rorippa nasturtium-aquaticum*) is another nonnative plant now abundant along perennial streams in Arizona. It is successful in disturbed areas and can form dense monocultures that can out-compete *Lilaeopsis* populations.

Limited numbers of populations render each of the three taxa addressed in this rule vulnerable to extinction as a result of naturally occurring chance events that are often exacerbated by habitat disturbance. For instance, the restriction of these three species to a relatively small area in southeastern Arizona and adjacent Sonora increases the chance that a single environmental catastrophe, such as a severe tropical storm or drought could eliminate populations or cause extinction. This is of particular concern for Sonora tiger salamander populations inhabiting stock tanks that could wash out during a storm or dry out during drought. Furthermore, Sonora tiger salamander genetic heterozygosity is among the lowest reported for any salamander (Jones *et al.* 1988, Jones *et al.* 1995). Low heterozygosity indicates low genetic variation, which increases demographic variability and the chance of local extirpations (Shafer 1990).

The ability of Sonora tiger salamanders to move between populations is unknown, but arid grassland, savanna, or pine-oak woodland separate all populations and movement through these relatively dry landscapes is probably limited. Movement would be most likely during storms or where wet drainages are available as movement corridors. The distance between aquatic populations of Sonora tiger salamander is frequently more than 1.6 km (1.0 mi), and much greater distances separate several sites. For instance, Game and Fish Tank is 10.1 km (6.3 mi) from the nearest adjacent aquatic population. Thus, even if these salamanders are capable of moving relatively long distances, some populations may be effectively geographically isolated. Small, isolated populations have an increased probability of extirpation (Wilcox and Murphy 1985). Disease, predation by nonnative predators, and drying of tanks during drought further increase the chance of extirpation. Once populations are extirpated, natural recolonization of these isolated habitats may not occur (Frankel and Soule 1981).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to make this rule final. Based on this evaluation, the preferred action is to list *Spiranthes delitescens*, *Lilaeopsis schaffneriana* spp. *recurva*, and the Sonora tiger salamander as endangered. These species are endangered because of widespread and serious threats that may lead to extinction in the foreseeable future. As a result, listing as threatened species would not fully address the extent and nature of threats to these species. The Service believes designation of critical habitat is not prudent for all three species. The rationale for these decisions are discussed in the following section.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(I) the specific areas within the geographic area occupied by a species, at the time it is listed in

accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation,'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 242.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Lilaeopsis schaffneriana* ssp. *recurva, Spiranthes delitescens,* and *Ambystoma tigrinum stebbinsi.* Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat, or (2) such designation would not be beneficial to the species.

Lilaeopsis schaffneriana ssp. *recurva* and Sonora tiger salamander would not benefit from the designation of critical habitat. The Service determines that any potential benefits beyond those afforded by listing, when weighed against the negative impacts of disclosing their site-specific location, does not yield an overall benefit and is therefore not prudent. The overall habitat protection and conservation of these two species would be best implemented by the recovery process and section 7 provisions of the Act (see ''Available Conservation Measures'' section).

As discussed under Factor B in the ''Summary of Factors Affecting the Species,'' *Spiranthes* is threatened by collecting. If it is listed, collecting of *Spiranthes* would be prohibited under the Act in cases of (1) removal and reduction to possession from lands under Federal jurisdiction, or malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying *Spiranthes* in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *Spiranthes delitescens* more vulnerable and increase enforcement problems. All involved parties and principal landowners are aware of the location and importance of protecting this species' habitat. Habitat protection will be addressed through the recovery process and through the section 7 provisions of the Act. Therefore, it is not prudent to designate critical habitat for *Spiranthes delitescens.*

Protection of the habitat of these species will be addressed through the recovery process and the section 7 consultation process. The Service believes that Federal involvement in the areas where these species occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these three species is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All three taxa in this rule occur on the Coronado National Forest. *Lilaeopsis* and the Sonora tiger salamander also occur on Fort Huachuca, managed by the Department of the Army. In addition, *Lilaeopsis* occurs on Service lands at San Bernardino National Wildlife Refuge and at the BLM's San Pedro Riparian National Conservation Area.

Examples of Federal actions that may affect the three species addressed in this rule include managing recreation, road construction, livestock grazing, granting rights-of-ways, stock tank development and maintenance, and military activities on Fort Huachuca. These and other Federal actions would require formal section 7 consultation if the action agency determines that the proposed action may affect listed species. Development on private or State lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers, would also be subject to the section 7 consultation process. Federal actions not affecting the species, as well as Actions that are not federally funded or permitted, would not require section 7 consultation.

Pursuant to 50 CFR 402.10(a), the Coronado National Forest conferred with the Service on the effects of issuance of grazing permits in the Duquesne, Campini, and San Rafael allotments within the range of the Sonora tiger salamander. The Service determined that issuance of the permits would not likely jeopardize the continued existence of the salamander provided that stock tank maintenance and management plans were promptly developed and implemented for the allotments. These plans would ensure the maintenance of quality aquatic habitat for the Sonora tiger salamander.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale listed species in interstate or foreign commerce, or to remove and reduce to possession listed species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying endangered

plants in knowing violation of any state law or regulation, including state criminal trespass law. Certain exceptions apply to agents of the Service and state conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued for *Lilaeopsis* or *Spiranthes* because these species are not common in cultivation or in the wild.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any such conduct), import or export, ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and state conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time an animal species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities with a species' range. The Service believes that, based on the best available information, the following are examples of actions that will not result in a violation of section 9.

Actions that would not result in a violation of section 9 for either *Lilaeopsis* or *Spiranthes* would include—

(1) Otherwise lawful activities on private lands undertaken by the landowner since plants are not protected from taking by the private landowner of the habitat by the Act; or

(2) federally-approved projects, such as issuance of livestock grazing permits, road construction, and dredge and fill activities, when such activity is conducted in accordance with section 7 of the Act.

Actions that would not result in violation of section 9 for Sonora tiger salamander would include—

(1) Recreational activities in the range of the Sonora tiger salamander that do not result in physical damage to stock tanks, vegetation at stock tanks, stock fences, and riparian habitats between occupied stock tanks; and that do not involve relocation of salamanders or nonnative aquatic vertebrates;

(2) Well-managed livestock grazing of uplands, including running of cattle, and development, operation and maintenance of range improvements; or

(3) Federally-approved projects, such as issuance of livestock grazing permits, road construction, and dredge and fill activities, when such activity is conducted in accordance with section 7 or section 10 of the Act.

The Service has determined that the following activities could potentially result in a section 9 violation. As section 9 is somewhat limited in the protection provided to plants, the possible actions that could result in a section 9 violation for *Lilaeopsis* or *Spiranthes* could include—

(1) Malicious destruction or removal on lands under Federal jurisdiction;

(2) Criminal trespass onto private lands and then removal of plants from those lands; or

(3) Removal of plants without appropriate State permits.

Some of the possible actions that could result in a section 9 violation for Sonora tiger salamander include:

(1) Unauthorized handling, collecting, or harming of Sonora tiger salamanders;

(2) Destroying or altering berms or draining of aquatic sites occupied by the salamander and diverting flows upstream of breeding sites;

(3) Livestock grazing or watering at sites occupied by the salamander when such activity results in trampling of salamanders;

(4) Actions that result in the destruction or removal of aquatic or emergent vegetation, or shoreline vegetation at aquatic sites occupied by the species;

(5) Stocking of fish, bullfrogs other subspecies of *Ambystoma tigrinum,* or other organisms within the range of the Sonora tiger salamander that prey on or transmit diseases to Sonora tiger salamanders;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting the species; and

(7) Pesticide applications at or near occupied aquatic sites in violation of label restrictions.

Questions as to whether specific activities would constitute a violation of section 9 should be addressed to the Service's Arizona Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and wildlife and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505/248–6920; facsimile 505/248–6922).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this rule are Angie Brooks and Jim Rorabaugh, Arizona Ecological Services Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal

Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

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

2. Section 17.11(h) is amended by adding the following in alphabetical order, under ''Amphibians,'' to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Amphibians.							
*	*	*	*	*	*		*
Salamander, Sonora tiger.	Ambystoma tigrinum stebbinsi	U.S.A. (AZ), Mexico.	Entire	E	600	NA	NA
*	*	*	*	*	*		*

3. Section 17.12(h) is amended by adding the following two species, in alphabetical order under ''Orchidaceae'' and ''Unbelliferae'' to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*		*
Orchidaceae—Orchid Family:						
*	*	*	*	*		*
Spiranthes delitescens	Canelo Hills ladies'-tresses.	U.S.A. (AZ), Mexico.	E	600	NA	NA
*	*	*	*	*		*
Umbelliferae—Parsley Family:						
*	*	*	*	*		*
Lilaeopsis schaffneriana spp. *recurva*	Huachuca water umbel.	U.S.A. (AZ), Mexico.	E	600	NA	NA
*	*	*	*	*		*

Dated: December 24, 1996.

Jay L. Gerst,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–130 Filed 1–3–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 950725189–6245–04; I.D. 123096B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction.

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

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit in the hook-and-line fishery for king mackerel in the Florida west coast sub-zone to 50 king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: The 50–fish commercial trip limit is effective 12:01 a.m., local time, January 1, 1997, and remains in effect through June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is

managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf migratory group of king mackerel in the Florida west coast sub-zone of 865,000 lb (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels using run-around gillnets and vessels using hook-and-line gear.

In accordance with 50 CFR 622.44(a)(2)(ii)(B), from the date that 75 percent of the subzone's hook-and-line gear quota has been harvested until the west coast subzone's hook-and-line fishery is closed, or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 50 per day.

NMFS has determined that 75 percent of the hook-and-line quota for Gulf group king mackerel from the Florida west coast subzone was reached on December 30, 1996. Accordingly, a 50–fish trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the Florida west coast subzone effective 12:01 a.m., local time, January 1, 1997.

The Florida west coast subzone extends from 87°31′06″ W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4′ N. lat. (due east of the Dade/Monroe County, FL, boundary) through March 31, 1997; and (2) 25°48′ N. lat. (due west of the Monroe/Collier County, FL, boundary) from April 1, 1997, through October 31, 1997.

Classification

This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under E.O. 12866.

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

Dated: December 30, 1996.

Gary C. Matlock,

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

[FR Doc. 96–33403 Filed 12–31–96; 2:35 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 3
Monday, January 6, 1997

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 Highway Administration

23 CFR Part 655

[FHWA Docket No. 96–47]

RIN 2125–AE11

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices; Markings, Signals, and Traffic Control Systems for Railroad-Highway Grade Crossings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134. This document proposes new text for the MUTCD in Part III, markings; in part IV, signals; and in part VIII, traffic control systems for railroad-highway grade crossings. The purpose of this effort is to include metric dimensions and values for the design and installation of traffic control devices and to improve the organization and discussion of the contents of the MUTCD. The proposed changes to the MUTCD are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

DATES: Submit comments on or before August 30, 1997.

ADDRESSES: Submit written, signed comments to FHWA Docket 96–47, Federal Highway Administration, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 and 3:30 p.m., e.t., Monday through Friday except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: *Program Office:* Ms. Linda L. Brown, HHS–10, (202) 366–2192. The proposed text for the parts of the MUTCD discussed in this notice of proposed rulemaking is available in printed copy or CD–ROM format. It is also available on the FHWA home page at the following Internet address: HTTP://cti1.volpe.dot.gov/fhwa/. *Office of the Chief Counsel:* Mr. Raymond Cuprill, HCC–20, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: The 1988 MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This notice is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments submitted and upon its own experience, the FHWA will issue a final rule concerning the proposed changes included in this notice.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has taken the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices.

Although the MUTCD will be revised in its entirety, it will be done in phases due to the enormous volume of text. The NCUTCD has submitted to the FHWA for review and consideration the proposed text for the following MUTCD Parts: MUTCD Parts III—Markings, Part IV—Signals, and Part VIII—Traffic Control Systems for Railroad Highway Grade Crossings. The FHWA has had an opportunity to review the NCUTCD's recommendations and a majority of those recommendations are included in this notice of proposed rulemaking as the first phase of the MUTCD rewrite and reformat effort. In virtually all cases where the recommendation from the NCUTCD for a text change or a change in the ''shall, should, or may'' condition was not accepted, the FHWA felt there was insufficient justification presented for the change. In reviewing the proposed text submitted by the NCUTCD, the FHWA prepared a comparison table which shows the differences from the 1988 Edition of the MUTCD and the FHWA's decisions on whether or not to accept the changes. The comparison table is part of this docket and is available for inspection.

MUTCD Parts I, VII and IX will be included in Phase 2 of the rewrite effort and the remaining parts will be included in Phase 3. The public will have an opportunity to review and comment on both of these remaining phases of the MUTCD rewrite effort. The FHWA invites your comments on the proposed text for Phase 1 which includes parts III, IV, and VIII of the MUTCD. A summary of the significant changes contained in these sections is discussed in this notice of proposed rulemaking.

The proposed new style of the MUTCD would be a 3-ring binder with 8½ inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing ''shall'' conditions, (2) Guidance—representing ''should'' conditions, (3) Options—representing ''may'' conditions, and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance and optional conditions for the design, placement, and application of traffic control devices. For review purposes during this rewrite effort, dimensions will be shown in both metric and English. This will make it easier to compare text shown in the 1988 Edition with the proposed new

edition. However, the adopted final version of the new MUTCD will be solely in metric units.

This effort to rewrite and reformat the MUTCD will be an ongoing activity over the next 2–3 years. Some of the other issues which will be addressed in future notices of proposed rulemaking are: Standards for the placement of pavement marking center lines and edge lines; minumum retroreflectivity standards for signs and pavement markings; signing for low-volume rural roads; traffic control for light-rail grade crossings; and the addition of a new color ''Fluorescent Yellow Green'' for use at pedestrian and bicycle locations. These proposed changes to the MUTCD are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

Discussion of Proposed Amendments to Part III—Markings

The following items are the most significant of the many revisions to Part III of the 1988 MUTCD:

Characteristics of Islands as Traffic Control Devices

In the 1988 Edition of the MUTCD, ''Islands'' were covered in Part V. It is proposed to relocate this topic to part III, Section 3G.

Pavement Marking Colors

In Section 3A.4 the color ''blue'' would be included as a new standard pavement marking color for international symbol of access parking.

General Principles for Longitudinal Pavement Markings

In Section 3A.5 a definition for ''Dotted Lines'' would be included.

Widths and Patterns of Longitudinal Line Markings

The width and pattern for ''dotted lines'' would be added to Section 3A.6.

Warrants for No Passing Zones at Curves

The warrants for no-passing zones at curves would be moved from previous Section 3B–5 to Section 3B–1. These warrants for determining minimum passing sight distances would be based on posted or statutory speed limits as shown in Table III–1. Previously, the mimimum passing sight distances were determined based on the greater of the off-peak 85th percentile speed or the posted speed limits. In addition, Table III–1 includes incremental speed limits of five miles per hour (kilometers per hour were rounded).

Center Line Markings

A new STANDARD would be added to Section 3B.1a that requires center line markings to be placed on paved undivided streets and highways including all rural and urban arterials and collectors with specified widths and average daily travel (ADT), and including all two-way streets and highways with three or more travel lanes.

Edge Line Markings

In Section 3B.3 edge line markings would be required on all freeways and expressways and on all rural arterials with travel widths of 6.1 m (20 ft.) or more. In addition, edge line markings are recommended on rural collectors with travel widths of 6.1 m (20 ft.) or more and at locations where the edge of the traveled way is not otherwise delineated and where an engineering study indicates a need.

New Standard on Pavement Marking Extensions Through Intersections or Interchanges

Section 3B.4 would provide that when markings are extended into or continued through an intersection or interchange area, they shall be the same color and at least the same width as the line(s) they extend. This section also provides STANDARDS for dotted lines.

Raised Pavement Markers

New supporting information would be included in Section 3B.7. It states that ''a raised pavement marker is a device with a height of at least 10mm mounted on or in a road surface, and intended to be used as positioning guides or to supplement or substitute for pavement markings.''

The following new STANDARD would be included in Section 3B.7: The color of raised pavement markers under both daylight and nighttime conditions shall conform to the color of the marking for which they serve as a positioning guide, or for which they supplement, or substitute.

The following new GUIDANCE would be included in Section 3B.7: Raised pavement markers should not be substituted for right edge lines.

Pavement Word and Symbol Markings

In situations where through lanes become mandatory turn lanes, Section 3B.12, under GUIDANCE, would be modified to allow signs or markings to be repeated as necessary to prevent entrapment and to help the road user select the appropriate lane before reaching the queue of waiting vehicles.

A new STANDARD would also be added to this section. It states that in situations where through lanes become mandatory turn lanes, lane-use arrows shall be used and shall be accompanied by standard signs.

A pavement marking symbol for designated parking spaces for persons with disabilities would be included as an OPTION in Section 3B.12.

A lane reduction pavement arrow would be included in Section 3B.12.

Channelizing Devices

A new STANDARD would be added to Section 3F.2 which states that the color of cones and tube markers used outside construction and maintenance areas shall be the same as the pavement marking for which they supplement or substitute.

Approach End Treatment

A new STANDARD would be included in Section 3G.2 which states that bars or buttons, when used in advance of islands having raised curbs, shall not be placed in such a manner as to constitute an unexpected hazard.

Discussion of Proposed Amendments to Part IV—Signals

The following items are the most significant changes of the many revisions to Part IV.

Definitions Relating to Highway Traffic Signals

Section 4A.2 would be significantly expanded from four definitions to fifty-five definitions of technical terms that are being used throughout Part IV.

Basis for Installing Highway Traffic Signals

Section 4B.2 would state that ''If changes in traffic patterns have resulted in a situation where a highway traffic control signal is no longer needed, consideration should be given to removing it and replacing it with appropriate alternative traffic control devices.'' The FHWA has always acknowledged this but never stated it in the MUTCD.

Alternatives to Highway Traffic Control Signals

Since vehicle delay and accident frequency are sometimes greater under traffic signal control than under STOP sign control, consideration should be given to providing less restrictive alternatives to traffic signals. Section 4B–4 would list eleven less restrictive alternative measures that should be considered before a highway traffic control signal is installed.

Studies and Factors for Justifying Highway Traffic Control Signal Installation

Section 4C would list seven warrants for justifying a highway traffic control signal installation. Warrants are a set of criteria that can be used to define the relative need for, and appropriateness of traffic control signals. The number of warrants would be reduced from eleven warrants to seven warrants. The following is a brief summary of how the warrants were reduced:

1. The interruption of continuous traffic warrant will be combined with the new warrant number 1 entitled, ''Eight Hour Vehicle Volume Warrant.''
2. The school crossing warrant will be placed in section 7D.4.
3. Warrant 8 will be incorporated into warrant 1.
4. The peak hour delay warrant will be included in Warrant 3.

The FHWA had been receiving a number of complaints concerning the number and complexity of the signal warrants. This modification should address these concerns.

Traffic Control Signal Features

In Section 4D.1, the following two cases where STOP signs are allowed to be used with traffic control signals would be added: (1) If the signal indication for an approach is a flashing red at all times; and (2) If a minor roadway or driveway is located within or adjacent to the controlled area, but does not require separate traffic signal control because an extremely low potential for conflict exists.

Meaning of Vehicle Signal Indications

In Section 4C.4, the phrase ''Unless otherwise determined by law'' in the first paragraph under STANDARDS would be deleted. If this phrase were left in the paragraph, States would have the right to assign different meanings to signal indications than are allowed by the MUTCD.

Application of Steady Signal Indication

In Section 4D.5f(3) entitled ''A Steady GREEN ARROW Indication,'' a GREEN ARROW would not be required on the stem of ''T'' intersections or for turns from one-way roadways. In this same section under ''Options,'' the application of steady RED, YELLOW, and GREEN ARROWS is discussed. In the 1988 MUTCD there was an item (e) that made it optional to use a CIRCULAR GREEN indication for protected movements. This proposal would eliminate item (e) so that the GREEN ARROW indication would be mandatory for all protected left or right turn movements.

Application of Steady Signal Indications for Left Turns

In Section 4D.6b(3), a new STANDARD would be added. It states that ''A four-section signal face (CIRCULAR RED, CIRCULAR YELLOW, CIRCULAR GREEN, and left-turn GREEN ARROW) shall be used when the CIRCULAR GREEN and left-turn GREEN ARROW indications begin and terminate together.'' This is known as ''split phasing'' and would be discussed for the first time in the MUTCD.

Application of Steady Signal Indications for Right-Turns

Section 4D.7 would describe in more detail the various modes for right-turn displays.

Traffic Control Signals for One-Lane, Two-Way Facilities

Section 4G would be greatly expanded to include the application, design, and operation of traffic control signals used on one-lane, two-way facilities.

Design of Freeway Entrance Ramp Control Signals

In Section 4H.2, the requirement for a signal face being mounted on both the left and right side of a ramp that has two lanes would be eliminated. In addition, the requirement for a signal face to have a minimum nominal diameter of 8 inches has been eliminated. In this same section, the recommended height of the signal face (between 4½ and 6 feet) has been changed from a GUIDANCE to an OPTION.

Design of Movable Bridge Signals and Gates

In Section 4I.2, the following paragraph would be upgraded to a STANDARD:

''Since movable bridge operations cover a variable range of time periods between openings, the signals shall be of the following types. The first type shall consist of the standard three color (red, yellow, and green) traffic signal lenses, generally to be used if movable bridge operation is quite frequent. The second type shall consist of two red signal lenses in vertical array separated by a STOP HERE ON RED sign. (See Section 2B.37)''

Meaning of Lane-Use Control Signal Indications

In Section 4J.2, under STANDARD, the flashing YELLOW X indication would be replaced by two new lane-use control signal indications: steady WHITE TWO–WAY LEFT–TURN ARROW and steady WHITE ONE–WAY LEFT–TURN ARROW.

Warning Beacon

Section 4K.2 would replace the Hazard Identification Beacon section that was in the 1988 MUTCD. Guidance for design and application of warning beacons is described.

Speed Limit Sign Beacon

In Section 4K.3, all speed limit sign beacons would be required to have a visible diameter of not less than 200 millimeters (8 inches).

Discussion of Proposed Amendments to Part VIII—Roadway-Rail Intersections

The following are the most significant changes of the many revisions to Part VIII:

Title of Part VIII

This section of the MUTCD would be retitled ''Traffic Control For Roadway-Rail Intersections'' to more properly reflect the intent of this part to deal with all instances where there is an intersection between vehicles operating on fixed rail and vehicles operating on roadways.

General

The term ''roadway'' would be substituted for the terms ''highway'' and ''street.'' The term ''roadway'' connotes the terms ''highway'' or ''street'' unless specifically defined in a specific section. The term ''roadway-rail intersection'' would be substituted for the term ''grade-crossing.''

Roadway Rail Intersection Closures

Section 8A.4 would be expanded to discuss situations where the railroad is closed and situations where the roadway is closed.

Traffic Controls During Construction and Maintenance

Section 8A.5 would be expanded to ensure that the standards discussed in Part VI of the MUTCD are followed for construction and maintenance operations at roadway-rail intersections. In addition, this section would require the use of a law enforcement officer or flagger at the intersection if the queuing of vehicles across the tracks cannot be avoided during construction or maintenance activities. This requirement would apply whether or not active traffic control devices are in use at the roadway-rail intersection.

Roadway-Rail Crossing (Crossbuck) Sign

Section 8B–2 would be revised to include standards for the installation of 2'' minimum retroreflective white material at all grade crossings for placement on the back of each blade of the crossbuck sign for the length of the

blade. At passive grade crossings, a strip of high grade retroreflective white material would also be required on the full length of the front and back of each ''Crossbuck'' (R15–1) or ''Number of Track'' (R15–2) sign support. Figure 8–1 has been modified to reflect this change.

Roadway-Rail Intersection Signs and Markings

Some of the sections in 8B would be reordered to put all of the discussions relating to signs together before pavement markings, etc. A new Section 8B.10 ''Stop Lines'' would be added. This section discusses the placement of stop lines. This information is presently contained as a note on Figure 8–2. The current Section 8B.5 ''Illumination at Grade Crossings'' would be moved to Section 8C.1.

Flashing-Light Signals and Gates

This Section 8C would be redesignated as 8D. Section 8D in the 1988 MUTCD entitled ''Systems and Devices'' would be removed and the information in that section would be incorporated into revised sections 8A and 8D.

Train Detection Systems

In Section 8D–5, automatic flashing light signals would be required to flash for at least 20 seconds before the arrival of any train regardless of the train's speed. The current requirement applies to trains that operate at speeds of 20 mph or greater.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities, including small governments. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to improve traffic operations, expand guidance and clarify application of traffic control devices. The FHWA hereby certifies that these actions would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. The proposed amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that this amendment would override any existing State requirements regarding traffic control devices, it does so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32, 655.601, 655.602, and 655.603; 49 CFR 1.48)

Issued on: December 27, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–33405 Filed 12–31–96; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–242996–96]

RIN 1545–AU45

Inflation-Indexed Debt Instruments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations relating to the federal income tax treatment of inflation-indexed debt instruments, including

Treasury Inflation-Indexed Securities. The text of the temporary regulations also serves as the text of the proposed regulations. This document also provides notice of a public hearing on the proposed regulations.

DATES: Comments must be received by April 7, 1997. Requests to appear and outlines of topics to be discussed at the public hearing scheduled for April 30, 1997, at 10 a.m. must be received by April 9, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–242996–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–242996–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the ''Tax Regs'' option of the IRS Home Page or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html. A public hearing will be held in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, William E. Blanchard, (202) 622–3950, or Jeffrey W. Maddrey, (202) 622–3940; concerning submissions and the hearing, Mike Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the Federal Register amend the Income Tax Regulations (26 CFR part 1) relating to sections 1275 and 1286 of the Internal Revenue Code. The temporary regulations provide rules relating to inflation-indexed debt instruments, including Treasury Inflation-Indexed Securities.

The text of the temporary regulations also serves as the text of the proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 30, 1997, at 10 a.m. in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit comments by April 7, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic by April 9, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is William E. Blanchard, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding two entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1275–7 also issued under 26 U.S.C. 1275(d). * * *

Section 1.1286–2 also issued under 26 U.S.C. 1286(f). * * *

Par. 2. Section 1.1275–7 is added to read as follows:

§ 1.1275–7 Inflation-indexed debt instruments.

[The text of this proposed section is the same as the text of § 1.1275–7T published elsewhere in this issue of the Federal Register.]

Par. 3. Section 1.1286–2 is added to read as follows:

§ 1.1286–2 Inflation-indexed debt instruments.

[The text of this proposed section is the same as the text of § 1.1286–2T published elsewhere in this issue of the Federal Register.]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–33397 Filed 12–31–96; 12:57 pm]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH69–2–6680b; FRL–5646–3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is taking action to approve, through direct final procedure, changes to the Ohio enhanced automobile inspection and maintenance program (known as E-Check) as a revision to the ozone portion of the Ohio State Implementation Plan (SIP). The program changes were submitted to satisfy a Federal requirement that any changes to the program be submitted to the EPA for approval. The Ohio ozone nonattainment areas covered by this rulemaking are the Cleveland-Akron-Lorain, Dayton-Springfield, and Cincinnati areas.

In the Final Rules Section of this Federal Register, EPA is approving the State's SIP revision request as a direct final rule without prior proposal because EPA views this as noncontroversial and anticipates no adverse comments. The rationale for the approval is set forth in the direct final

rule. If no adverse or critical comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives significant adverse comments, (which have not been addressed) the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will institute a second comment period on this action only if warranted by revisions to the rulemaking based on comments received. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by February 5, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (A–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and EPA's analysis of it are available for inspection at: Regulation Development Section, Air Enforcement Branch (A–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Regulation Development Section, Air Programs Branch (A–18J), Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6084.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 4201–7601q.

Dated: October 16, 1996.

William E. Muno,

Acting Regional Administrator.

[FR Doc. 97–195 Filed 1–3–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 26

[WT Docket No. 96–148; GN Docket No. 96–113; FCC 96–474]

Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees; and Implementation of Section 257 of the Communications Act; Elimination of Market Entry Barriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Further Notice of Proposed Rulemaking in WT Docket No. 96–148, the Commission proposes modifications to the cellular and General Wireless Communications Services (GWCS) rules to expand geographic partitioning and spectrum disaggregation provisions. The Commission solicits comment on certain issues relating to these rules.

DATES: Comments must be filed on or before February 10, 1997. Reply comments must be filed on or before February 25, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Shaun A. Maher, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This Further Notice of Proposed Rulemaking in WT Docket No. 96–148 and GN Docket No. 96–113, adopted on December 13, 1996, and released December 20, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 234, 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Synopsis of Further Notice of Proposed Rulemaking

I. Introduction

1. There are Commercial Mobile Radio Services (CMRS) in which partitioning and disaggregation have either not been proposed or have been adopted on a more limited basis than the rules adopted for broadband PCS. For example, while partitioning is allowed for cellular licensees, there are no rules on disaggregation. Similarly, General Wireless Communications Service (GWCS) licensees are permitted to partition only to rural telcos and currently there is no rule for GWCS disaggregation.

2. The Commission believes that it is appropriate at this time to consider whether to permit full partitioning and disaggregation in cellular, GWCS and any other services that are licensed on a geographic area basis, or in spectrum blocks of sufficient size to make disaggregation practical. Therefore, the Commission seeks comment on whether these benefits similarly justify extension of partitioning and disaggregation to other services.

II. Discussion

A. Partitioning and Disaggregation for Cellular and GWCS Services

3. *Cellular.* The Commission seeks comment as to whether to permit cellular disaggregation. Commenters should address whether there are technical or other constraints, unique to the cellular service, that would make disaggregation either impractical or administratively burdensome. Commenters should address whether regulatory or technological changes expected in the near future may provide the opportunity for cellular licensees to disaggregate portions of their licensed spectrum to other parties. The Commission seeks comment as to whether such regulatory changes may create a demand for cellular disaggregation and whether, in anticipation of such changes, the Commission should adopt interim disaggregation rules for cellular.

4. *GWCS.* The Commission seeks comment as to whether open partitioning of GWCS licenses should be permitted similar to the proposal for open partitioning the Commission has adopted for broadband Personal Communications Service (PCS) licensees. In addition, the Commission seeks comment as to whether GWCS licensees should be permitted to disaggregate their spectrum. The Commission also seeks comment as to whether there are technical or regulatory constraints unique to the GWCS service that would render disaggregation impractical or administratively burdensome. Further, the Commission recognizes that there are special competitive bidding issues, similar to those raised in the broadband PCS context, that must be resolved if it permits open partitioning and disaggregation for GWCS.

B. Available License Area

5. Section 22.947(b) of the rules, 47 CFR 22.947(b), provides that a cellular licensee may partition portions of its cellular market to other eligible parties. The parties are free to define the license area or ''CGSA'' of the new partitioned cellular system. Because the cellular partitioning rule is sufficiently flexible to permit parties to freely define the partitioned license area, the Commission does not propose to modify the cellular rules at this time.

6. GWCS service areas are based on Economic Areas. Similar to the former rule for broadband PCS partitioning, GWCS licensees must partition along an established geopolitical boundary, such as county lines, the partitioned area must include the wireline service area

of a rural telephone company (rural telco) and it must be reasonably related to the rural telco's wireline service area. The Commission seeks comment on whether and how its existing partitioning rule for GWCS, which requires partitioning along established geopolitical boundaries and along an area that is reasonably related to a rural telco's wireline service area, should be modified, if it chooses to open partitioning of GWCS licenses to entities other than rural telcos. The Commission tentatively concludes that a more flexible approach, similar to the one it adopted for broadband PCS, is appropriate for GWCS. Partitioning of GWCS licenses would be permitted based on any license area defined by the parties. The Commission seeks comment on whether this proposal is consistent with the licensing of GWCS based on Economic Areas and whether there are any technical or other issues unique to GWCS that might impede the adoption of a flexible approach to defining the partitioned license area.

C. Amount of Spectrum To Disaggregate

7. The Commission seeks comment as to whether minimum disaggregation standards are necessary for cellular and GWCS. The Commission seeks to determine whether technological and administrative considerations warrant the adoption of such standards. Cellular licenses are currently issued for a 25 MHz block of spectrum and GWCS licenses for 5 MHz blocks. GWCS licensees are also permitted to obtain multiple 5 MHz blocks and are subject to a 15 MHz GWCS spectrum aggregation limit. The Commission finds that any such standard it adopts should be sufficiently flexible so as to encourage disaggregation while providing a standard which is consistent with the technical rules and by which the Commission will be able to track disaggregated spectrum and review disaggregation proposals in an expeditious fashion.

D. Combined Partitioning and Disaggregation

8. The Commission seeks comment as to whether combined partitioning and disaggregation should be permitted for cellular and GWCS services. The Commission tentatively concludes that it should permit such combinations to provide parties the flexibility they need to respond to market forces and demands for service relevant to their particular locations and service offerings.

E. Construction Requirements

9. *Cellular*. While the Commission does not propose to modify the existing cellular build-out procedures, it seeks comment as to whether the cellular partitioning rule is sufficiently flexible to increase the viability and value of partitioned cellular licenses and to facilitate cellular partitioning while preventing circumvention of the cellular build-out procedures. The Commission invites comment as to whether the existing cellular rules might be amended to further facilitate cellular partitioning and what types of alternative partitioning mechanisms might be adopted.

10. In addition, the Commission seeks comment as to whether it should adopt a disaggregation certification procedure similar to the type adopted for broadband PCS. The Commission proposes requiring parties seeking Commission approval of a cellular disaggregation agreement to include a certification as to which party will be responsible for building out the remainder of the market. Should that party fail to build out, the Commission proposes that the unserved portion of the market would be subject to Phase II or unserved area applications. The Commission seeks comment as to whether such an approach is feasible for cellular disaggregation given the distinctive nature of the cellular build-out rules.

11. *GWCS*. The Commission seeks comment as to whether it should amend its existing partitioning rule for GWCS to allow dual construction options for GWCS partitioning and adopt a certification procedure for GWCS disaggregation similar to the procedure it has adopted for broadband PCS.

12. For example, under the first construction option for GWCS partitioning, the partitionee would certify that it will satisfy the same construction requirement as the original GWCS licensee for its partitioned license area. Under the second construction option, the original GWCS licensee may certify that it has or will meet its five-year construction requirement and that it will meet the ten-year construction requirement for the entire license area. Since the original GWCS licensee retains responsibility for meeting the construction requirements, the Commission believes that the partitionee should be permitted to meet a less substantial construction requirement. The Commission seeks comment as to what lesser construction requirement would be appropriate.

13. As for GWCS disaggregation, the Commission proposes adopting a procedure similar to the one adopted for broadband PCS and proposed for cellular. Under such an approach, the disaggregating parties would be required to submit a certification, signed by both the disaggregator and disaggregatee, as to which of the parties will retain responsibility for meeting the five and ten-year construction requirements for the GWCS market. The parties would be permitted to share responsibility for meeting the construction requirements. The party or parties taking responsibility for meeting the construction requirements would be subject to license forfeiture for failing to meet the construction requirements.

F. License Term

14. The Commission seeks comment as to whether the cellular and GWCS rules should be amended to provide that parties obtaining partitioned cellular or GWCS licenses or disaggregated spectrum hold their license for the remainder of the original licensee's ten-year license term. In addition, the Commission seeks comment as to whether GWCS partitionees and disaggregatees should be afforded the same renewal expectancy as other GWCS licensees. The Commission tentatively concludes that limiting the license term of the partitionee or disaggregatee is necessary to ensure that there is maximum incentive for parties to pursue available spectrum as quickly as practicable.

G. GWCS Competitive Bidding Issues

15. The Commission tentatively concludes that GWCS partitionees and disaggregatees that would qualify as designated entities should be permitted to pay their pro rata share of the remaining government obligation via installment payments. The Commission seeks comment as to the exact mechanisms for apportioning the remaining government obligation between the parties and whether there are any unique circumstances that would make devising such a scheme for the GWCS service more difficult than for broadband PCS. Since GWCS service areas are allotted on a geographic basis, similar to broadband PCS, the Commission proposes using population as the objective measure to calculate the relative value of the partitioned area and amount of spectrum disaggregated as the objective measure for disaggregation.

16. The Commission seeks comment on whether to apply unjust enrichment rules to designated entity GWCS licensees that partition or disaggregate to non-designated entities. Commenters

should address whether the unjust enrichment payments should be calculated on a proportional basis, using population of the partitioned area and amount of spectrum disaggregated as the objective measures. The Commission further seeks comment as to how to enforce unjust enrichment payments for designated entity GWCS licensees paying via installment payments and those that were awarded bidding credits that partition or disaggregate to non-designated entities. The Commission tentatively proposes using methods similar to those adopted for broadband PCS for calculating the amount of the unjust enrichment payments that must be paid in those circumstances.

H. Licensing Issues

17. Partial assignment procedures are not used for cellular partitioning. Instead, whenever a cellular licensee enters into a partitioning agreement, the partitionee must file an application (FCC Form 600) for a new cellular system covering the partitioned market. Since this procedure provides the appropriate level of review of the partitioning transaction, the Commission proposes no modification at this time. However, should the Commission permit cellular disaggregation, it seeks comment on the method it should devise for reviewing cellular disaggregation transactions.

18. Since there are existing partial assignment rules for both cellular and GWCS, the Commission proposes utilizing partial assignment procedures, similar to those adopted for broadband PCS, to review cellular disaggregation and GWCS partitioning and disaggregation transactions. Partial assignment applications would be placed on public notice and subject to petitions to deny. The parties would be required to submit an FCC Form 490, an FCC Form 600 and, if necessary, an FCC Form 430, together as one package under cover of the FCC Form 490. The Commission invites comment whether any additional procedures are necessary for reviewing these applications.

III. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Act

Summary

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM).

Reason for Action

This rulemaking proceeding was initiated to secure comment on proposals to modify our cellular and General Wireless Communications Service (GWCS) rules to permit partitioning and disaggregation for all licensees in those services. The proposals advanced in the FNPRM are also designed to implement Congress' goal of giving small businesses the opportunity to participate in the provision of spectrum-based services in accordance with Sections 257 and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 257, 309(j) (the Communications Act).

Objectives

The Commission proposes to change its rules for cellular and GWCS to facilitate the efficient use of cellular and GWCS spectrum, increase competition, and expedite the provision of cellular and GWCS services in the near term. These proposals seek to increase the level of small business participation in the provision of cellular and GWCS services. The Commission considers whether to modify the existing cellular rules to provide for more flexible partitioning and to allow disaggregation of cellular spectrum for the first time. In addition, the Commission proposes to allow GWCS licensees to partition and disaggregate to entities that are eligible for GWCS licenses. Designated entity GWCS licensees will be allowed to partition or disaggregate to non-designated entities, subject to unjust enrichment payments. Entities that qualify for installment payments will be permitted to pay their pro rata share of the remaining government obligation via installment payments. The Commission proposes to establish license terms that permit cellular and GWCS partitionees to hold partitioned licenses and disaggregatees to hold disaggregated spectrum for the remaining duration of the original ten-year license term. The Commission also proposes to establish construction requirements for GWCS partitioning to ensure expedient access to GWCS service in partitioned areas, to ensure coverage and to increase spectrum efficiency. Finally, the Commission proposes to allow combined partitioning and disaggregation for cellular and GWCS services and to follow the existing partial assignment procedures for cellular and GWCS.

Legal Basis

The proposed action is authorized under Sections 4(i), 257, 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

Reporting, Recordkeeping, and Other Compliance Requirements

The proposals under consideration in this FNPRM include the possibility of imposing reporting and recordkeeping requirements on small businesses seeking licenses through the proposed partitioning and disaggregation rules. The information requirements would be used to determine whether the licensee was qualified to obtain a partitioned license or disaggregated spectrum. This information will be a one-time filing by an applicant requesting cellular disaggregation or GWCS partitioning or disaggregation. This information will be submitted on FCC Forms 490 (and 430 and/or 600 filed as one package under cover of the Form 490) which are currently in use and have already received OMB clearance. We estimate that the average burden on the applicant is three hours for the information necessary to complete these forms. We estimate that 75 percent of the respondents (which may include small businesses) will contract out the burden of responding. We estimate that it will take approximately 30 minutes to coordinate information with those contractors. The remaining 25 percent of respondents (which may include small businesses) are estimated to employ in-house staff to provide the information.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

The rule changes proposed in this proceeding will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding cellular licenses who choose to partition and/or disaggregate, and small businesses who may acquire licenses through partitioning and/or disaggregation. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total cellular and GWCS entities, existing and potential, would be affected by the proposed rules in the FNPRM. In particular, we seek estimates of how many cellular and GWCS entities, existing or potential, will be considered small businesses. Small business is

defined here as a firm that has revenues of less than $40 million in each of the last three calendar years. This definition was adopted for the GWCS service. We seek comment as to whether this definition is appropriate in this context. Additionally, we request each commenter to identify whether it is a small business under this definition. If the commenter is a subsidiary of another entity, this information should be provided for both the subsidiary and the parent corporation or entity.

The Commission anticipates that a total of 8,465 cellular licensees or potential licensees could take the opportunity to partition or disaggregate a license or obtain a license through partitioning and/or disaggregation. This estimate is based upon the current number of existing cellular licensees (1,693) and our estimate that each license would probably not be partitioned and/or disaggregated to more than five parties. However, we estimate that a significant number of the cellular and GWCS licensees and potential licensees who take the opportunity to partition and/or disaggregate a license or who could obtain a license through partitioning and/or disaggregation will be small businesses.

SBA has not developed a definition of small entities specifically applicable to cellular. The closest applicable definition under SBA rules is radiotelephone (wireless) companies. According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. According to our most recent data, there are 1,693 existing cellular licensees. We are unable at this time to estimate the number of cellular service carriers that would qualify as small business concerns under SBA's definition. We estimate that fewer than 1,693 small entity cellular service carriers may be affected by the decisions and rules adopted in this FNPRM.

Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

The proposals advanced in the FNPRM are designed to implement Congress' goal of giving small businesses, as well as other entities, the opportunity to participate in the provision of spectrum-based services. The impact on small entities in the proposals in the FNPRM is the opportunity to enter the cellular and GWCS market through partitioning and disaggregation. With more open partitioning and disaggregation, additional entities, including small businesses, may participate in the provision of cellular and GWCS services without needing to acquire wholesale an existing license (with all of the bundle of rights currently associated with the existing license). Acquiring ''less'' than the current license will presumably be a more flexible and less expensive alternative for entities desiring to enter these services.

The rule changes proposed in the FNPRM by the Commission are consistent with the Communications Act's mandate to identify and eliminate market entry barriers for small business in the provision and ownership of telecommunications services, and the mandate under Section 309(j) of the Communications Act, 47 U.S.C. 309(j), to utilize auctions to ensure that small, minority and women-owned businesses and rural telcos have an opportunity to participate in the provision of spectrum-based services. The proposals in the FNPRM, if implemented, will facilitate market entry by parties, including small businesses, that may lack the financial resources for participation in cellular and GWCS services. The alternative is to continue to allow GWCS partitioning only for rural telcos. Limiting GWCS partitioning to rural telcos would not permit other small businesses to obtain partitioned licenses or to partition to other parties, and thus would not promote the participation of small business in the provision of GWCS service.

In the FNPRM, the Commission proposes facilitating GWCS partitioning by offering a choice between two different build-out options, which could be negotiated by the parties. The Commission tentatively concludes that these proposed flexible build-out requirements, if adopted, will encourage partitioning to entities that have a sincere interest in providing GWCS service and will thereby expedite the provision of service to geographic areas that otherwise may not receive it as quickly.

This FNPRM solicits comments on a variety of proposals discussed herein. Any significant alternatives presented in the comments will be considered.

B. Paperwork Reduction Act

The Further Notice of Proposed Rulemaking (FNPRM) contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget to take this opportunity to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB comments are due March 7, 1997. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

19. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to both of the following: Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet at fain__t@al.eop.gov. For additional information regarding the information collections contained herein, contact Dorothy Conway above.

C. Ex Parte Rules—Non-Restricted Proceedings

This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules, 47 CFR 1.1201, 1203, and 1.1206(a).

D. Comment Period

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments to the Further Notice of Proposed Rulemaking on or before February 10, 1997, and reply comments on or before February 25, 1997. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications

Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

E. Authority

Authority for issuance of this Further Notice of Proposed Rulemaking is contained in Sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

F. Ordering Clauses

Accordingly, *It is ordered* that, pursuant to the authority of Sections 4(i), 257, 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 257, 303(g), 303(r), and 332(a), a further notice of proposed rulemaking is hereby adopted.

It is further ordered, that comments in WT Docket No. 96–148 will be due February 10, 1997, and reply comments will be due February 25, 1997.

List of Subjects

47 CFR Part 22

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 26

Communications common carriers; Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–99 Filed 1–3–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 961227373–6373–01; I.D. 122096B]

RIN 0648–XX78

Magnuson Act Provisions; Foreign Fishing; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures

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

ACTION: 1997 groundfish fishery specifications and management measures; tribal whiting allocation; announcement of exempted fishing permits; request for comments.

SUMMARY: NMFS announces the 1997 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). The specifications include the level of the acceptable biological catch (ABC) and harvest guideline (HG), including the distribution between domestic and foreign fishing operations. The HGs are allocated between the limited entry and open access fisheries. The management measures for 1997 are designed to keep landings within the HGs, for those species for which there are HGs, and to achieve the goals and objectives of the FMP and its implementing regulations. The intended effect of these actions is to establish allowable harvest levels of Pacific Coast groundfish and to implement management measures designed to achieve but not exceed those harvest levels, while extending fishing and processing opportunities as long as possible during the year. This action also announces issuance of exempted fishing permits (EFPs) in 1996 and applications for exempted fishing permits in 1997.

DATES: Effective 0001 hours (local time) January 1, 1997, until the 1998 annual specifications and management measures are effective, unless modified, superseded, or rescinded. The 1998 annual specifications and management measures will be published in the Federal Register. Comments on the 1997 annual specifications and management measures will be accepted until February 5, 1997.

ADDRESSES: Comments on these specifications and management measures, tribal whiting allocation, and EFPs should be sent to Mr. William Stelle, Jr., Administrator, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Ms. Hilda Diaz-Soltero, Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to these specifications and management measures, including the stock assessment and fishery evaluation (SAFE) report, has been compiled in aggregate form and is available for public review during business hours at the office of the Administrator (formerly Director), Northwest Region, NMFS (Regional Administrator), or may be obtained from the Pacific Fishery Management Council (Council), by writing the Council at 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206–526–6140; or Rodney R. McInnis (Southwest Region, NMFS) 310–980–4040.

SUPPLEMENTARY INFORMATION: The FMP requires that fishery specifications for groundfish be evaluated each calendar year, that HGs or quotas be specified for species or species groups in need of additional protection, and that management measures designed to achieve the HGs or quotas be published in the Federal Register and made effective by January 1, the beginning of the fishing year. This action announces and makes effective the final 1997 fishery specifications and the management measures designed to achieve them. These specifications and measures were considered by the Council at two meetings and were recommended to NMFS by the Council at its October 1996 meeting in San Francisco, CA. NMFS received three public comments regarding the allocation of Pacific whiting (whiting) to the Makah Indian tribe prior to the publication of these specifications. These comments are addressed in paragraph V. Regulatory citations have been changed throughout this document to conform with the nationwide consolidation of Pacific and Western Pacific fisheries regulations at 50 CFR part 600 and part 660.

I. Final Specifications

The fishery specifications include ABCs, the designation of HGs or quotas for species that need individual management, the apportionment of the HGs or quotas between domestic and foreign fisheries, and allocation between the open access and limited entry segments of the domestic fishery. As in the past, the specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3–200 nm offshore). Only changes to the specifications between 1996 and 1997 are discussed herein, otherwise they are the same as announced in 1996 (61 FR 279, January 4, 1996).

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Table 1. 1997 Specifications of Acceptable Biological Catch (ABC), Harvest Guidelines, and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) subareas

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC) (x 1000 mt)						Harvest Guideline (1000 mt)	Commercial Harvest Guideline (1000 mt)	Allocations (x 1000 mt)			
	Vancouver	Columbia	Eureka	Monterey	Conception	Total ABC			Limited Entry		Open Access	
									1000 mt	%	1000 mt	%
ROUNDFISH:												
Lingcod b/	1.3		0.3	0.7	0.1	2.4	2.4	1.5	1.21	80.9	0.29	19.1
Pacific cod	3.2		c/	c/	c/	3.2	--	--	--	--	--	--
Pacific whiting d/	290.0					290.0	232.0	207.0	--	--	--	--
Sablefish e/f/	8.7				0.425	9.125	7.8	7.02	6.557	93.4	0.463	6.6
Jack mackerel g/	52.6			--		52.6	52.6	--	--	--	--	--
FLATFISH:												
Dover sole e/h/	0.82-1.57	3.0	2.9	3.16-4.36	1.0	10.88-12.83	11.05 WOC 2.85 Col	--	--	--	--	--
English sole	2.0		1.1			3.1	--	--	--	--	--	--
Petrale sole	1.2		0.5	0.8	0.2	2.7	--	--	--	--	--	--
Arrowtooth flounder	5.8					5.8	--	--	--	--	--	--
Other flatfish	0.7	3.0	1.7	1.8	0.5	7.7	--	--	--	--	--	--
ROCKFISH:												
POP i/	0.0	0.0	c/	c/	c/	0.0	0.75	0.75	--	--	--	--
Shortbelly	23.5					23.5	23.5	23.5	--	--	--	--
Widow j/	7.7					7.7	6.5	6.5	6.26	96.3	0.24	3.7
Thornyheads: e/k/	8.0				-	8.0	--	--	--	--	--	--
Shortspine e/k/	1.0				-	1.0	1.38	1.38	1.376	99.75	0.003	0.25
Longspine e/k/	7.0				-	7.0	6.0	6.0	--	--	--	--
Sebastes complex: l/	7.130		9.664			7.130 N 9.664 S	6.656 N 9.284 S	6.656 N 9.284 S	6.017 N 6.257 S	90.4 N 67.4 S	0.639 N 3.027 S	9.6 N 32.6 S
Bocaccio-S m/	n/		0.265			0.265	0.387	0.332	0.224	67.4	0.108	32.6
Canary-N n/	1.22		n/			1.22	1.0	1.0	0.912	91.2	0.09	8.80
Chilipepper	c/		4.0			4.0	--	--	--	--	--	--
Yellowtail-N o/	0.454	0.984 N 0.335 S	n/			1.773	2.762	2.762	2.497	90.4	0.265	9.6

(Table 1. continued)

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC) (x 1,000 mt)						Harvest Guideline (1000 mt)	Commercial Harvest Guideline (1000 mt)	Allocations (x 1000 mt)			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total ABC			Limited Entry		Open Access	
									1000 mt	%	1000 mt	%
Sebastes complex (cont'd)												
Remaining rockfish p/:	2.295		1.431			2.295 N 1.431 S	--	--	--	--	--	--
bank	c/		0.081			0.08	--	--	--	--	--	--
bocaccio-N	0.424		q/			0.424	--	--	--	--	--	--
canary-S	q/		0.085			0.085	--	--	--	--	--	--
darkblotched	0.209		0.047			0.26	--	--	--	--	--	--
POP-S	q/		0.020			0.02	--	--	--	--	--	--
redstripe	0.768		c/			0.77	--	--	--	--	--	--
sharpchin	0.398		0.071			0.47	--	--	--	--	--	--
silvergrey	0.051		c/			0.05	--	--	--	--	--	--
splitnose	0.274		0.868			1.14	--	--	--	--	--	--
yelloweye	0.039		c/			0.04	--	--	--	--	--	--
yellowmouth	0.132		c/			0.13	--	--	--	--	--	--
yellowtail-S	q/		0.104	0.155		0.259	--	--	--	--	--	--
Other rockfish r/	1.842		3.968			--	--	--	--	--	--	--
OTHER FISH s/	2.5	7.0	1.2	2.0	2.0	14.7	--	--	--	--	--	--

a/ U.S. Vancouver only, except for Pacific whiting.

b/ Lingcod. The stock assessment covers the entire Vancouver INPFC area, including Canada, and the Columbia subarea north of Cape Falcon. The U.S. ABC is based on 50 percent of the ABC for this assessment area, plus 400 mt for the Columbia area south of Cape Falcon. The coastwide harvest guideline equals the sum of the ABCs and includes a 900-mt estimate of recreational harvest. The limited entry and open-access percents are applied to the commercial portion of the harvest guideline, which is 1,500 mt (the 2,400 mt harvest guideline minus 900 mt recreational harvest).

c/ Other. These species are not common nor important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "other fish" category for the areas footnoted, and rockfish species are included in the "other rockfish" category for the areas footnoted only.

d/ Pacific whiting. The ABC is coastwide, including Canadian waters. The U.S. harvest guideline is set at 80 percent of the U.S./Canada ABC. Allocation to catcher/processor, mothership, or shore-based operations are based on the commercial portion of the harvest guideline (the U.S. harvest guideline minus the tribal allocation of 25,000 mt for 1997).

e/ DTS complex. Dover sole, thornyheads, and trawl-caught sablefish are managed together as the "DTS complex." There is no harvest guideline for the DTS complex.

f/ Sablefish. The 7,800 mt harvest guideline north of the Conception area (36° N. lat.) is the 8,700 mt ABC (for that same area) reduced by 900 mt for estimated discards. The 7,800-mt harvest guideline is reduced by 780 mt for the treaty tribes before dividing the remaining 7,020 mt between the limited entry (6,557 mt) and open-access (463 mt) fisheries. The limited entry allocation is further allocated 58 percent (3,803 mt) to the trawl fishery, and 42 percent (2,754 mt) to the nontrawl fishery, both of which are harvest guidelines.

g/ Jack mackerel. Only jack mackerel north of 39°00′ N. latitude are managed by the FMP. The ABC and harvest guideline include waters beyond 200 nm.

h/ Dover sole. The ABC for Dover sole in the Vancouver area ranges from 818 mt (the ABC recommended in the 1995 assessment) to 1,565 mt (1990-1994 average landings). The ABCs for Dover sole in the Columbia and Eureka areas are based on the stock assessment. The ABC for Dover sole in the Monterey area ranges from 3,164 mt (1990-1994 average landings) to 4,360 mt (the level recommended in the 1995 assessment).

The 11,050 mt coastwide harvest guideline for Dover sole is based on the upper end of the ABC range for the Vancouver subarea and the lower end of the ABC for the Monterey subarea (which are the recent average catches in those two subareas), plus the ABCs for the Columbia, Eureka and Conception subareas, minus 580 mt for estimated discards. The coastwide harvest guideline includes a 2,850 mt harvest guideline for the Columbia subarea (3,000 mt ABC minus 150 mt estimated discards).

i/ Pacific ocean perch. The ABC remains at zero. The harvest guideline for landed catch applies to the Vancouver/Columbia subareas combined, and is intended to represent only incidental catches.

j/ Widow rockfish. The 6,500 mt harvest guideline is derived by subtracting 16 percent for estimated discards (1,200 mt) from the ABC (7,700 mt).

k/ Thornyheads. The thornyhead ABCs and harvest guidelines apply north of Point Conception, CA (34°27′ N. lat.). The harvest guideline for shortspine thornyheads has been reduced by 120 mt to represent landings rather than total catch. The total

catch estimate of 1,500 mt (which was the harvest guideline in 1996) is 50 percent above the ABC, but below the overfishing threshold, in order to allow greater harvest of longspine thornyheads. Eight percent is deducted for discards. The harvest guideline for longspine thornyheads is 1,000 mt below its ABC to help prevent overharvest of shortspine thornyheads.

1/ Sebastes complex. The Sebastes-north ABC is the sum of the ABCs for canary, yellowtail, "remaining rockfish," and "other rockfish" in the Vancouver and Columbia areas. The Sebastes-north harvest guideline, which applies to the Vancouver/Columbia area, is the sum of the harvest guidelines for canary and yellowtail rockfish, plus the sum of the ABCs or recent catch, whichever is less, for "remaining rockfish" and "other rockfish."

Within the Sebastes-north harvest guideline are two small harvest guidelines for commercial harvest of black rockfish by the Makah, Quileute, Hoh, and Quinault Indian tribes: 20,000 lb (9,072 kg) for the EEZ north of Cape Alava (48°09'30" N. lat.) and 10,000 lb (4,536 kg) between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.).

The Sebastes-south ABC is the sum of the ABCs for bocaccio, chilipepper, "remaining rockfish," and "other rockfish" in the Eureka, Monterey, and Conception areas. The Sebastes-south harvest guideline, which applies to the Eureka/Monterey/Conception area, is the harvest guideline for bocaccio plus the sum of the ABCs or recent catch, whichever is less, for "remaining rockfish" and "other rockfish."

The harvest guidelines for the Sebastes complex, bocaccio, canary rockfish, and yellowtail rockfish are for total catch, so estimates of discards will be added during the season as data become available.

m/ Bocaccio. The bocaccio harvest guideline, which applies to the Eureka, Monterey, and Conception areas and represents total catch, is stepped down from 1,700 mt in 1996 to 387 mt in 1997, the estimated overfishing threshold. In 1997, 55 mt for estimated recreational harvest is subtracted from the harvest guideline before deriving the limited entry and open access allocations. In 1998, the harvest guideline is expected to equal the ABC.

n/ Canary rockfish. Even though the ABC increased slightly (from 1,000 mt in 1996 to 1,220 mt in 1997), landings are not intended to increase in 1997. The increase in the from 850 mt (for landed catch) in 1996 to 1,000 mt(for total catch) in 1997 results from adding an estimate for discards in 1997.

o/ Yellowtail rockfish. The stock assessment for northern yellowtail rockfish addressed three separate areas: 454 mt for the U.S. Vancouver area; 984 mt for the Columbia area north of Cape Falcon (45°46′ N. lat.); and 439 mt for the Eureka area plus the Columbia area south of Cape Falcon. The ABC has been prorated to conform with management areas for other species in the Sebastes complex, at 335 mt for the southern Columbia area and 104 mt for the Eureka area. The prorated ABC for the Vancouver/Columbia area is 1,773 mt, a reduction of more than 70

percent from the 1996 ABC of 6,540 mt for this area. A separate stock assessment provided the 155 mt ABC for the Monterey/Conception area, resulting in an ABC of 259 mt for yellowtail in the Eureka/Monterey/Conception area.

The harvest guideline for yellowtail rockfish in the Vancouver/Columbia area is stepped down from 3,590 mt in 1996 to 2,762 mt in 1997, with the intent to set the harvest guideline equal to ABC in 1998. The 1997 harvest guideline represents total catch, whereas in 1996 it represented landed catch only.

p/ Remaining rockfish. Prior to 1997, this category included all species in the Sebastes complex that did not have an individual ABC, and therefore included species that in 1997 are designated as "other rockfish." In 1997, "remaining rockfish" includes only those species and areas listed in Table 1.

q/ There is a separate ABC for this species and area which is not included in "remaining rockfish" or "other rockfish."

r/ Other rockfish. "Other rockfish" includes offshore Sebastes species not identified in Table 1. It is based on the Sebastes complex assessment of commercial landings and includes estimates of recreational landings for those species without individual ABCs.

s/ Other fish. Includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

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Changes to the ABCs and HGs

The ABCs, which are based on the best available scientific information, represent the total catch, including amounts that are discarded as well as retained. Stock assessment information considered in determining the ABCs is available from the Council, and was made available to the public, before the Council's October 1996 meeting, in the Council's SAFE document (see **ADDRESSES**). The 1997 ABCs are changed from 1996 for Pacific whiting, the *Sebastes* complex, bocaccio, canary rockfish, and yellowtail rockfish. New ABCs were developed for ''remaining rockfish'' and for a new category of ''other rockfish.'' Changes that result only from rounding are not explained.

Those species or species groups managed with HGs in 1996 will continue to be managed with HGs in 1997. The 1997 HGs differ from 1996 for Pacific whiting, shortspine thornyheads, the *Sebastes* complex, yellowtail rockfish, bocaccio, and canary rockfish.

Stock assessments and inseason catch monitoring are designed to account for all fishing mortality, including that resulting from fish discarded at sea. Discards of rockfish and sablefish in the fishery for whiting are well monitored and are accounted for inseason as they occur. In the other fisheries, discards caused by trip limits have not been monitored consistently, so discard estimates have been developed to account for this extra catch. A discard level of about 16 percent of the total catch, previously measured for widow rockfish in a scientific study, is assumed to be appropriate for the commercial fisheries for widow rockfish, yellowtail rockfish, canary rockfish, and Pacific ocean perch (POP). A discard estimate of 8 percent is used for the deepwater thornyhead fishery, 5 percent for Dover sole, and 20 percent for sablefish.

In some cases (e.g., sablefish, widow rockfish, thornyheads, Dover sole), an estimated amount of discards has been subtracted from the ABC to determine the HG for the landed catch. In other cases (e.g., whiting, *Sebastes* complex), a HG representing total catch is more appropriate. Discards in the whiting fishery have been well documented and, therefore, the HG for whiting represents total catch and discards are accounted for during the season. In 1996, the HG for the *Sebastes* complex included only landings to be consistent with most of the other groundfish HGs. However, using HGs based only on landed catch was too rigid because it did not provide for inseason adjustments, a particular problem when actual reports of discards during the season differed from the amount assumed at the beginning of the year. Therefore, for greater management flexibility during the season, HGs for the *Sebastes* complex and its components in 1997 will include the total catch, and estimates of discards will be added to the landings during the season.

The 1997 changes to the ABCs and HGs are summarized below. More detailed information appears in the Council's SAFE document (September 1996), the ''Groundfish Management Team Final Acceptable Biological Catch and Harvest Guideline Recommendations for 1997'' (GMT Report C.4.) from the October 1996 Council meeting, and the Council's newsletters for its August and October 1996 meetings.

Whiting

A new stock assessment for whiting indicated that the 1994 year class was larger than previously expected. This, combined with substantive changes in the stock assessment model, resulted in an ABC of 290,000 mt for the U.S. and Canada combined, 25,000 mt higher than in 1996. Nonetheless, this ABC may be somewhat conservative. Another year of data is needed to verify whether the apparent high abundance of the 1994 year class is due to an actual increase in fish, rather than a shift in their distribution to more northern waters. Other factors considered in setting the ABC were promoting stability in landings by distributing the harvest of strong year classes over several years and the need to suppress the bycatch of yellowtail rockfish at a time when that fishery is facing a major reduction in its ABC. The U.S. HG (232,000 mt) is set at 80 percent of the U.S.-Canadian ABC, as in recent years. Allocation to the Makah treaty Indian tribe in 1997 is discussed in paragraph V.

Pacific Ocean Perch (POP)

Since 1981, POP has been managed under a schedule intended to rebuild POP to a level that would annually support removals of 1,000 mt. Landings were higher than this as recently as 1993. To achieve an annual harvest of about 1,000 mt while maintaining a biologically sound harvest rate, the current biomass would have to double. This would be a slow process unless there is a fortuitous sequence of large recruitments. The harvest guideline for POP is meant to accommodate only small, incidental catches and, therefore, is not a target to be achieved deliberately. Trip limits for POP will not be increased to achieve the harvest guideline, and may be reduced if landings are too high. The harvest guideline of 750 mt for POP is the same as last year.

Shortspine Thornyheads

The ABC for shortspine thornyheads is the same as in 1996, but the HG is reduced from 1,500 mt to 1,380 mt to more accurately represent the landed catch.

Sebastes Complex

The ABCs for the *Sebastes* complex are the sum of the ABCs of its components. The HGs (for total catch) are the sum of the HGs for each species or of the ABCs for those species without HGs. The 1997 HG for the *Sebastes* complex in the Vancouver/Columbia area is reduced from 11,900 mt for landed catch in 1996 to 7,130 mt for total catch in 1997. The 1997 HG for the *Sebastes* complex in the Eureka/Monterey/Conception area is reduced from 13,200 mt for landed catch in 1996 to 9,664 mt for total catch in 1997. The large declines are due primarily to large reductions in the ABCs and HGs for bocaccio, yellowtail rockfish, and also to new ABC estimates for the ''remaining rockfish'' and ''other rockfish'' categories.

Bocaccio

The 1997 ABC for bocaccio in the Eureka/Monterey/Conception area is 265 mt, only 15 percent of the 1,700-mt ABC in 1996. (Landings were projected at 454 mt for 1996, so the reduction in ABC, while severe, is not as extreme as it appears.) The new stock assessment indicates it is unlikely that the current stock size is greater than 17–20 percent of the 1970 level but also suggests a high degree of uncertainty in current stock size. Recruitment is highly variable for bocaccio. Assuming that future recruitment will be similar to that in 1969–1996, the level of fishing mortality that would produce spawning biomass at 35 percent of its unfished level (F35%) is 265 mt. The 1997 HG (for total catch) is 387 mt, 122 mt higher than ABC, and at, but not above, the overfishing threshold for bocaccio. The Council recommended that the bocaccio HG be set above ABC in 1997 to allow a 1-year phase-down to mitigate the economic impacts of a 60 percent reduction in catch in 1 year (from 664 mt to 265 mt). The consequences of the phase-down are that the ABC and HG in 1998, and possibly subsequent years, most likely will be lower than they would have been if 1997 catches did not exceed ABC. The Council intends that the HG be set equal to ABC in 1998.

Bocaccio also are particularly difficult to manage, because of the multiplicity of gear types involved, including trawl, set

net and recreational fisheries. The 2-month cumulative trip limit in the limited entry fishery is substantially reduced from 60,000 lb (27,216 kg) in 1996 to 12,000 lb (5,443 kg) in 1997. Additional trip limits specific to bocaccio have been placed on the open access fishery in 1997. Bycatch of rockfish in the shrimp and prawn trawl fisheries is being addressed by reducing the groundfish trip limits to 500 lb (227 kg) in 1997, one third of the 1996 shrimp trip limit and one half of the 1996 prawn trip limit.

Canary Rockfish

The 1997 ABC for canary rockfish in the Vancouver/Columbia area is 1,220 mt, slightly higher than the 1,000-mt ABC in 1996. A new assessment for canary rockfish used two models that estimate the 1995 spawning biomass is 18–33 percent of the 1967 value. Both models predict yield and spawning biomass levels will decline during 1997–1999. For both models combined, the average catch projection for the next 3 years is 1,220 mt when average recruitment is assumed. The HG for canary rockfish is increased from 850 mt for landed catch in 1996 to 1,000 mt for total catch in 1997 to account for estimated discards.

Yellowtail Rockfish

The 1997 ABC for yellowtail rockfish in the Vancouver/Columbia/Eureka area is 1,773 mt, 4,667 mt lower than the 6,440-mt ABC in 1996. (The stock assessment determined ABCs for different areas. The 1997 ABC is prorated in Table 1 to apply north and south of the Columbia-Eureka boundary for consistency with other species in the *Sebastes* complex.) The results of the new assessment have caused a great deal of concern because they conflict with the impressions of many who fish for yellowtail rockfish. For the Eureka/south Columbia area (south of Cape Falcon (45°46′ N. lat.)), addition of 1995–96 stock assessment data resulted in substantial reductions in estimates of biomass and recruitment of the 1984 year class in 1988 (to 20 percent of its former level). For the north Columbia area (north of Cape Falcon), addition of the 1995–96 data also reduced estimates of biomass and recruitment. Major changes did not occur in the U.S. Vancouver area. Available fishery age-composition data indicate that fish older than 25 years have all but disappeared from the fishery. Additionally, there is no evidence of any strong incoming year classes. Only half the population is mature 3 or 4 years after recruiting to the fishery, so immature fish have a relatively high likelihood of being caught before they have had an opportunity to contribute to building future biomass. Given this new information, it appears that yellowtail rockfish may have been fished for the last several years above the overfishing threshold.

The recommended 1997 HG of 2,762 mt for yellowtail rockfish in the Vancouver/Columbia area represents total catch, whereas the 3,590-mt HG in 1996 was for landed catch (equivalent to 4,160 mt for total catch). The Council recommended that the 1997 HG be set at, but not above, the overfishing threshold. Fishing is allowed at, but not above, the overfishing threshold of 2,762 mt in 1997 in order to mitigate the sudden and severe economic impact to the fishing industry that would occur if the HG were reduced from the 1996 ABC of 6,440 mt to the 1997 ABC of 1,773 mt in a single year. The Council recognized, however, the need to adjust catches to the ABC level as soon as possible, and consequently, announced its intent that this phase-down in harvest last only a single year and that it intended to recommend a 1998 HG equivalent to the 1998 ABC. Fishing at the overfishing threshold for 1997 is expected to result in a lower ABC and HG in 1998 than if the 1997 harvest did not exceed ABC, but the fishing industry will have had a full year to adjust to reduced harvest levels.

The Council carefully considered the possible impacts of continuing to harvest at a level greater than ABC for 1 more year in contrast to making the full adjustment to the ABC level in a single year. The Council concluded, based on risk analysis conducted by the stock assessment scientists, that the 1-year phase-down will cause only a small further decline in the stock level while it buffers the economic impact of the harvest reductions. Lower stock levels means the likelihood of continued lower ABCs and HGs for the next few years until the stock recovers sufficiently to allow higher harvests. The Council also recommended the phase-down to allow sufficient time for further analysis of some of the components of the stock assessment in order to refine estimates of the ABC for 1998. Considerable public testimony pointed to some indicators, such as yellowtail bycatch rates in the whiting and shrimp trawl fisheries, that were contradictory to the stock assessment results. A work plan was developed to examine some of these indicators and redo the stock assessment during the upcoming year so that the results could be used to set the 1998 ABC.

Yellowtail rockfish is particularly difficult to manage because it is encountered as bycatch in other fisheries. A substantial portion of the yellowtail harvest guideline is taken as bycatch in the whiting and shrimp fisheries. Catch data from the whiting fishery have been examined, and regulatory changes to reduce bycatch are not obvious. The whiting ABC may be somewhat conservative in 1997, in part to suppress the bycatch of yellowtail rockfish. The at-sea processing sector of the whiting fishery has agreed to monitor its bycatch more closely, using daily satellite transmissions to alert them to areas of high bycatch of yellowtail rockfish, as was done to monitor salmon bycatch in 1996. Bycatch of rockfish in the shrimp and prawn trawl fisheries is being addressed by reducing the groundfish trip limits to 500 lb (227 kg) in 1997, one third of the 1996 shrimp trip limit and one half of the 1996 prawn trip limit. The target fishery for yellowtail rockfish is addressed by reducing the trip limit, from 6,000 lb (2,722 kg) per month north of Cape Lookout OR (45°20′15″ N. lat.) and 35,000 lb per month between Cape Lookout and Cape Mendocino CA (40°30′ N. lat.) to 6,000 lb (2,722 kg) per 2-month period in both areas.

Remaining Rockfish

New assessments were provided for a number of previously unassessed rockfish species (listed in table 1). ''Remaining rockfish'' includes canary, POP, and yellowtail rockfish in the Eureka/Monterey/Conception area, and bocaccio in the Vancouver/Columbia area—areas not included in the individual HGs for these species. The ABCs were based on either the ABC from the assessment or recent catch, whichever is less.

Other Rockfish

Assessments were not conducted for a number of other rockfish species (''other rockfish''). The combined ABC for these species is set at the recent landed catch.

Setting HGs Greater Than ABC

In most cases, HGs are less than or equal to the ABCs. However, the Council recommended HGs that exceed the ABCs for POP and shortspine thornyheads (as in 1996), yellowtail rockfish, and bocaccio. The FMP requires that the Council consider certain factors when setting a HG above an ABC. These factors were analyzed by the Council's Groundfish Management Team (GMT) and considered at the Council's October 1996 meeting before the Council recommended the 1997 HGs. These factors also were considered when establishing the 20-year rebuilding schedule for POP in the 1981

FMP, in the most recent stock assessments for POP (in the September 1995 SAFE document) and shortspine thornyheads (in the October 1994 SAFE document), and in the GMT's recommendations for 1996 (GMT Report C.1., October 1995) and for 1997 (GMT Report C.4., October 1996).

Overfishing

The FMP defines ''overfishing'' as a fishing mortality rate that would, in the long term, reduce the spawning biomass per recruit below 20 percent of what it would have been if the stock had never been exploited (unless the species is above the level that would produce maximum sustainable yield (MSY)). The rate is defined in terms of the percentage of the stock removed per year. Therefore, high catch rates can cause overfishing at any stock abundance level. Conversely, overfishing does not necessarily occur for stocks at low abundance levels if the catch can be kept to a sufficiently small fraction of that stock level. The target rate for exploitation of Pacific Coast groundfish typically is the rate that would reduce spawning biomass per recruit to 35 percent of its unfished level. This desired rate of fishing will always be less than the overfishing rate, so there is a buffer between the management target and the level that could harm the stock's long-term potential productivity. If the overfishing threshold is reached, the Guidelines for Fishery Management Plans at 50 CFR part 600 require the Council to identify actions to be undertaken to alleviate overfishing. As discussed above, efforts have been taken to avoid exceeding the overfishing thresholds for bocaccio and yellowtail rockfish in 1997 by reducing their HGs to the F20% level and by instituting more restrictive trip limit management in 1997, that will make it less likely that HGs will be reached before the end of the year. In addition, the Council has expressed its intent to reduce the HGs to the F35% level in 1998.

Foreign and Joint Venture Fisheries

For those species needing individual management that will not be fully utilized by domestic processors or harvesters, and that can be caught without severely affecting species that are fully utilized by domestic processors or harvesters, foreign or joint venture operations may occur. A joint venture occurs when U.S. vessels deliver their catch to foreign processing vessels in the EEZ. A portion of the HGs or quotas for these species may be apportioned to domestic annual harvest (DAH), which in turn may be apportioned between domestic annual processing (DAP) and joint venture processing (JVP). The portion of a HG or quota not apportioned to DAH may be set aside as the total allowable level of foreign fishing (TALFF). In January 1997, no surplus groundfish are available for joint venture or foreign fishing operations. Consequently, all the HGs in 1997 are designated entirely for DAH and DAP (which are the same in this case); JVP and TALFF are set at zero.

In the unlikely event that fish are reallocated inseason and a foreign or joint venture fishery should occur, the incidental catch levels would be as follows, subject to change during the year: For a whiting fishery, the same as announced at Table 2, footnote 1, of 58 FR 2990 (January 7, 1993); for a jack mackerel joint venture, initially the same as those suggested in section 12.5.2 of the FMP.

II. The Limited Entry Program

The FMP established a limited entry program that, on January 1, 1994, divided the commercial groundfish fishery into two components: The limited entry fishery and the open access fishery, each of which has its own allocations and management measures. The limited entry and open access allocations are calculated according to a formula specified in the FMP, which takes into account the relative amounts of a species taken by each component of the fishery during the 1984–88 limited entry window period. At its October 1996 meeting, the Council recommended the species and areas subject to open access and limited entry allocations in 1997, and the Regional Administrator calculated the amounts of the allocations that are presented in Table 1. Unless otherwise specified, the limited entry and open access allocations are treated as HGs in 1997.

Open Access Allocations

The open access fishery is composed of vessels that operated under the HGs, quotas, and other management measures governing the open access fishery, using (1) exempt gear, or (2) longline or pot (trap) gear fished from vessels that do not have permits endorsed for use of that gear. Exempt gear means all types of legal groundfish fishing gear except groundfish trawl, longline, and pots. (Exempt gear includes trawls used to harvest pink shrimp or spot or ridgeback prawns (shrimp trawls), and, south of Point Arena, CA (38°57′30″ N. lat.), California halibut or sea cucumbers.)

The open access allocation is derived by applying the open access allocation percentage to the annual HG or quota after subtracting any set-asides for recreational or tribal fishing. For those species in which the open access share would have been less than 1 percent, no open access allocation is specified unless significant open access effort is expected.

Limited Entry Allocations

The limited entry fishery means the fishery composed of vessels using limited entry gear fished pursuant to the HGs, quotas, and other management measures governing the limited entry fishery. Limited entry gear means longline, pot, or groundfish trawl gear used under the authority of a valid limited entry permit issued under the FMP, affixed with an endorsement for that gear. (Groundfish trawl gear excludes shrimp trawls used to harvest pink shrimp, spot prawns, or ridgeback prawns, and other trawls used to fish for California halibut or sea cucumbers south of Point Arena, CA.)

The limited entry allocation is the allowable catch (HG or quota) reduced by: (1) Set-asides, if any, for treaty Indian fisheries or recreational fisheries; and (2) the open access allocation. In 1996, a new definition was added for ''commercial harvest guideline'', (the commercial harvest guidelines are set forth in Table 1). It is the HG minus the amount set aside for tribal or recreational fishing and, therefore, is the number that, when multiplied by the open access allocation percentages, provides the open access and limited entry allocations. Estimates of recreational harvest are subtracted for two species in 1997, 55 mt for bocaccio (which also is reflected in the allocations for the *Sebastes* complex in the Eureka, Monterey, and Conception subareas), and 900 mt for lingcod. Allocations for Washington coastal tribal fisheries are discussed in paragraph V.

III. 1997 Management Measures

Projections of landings in 1996 are based on the information available to the Council at its October 1996 meeting (GMT Supplemental Report C.4., October 1996).

A. Limited Entry Fishery

The following management measures apply to vessels operating in the limited entry fishery starting January 1, 1997, and are designed to keep landings within the HGs or limited entry allocations. Cumulative trip limits continue to be used for most of the limited entry fishery, which allows fishers to accumulate fish over a period of time without limit on the number of landings. Two-month cumulative limits

will continue to be used for most of the limited entry fishery in 1997. As in 1996, no more than 60 percent of a 2-month limit may be taken in either calendar month, resulting in a variable monthly trip limit within the 2-month limit. This enables the limited entry fleet to maintain its current monthly fishing pattern, target on 50 percent of the 2-month cumulative limit in a month, and have the protection of a buffer equivalent to 10 percent of the 2-month cumulative limit to account for inaccuracies in weighing fish at sea or for small amounts caught above the target level. Unless otherwise announced later in the year, the 2-month periods are: January–February, March–April, May–June, July–August, September–October, and November–December. One-month periods may be used later in the year.

Platooning

An optional platooning system is added for 1997, that enables the limited entry trawl fleet to provide a more consistent supply of fish to processors. Whereas the cumulative limits normally apply by calendar month (this would be considered the ''A'' platoon), a vessel in the ''B'' platoon would choose to operate under limits out of phase by 2 weeks, from the 16th to the 15th of the month. All limited entry trawl vessels will automatically be in the ''A'' platoon, unless the permit owner indicated in the annual permit renewal that the permitted vessel will participate in the ''B'' platoon. Vessels operating in the ''B'' platoon will not be able to land any species of groundfish from January 1–15, 1997. The effective date of any inseason changes to the cumulative trip limits also will be delayed for 2 weeks for the ''B'' platoon so that a vessel's ''B'' limit will not be changed during its cumulative trip limit period. Special provisions will be made to accommodate ''B'' vessels at the end of the year so that the amount of fish made available to both ''A'' and ''B'' vessels is the same. A vessel in the ''B'' platoon will have the same cumulative trip limit for the final period as vessels in the ''A'' platoon, but the final period may be 2 weeks shorter, so that both the ''A'' and ''B'' fishing periods end on December 31, 1997. For example, if the last period is a 2-month cumulative trip limit for November–December, the vessel would be able to take it in 6 weeks (November 16–December 31) without a 60-percent monthly limit. The choice of platoon applies to the permit for the entire calendar year, even if the permit is sold, leased, or otherwise transferred. The platoon system is experimental and may not be continued in 1998 if the Council decides the benefit does not outweigh the administrative burden.

Widow Rockfish

In 1996, the 2-month cumulative limit of 70,000 lb (31,752 kg) was in effect until September, at which time it was reduced to 50,000 lb (27,680 kg). In November, a monthly cumulative limit of 25,000 lb (11,340 kg) was applied until the end of the year. Landings were projected to be 6,275 mt in 1996, within 1 percent of the HG. In 1997, the year will start with the same cumulative limits as in 1996: 70,000 lb (31,752 kg) per 2-month period.

The Sebastes Complex (Including Yellowtail Rockfish, Canary Rockfish, and Bocaccio)

Beginning in January 1996, the 2-month cumulative trip limits for the *Sebastes* complex were: 70,000 lb (31,752 kg) north of Cape Lookout (45°20′15″ N. lat.), 100,000 lb (45,359 kg) between Cape Lookout and Cape Mendocino (40°30′ N. lat.), and 200,000 lb (90,719 kg) south of Cape Mendocino. Two-month cumulative limits also applied to yellowtail rockfish, canary rockfish and bocaccio, which counted toward the limits for the *Sebastes* complex. Beginning in January 1996, these limits were: Yellowtail rockfish—32,000 lb (14,515 kg) north of Cape Lookout or 70,000 lb (31,752 kg) between Cape Lookout and Cape Mendocino; canary rockfish—18,000 lb (8,165 kg); bocaccio south of Cape Mendocino—60,000 lb (27,216 kg). These limits remained in effect until September 1996, at which time the 2-month cumulative limit for yellowtail was reduced to 20,000 lb (9,072 kg) north of Cape Lookout. In November, all the trip limits for the *Sebastes* complex north of Cape Mendocino were converted to 1-month cumulative limits to provide more management flexibility. The 1-month limits were set at half the poundage of the 2-month cumulative limits, except for yellowtail rockfish north of Cape Lookout, which was reduced to 6,000 lb (2,722 kg).

By the end of 1996, landings are projected to be as follows: *Sebastes* complex in the Vancouver/Columbia area—8,583 mt (19 percent below the HG); yellowtail rockfish north of Cape Lookout—3,144 mt (5 percent over the HG), but this projection was made before the cumulative limit was reduced in November 1996; yellowtail rockfish south of Cape Lookout—1,621 mt (33 percent below the HG); canary rockfish—868 mt (2 percent below the HG); and bocaccio—654 mt, including estimated recreational catch (56 percent below the HG).

In January 1997, the 2-month cumulative trip limits for the *Sebastes* complex are 30,000 lb (13,608 kg) north of Cape Mendocino and 150,000 lb (68,039 kg) south of Cape Mendocino. Within these limits, no more than 14,000 lb (6,350 kg) may be canary rockfish; 6,000 lb (2,722 kg) may be yellowtail rockfish north of Cape Mendocino; and 12,000 lb (5,443 kg) may be bocaccio south of Cape Mendocino. The yellowtail and bocaccio cumulative trip limits are substantially reduced because of severe reductions in their HGs. As discussed above, both yellowtail and bocaccio will be fished at their overfishing threshold in 1997, as a 1-year step down to fishing at F35%. Both species are particularly difficult to manage because of the multiplicity of gear types involved. A substantial portion of the yellowtail HG is taken as bycatch in the whiting and shrimp fisheries. Catch data from the whiting fishery have been examined, and regulatory changes to reduce bycatch are not obvious. The whiting ABC may be somewhat conservative in 1997, in part to suppress the bycatch of yellowtail rockfish. The at-sea processing sector of the whiting fishery has agreed to monitor its bycatch more closely, using daily satellite transmissions to alert them to areas of high bycatch, as was done to monitor salmon bycatch in 1996. Bycatch of rockfish in the shrimp and prawn trawl fisheries is being addressed by reducing the groundfish trip limits from 1,500 lb (680 kg) and 1,000 lb (454 kg), respectively, to 500 lb (227 kg) of groundfish in 1997. Management of bocaccio is further complicated by a significant recreational harvest; bag limit reductions may be necessary in the future.

The declaration procedures, instituted by the States of Oregon and Washington for vessels operating on both sides of Cape Lookout, are no longer in effect because the cumulative limits no longer differ north and south of Cape Lookout.

POP

In 1996, the 2-month cumulative trip limit for POP of 10,000 lb (4,536 kg) continued until July 1, when it was reduced to 8,000 lb (3,629 kg). Landings were projected to be 771 mt in 1996, 4 percent above the HG. With the 1997 HG the same as in 1996, the 2-month cumulative limit will be set again at 8,000 lb (3,629 kg) beginning in January 1997. POP is managed to achieve a rebuilding schedule, so trip limits will not be increased to achieve the HG.

Sablefish

The sablefish HG is subdivided among several fisheries. The tribal fishery allocation is set aside prior to dividing the balance of the HG between the commercial limited entry and open access fisheries. These three fisheries are managed differently. The limited entry allocation is further subdivided into trawl (58 percent) and nontrawl (42 percent) allocations. Trawl-caught sablefish are managed together with Dover sole and thornyheads as the DTS complex because they often are caught together. A projection for landings of nontrawl sablefish is not yet available because data from the October mop-up fishery have not been confirmed.

DTS Complex (Dover Sole, Thornyheads, and Trawl-Caught Sablefish)

In 1996, the 2-month cumulative trip limits for the DTS complex remained in effect throughout the year, as follows: 70,000 lb (31,752 kg) north of Cape Mendocino and 100,000 lb (45,359 kg) south of Cape Mendocino. Within the cumulative limits for the DTS complex there were limits for Dover sole, thornyheads, and trawl-caught sablefish. The cumulative limits for thornyheads (20,000 lb (9,072 kg), of which no more than 4,000 lb (1,814 kg) could be shortspine thornyheads) and for trawl-caught sablefish (12,000 lb (5,443 kg)) remained in effect the entire year, as did the 500-lb (227-kg) ''per trip'' limit on sablefish smaller than 22 inches (56 cm) total length. Initially, the limit on Dover sole was the amount of the DTS cumulative limit remaining after subtracting sablefish and thornyheads. In July, this was changed north of Cape Mendocino to a specific trip limit of 38,000 lb (17,236 kg) to protect Dover sole in the Columbia area. Landings of sablefish (trawl-caught), Dover sole (coastwide and in the Columbia area), and shortspine thornyheads are expected to be within 10 percent of their respective HGs in 1996. Landings of longspine thornyheads are projected to be 33 percent below the HG in 1996. In 1997, the trip limits will continue at the same levels that have been in effect since July 1996.

Nontrawl Sablefish

Small daily trip limits were applied to the nontrawl fishery again in 1996 before and after the September 1–5, 1996 ''regular'' and October 1–14, 1996 ''mop-up'' seasons. A 300-lb (136-kg) daily trip limit was applied only north of the Conception subarea (36°00′ N. lat.), the same area covered by the HG. In the Conception area, where there is no HG and landings had been below the 425-mt ABC in 1996, the daily trip limit was set at 350 lb (159 kg) to accommodate most landings without encouraging excessive effort shifts into that area. The trip limit for sablefish smaller than 22 inches (56 cm) of 1,500 lb (680 kg) or 3 percent of all legal sablefish on board, whichever is greater, remained in effect during the regular and mop-up seasons.

In 1996, as in 1995, the regular (derby) season was preceded by a 72-hour closure for all limited entry and open access fixed gear used to take and retain groundfish, with one exception. Pot gear could be set 24 hours before the regular season because this gear takes longer to deploy.

In 1997, the same daily trip limits for the limited entry fishery will apply outside the regular and mop-up seasons and any closure. The ''per trip'' limit for nontrawl sablefish smaller than 22 inches (56 cm) will remain in effect during the regular and mop-up fisheries. The Council recommended a number of management changes for 1997 that have not yet been approved by NMFS. These recommendations are summarized in paragraph IV.E.(3)(c). The Council also is considering different management strategies for 1998 and beyond, but has not yet submitted a recommendation to NMFS.

Whiting

Approximately 212,900 mt of whiting was harvested in 1996, 85,125 mt by the shore-based fleet, 112,776 mt by the at-sea processing sector (which includes deliveries to motherships), and about 15,000 mt by the Makah tribal fishery. The 10,000-lb (4,536-kg) trip limit for whiting taken before and after the regular whiting season and inside the 100-fathom (183-m) contour in the Eureka subarea (40°30′–43°00′ N. lat.) continues in effect in 1997. Additional regulations, including the allocation of whiting among non-tribal sectors, are found at 50 CFR 660.323(a)(4). The Council has recommended a number of changes that are summarized in paragraph IV.F. These changes have not yet been approved by NMFS.

Lingcod

The 2-month cumulative trip limit for lingcod is the same in 1997 as throughout 1996, 40,000 lb (18,144 kg) per 2-month period. As in 1996, lingcod smaller than 22 inches (56 cm) may not be landed in the commercial or recreational fisheries except for 100-lb (45-kg) per trip for trawl-caught lingcod. Landings of lingcod are projected at 2,708 mt in 1996, including estimated recreational catch, 8 percent below the HG.

Black Rockfish

Black rockfish off the State of Washington continue to be managed under the regulations at 50 CFR 660.323(a)(1) for non-tribal fisheries. The State of Oregon implements trip limits for black rockfish off the Oregon coast.

B. Open Access Fishery

The trip limits for the open access fishery are designed to keep landings within the open access allocation, while allowing the fisheries to operate for as long as possible during the year. The overall open access limits for rockfish, sablefish, and ''all groundfish'' in 1997 are the same as in 1996 with several exceptions: (1) The thornyhead open access allocation of only 3 mt is expected to be taken entirely as incidental catch in open access fisheries for other species. Consequently, north of Pt. Conception thornyheads may not be taken and retained, possessed, or landed, as has been the case since May 1996; (2) the monthly cumulative trip limit for rockfish is applied coastwide in 1997, whereas in 1996, it differed north and south of Cape Lookout; (3) additional limits are established for bocaccio: For setnets or trammel nets, no more than 4,000 lb (1,814 kg) of bocaccio cumulative per month south of Cape Mendocino; and, for hook-and-line or pot gear, no more than 2,000 lb (907 kg) of bocaccio cumulative per month south of Cape Mendocino, of which no more than 300 lb (136 kg) may be taken per trip; (4) language is changed to clarify that open access nontrawl gear may not exceed limits that apply to limited entry nontrawl gear; (5) daily trip limits for sablefish will apply to all open access gear in 1997, not only to nontrawl gear as was the case in 1996; and (6) trip limits for groundfish are reduced from 1,500 lb (680 kg) in the shrimp trawl fishery and 1,000 lb (454 kg) in the prawn trawl fishery to 500 lb (227 kg), including the 300-lb (136-kg) daily trip limit for sablefish. The reduction in the groundfish limit is primarily to discourage bycatch of yellowtail and other rockfish.

C. Operating in Both Limited Entry and Open Access Fisheries

Vessels using open access gear are subject to the management measures for the open access fishery, regardless of whether the vessel has a valid limited entry permit endorsed for any other gear. In addition, a vessel operating in the open access fishery must not exceed any trip limit, frequency limit, and/or

size limit (for the same area) in the limited entry fishery.

A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. Fish caught with open access gear will also be counted toward the limited entry trip limit. For example: In January, a trawl vessel catches 7,000 lb (3,175 kg) of sablefish in the limited entry fishery, and in the same month catches 1,000 lb (454 kg) of sablefish with shrimp trawl (open access) gear, for a total of 8,000 lb (3,629 kg) of sablefish. Because the open access landings are counted toward the limited entry limit, the vessel would have exceeded its limited entry, cumulative limit of 7,200 lb (3,266 kg) (60 percent of the 12,000-lb (5,443-kg) 2-month cumulative limit for the limited entry fishery).

D. Operating in Areas With Different Trip Limits

Trip limits may differ for a species or species complex at different locations on the coast. Unless otherwise stated (as for black rockfish or for species with daily trip limits), the cross-over provisions at paragraph IV.A.(12) apply. In general, a vessel fishing for groundfish in a more restricive area is subject to the more restrictive limit for the duration of that trip limit period. In 1997, these provisions are relaxed to apply only to vessels taking and retaining groundfish rather than any species. Since trip limits for the *Sebastes* complex and yellowtail rockfish will be the same in Washington and Oregon in 1997, Washington and Oregon State declaration procedures that enabled a vessel to operate on both sides of the line and harvest the larger limit no longer are in effect.

E. Changes to Trip Limits; Closures

Unless otherwise stated, a vessel must have initiated offloading its catch before the fishery is closed or before a more restrictive trip limit becomes effective. As in the past, all fish on board the vessel when offloading begins are counted toward the landing limits (See 50 CFR 660.302, formerly 50 CFR 663.2, for the definition of ''landing'').

F. Designated Species B Permits

Designated species B permits may be issued if the limited entry fleet will not fully utilize the HG for Pacific whiting, shortbelly rockfish, or jack mackerel north of 39° North latitude. The limited entry fleet has requested the full use of shortbelly rockfish and Pacific whiting, but less than half of the HG for jack mackerel in 1997. Since no applications were received before the November 1 deadline, NMFS does not expect to issue Designated Species B permits in 1997.

G. Recreational Fishing

Bag limits in the 1997 recreational fishery remain the same as in 1996 with one exception. The bag limit for rockfish in Washington State is reduced to 10 fish throughout the State to be consistent with State laws protecting black rockfish.

IV. NMFS Actions

For the reasons stated above, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concurs with the Council's recommendations and announces the following management actions for 1997, including those that are the same as in 1996.

A. General Definitions and Provisions

The following definitions and provisions apply to the 1997 management measures, unless otherwise specified in a subsequent notice:

(1) *Trip limits.* Trip limits are used in the commercial fishery to specify the amount of fish that may legally be taken and retained, possessed, or landed, per vessel, per fishing trip, or cumulatively per unit of time, or the number of landings that may be made from a vessel in a given period of time, as explained below.

(a) *A trip limit* is the total allowable amount of a groundfish species or species complex, by weight, or by percentage of weight of legal fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(b) *A daily trip limit* is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period. Daily trip limits may not be accumulated during multiple day trips.

(c) *A cumulative trip limit* is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time, without a limit on the number of landings or trips.

(i) *Limited entry fishery.* Unless otherwise specified, cumulative trip limits in the limited entry fishery apply to 2-month periods. No more than 60 percent of the applicable 2-month cumulative limit may be taken and retained, possessed or landed in either month of a 2-month period; this is called the ''60-percent monthly limit.'' The 2-month periods are: January–February, March–April, May–June, July–August, September–October, and November–December. Different cumulative periods may be announced later in the year.

(ii) *Open access fishery.* Unless otherwise specified, cumulative trip limits apply to 1-month periods in the open access fishery. Within these limits, in any calendar month, no more than 50 percent of the applicable 2-month cumulative limit for the limited entry fishery may be taken and retained, possessed, or landed from a vessel in the open access fishery; this is called the ''50-percent monthly limit.''

(iii) *Platooning—limited entry trawl vessels.* Limited entry trawl vessels are automatically in the ''A'' platoon, which means a vessel's cumulative trip limit periods begin and end on the beginning and end of a calendar month as in the past. If a limited entry trawl permit is authorized for the ''B'' platoon (which, in 1997, will require a separate letter from NMFS to be attached to the limited entry permit), then cumulative trip limit periods will begin 2 weeks later than for the ''A'' platoon.

(A) For a vessel in the ''B'' platoon, cumulative trip limit periods begin on the 16th of the month and end on the 15th of the month. Therefore, the management measures announced herein that are effective on January 1, 1997, for the ''A'' platoon will be effective on January 16, 1997, for the ''B'' platoon. The effective date of any inseason changes to the cumulative trip limits also will be delayed for 2 weeks for the ''B'' platoon.

(B) A vessel authorized to operate in the ''B'' platoon may take and retain, but may not land, groundfish from January 1, 1997, through January 15, 1997.

(C) Special provisions will be made for ''B'' platoon vessels later in the year so that the amount of fish made available in 1997 to both ''A'' and ''B'' vessels is the same. For example, a vessel in the ''B'' platoon will have the same cumulative trip limit for the final period as a vessel in the ''A'' platoon, but the final period may be 2 weeks shorter so that both fishing periods end on the same date.

(2) Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next legal period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. As stated in the regulations at 50 CFR 660.302 (formerly 50 CFR 663.2, the definition of ''landing''), once offloading of any species begins, all fish aboard the vessel are counted as part of the landing.

(3) All weights are round weights or round-weight equivalents.

(4) Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) ''Legal fish'' means fish legally taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 660 (previously 50 CFR part 663), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), any notice issued under part 660 (previously subpart B of 50 CFR part 663), and any other regulation promulgated or permit issued under the Magnuson-Stevens Act.

(6) *Size limits and length measurement.* Unless otherwise specified, size limits in the commercial and recreational groundfish fisheries apply to the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods.

(a) For a whole fish, total length will be measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(b) For a fish with the head removed (''headed''), the length will be measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(7) ''Closure,'' when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited. (See the regulations at 50 CFR 660.302 (previously 50 CFR 663.2).) Unless otherwise announced in the Federal Register, offloading must begin before the time the fishery closes.

(Note: The Council recommended requiring fixed gear to be out of the water at the end of the regular season for sablefish rather than requiring offloading to have begun. This recommendation has not yet been approved.)

(8) The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All groundfish possessed between 0–200 nm offshore, or landed in, Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

(9) Inseason changes to trip limits are announced in the Federal Register. Most trip and bag limits in the groundfish fishery have been designated ''routine,'' which means they may be changed rapidly after a single Council meeting. Information concerning changes to trip limits is available from the NMFS Northwest and Southwest Regional Offices (see **ADDRESSES**). Changes to trip limits are effective at the times stated in the Federal Register. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means, unless otherwise announced in the Federal Register, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect.

(10) It is unlawful for any person to take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish (50 CFR 660.306(p), formerly 50 CFR 663.7(t)).

(11) *Operating in both limited entry and open access fisheries.* The open access trip limit applies to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. Fish caught with open access gear will also be counted toward the limited entry trip limit.

(12) *Operating in areas with different trip limits.* Trip limits for a species or species complex may differ in different geographic areas along the coast. The following ''crossover'' provisions apply to vessels operating in different geographical areas that have different cumulative or ''per trip'' trip limits for the same species or species complex. They do not apply to species that are only subject to daily trip limits, or to the trip limits for black rockfish off the State of Washington (see 50 CFR 660.323(a)(1), previously 50 CFR 663.23(b)). In 1997, the trip limit period for cumulative trip limits is 2 months for the limited entry fishery and 1 month for the open access fishery, unless otherwise specified.

(a) *Going From A More Restrictive To A More Liberal Area:* If a vessel takes and retains any species of groundfish in an area where a more restrictive trip limit applies, before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(b) *Going From A More Liberal To A More Restrictive Area:* If a vessel takes and retains a species (or species complex) in an area where a higher trip limit (or no trip limit) applies, and possesses or lands that species (or species complex) in an area where a more restrictive trip limit applies, then that vessel is subject to the more restrictive trip limit for that trip limit period.

(13) *Sorting.* Regulations at 50 CFR 660.306(h) (formerly 50 CFR 663.7(l)) make it unlawful for any person to ''fail to sort, prior to the first weighing after off loading, those groundfish species or species groups for which there is a trip limit, if the weight of the total delivery exceeds 3,000 lb (1,361 kg) (round weight or round weight equivalent).'' This provision applies to both the limited entry and open access fisheries.

(Note: The Council has recommended that this regulation be changed to require all species or species groups with a trip limit, HG, or quota to be sorted. There would be no exception for landings under 3,000 lb (1,361 kg). The States of Washington and Oregon already have the same or similar requirements. If approved, the regulation is expected to be implemented in 1997, after publication in the Federal Register.)

(14) *Exempted fisheries.* U.S. vessels operating under an exempted (formerly experimental) fishing permit issued under 50 CFR part 600 (formerly 50 CFR 663.10) also are subject to these restrictions, unless otherwise provided in the permit.

(15) Paragraphs IV.B. through IV.I. pertain to the commercial groundfish fishery, but not to Washington coastal tribal fisheries which are described in paragraph V. The provisions in paragraphs IV.B. through IV.I. that are not covered under the headings ''limited entry'' or ''open access'' apply to all vessels in the commercial fishery that take and retain groundfish, unless otherwise stated. Paragraph IV.J. pertains to the recreational fishery.

(16) Commonly used geographical coordinates.

(a) Cape Falcon, OR—45°46′ N. lat.

(b) Cape Lookout, OR—45°20′15″ N. lat.

(c) Cape Mendocino, CA—40°30′ N. lat.

(d) Point Conception, CA—34°27′ N. lat.

(e) International North Pacific Fisheries Commission (INPFC) subareas (for more precise coordinates for the Canadian and Mexican boundaries, see 50 CFR 660.304 (formerly 663.5):

(i) Vancouver—U.S.-Canada border to 47°30′ N. lat.

(ii) Columbia—47°30′ to 43°00′ N. lat.

(iii) Eureka—43°00′ to 40°30′ N. lat.

(iv) Monterey—40°30′ to 36°00′ N. lat.

(v) Conception—36°00′ N. lat. to the U.S.-Mexico border.

B. Widow Rockfish (Commonly Called Brownies)

(1) *Limited entry fishery.* The cumulative trip limit for widow rockfish is 70,000 lb (31,752 kg) per vessel per 2-month period. The 60-percent monthly limit is 42,000 lb (19,051 kg).

(2) *Open access fishery.* Within the limits at paragraph IV.I. for the open access fishery, the 50-percent monthly limit for widow rockfish is 35,000 lb (15,876 kg).

C. Sebastes Complex (including Bocaccio, Yellowtail, and Canary Rockfish)

(1) *General. Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and *Sebastolobus* spp. (also called thornyheads, idiots, or channel rockfish). Yellowtail rockfish (*S. flavidus*) are commonly called greenies. Bocaccio (*S. paucispinis*) are commonly called rock salmon. Canary rockfish (*S. pinniger*) are commonly called orange rockfish.

(2) *Limited entry fishery.* (a) *Cumulative trip limits.* (i) *North of Cape Mendocino.* The cumulative trip limit for the *Sebastes* complex taken and retained north of Cape Mendocino is 30,000 lb (13,608 kg) per vessel per 2-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 6,000 lb (2,722 kg) may be yellowtail rockfish taken and retained north of Cape Mendocino, and no more than 14,000 lb (6,350 kg) may be canary rockfish.

(ii) *South of Cape Mendocino.* The cumulative trip limit for the *Sebastes* complex taken and retained south of Cape Mendocino is 150,000 lb (68,039 kg) per vessel per 2-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 12,000 lb (5,443 kg) may be bocaccio taken and retained south of Cape Mendocino, and no more than 14,000 lb (6,350 kg) may be canary rockfish.

(iii) The 60-percent monthly limits are: For the *Sebastes* complex, 18,000 lb (8,165 kg) north of Cape Mendocino, and 90,000 lb (40,823 kg) south of Cape Mendocino; for yellowtail rockfish, 3,600 lb (1,633 kg) north of Cape Mendocino; for bocaccio south of Cape Mendocino, 7,200 lb (3,266 kg); and for canary rockfish coastwide, 8,400 lb (3,810 kg).

(b) For operating in areas with different trip limits for the same species, see paragraph IV.A.(12) above.

(3) *Open access fishery.* If smaller than the limits at paragraph IV.I., the following cumulative monthly trip limits apply (within the limits at paragraph IV.I.): For the *Sebastes* complex, 15,000 lb (6,804 kg) north of Cape Mendocino, and 75,000 lb (34,019 kg) south of Cape Mendocino; for yellowtail rockfish, 3,000 lb (1,361 kg) north of Cape Mendocino; for bocaccio, 6,000 lb (2,722 kg) south of Cape Mendocino; and, for canary rockfish, 7,000 lb (3,175 kg) coastwide.

D. POP

(1) *Limited entry fishery.* The cumulative trip limit for POP is 8,000 lb (3,629 kg) per vessel per 2-month period. The 60-percent monthly limit is 4,800 lb (2,177 kg).

(2) *Open access fishery.* Within the limits at paragraph IV.I. below, the 50-percent monthly limit for POP is 4,000 lb (1,814 kg).

E. Sablefish and the DTS Complex (Dover Sole, Thornyheads, and Trawl-Caught Sablefish

(1) *1997 Management goal.* The sablefish fishery will be managed to achieve the 7,800-mt HG in 1997.

(2) *Limited entry fishery.* (a) *Gear allocations.* After subtracting the tribal-imposed catch limit and the open access allocation from the HG for sablefish, the remainder is allocated 58 percent to the trawl fishery and 42 percent to the nontrawl fishery.

(Note: The 1997 HG for sablefish north of 36° N. lat. is 7,800 mt. The 780-mt tribal allocation is subtracted, and the limited entry and open access allocations are based on the remaining 7,020 mt. The limited entry allocation of 6,557 mt for 1996 is allocated 3,803 mt (58 percent) to the trawl fishery and 2,754 mt (42 percent) to the nontrawl fishery. The trawl and nontrawl gear allocations are HGs in 1997, which means the fishery will be managed not to exceed the HGs, but will not necessarily be closed if the HGs are reached.)

(b) *Limited entry trip and size limits for the DTS complex.* ''DTS complex'' means Dover sole (*Microstomus pacificus*), thornyheads (*Sebastolobus* spp.), and trawl-caught sablefish (*Anoplopoma fimbria*). Sablefish are also called blackcod. Thornyheads, also called idiots, channel rockfish, or hardheads, include two species: Shortspine thornyheads (*S. alascanus*) and longspine thornyheads (*S. altivelis*). These provisions apply to Dover sole and thornyheads caught with any limited entry gear and to sablefish caught with limited entry trawl gear.

(i) *North of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained north of Cape Mendocino is 70,000 lb (31,752 kg) per vessel per 2-month period. Within this cumulative trip limit, no more than 12,000 lb (5,443 kg) may be sablefish, no more than 38,000 lb (17,236 kg) may be Dover sole, and no more than 20,000 lb (9,072 kg) may be thornyheads. No more than 4,000 lb (1,814 kg) of the thornyheads may be shortspine thornyheads.

(ii) *South of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained south of Cape Mendocino is 100,000 lb (45,359 kg) per vessel per 2-month period. Within this cumulative trip limit, no more than 12,000 lb (5,443 kg) may be sablefish, and no more than 20,000 lb (9,072 kg) may be thornyheads. No more than 4,000 lb (1,814 kg) of the thornyheads may be shortspine thornyheads.

(iii) The 60-percent monthly limits are: For the DTS complex, 42,000 lb (19,051 kg) north of Cape Mendocino, and 60,000 lb (27,216 kg) south of Cape Mendocino; for trawl-caught sablefish, 7,200 lb (3,266 kg); for Dover sole north of Cape Mendocino, 22,800 lb (10,342 kg); for both species of thornyheads combined, 12,000 lb (5,443 kg); and for shortspine thornyheads, 2,400 lb (1,089 kg).

(iv) In any trip, no more than 500 lb (227 kg) may be trawl-caught sablefish smaller than 22 inches (56 cm) total length. (See paragraph IV.A.(6) regarding length measurement.)

(v) For operating in areas with different trip limits for the same species, see paragraph IV.A.(12) above.

(c) *Nontrawl trip and size limits.* (i) *Daily trip limit.* The daily trip limit for sablefish taken and retained with nontrawl gear north of 36° N. lat. is 300 lb (136 kg) and south of 36° N. lat. is 350 lb (159 kg). The daily trip limit, which applies to sablefish of any size, is in effect until the closed periods before or after the regular season (as specified at 50 CFR 660.323(a)(2)(i) (formerly 50 CFR 663.23(b)(2)), between the end of the regular season and the beginning of the mop-up season, and after the mop-up season.

(ii) *Limit on small fish.* During the ''regular'' or ''mop-up'' seasons, the only trip limit in effect applies to sablefish smaller than 22 inches (56 cm) total

length, which may comprise no more than 1,500 lb (680 kg) or 3 percent of all legal sablefish 22 inches (56 cm) (total length) or larger, whichever is greater. (See paragraph IV.A.(6) regarding length measurement.)

(d) For headed and gutted sablefish:

(i) The minimum size limit for headed sablefish, which corresponds to 22 inches (56 cm) total length for whole fish, is 15.5 inches (39 cm).

(ii) The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the state conversion factors may differ; fishermen should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.)

(Note: The Council has recommended a number of changes to the regulations for the fixed gear sablefish fishery in 1997. Before these changes can be made effective, they must be approved by NMFS and then implemented by a regulation published in the Federal Register. The recommended changes are summarized below:

(1) A vessel must have an endorsement on its limited entry permit in order to participate in the regular or mop-up season north of 36° N. lat.; (2) the regular and mop-up seasons would apply only north of 36° N. lat., whereas in 1996, they applied coastwide; (3) for 48 hours prior to the regular season, all fixed gear used to take and retain groundfish would be removed from the water—no advance setting of pot gear would be allowed; (4) a 48-hour closed period would be added at the end of the regular season, and all fixed gear used to take and retain groundfish, including open access gear, would be removed from the water during this period; (5) a framework season would be established (from August 1–September 30), with the date being selected each year according to certain criteria. The starting date, which has not yet been recommended for 1997, remains at noon September 1 until the new regulation becomes effective.)

(3) *Open access fishery.* Within the limits in paragraph IV.I. below, a vessel in the open access fishery is subject to the 50-percent monthly limits, which are as follows: For the DTS complex, 35,000 lb (15,876 kg) north of Cape Mendocino, and 50,000 lb (22,680 kg) south of Cape Mendocino; for Dover sole north of Cape Mendocino, 19,000 lb (8,618 kg); south of Pt. Conception, for both species of thornyheads combined, 10,000 lb (4,536 kg) of which no more than 2,000 lb (907 kg) may be shortspine thornyheads. (The open access fishery for thornyheads is closed north of Pt. Conception.) Daily trip limits for sablefish and for thornyheads south of Pt. Conception are announced at paragraph IV.I.

F. Whiting

(1) *Limited entry fishery.* Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 (formerly 50 CFR 663.7) and 50 CFR 660.323(a)(3) and (4)(formerly 50 CFR 663.23(b)(3) and (4)).

(a) No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed, per vessel per fishing trip before and after the regular season for whiting, as specified at 50 CFR 660.323(a)(3) and (4) (formerly 50 CFR 663.23(b)(3) and (4)). This trip limit includes any whiting caught shoreward of 100 fathoms (183 m) in the Eureka subarea (see paragraph IV.F.(1)(b)).

(b) No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100-fathom (183-m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka subarea.

(Note: The Council recommended a number of changes to the Pacific whiting fishery that are not yet in effect, particularly separate allocations for catcher/processor, mothership, and shore-based sectors. The Council also recommended separate opening dates for catcher/processors and mothership operations (but both sectors prefer the current opening date of May 15 in 1997), and for vessels delivering shoreside (June 15 north of 42° N. lat. and April 15 south of 42° N. lat.). The dates at 50 CFR 660.323(a)(3) remain in effect until otherwise announced in the Federal Register.)

(2) *Open access fishery.* See paragraph IV.I. below.

G. Lingcod

(1) *Limited entry fishery.* The cumulative trip limit for lingcod is 40,000 lb (18,144 kg) per vessel per 2-month period. The 60-percent monthly limit is 24,000 lb (10,886 kg). No lingcod may be smaller than 22 inches (56 cm) total length, except for a 100-lb (45-kg) trip limit for trawl-caught lingcod smaller than 22 inches (56 cm). Length measurement is explained at paragraph IV.A.(6).

(2) *Open access fishery.* Within the limits in paragraph IV.I. below, the 50-percent monthly limit for lingcod is 20,000 lb (9,072 kg).

(3) *Conversions.* (a) *Size conversion.* For lingcod with the head removed, the minimum size limit, which corresponds to 22 inches (56 cm) total length for whole fish, is 18 inches (46 cm).

(b) *Weight conversion.* The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The states' conversion factors may differ and fishers should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.) If a state does not have a conversion factor for lingcod that is headed and gutted, or only gutted, the following conversion factors will be used. To determine the round weight, multiply the processed weight times the conversion factor.

(i) *Headed and gutted.* The conversion factor for headed and gutted lingcod is 1.5. (The State of Washington currently uses a conversion factor of 1.5.)

(ii) *Gutted, with the head on.* The conversion factor for lingcod that has only been eviscerated is 1.1.

H. Black Rockfish

The regulations at 50 CFR 660.323(a)(1) (formerly 50 CFR 663.23(b)(1)(iii)) state: ''The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.), and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), is 100 lb (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip.'' The provisions at paragraphs IV.A.(12) do not apply.

I. Trip Limits in the Open Access Fishery

Open access gear is gear used to take and retain groundfish from a vessel that does not have a valid limited entry permit for the Pacific coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. This includes longline, trap, pot, hook-and-line (fixed or mobile), set net (south of 38° N. lat. only), and trawls used to target non-groundfish species (pink shrimp or prawns, and, south of Pt. Arena, CA (38°57′30″ N. lat.), California halibut or sea cucumbers). A vessel operating in the open access fishery must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery; or for the same area in the limited entry fishery; or, in any calendar month, 50 percent of any 2-month cumulative trip limit for the same area in the limited entry fishery,

called the ''50-percent monthly limit.'' For purposes of this paragraph, exempted trawl gear (that is used to harvest shrimp, prawns, California halibut or sea cucumbers as provided in this paragraph I.) may not exceed any limit for the limited entry trawl fishery, or 50 percent of any 2-month cumulative limit that applies to limited entry trawl gear. The cross-over provisions at paragraph IV.A.(12) that apply to the limited entry fishery apply to the open access fishery as well.

(1) *Rockfish.* Rockfish means all rockfish as defined at 50 CFR 660.302 (formerly 50 CFR 663.2), which includes the *Sebastes* complex (including yellowtail rockfish, bocaccio, and canary rockfish), shortbelly rockfish, widow rockfish, POP, and thornyheads.

(a) *All open access gear.* (i) North of Pt. Conception, thornyheads (shortspine or longspine) may not be taken and retained, possessed, or landed.

(ii) South of Pt. Conception, the daily trip limit for thornyheads is 50 lb (23 kg).

(b) *All open access gear except shrimp, prawn, or sea cucumber trawl.* The cumulative monthly trip limit for rockfish is 40,000 lb (18,144 kg) per vessel per month, and includes the daily trip limit for thornyheads. The following trip limits also apply, which count toward the cumulative monthly limit:

(i) *Hook-and-line or pot gear:* 10,000 lb (4,536 kg) of rockfish per vessel per fishing trip, of which no more than 300 lb (136 kg) per trip, not to exceed 2,000 lb (907 kg) cumulative per month, may be bocaccio taken and retained south of Cape Mendocino.

(ii) *Setnet or trammel net gear* (which are legal only south of 38° N. lat.): 4,000 lb (1,814 kg) cumulative of bocaccio taken and retained south of Cape Mendocino.

(c) For operating in areas with different trip limits for the same species, see paragraph IV.A.(12) above.

(2) *Sablefish.* (a) *North of 36°00′ N. lat.* The cumulative trip limit for sablefish taken and retained north of 36°00′ N. lat. is 1,500 lb (680 kg) per month. The daily trip limit for sablefish taken and retained north of 36°00′ N. lat., which counts toward the cumulative limit, is 300 lb (136 kg).

(b) *South of 36°00′ N. lat.*. The daily trip limit for sablefish taken and retained south of 36°00′ N. lat. is 350 lb (159 kg).

(3) *Groundfish taken by shrimp or prawn trawl.* The daily trip limits are: Sablefish, 300 lb (136 kg) coastwide; and thornyheads south of Pt. Conception, 50 lb (23 kg).

(a) *Pink shrimp.* The trip limit for a vessel engaged in fishing for pink shrimp is 500 lb (227 kg) of groundfish, multiplied by the number of days of the fishing trip, and includes the daily trip limits for sablefish and thornyheads, which may not be multiplied by the number of days of the fishing trip.

(b) *Spot and ridgeback prawns.* The trip limit for a vessel engaged in fishing for spot or ridgeback prawns is 500 lb (227 kg) of groundfish species per fishing trip, and includes the daily trip limits for sablefish and thornyheads.

(c) This rule is not intended to supersede any more restrictive state law relating to the retention of groundfish taken in shrimp or prawn pots or traps.

(4) *Groundfish taken by California halibut or sea cucumber trawl.* The trip limit for a vessel participating in the California halibut fishery or in the sea cucumber fishery south of Point Arena, CA (38°57′30″ N. lat.) is 500 lb (227 kg) of groundfish per vessel per fishing trip, which includes a daily trip limit for sablefish of 300 lb (136 kg), and a daily trip limit for thornyheads south of Pt. Conception of 50 lb (23 kg).

(a) A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR part 660.333 (formerly 50 CFR part 663) for trawl gear;

(ii) All fishing on the trip takes place south of Point Arena; and

(iii) The landing includes California halibut of a size required by California Fish and Game Code section 8392(a), which states: ''No California halibut may be taken, possessed or sold which measures less than 22 inches in total length, unless it weighs four pounds or more in the round, three and one-half pounds or more dressed with the head on, or three pounds or more dressed with the head off. Total length means the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail.''

(b) A trawl vessel will be considered participating in the sea cucumber fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR part 660.333 (formerly 50 CFR 663) for trawl gear;

(ii) All fishing on the trip takes place south of Point Arena; and

(iii) The landing includes sea cucumbers taken in accordance with California Fish and Game Code section 8396, which requires a permit issued by the State of California.

J. Recreational Fishery

(1) *California.* The bag limits for each person engaged in recreational fishing seaward of the State of California are: 5 lingcod per day, which may be no smaller than 22 inches (56 cm) total length; and 15 rockfish per day. Multi-day limits are authorized by a valid permit issued by the State of California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(2) *Oregon.* The bag limits for each person engaged in recreational fishing seaward of the State of Oregon are: 3 lingcod per day, which may be no smaller than 22 inches (56 cm) total length; and 15 rockfish per day, of which no more than 10 may be black rockfish (*Sebastes melanops*).

(3) *Washington.* The bag limits for each person engaged in recreational fishing seaward of the State of Washington are: Three lingcod per day no smaller than 22 inches (56 cm) total length, and 10 rockfish per day.

V. Washington Coastal Tribal Fisheries

From 1991 through 1994, the Washington coastal treaty tribes conducted a tribal sablefish fishery of 300 mt that was accommodated in the annual management measures. In late 1994, the U.S. government formally recognized the treaty right to fish for groundfish of the four Washington Coastal Treaty tribes (the Makah, Hoh, Quileute, and Quinault), and concluded that in general terms the quantification of the right is 50 percent of the harvestable surplus of groundfish available in the tribes' usual and accustomed fishing areas (defined at 50 CFR 660.304).

A tribal allocation is subtracted from the species HG before limited entry and open access allocations are derived. The treaty Indian fisheries for sablefish, black rockfish, and whiting allocations are separate fisheries, not governed by the limited entry or open access regulations or allocations. The tribes regulate their fisheries so as not to exceed their allocations. Tribal fishing for rockfish with fixed gear will operate under the same rules as the open access fishery. The tribal trawl fishery for rockfish will operate under the limited entry rules (50 CFR 660.324(j)). Makah tribal members may use midwater trawl gear to take and retain groundfish for which there is no tribal allocation and will be subject to the trip landing and frequency and size limits applicable to the limited entry fishery (50 CFR 660.324(k)).

The tribal allocations for sablefish and black rockfish are the same as in 1996 and for the same reasons. The tribal allocation for whiting in 1997 differs from the 1-year allocation agreement with the Makah for 1996, as discussed below.

The Council recommended that no whiting be allocated to the Makah Tribe in 1997. The Council's recommendation of no allocation is not acceptable because Federal district court Judge Rafeedie held that tribes have a right to all fish in their usual and accustomed fishing areas, with no species limitation. Some fishermen have argued that this ruling should not apply to whiting. A subproceeding is pending in *U.S.* v. *Washington* that addresses the issue of a treaty right to whiting. In that whiting subproceeding, on November 4, 1996, the court ruled that ''Judge Rafeedie's ruling in Subproceeding 89–3 should remain the binding law of the case until the Ninth Circuit decides the appeal of the decision now pending before it.''

NMFS acknowledges that many difficult questions have been raised and that there is much uncertainty regarding what is a complex and difficult technical and legal issue. The Tribe's proposed allocation methodology would result in an allocation of 25 percent of the U.S. HG; NMFS's proposed allocation methodology would result in an allocation of 6.5 percent of the U.S. HG. The tribal compromise falls between these two positions. NMFS finds the tribal proposal of 25,000 mt (10.8 percent) in 1997 to be an acceptable compromise given all of the uncertainties. This compromise gives NMFS time to work with the tribes, the States, and other Federal agencies to develop an agreed-upon allocation. This is a short-term compromise and is not intended to set a precedent regarding either quantification of the Makah treaty right or future allocations. If an appropriate methodology or allocation cannot be developed through negotiations, the allocation will ultimately be resolved in the pending subproceeding in *U.S.* v. *Washington*. In the absence of a resolution of the appropriate allocation in 1998, NMFS may again provide the tribes 10.8 percent of the U.S. HG. NMFS expects the quantification issue to be resolved before the 1999 season. NMFS Actions

For the reasons stated above, the Assistant Administrator announces the following tribal allocations for 1997, including those that are the same as in 1996:

Sablefish: 780 mt, 10 percent of the HG.

Rockfish: For the commercial harvest of black rockfish off Washington State a HG of: 20,000 lb (9,072 kg) north of Cape Alava (48°09′30″ N. lat.) and 10,000 lb (4,536 kg) between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.).

Whiting: 25,000 mt in 1997, 10.8 percent of the HG.

Response to Public Comments

NMFS received two written comments from the nontreaty whiting industry and one from the Makah Tribe on the proposed tribal whiting allocation. One commenter argued the Secretary of Commerce does not have the authority to make this allocation because such an allocation requires an amendment of the FMP. This is not so much a comment on the allocation for 1997, as on the rule implementing the framework for treaty tribe harvest of Pacific groundfish (tribal groundfish rule) that was adopted on May 31, 1996; the response to this comment is found in the preamble to the final tribal groundfish rule published at 61 FR 28786 (June 6, 1996), specifically on pages 28789 and 28790 under the heading ''Magnuson Act''.

The two commenters also objected to the process used this year to make the allocation because it does not provide a ''formal public comment period.'' NMFS followed its regulation by considering the tribal request, the Council recommendation, and public comments, before announcing the allocation with the final groundfish specifications. As explained in the preamble to the tribal groundfish rule (specifically on page 28787), NMFS is using the Council's annual groundfish management process, as much as possible, for developing and implementing the tribal allocation request. This is the best way to provide information to all of the interested parties, since they are involved in the annual process, either through attending the meetings or through receiving the Council newsletters which are sent to all persons who request to be on the Council mailing list. The tribal whiting request for 1997 was announced at the August 1996 Council meeting when the initial proposals for the 1997 management measures and specifications were discussed and adopted by the Council. The Council adopted a preliminary range for a 1997 whiting set-aside of zero to 35,000 mt. This was announced in the Council's August newsletter, along with the other 1997 management recommendations. At the October Council meeting, the tribe modified its 1997 whiting proposal to be 25,000 mt. The Council recommended an allocation of zero for 1997. The NMFS representative announced NMFS would take additional comments on the tribal allocation for another 3 weeks. The Council's October newsletter announced the tribal request for 25,000 mt, the Council's proposed tribal whiting allocation of zero, and that NMFS would ''accept comments on the Council's recommendations until November 15, 1996 with special attention to yellowtail rockfish and the tribal whiting allocation decisions.'' This process conforms to the requirements of the tribal groundfish rule and provides the widest opportunity for the interested public to participate and provide comments, since it uses the same timeframe and public participation process as is used for the rest of the annual groundfish management decisions.

One commenter asserted the allocation violates many national standards of the Magnuson-Stevens Act, found at 16 U.S.C. 1851(a). Most of the arguments had been made last year and were responded to in the preamble to the tribal rule under the heading of ''Magnuson Act.'' The commenter argued the allocation is not fair and equitable, does not promote conservation, and allows a particular entity to acquire an excessive share of fishing privileges in violation of national standard 4, 16 U.S.C. 1851(a)(4). This allocation is different from other discretionary allocations that the Council and NMFS might make. It is required by the treaties with the Northwest tribes as explained above, which are other applicable law with which management measures must be consistent. It promotes conservation as much as any allocation does in that the allocation is within the total allowable catch authorized for 1997. It does not provide an excessive share of fish to the tribe; it is implementing a treaty right, that is the supreme law of the land. The commenter alleged the allocation does not promote efficiency, in violation of national standard 5, 16 U.S.C. 1851(a)(5); and does not minimize costs or avoid unnecessary duplication in violation of national standard 7, 16 U.S.C. 1851(a)(7). National standard 5 (as revised by Public Law 104–297) requires that efficiency be ''considered''; national standard 7 requires that measures shall, where practicable, minimize costs and avoid unnecessary duplication. The commenter has provided no specifics on why these standards have been violated or suggestions on how the treaty right can be accommodated in a way that would be more efficient, minimize costs, or avoid unnecessary duplication.

The two commenters argued that there should be a zero allocation to the tribe in 1997 because there is no

adjudicated treaty right to whiting, and they refer to their comments on the tribal groundfish rule and the 1996 allocations. NMFS addressed their arguments in the preamble to the tribal groundfish rule under the heading of ''Treaty Entitlement.'' NMFS had determined there is a treaty right to whiting, in part, because in a subproceeding of *U.S.* v. *Washington* regarding tribal rights to shellfish, Federal district court Judge Rafeedie held that tribes have a right to all fish in their usual and accustomed fishing areas, with no species limitation. This ruling is currently on appeal in front of the Ninth Circuit Court of Appeals. The commenters argued this ruling should not apply to whiting. A subproceeding is pending in *U.S.* v. *Washington* that addresses the issue of a treaty right to whiting. In that whiting subproceeding, on November 4, 1996, the court ruled that ''Judge Rafeedie's ruling in Subproceeding 89–3 should remain the binding law of the case until the Ninth Circuit decides the appeal of the decision now pending before it.''

One commenter asserted the Makah tribe already has achieved a moderate living and, therefore, the treaty right has been satisfied without providing whiting to the Makah. The commenter provided no new information to support this assertion. This assertion was answered in the preamble to the tribal groundfish rule under the heading ''Moderate Living''.

One commenter asserted that since the harvest in the Vancouver statistical area (an area larger than, but including, the usual and accustomed fishing area) was 9.9 percent of the total harvest from 1981 to 1995, if the tribes were entitled to a 50 percent share of the whiting, they should at most be allocated 4.95 percent of the amount available to the U.S. He further asserted that since the whiting spend a small portion of the year in the Makah area and do not spawn there, the allocation should be even smaller than 4.95 percent. These comments were responded to in the preamble to the tribal groundfish rule.

One commenter alleges the allocation violates the ESA because it has not been subject to a formal consultation under the ESA. However, a biological opinion issued on May 14, 1996, found that ''(t)he timing, method, and location of the tribal fishery are comparable with how the whiting fishery has operated in recent years. As a result, there is no reason to expect that the bycatch of salmon or the effect of the fishery to other listed species including marine mammals will be different from what has be(en) reported for the existing fishery.'' The tribal fishery authorized for 1997 is still within the scope of what was analyzed in previous biological opinions, and thus reinitiation of consultation is not required. The other commenter argued that the tribal salmon bycatch appeared to exceed the level of concern in the fishery, which requires a new biological opinion. The current biological opinion considers salmon bycatch in the fishery as a whole, but does require consultation if the number of chinook salmon per metric ton of whiting exceeds 0.05 in either the shoreside, catcher/processor or the mothership components of the fishery (Biological Opinion, May 14, 1996). For purposes of the biological opinion, the tribal whiting fishery was considered as part of the mothership fleet. Therefore, salmon bycatch in the tribal fishery, by itself, does not necessarily trigger a requirement for reinitiation unless it results in the salmon bycatch for the mothership sector to exceed the reinitiation criteria. All three sectors were within the 0.05 rate in 1996.

VI. Issuance of EFPs in 1996

In 1995, applications were received and approved for three different types of EFPs (formerly called ''experimental fishing permits'') for the 1996 fishing year: (1) The first was from the State of Oregon (representing Washington and California as well) for the purpose of renewing the 1995 EFP to monitor the bycatch of salmon in the shore-based whiting fishery. Under this permit, 40 vessels were issued EFPs that required all salmon caught incidentally in the whiting fishery to be landed shoreside. A variation of the whiting EFP also was requested by the State of California so that a small number of fishers could be allowed to fish for whiting inside of the 100-fathom (183-m) contour in the Eureka Management Area, which currently is prohibited. The purpose was to see if the bycatch rate of salmon could be kept at acceptable levels by this small, shore-based sector of the fleet delivering to Eureka and Crescent City, CA. At-sea observers would be aboard all whiting trips. Even though this variation to the whiting EFP was approved, the industry declined to participate.

(2) The second EFP was for a new, enhanced data collection program that applied to the other groundfish fisheries. The application was submitted by the State of Oregon, but could include involvement by the States of Washington and California as well. This is a multi-year cooperative data collection program with the industry and state and Federal governments. Twenty vessels participated in 1996. The purpose of the experiment was to monitor trip-limit-induced discards and the bycatch of salmon and non-target species in the groundfish trawl fishery. All participating vessels were required to land salmon caught incidentally in groundfish trawl gear and to keep enhanced logbooks required by the States. Some vessels were required to carry at-sea observers to monitor trip-limit induced discards, and some vessels could have been required to bring virtually their entire catch to shore for additional monitoring although this did not occur in 1996.

(3) The third EFP application was to collect reproductive samples for sablefish to test assumptions in the stock assessment for that species. An EFP was needed because the vessel would be authorized to land 500 lb (227 kg) in excess of the cumulative trip limit for trawl-caught sablefish (for a total of 5 mt in 1996), and could sell the scientific samples. A state or Federal scientist would be aboard every trip to gather the biological data. Although this permit was approved and issued, it had not been used at the time this notice was prepared in late 1996; sampling normally occurs late in the year.

VII. Renewal of EFPs in 1997

Renewal of all three EFPs was requested for 1997, some with slight modifications. First, the whiting EFPs described in paragraph VI.(1) would be continued, pending development and implementation of an FMP amendment that would authorize salmon to be retained and landed. Fishers also are concerned that their practice of dumping codends directly in the hold would make monitoring of trip limits difficult, if not impossible, and would like the EFP continued because overages are forfeited but no penalty results. The scope of the experiment and level of participation would be the same as in 1996.

Second, continuation of the enhanced data collection program described in paragraph VI.(2) also was requested, with some modifications. The major change would enable data to be obtained on a vessel throughout its fishing activities in a month, even if not fishing for groundfish. This would provide information on groundfish bycatch in other fisheries (particularly shrimp fisheries) and on a fisher's choice to pursue alternative fisheries or fishing strategies. The program also could be expanded to include whiting fisheries when the whiting EFP no longer is in effect.

The third is renewal of the EFP to gather biological information on sablefish, as described in paragraph VI.(3) to confirm or improve data used

in the stock assessment. This experiment would allow one vessel to retain 25 fish in excess of the trawl trip limit for sablefish and is not expected to exceed 10 mt per year. It differs from the 1996 permit in that a state or Federal scientist would not need to be aboard every trip, but would be required to be present when the vessel offloads to gather the scientific samples. Also, the scientific samples would not necessarily be sold; they also could be distributed to a food bank or otherwise disposed of consistent with state and Federal law.

Requests for these renewals were presented at the Council's October 1996 meeting. The Council recommended renewal of all three in 1997. Comments on the three EFP programs for 1997 were invited at the October 1996 Council meeting. If approved, the whiting EFPs could be issued as early as March 1 for vessels delivering in the State of California, and mid-April for vessels delivering in Washington and Oregon; and the EFP for sablefish could be issued early in 1997. The decision on whether to issue EFPs and determinations on appropriate permit conditions will be based on a number of considerations, including the Council's recommendations and comments received from the public.

Classification

The final specifications and management measures for 1997 are issued under the authority of, and are in accordance with, the Magnuson-Stevens Act and 50 CFR parts 600 and 660 subpart G (the regulations implementing the FMP).

Much of the data necessary for these specifications and management measures came from the current fishing year. Because of the timing of the receipt, development, review, and analysis of the fishery information necessary for setting the initial specifications and management measures, and the need to have these specifications and management measures in effect at the beginning of the 1997 fishing year, there is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment for the specifications and management measures. Amendment 4 to the FMP, implemented on January 1, 1991, recognized these timeliness considerations and set up a system by which the interested public is notified, through Federal Register publication and Council mailings, of meetings and of the development of these measures and is provided the opportunity to comment during the Council process. The public participated in GMT, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in August and October 1996 where these recommendations were formulated. Additional public comments on the specifications and management measures will be accepted for 30 days after publication of this document in the Federal Register. The Assistant Administrator (AA) will consider all comments made during the public comment period and may make modifications as appropriate.

An Environmental Assessment (EA) was prepared for the tribal groundfish rule that supported the AA's determination that the proposed 1996 Makah allocation would have no significant impact on the human environment. NMFS has updated the 1996 EA and has concluded that the 1997 Makah allocation will have no significant impact on the human environment.

The Administrative Procedure Act requires that publication of an action be made not less than 30 days before its effective date unless the AA finds, and publishes with the rule, good cause for an earlier effective date (5 U.S.C. 553(d)(3)). These specifications announce the harvest goals and the management measures designed to achieve those harvest goals in 1997. A delay in implementation could compromise the management strategies that are based on the projected landings from these trip limits. Therefore, a delay in effectiveness is contrary to the public interest and these actions are effective on January 1, 1997.

The tribal whiting allocation is developed following, as much as possible, the annual process for developing fishery specifications and management measures. This is because the information developed in this process (such as the ABC and HG for whiting) is important in the allocation process. In addition, the annual groundfish process provides the best opportunity to the interested public to receive notification of the proposed allocation and to provide comments. As described above in the response to public comments, the public received notice through the August and October Council meetings and Council newsletters. It is important to announce the tribal allocation with the other specifications and management measures so the affected industry will know the amount of whiting available to the various sectors and will be able to plan accordingly.

Dated: December 30, 1996.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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50 CFR Part 622

[Docket No. 961226370–6370–01; I.D. 111896A]

RIN 0648–AI15

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 2

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). Amendment 2 would add brown and pink shrimp to the FMP's fishery management unit, define overfishing for brown and pink shrimp, define optimum yield (OY) for brown and pink shrimp, require the use of certified bycatch reduction devices (BRDs) in all penaeid shrimp trawls in the exclusive economic zone (EEZ) in the South Atlantic, and establish a framework procedure for adding to the list of certified BRDs or modifying their specifications. The intended effects are to minimize the bycatch of finfish in shrimp trawling operations in the South Atlantic and to implement consistent, and therefore more enforceable, Federal and state management measures requiring the use of BRDs for reducing finfish bycatch in the penaeid shrimp fishery.

DATES: Written comments must be received on or before February 20, 1997.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 2, which includes a regulatory impact review (RIR), a social impact analysis, and a supplemental final environmental impact statement (SFEIS), should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 803–571–4366; Fax: 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The shrimp fishery is the largest and most valuable commercial fishery in the South Atlantic, with approximately 1,400 large vessels and 1,000 small boats harvesting 30 million lb (13,608 mt) with an ex-vessel value of $60 million annually. Shrimp trawls have a significant bycatch of nontarget finfish and invertebrates, most of which are discarded dead. Scientific survey results indicate that the ratio of the weight of finfish bycatch to that of shrimp caught is about 2.3 to 1.

Bycatch may reduce the diversity of species within a marine ecosystem, adversely impact other fauna, and significantly reduce the yield in other fisheries that are directed at adults of the discarded species. Important fish species in the shrimp fishery bycatch include juveniles of mackerel, weakfish, spot, and croaker. If left to mature and grow, these juvenile fish possibly could be harvested later and produce a significantly higher yield in weight as well as enhancing the reproductive capacity of their stocks.

The Atlantic States Marine Fisheries Commission (ASMFC) has determined that weakfish are seriously overfished and on the verge of recruitment failure. The ASMFC adopted an Interstate Fishery Management Plan for Atlantic Weakfish (ISFMP) in 1985, primarily to address the lack of biological and fisheries data necessary for effective management of the weakfish resource. ISFMP Amendments 1 and 2 were adopted by the ASMFC to achieve significant reductions in fishing mortality of weakfish and to halt stock declines. ISFMP Amendment 2 directed the South Atlantic states to implement measures to achieve a 50 percent reduction in weakfish bycatch in the shrimp trawl fisheries for the 1996 fishing year. In order to accelerate weakfish conservation efforts, the ASMFC adopted Amendment 3 to its ISFMP in May 1996. The major goals of Amendment 3 are: Restoring the Atlantic coast weakfish resource over a 5-year period to a healthy level that will maintain commercial and recreational harvests consistent with a self-sustaining spawning stock; and providing for restoration and maintenance of habitat essential for the long term stability of the weakfish resource. Amendment 3 directs the states to require BRDs in all penaeid shrimp trawls nets above a certain size and requires that all BRDs be certified as demonstrating a 40 percent reduction by number or 50 percent reduction of bycatch mortality of weakfish when compared to catch rates in a net without a BRD. As members of the ASMFC, the southern Atlantic states have pledged to accomplish the BRD-related objectives of Amendment 3 in state waters during the 1996 shrimp season, which began in June 1996.

The Council has developed Amendment 2 to reduce bycatch of weakfish in Federal waters consistent with the objectives of Amendment 3 to the ISFMP, to enhance enforcement by requiring comparable BRDs in both state and Federal waters, and to initiate a process for certifying improved BRDs as they become available.

BRD Requirements

This rule would require the use of a certified BRD in most penaeid shrimp trawl nets in the South Atlantic EEZ. Specifically, on board a penaeid shrimp trawler, each trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm) stretched mesh (center of knot to center of opposite knot), and each try net that is rigged for fishing and has a headrope length greater than 16.0 ft (4.9 m), must have a certified BRD installed. BRD designs that have passed the operational testing phase of the NMFS cooperative bycatch research program (i.e., extended funnel, expanded mesh, and fisheye BRDs) are certified for use in state waters and are certified for use in the EEZ where BRDs are required.

Most shrimp trawling in the South Atlantic occurs in state waters. Because most shrimp fishermen in the South Atlantic fish in both state and Federal waters on the same trip, the requirement to use BRDs in Federal waters should pose little, if any, additional burden on fishermen.

Amendment 2 Management Measures Not Reflected in the Proposed Rule

Framework Procedure for Certifying BRDs and for Modification of BRD Certification Criteria and Testing Protocol

In addition to the management measures reflected in the proposed rule, Amendment 2 would establish a framework procedure for certifying new or modified BRDs and for establishing and modifying BRD certification criteria and testing protocol. Any BRD that is eligible for NMFS certification must be shown to reduce the bycatch component of fishing mortality for Spanish mackerel and weakfish by 50 percent, or demonstrate a 40-percent reduction in number of these fish. The Regional Administrator, Southeast Region, NMFS (Regional Administrator), would be responsible for review and certification of BRDs for use in the South Atlantic EEZ. There would be two certification procedures. Under the first procedure, a new or modified BRD that is reviewed and recommended by a state management agency, and that meets the bycatch reduction criteria under the testing protocol specified by the Council, would be certified by the Regional Administrator. Under the second procedure, an individual would submit the results of BRD certification trials directly to NMFS. Such submissions would be evaluated by NMFS with the Regional Administrator making the final decision on BRD certification pursuant to the certification criteria, testing protocol, and terms of the FMP. Under either the first or second procedure, certification of a new or modified BRD would be announced by the Regional Administrator through publication of a notice in the Federal Register.

The proposed BRD testing protocol for certification does not include a shrimp loss criterion (i.e., estimated loss of shrimp when a BRD is used). However, any application for BRD certification would be required to provide data and analyses on the quantity of shrimp that could be lost when using the BRD. Also, an applicant would be required to identify: The sponsor of the BRD certification tests (e.g., Sea Grant program, university, or private firm); when and where the tests were conducted; the vessel or vessels involved; any special conditions or requirements of the tests; the statistical design and analyses that were performed, including length of tow, number of tows, and the measurements of shrimp and fishes; the names and affiliations of the observers; a complete description of the BRD, including detailed descriptions of how the BRD is installed in the nets; and the types of TEDs used. It should be noted that all certification tests would be required to be conducted with a state-approved or NMFS-approved observer aboard. It would be the responsibility of the applicant, or his/her agent, conducting the certification tests to ensure that a qualified observer is aboard during the tests.

Additional details concerning the Council's recommendations regarding the certification of BRDs, certification

criteria, and the BRD testing protocol are provided in Amendment 2 (see **ADDRESSES**) under the discussion regarding proposed Action 5 (pages 73–83 of Amendment 2). Action 5 also provides: The Regional Administrator will advise an applicant if a BRD is not certified; an applicant may resubmit a rejected request for certification; and the Regional Administrator may decertify a BRD should it be determined that such BRD does not meet the bycatch reduction criteria (page 76 of Amendment 2).

Brown and Pink Shrimp Measures

Amendment 2 would add brown and pink shrimp to the FMP's fishery management unit and define overfishing and OY for these species.

Annual landings of brown and pink shrimp off the southern Atlantic states over time appear to fit a normal distribution (a common statistical distribution) and have been relatively stable since the mid-1950s without any discernible upward or downward trend. Average annual landings for brown shrimp for the 1957–93 period have been 8,346,397 lb (3,786 mt); whereas average annual landings for pink shrimp for the same period have been 1,713,067 lb (777 mt). It appears that annual abundance of these shrimp is primarily influenced by environmental factors that determine the survival rate of juvenile shrimp. Fishing pressure, at least in the past, does not appear to have been a major factor controlling brown and pink shrimp abundance.

Since brown and pink shrimp are harvested in shrimp trawls for which BRDs will be required under Amendment 2, the Council concluded that it is necessary and appropriate that these shrimp species be added to the FMP management unit. The Council believes that the addition of these two shrimp species to the management unit would provide the necessary regulatory framework for establishing and enforcing compatible state and Federal regulations. Adding these species to the management unit would result in the following revised description of the FMP management unit: The management unit includes the populations of white, brown, pink, and rock shrimp along the U.S. Atlantic coast from the east coast of Florida, including the Atlantic side of the Keys, to the North Carolina/Virginia border.

Amendment 2 would define overfishing for brown and pink shrimp as follows: Overfishing for brown or pink shrimp is occurring if annual landings for 3 consecutive years are more than two standard deviations below mean landings for the period 1957–1993. Thus, annual landings for 3 consecutive years would have to be below 2,946,157 lb (1,336 mt) (heads on) for brown shrimp and 286,293 lb (130 mt) (heads on) for pink shrimp in order for these resources to be considered overfished. Reduced landings could result from reduced fishing pressure rather than overfishing. Accordingly, under Amendment 2, if annual landings are more than two standard deviations below mean landings for the 1957–1993 period for 2 consecutive years, the Council would convene its Shrimp Stock Assessment Panel, Shrimp Advisory Panel, and Shrimp Committee to review the causes of such declines in landings and recommend, if appropriate, actions necessary to address the identified problems. In the event that declining landings are actually due to overfishing rather than reduced fishing effort or some other factor, this should ensure that the Council takes timely action to address the overfishing problem. The NMFS Southeast Science Center has certified that the Council's proposed overfishing definition is based on the best scientific information available.

Both pink and brown shrimp are short lived and produce annual crops. Thus, as long as sufficient spawners survive each year, the Council believes that there is no benefit from leaving an excess of the present year's crop for the next season. Based on the biological characteristics of brown and pink shrimp, there is a minimal chance of overfishing these species. For these reasons, the Council is proposing that OY for these species be defined as the amount of harvest that can be taken by U.S. fishermen without annual landings falling more than two standard deviations below mean landings for the 1957–1993 period for 3 consecutive years (i.e., below 2,946,157 lb (1,336 mt) (heads on) for brown shrimp and 286,293 lb (130 mt) (heads on) for pink shrimp). The Council selected this definition of OY based, in part, on the absence of evidence that present or past levels of fishing effort have caused either growth or recruitment overfishing.

Availability of Amendment 2

Additional background and rationale for the measures discussed above are contained in Amendment 2, the availability of which was announced in the Federal Register on November 25, 1996 (61 FR 59856). Public comment on Amendment 2 is invited through January 24, 1997.

Classification

At this time, NMFS has not made its final determination that Amendment 2 is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. In making that final determination, NMFS will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that Amendment 2 and its implementing rule would not have a significant impact on a substantial number of small entities as follows:

The proposed rule would require the use of certified bycatch reduction devices (BRDs) in most shrimp trawls used in the fisheries for penaeid shrimp in the exclusive economic zone (EEZ) of the South Atlantic and specifies the 3 types of BRDs that are initially deemed ''certified.''

For the 1994 fishing season, about 1,100 large shrimp vessels were licensed in Florida, Georgia, and South Carolina, and about 300 large vessels in North Carolina. In addition, there were probably 1,000 or more small vessels and boats which have a significant dependence on shrimp trawling in the South Atlantic area; these vessels fish mostly in North Carolina waters. All entities involved in the shrimp fisheries in the southeast Atlantic EEZ are considered small entities for purposes of the RFA.

Requiring the use of BRDs for all shrimp trawls in the South Atlantic EEZ would have little or no economic impact since virtually all shrimp fishermen in this area fish primarily in state waters where BRDs are already required. Most, if not all, shrimp fishermen have already equipped their trawls with BRDs in conformity with state regulations that should meet the BRD-certification requirements of this rule. Accordingly, there should be little or no additional costs to fishermen in complying with the BRD requirements of this rule when they fish in the EEZ.

Regarding the impacts of this rule, the Council's regulatory impact review (RIR) concluded: Any economic impact would result in much less than a 5 percent reduction in annual gross revenues to small entities; any increase in compliance costs would be less than a 5 percent increase in total costs of production; all entities involved are small entities; capital costs of compliance represent a very small portion of capital available to small entities; and no entities are expected to be forced to cease business operations. For these reasons, the RIR concluded that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 622

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

Dated: December 30, 1996.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be 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 § 622.2, definitions for ''BRD'', ''Headrope length'', ''Penaeid shrimp trawler'', and ''Try net'' are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

BRD means bycatch reduction device.

* * * * *

Headrope length means the distance, measured along the forwardmost webbing of a trawl net, between the points at which the upper lip (top edge) of the mouth of the net are attached to sleds, doors, or other devices that spread the net.

* * * * *

Penaeid shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of brown, pink, or white shrimp (penaeid shrimp) is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

* * * * *

Try net, also called test net, means a net pulled for brief periods by a shrimp trawler to test for shrimp concentrations or determine fishing conditions (for example, presence or absence of bottom debris, jellyfish, bycatch, seagrasses, etc.).

* * * * *

3. In § 622.41, paragraph (g) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) *Shrimp in the South Atlantic*—(1) *BRD requirement.* On a penaeid shrimp trawler in the South Atlantic EEZ, each trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each try net that is rigged for fishing and has a headrope length longer than 16.0 ft (4.9 m), must have a certified BRD installed. A trawl net, or try net, is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(2) *Certified BRDs.* The following BRDs are certified for use by penaeid shrimp trawlers in the South Atlantic EEZ. Specifications of these certified BRDs are contained in Appendix D of this part.

(i) Extended funnel.

(ii) Expanded mesh.

(iii) Fisheye.

4. In § 622.48, paragraph (h) is added to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(h) *South Atlantic shrimp.* Certified BRDs and their specifications.

5. Appendix D is added to part 622 to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs in the South Atlantic Shrimp Fishery

A. *Extended Funnel.*

1. *Description.* The extended funnel BRD consists of an extension with large-mesh webbing in the center (the large-mesh escape section) and small-mesh webbing on each end held open by a semi-rigid hoop. A funnel of small-mesh webbing is placed inside the extension to form a passage for shrimp to the codend. It also creates an area of reduced water flow to allow for fish escapement through the large mesh. One side of the funnel is extended vertically to form a lead panel and area of reduced water flow. There are two sizes of extended funnel BRDs, a standard size and an inshore size for small trawls.

2. *Minimum Construction and Installation Requirements for Standard Size.*

(a) *Extension Material.* The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅝ inch (4.13 cm), No. 30 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section.* The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) in length by 95 inches (241.3 cm) in circumference. The leading edge is attached to the 6½-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(c) *Funnel.* The funnel is constructed of 1½ inch (3.81 cm), stretched mesh, No. 30 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 34 to 36 inches (86.4 to 91.4 cm) long and the opposite side of the funnel extends an additional 22 to 24 inches (55.9 to 61.0 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop.* A 30-inch (76.2-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed 5 meshes behind the trailing edge of the large-mesh escape section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation.* The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.2.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

3. *Minimum Construction and Installation Requirements for Inshore Size.*

(a) *Extension Material.* The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅜ inch (3.5 cm), No. 18 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section.* The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) by 75 inches (190.5 cm) in circumference. The leading edge is attached to the 6½-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(c) *Funnel.* The funnel is constructed of 1⅜ inch (3.5 cm), stretched mesh, No. 18 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 30 to 32 inches (76.2 to 81.3 cm) long and the opposite side of the funnel extends an additional 20 to 22 inches (50.8 to 55.9 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh

escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop.* A 24-inch (61.0-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a 3/8-inch (9.53-mm) micropress sleeve, is installed 5 meshes behind the trailing edge of the large mesh section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation.* The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.3.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

B. *Expanded Mesh.* The expanded mesh BRD is constructed and installed exactly the same as the standard size extended funnel BRD, except that one side of the funnel is not extended to form a lead panel.

C. *Fisheye.*

1. *Description.* The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel rod of at least ¼ inch diameter, which is inserted into the codend to form an escape opening. Fisheyes of several different shapes and sizes have been tested in different positions in the codend.

2. *Minimum Construction and Installation Requirements.* The fisheye has a minimum opening dimension of 5 inches (12.7 cm) and a minimum total opening area of 36 square inches (91.4 square cm). The fisheye must be installed in the codend of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 11 ft (3.4 m) from the codend tie-off rings.

[FR Doc. 97–187 Filed 1–3–97; 8:45 am]

BILLING CODE 3510–22–P

50 CFR Part 678

[I.D. 120696A]

RIN 0648–AH77

Atlantic Shark Fisheries; Notice of Availability of Amendment 1

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Highly Migratory Species Division has submitted Amendment 1 to the Fishery Management Plan for the Sharks of the Atlantic Ocean (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public. Amendment 1 would implement limited access measures for the Atlantic shark fisheries.

DATES: Written comments must be received on or before February 28, 1997.

ADDRESSES: Send comments to William Hogarth, Acting Chief, Highly Migratory Species Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Requests for copies of Amendment 1, which includes an environmental assessment and a regulatory impact review, should be sent to Margo Schulze, Fishery Biologist, Highly Migratory Species Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margo Schulze or John Kelly, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The fishery for Atlantic sharks is managed under the FMP prepared by NMFS under authority of section 304(g) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act), as amended, and was implemented on April 26, 1993, through regulations found at 50 CFR part 678.

If approved, Amendment 1 would redefine permits as directed or incidental, develop eligibility criteria for these permits based on historical participation, and specify rules for transferability of permits. NMFS has determined that the Atlantic shark fishery is overcapitalized, with an excessive number of permitted vessels relative to current harvest levels. The objective of this amendment is to take a first and significant step towards reducing fleet capacity to levels more closely aligned with resource production by implementing limited access, substantially reducing latent harvesting capacity, and implementing measures to prevent further overcapitalization.

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

Dated: December 30, 1996.

Gary C. Matlock,

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

[FR Doc. 96–33394 Filed 12–30–96; 4:57 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 96122063–6363–01; I.D. 120296B]

RIN 0648–AI65

Fisheries of the Exclusive Economic Zone off Alaska; Maximum Retainable Bycatch Percentages

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to reduce maximum retainable bycatch percentages for sablefish in the Gulf of Alaska (GOA) groundfish trawl fisheries and to allow the use of GOA arrowtooth flounder as a basis species for the retention of bycatch amounts of pollock and Pacific cod when either of these two species is closed to directed fishing. This action is necessary to slow the harvest rate of GOA sablefish and to provide for fuller utilization of pollock and Pacific cod incidentally taken in the arrowtooth flounder fishery. This action is intended to further the objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Comments must be received at the following address by February 5, 1997.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the environmental assessment/regulatory impact review prepared for this action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the GOA is managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens 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.

Regulations at § 679.20(e) establish maximum retainable bycatch (MRB) percentages for groundfish species or species groups. These MRB percentages establish the amount of a species that is

closed to directed fishing that may be retained on board a vessel, relative to amounts of other retained species open to directed fishing. MRB percentages serve as a management tool to slow down the rate of harvest of a bycatch species and to reduce the incentive for fishing vessel operators to target on the species. Nonetheless, vessel operators may top off their retained catch of these species up to the MRB amount. MRB percentages do not necessarily reflect a natural incidental catch rate but rather reflect a balance between the recognized need to slow harvest rates, minimize the potential for undesirable discard, and, in some cases, provide an increased opportunity to harvest available total allowable catch (TAC) through limited topping off activity.

Topping off is a recognized and generally accepted activity associated with bycatch species. The incentive for fishermen to engage in this activity is directly related to the value of, and available market for, the bycatch species relative to the associated operational costs of fishing first for and retaining one species and subsequently topping off that retained catch with a bycatch species up to, and including, the allowable MRB percentage.

Current regulations prohibit the use of arrowtooth flounder as a basis species for the retention of other groundfish species closed to directed fishing. This prohibition was implemented by NMFS in 1994 to respond to industry and Council concern that directed fishing for arrowtooth flounder for the purpose of topping off with other, higher-valued species could result in unacceptably high halibut bycatch rates. Little or no market existed for arrowtooth flounder, which subsequently was discarded or rendered into meal, but the halibut bycatch amounts associated with the arrowtooth flounder fishery were credited against the overall halibut bycatch limits available to other fisheries. Directed fishing for arrowtooth flounder could increase the rates at which halibut bycatch limits or allowances are reached, thus further limiting the ability of the groundfish fleet to harvest available TAC amounts before halibut bycatch restrictions close the fisheries.

At the Council's December 1995 meeting, industry representatives and individual members of the Council requested that NMFS initiate several changes to existing MRB percentages. This request was in response to specific concerns about topping off activity and to testimony that a limited fishery for GOA arrowtooth flounder exists and that this species should be allowed as a basis species for the retention of pollock and Pacific cod. Industry representatives and NMFS in-season managers also recommended that a reduction of the GOA sablefish MRB percentage be considered to respond to fishery management issues that became evident as a result of topping off activities in the 1996 trawl fisheries. At its September 1996 meeting, the Council adopted its preferred alternative to reduce the MRB percentages for GOA sablefish relative to deep water species from 15 percent to 7 percent and to allow the use of GOA arrowtooth flounder as a basis species for the retention of pollock and Pacific cod. An MRB of 5 percent of each these species relative to arrowtooth flounder is proposed. The Council requested staff to explore other changes to MRB percentages for GOA rockfish species that may be considered at a future date. Specific rationale for each of the proposed changes follows.

Allow the Use of GOA Arrowtooth Flounder as a Basis Species

At the Council's December 1995 meeting, testimony was presented that markets now exist for arrowtooth flounder and that this species should be allowed as a basis species for purposes of retaining pollock and Pacific cod when these two species are closed to directed fishing. An MRB percentage of 5 percent was proposed for pollock and Pacific cod relative to arrowtooth flounder.

NMFS catch data show that bycatch of these two species in the arrowtooth flounder fishery since 1994 ranged between 6 and 15 percent, higher than the proposed MRB percentage. As a result, some discard of GOA pollock and Pacific cod may still occur. Nonetheless, opportunity for unacceptably high levels of topping off activity would be limited to address halibut bycatch concerns.

Reduce the MRB Percentage for GOA Sablefish

The current MRB percentage for GOA sablefish is 15 percent relative to deep water flatfish, flathead sole, rex sole, and rockfish and 1 percent relative to all other species. Sablefish typically is a bycatch species for the GOA trawl fisheries and trawl vessels maximize allowable retention of sablefish through topping off activity. In 1996, in-season monitoring and management of trawl fisheries was frustrated by unanticipated high harvest rates of Pacific ocean perch (POP) for purposes of topping off with sablefish, as well as unprecedented high harvest rates of sablefish through topping off activity. As a result of these higher than anticipated harvest rates, TACs for sablefish and POP were exceeded, these species were put on prohibited species status within 2 weeks of the July 1 opening of the trawl rockfish fishery, and these species were mandatorily discarded for the remainder of the year. NMFS proposes that the MRB percentage for GOA sablefish relative to all rockfish species or species groups and deep water flatfish be reduced from 15 percent to 7 percent. This change would reduce the harvest rate of GOA sablefish as well as that for POP and potentially other rockfish species during topping-off activity. The Council concurred in this recommendation at its September 1996 meeting.

The proposed reduction in the sablefish MRBs reflects NMFS catch data for the bycatch of sablefish in the deep water flatfish and rockfish fisheries since 1994. The bycatch of sablefish in the flathead sole and rex sole fisheries ranged between 1–4 percent since 1994, lower than the proposed 7 percent MRB. The proposed reduction in the sablefish MRB is not anticipated to result in additional discard of trawl-caught sablefish. However, it would slow down the harvest rates of sablefish. It would also slow the harvest rate of groundfish that are open to directed fishing and that serve as a basis for the retention of sablefish. A reduced harvest rate would facilitate NMFS's ability to monitor the fishery and initiate fishery closures before TAC amounts are reached, thus delaying the attainment of TAC and the required discard of fish under prohibited species status.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed regulatory amendment would reduce the maximum retainable bycatch (MRB) percentages for sablefish in the Gulf of Alaska (GOA) groundfish trawl fisheries and allow the use of GOA arrowtooth flounder as a basis species for the retention of bycatch amounts of pollock and Pacific cod when either of these two species is closed to directed fishing. This action is necessary to slow the harvest rates of GOA sablefish and to provide for fuller utilization of pollock and Pacific cod incidentally taken in the arrowtooth flounder fishery.

The proposed action primarily would affect GOA trawl operations. In 1995, a total of 185 catcher vessels using trawl gear harvested GOA groundfish. NMFS considers

catcher vessels to be small entities for purposes of analyses required under the Regulatory Flexibility Act. The proposed change to the GOA sablefish MRB would affect only trawl operations because the retention of sablefish by nontrawl vessels is governed by regulations implementing the sablefish individual fishing quota program. In 1995, four of the eight catcher vessels participating in the GOA rockfish fisheries retained sablefish as bycatch. The proposed reduction of the sablefish MRB percentages likely would not result in decreased annual revenues to these catcher vessels that exceed 5 percent because vessels still would have the opportunity to harvest available sablefish TACs through ''topping off'' activity, albeit at a reduced rate or over a longer period of time. Topping off is the term applied to catching and retaining non-target species in order to increase the base used for computing the percentage of bycatch of sablefish (or other valuable species) that can be retained. Operational costs of doing so could increase as a result, but likely not to the extent of posing a significant economic impact.

This action also would provide enhanced opportunity for revenues to the extent that participants in the arrowtooth flounder fishery retain bycatch amounts of pollock and Pacific cod up to the proposed MRB percentage of 5 percent. In 1995, 39 trawl catcher vessels retained GOA arrowtooth flounder. The additional revenue to these vessels that could result from the proposed action likely would not reflect a 5 percent increase in overall annual revenue. Landings of arrowtooth flounder in 1995 totaled only about 1 percent of the total amount of groundfish landed by catcher vessels. If catcher vessel operators chose to retain any bycatch of pollock and Pacific cod up to the proposed MRB percentage, the associated landings would be 5 percent or less of the arrowtooth landings, or about 0.1 percent of the total groundfish catch.

As a result, a regulatory flexibility analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: December 27, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In part 679, Table 10 is revised to read as follows:

TABLE 10 TO PART 679.—CURRENT GULF OF ALASKA RETAINABLE PERCENTAGES

	Bycatch Species [1]											
	Pollock	Pacific cod	Deep flatfish	Rex sole	Flathead sole	Shallow flatfish	Arrowtooth	Sablefish	Aggregated rockfish [2]	DSR SEEO [4]	Atka mackerel	Other species
Basis Species:												
Pollock	[3] na	20	20	20	20	20	35	1	5	10	20	20
Pacific cod	20	[3] na	20	20	20	20	35	1	5	10	20	20
Deep flatfish	20	20	[3] na	20	20	20	35	7	15	1	20	20
Rex sole	20	20	20	[3] na	20	20	35	7	15	1	20	20
Flathead sole	20	20	20	20	[3] na	20	35	7	15	1	20	20
Shallow flatfish	20	20	20	20	20	[3] na	35	1	5	10	20	20
Arrowtooth	5	5	0	0	0	0	[3] na	0	0	0	0	0
Sablefish	20	20	20	20	20	20	35	[3] na	15	1	20	20
Pacific Ocean perch	20	20	20	20	20	20	35	7	15	1	20	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	1	20	20
Other rockfish	20	20	20	20	20	20	35	7	15	1	20	20
Northern rockfish	20	20	20	20	20	20	35	7	15	1	20	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	1	20	20
DSR–SEEO	20	20	20	20	20	20	35	7	15	[3] na	20	20
Thornyhead	20	20	20	20	20	20	35	7	15	1	20	20
Atka mackerel	20	20	20	20	20	20	35	1	5	10	[3] na	20
Other species	20	20	20	20	20	20	35	1	5	10	20	[3] na
Aggregated amount non-groundfish species	20	20	20	20	20	20	35	1	5	10	20	20

[1] For definition of species, see Table 1 of the Gulf of Alaska groundfish specifications

[2] Aggregated rockfish means rockfish of the genera Sebastes and Sebastolobus except in the southeast Outside District where demersal shelf rockfish (DSR) is a separate category.

[3] na=not applicable.

[4] SEEO=Southeast Outside District.

[FR Doc. 97–7 Filed 1–3–97; 8:45 am]

BILLING CODE 3510–22–W

Notices

Federal Register
Vol. 62, No. 3
Monday, January 6, 1997

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

Office of the Secretary

Price Undercutting of Domestic Swiss Cheese by Imported Swiss Cheese From Canada and Germany

AGENCY: Department of Agriculture (USDA).

ACTION: Notice.

The U.S. Department of Agriculture received a complaint alleging price undercutting of domestic Swiss cheese in the United States by imported subsidized Swiss cheese subject to an in-quota rate of duty produced in Canada and Germany. Under section 702 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 1202 note), the Secretary of Agriculture must conduct an investigation and make a determination as to the validity of the allegations within 30 days.

Based on the investigation of the Director of the Dairy, Livestock and Poultry Division, Foreign Agricultural Service, conducted pursuant to the regulations at 7 C.F.R. 6.40–.44, I have determined that although available information suggests price undercutting of U.S. Swiss cheese by Swiss cheese subject to an in-quota rate of duty imported from Canada and Germany, this information is insufficient for the purposes of section 702 upon which to make a positive determination at this time that price undercutting has occurred. I am, however, directing the Department to monitor U.S. cheese markets for price undercutting by cheese imported subject to an in-quota rate of duty. I am also directing the Department, in coordination with the Office of the United States Trade Representative, to analyze the Canadian dairy price pooling system, including any implications this system would have for Canada's North American Free Trade Agreement and World Trade Organization export subsidy obligations.

Robert S. LaRussa, Acting Assistant Secretary for Import Administration, Department of Commerce, has determined that subsidies provided by the Government of Canada on Swiss cheese exported to the United States averaged $0.26 per pound during the investigations period. In the case of Germany, the Department of Commerce determined that the average export restitution payment provided by the European Union during the investigation period was $0.45 per pound on Swiss cheese exported to the United States.

Done at Washington, D.C., this 27th day of December, 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 97–115 Filed 1–3–97; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Extension of Currently Approved Information Collection for Hells Canyon Private Land Use Regulations

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request an extension of a currently approved information collection. Private landowners, whose land is located within the parameters of the Hells Canyon National Recreation Area, are asked to provide information that will enable the agency to determine if the use and development of the land is compatible with existing regulations at 36 CFR 292, Subpart E.

DATES: Comments must be received in writing on or before March 7, 1997.

ADDRESSES: All comments should be addressed to: Director, Recreation, Heritage, and Wilderness Resources (MAIL STOP 1125), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

FOR FURTHER INFORMATION CONTACT: Jeff Bailey, Recreation, Heritage, and Wilderness Resources Staff, at (202) 205–1407.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

The following describes the information collection to be extended:

Title: Hells Canyon Private Land Use Regulations: 36 CFR 292, Subpart E.

OMB Number: 0596–0135.

Expiration Date of Approval: March 31, 1997.

Type of Request: Extension of a previously approved information collection.

Abstract: This collected information is used to evaluate whether an estimated 235 landowners within the Hells Canyon National Recreation Area use and develop their land in compliance with the existing regulations known as Hells Canyon Private Land Use Regulations located at 36 CFR 292, Subpart E. Once a year, landowners provide written information to the Ranger that must include the following: (1) the current land category to which the land is assigned as defined at 36 CFR 292, Subpart E; (2) the use or development that exists or that is proposed for the property; (3) a statement as to whether a change in the land category assignment will be necessary to accommodate the proposed use or development; (4) a timeframe for implementing the proposed use or development, and (5) a statement as to how the proposed use or development satisfies the standards of § 292.23. Using the information collected from each landowner, the Ranger makes a determination whether private landowners existing or proposed use or development of the land within the Hells Canyon National Recreation Area complies with the standards of the regulations.

Data gathered in this information collection is not available from other sources.

Estimate of Burden: 4 hours.

Type of Respondents: Private land owners located within the Hells Canyon National Recreation Area.

Estimated Number of Respondents: 235.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 940 hours.

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 24, 1996.

David G. Unger,

Acting Chief.

[FR Doc. 97–164 Filed 1–3–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Intent to Revoke Antidumping Duty Orders and Findings and to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty orders and findings and to terminate suspended investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of January 1997.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Brazil, Brass Sheet & Strip, A–351–603, 52 FR 1214, January 12, 1987, Contact: Tom Killiam at (202) 482–2704.

Canada, Color Picture Tubes, A–122–605, 53 FR 429, January 7, 1988, Contact: Valerie Owenby at (202) 482–0145.

Singapore, Color Picture Tubes, A–559–601, 53 FR 432, January 7, 1988, Contact: Michael Heaney at (202) 482–4475.

South Africa, Brazing Copper Wire & Rod, A–791–502, 51 FR 3640, January 29, 1986, Contact: Valerie Owenby at (202) 482–0145.

South Korea, Brass Sheet & Strip, A–580–603, 52 FR 1215, January 12, 1987, Contact: Tom Killiam at (202) 482–2704.

South Korea, Color Picture Tubes, A–580–605, 53 FR 431, January 7, 1988, Contact: Tamara Underwood at (202) 482–0197.

Taiwan, Stainless Steel Cooking Ware, A–583–603, 52 FR 2139, January 20, 1987, Contact: Valerie Owenby at (202) 482–0145.

Canada, Potassium Chloride, A–122–701, 53 FR 1393, January 19, 1988, Contact: Jean Kemp at (202) 482–4037.

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of January 1997. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k) (3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: December 27, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 97–123 Filed 1–3–97; 8:45 am]

BILLING CODE 3510–DS–P

C–549–802

Ball Bearings and Parts Thereof From Thailand: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On July 3, 1996, the Department of Commerce (''the Department'') published in the Federal Register its preliminary results of administrative review of the countervailing duty order on ball bearings and parts thereof from Thailand for the period 1994 (61 FR 34794, July 3, 1996). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice. The countervailing duty order on ball bearings and parts thereof from Thailand was revoked effective January 1, 1995, as a result of a changed circumstances review (*see* 61 FR 20799). Because this order has been revoked, the

Department will not issue further instructions with respect to cash deposits of estimated countervailing duties.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Megan Waters, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 355.22(a) of the Department's *Interim Regulations,* this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. *See Antidumping and Countervailing Duties: Interim regulations; request for comments,* 60 FR 25130, 25139 (May 11, 1995) (''*Interim Regulations*''). Accordingly, this review covers the Minebea Group of Companies in Thailand, NMB Thai, Pelmec Thai, and NMB Hi-Tech, which manufacture and export the subject merchandise. During this review, the Department learned of another Minebea company, NMB Precision Ball, Ltd., which manufactures balls. The company does not export directly to the United States but it does sell balls to the other three companies which in turn export finished ball bearings to the United States and elsewhere. This company, like the other three Minebea producers in Thailand, is a wholly-owned subsidiary of Minebea Japan, and because NMB Precision Ball, Ltd. received export subsidies during the period of review (*see ''Programs Conferring Subsidies''* section below) for its sales of balls to the related Thai ball bearing producers, we determine that it is appropriate to include the export subsidies to NMB Precision Ball, Ltd. in our calculations of the net subsidy.

All of these companies are wholly owned by one parent company. As a result of this affiliation, we continue to find, as we did in the investigation and in previous reviews (*see for example, Ball Bearings and Parts Thereof from Thailand: Final Results of Countervailing Duty Administrative Review, 60* FR 52374, October 6, 1995), that the Minebea Group of Companies should be collapsed and treated as one corporate entity in our calculations. This review covers the period January 1 through December 31, 1994, and nine programs.

Since the publication of the preliminary results on July 3, 1996 (61 FR 34794), the following events have occurred. We invited interested parties to comment on the preliminary results. On August 2, 1996, a case brief was submitted by the Royal Thai Government (''RTG'') and the Minebea Group of Companies, which exported ball bearings and parts thereof to the United States during the review period.

On November 2, 1995, we extended the period for completion of the preliminary and final results pursuant to section 751(a)(3) of the Act (*see Extension of the Time Limit for Certain Countervailing Duty Administrative Reviews,* 60 FR 55699). As explained in the memoranda from the Assistant Secretary for Import Administration dated November 22, 1995, and January 11, 1996 (on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce), all deadlines were further extended to take into account the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 15, 1995, through January 6, 1996. As a result of these extensions, the deadline for these final results is no later than December 30, 1996—180 days from July 3, 1996, the date on which the preliminary results were published in the Federal Register.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act'').

Scope of the Review

Imports covered by this review are ball bearings and parts thereof. Such merchandise is described in detail in the Appendix to this notice. The Harmonized Tariff Schedule (HTS) item numbers listed in the Appendix are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

We verified information provided by the RTG and by the Minebea Group of Companies, producers/exporters of the subject merchandise (as provided in section 782(i) of the Act) . We followed standard verification procedures, including meeting with government and company officials and examining relevant accounting and original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Analysis of Programs

Based upon the responses to our questionnaire, the results of verification, and written comments from the interested parties we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

Investment Promotion Act of 1977—Sections 28, 31, 36(1), and 36(4)

In the preliminary results, we found that these programs conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, our calculation of the net subsidies for this program remains unchanged from the preliminary results and is as follows:

Manufacturer/Exporter	Rate
Minebea Group of Companies	5.25%.

II. Programs Found to be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

A. Tax Certificates for Exporters
B. Electricity Discounts for Exporters
C. Export Packing Credits
D. Rediscount of Industrial Bills
E. IPA Section 33
F. Export Processing Zones
G. Reduced Business Taxes for Producers of Intermediate Goods for Export Industries
H. International Trade Promotion Fund

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Respondents argue that the Department must liquidate entries during 1994 without regard to countervailing duties because the URAA does not provide an injury test for 1994 entries as required under the Agreement on Subsidies and Countervailing Measures (*Subsidies Agreement*). Citing Article 32.3 of the *Subsidies Agreement,* respondents argue that the *Subsidies Agreement* is applicable to all reviews, including the instant review, initiated pursuant to requests made after January 1, 1995. Respondents argue that the requirements of the Agreement include

the application of an injury test to entries covered by such a review. According to respondents, however, the URAA did not provide a mechanism to implement this obligation; rather, the URAA only provides an injury test for merchandise entered on or after January 1, 1995. Therefore, respondents assert that assessment of countervailing duties on 1994 entries would violate U.S. obligations under the *Subsidies Agreement.*

Department's Position: Respondents have misinterpreted both U.S. law and the Subsidies Agreement. There is no legal basis under U.S. law for respondents' claim. Because Thailand became a *Subsidies Agreement* country on January 1, 1995, only entries made on or after January 1, 1995 are entitled to the injury test. *See* section 753 of the Act; 19 U.S.C. § 1675b. Section 753 (a)(4) makes this clear by providing for the suspension of liquidation of entries of subject merchandise made ''on or after . . . the date on which the country . . . becomes a *Subsidies Agreement* country . . . .'' *See also Ceramica Regiomontana, S.A.* v. *United States,* 64 F.3d 1579 (Fed. Cir. 1995) (the right to an injury test is conferred at the time of importation (entry) in the United States). Therefore, countervailing duties may be assessed on Thai imports entered before January 1, 1995, without regard to an injury test.

Moreover, Article 32.3 of the *Subsidies Agreement* does not require an injury determination for merchandise entered prior to January 1, 1995. (*See also Footwear from Brazil* GATT Panel Decision confirming that liability for countervailing duties attaches at the time of importation, not assessment.) Liability for countervailing duties attaches at the time of entry and, because the subject merchandise entered in 1994, there is no obligation under the *Subsidies Agreement* to supply an injury test to these 1994 entries.

Comment 2: Respondents argue that, due to the ''upstream subsidies'' provision, the Department's inclusion of benefits received by NMB Precision Ball, Ltd. in the subsidy calculation is contrary to law. They claim that, because NMB Precision Ball, Ltd. is separately incorporated, any benefits it receives on inputs must be analyzed under the upstream provision. They also contend that the Department lacks authority to countervail any subsidies provided on the input balls supplied by NMB Precision Ball, Ltd. because petitioners have not made an ''upstream subsidies'' allegation.

Department's Position: We disagree with respondents. Including the benefits received by NMB Precision Ball, Ltd. in the benefit calculation is not contrary to the upstream provision of the statute. In fact, it is necessary to include these subsidies in order to accurately determine the total net subsidy attributable to subject merchandise.

NMB Precision Ball, Ltd. does not produce bearings; nor does it make commercial shipments of bearings to the United States. However, it does produce balls which it then supplies to other Minebea companies, including Minebea companies in Thailand. When the Department issued its questionnaire for this review, it requested information for all companies in Thailand which produced and/or exported subject merchandise that was exported to the United States. At verification, the Department learned that NMB Precision Ball, Ltd. produced balls that were exported to the United States as parts of finished ball bearings during the review period. Only then, upon request, did the Department gather information to determine whether NMB Precision Ball, Ltd. should be included in the subsidy calculations.

At verification, we found that the balls produced by NMB Precision Ball, Ltd. were exported either directly or as parts of bearings assembled by other Minebea companies in Thailand. Both the balls and bearings are merchandise subject to this review. As explained in the preliminary results of this review (61 FR 34794, July 3, 1996), the subsidies received by NMB Precision Ball, Ltd. on its sales of these balls are export subsidies. NMB Precision Ball, Ltd. receives these export subsidies not only for the balls that are exported directly but also for the balls that are sold to other Minebea companies for incorporation into ball bearings which are then exported. Therefore, the Department properly included in the subsidy calculation the benefits attributable to balls produced by NMB Precision Ball, Ltd. but exported by other Minebea companies in Thailand as parts of finished ball bearings.

Because these are export subsidies, the upstream subsidy provision is not applicable (*see* section 771A(a) of the Act). Specifically, the upstream subsidy provision, by its terms, expressly excludes export subsidies from its coverage (based on the presumption that an export subsidy paid on a nonsubject input product benefits the exportation of that product, not the downstream product). The upstream subsidy provision is not intended to cover the situation in this case. Further, separate and apart from this provision, such export subsidies on subject merchandise are plainly covered by the U.S. countervailing duty law. Accordingly, the export subsidies here on balls and ball bearings are countervailable.

Further, the fact that NMB Precision Ball, Ltd. is separately incorporated is irrelevant because these are export subsidies which are provided to balls contingent on their subsequent exportation, and the balls are covered by the order. It does not matter whether the balls are exported directly or whether the balls are sold to another company, incorporated into ball bearings, and then exported; all of the balls receive the export subsidy. Thus, the subject merchandise exported to the United States by the other Minebea companies during the period of review benefitted not only from the export subsidies on balls produced by NMB Precision Ball, Ltd. but also from the export subsidies provided on finished ball bearings.

Comment 3: Respondents claim that several of the essential materials for which BOI grants duty exemptions meet the ''consumed in production'' standard, and, therefore, duty exemptions on these materials should be found not countervailable. They argue that the Department improperly countervailed certain duty exemptions on inputs used in the production process because it has interpreted the meaning of the footnote 61 of Annex II of the *Subsidies Agreement* regarding ''inputs consumed in the production process'' too narrowly.

Department's Position: We disagree with respondents. Prior to the Uruguay Round Agreement, only duty exemptions on inputs that were physically incorporated into the product being exported (*e.g.*, raw material inputs) were considered non-countervailable. Under the *Subsidies Agreement,* this has been broadened to include duty exemptions on products that are ''consumed in production.'' Annex II of the Agreement contains a footnote (n. 61) which defines inputs consumed in the production process as: ''inputs physically incorporated, energy, fuels and oils used in the production process and catalysts which are consumed in the course of their use to obtain the exported product.'' Upon examination of the breakouts of duty exemptions that respondents claimed, we discovered that, with the exception of fixed assets, the RTG treated almost anything used in the production process as duty exempt. We found that a number of duty-exempt materials fall outside the definition in footnote 61 and have therefore countervailed the exemptions provided on items which fall outside that definition.

Respondents argue that the term ''consumed in production'' should

include all items that are worn out during the production process and that physically touch the product (*e.g.*, grinding wheels and drill bits) as well as items such as packing materials. However, it is the Department's position that the definition in Annex II is unambiguous, and therefore, the only duty exemptions that we find not countervailable are those on materials which are physically incorporated into the exported product and on oils used in the production process. The remaining duty exemptions received by the respondent companies on items such as drill bits and grinding wheels do not fit the definition in Annex II. They are not physically incorporated; nor are they energy, fuels, oils, or catalysts consumed in the course of their use. Accordingly, we continue to find those exemptions countervailable.

Final Results of Review

In accordance with section 355.22(c)(4)(ii) of the Department's *Interim Regulations,* we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. As discussed above in the *Background* section, the Department considers the Minebea Group of Companies as one corporate entity. Therefore, we have calculated one subsidy rate for the Minebea Group of Companies in Thailand. For the period January 1 through December 1, 1994, we determine the net subsidy to be as follows:

Net subsidies—producer/exporter	Net subsidy rate
Minebea Group of Companies (NMB Thai, Pelmec Thai, NMB Hi-Tech, NMB Precision Ball, Ltd.)	5.25%.

We will instruct the U.S. Customs Service (''Customs'') to assess countervailing duties as indicated above.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* section 355.22(a) of the *Interim Regulations.* Pursuant to 19 CFR § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate previously ordered. Accordingly, we will instruct Customs to liquidate at the cash deposit rate in effect at the time of entry all entries of subject merchandise from non-reviewed companies.

Pursuant to petitioner's statement of no further interest in the CVD order on ball bearings and parts thereof from Thailand for entries after December 31, 1994, the Department conducted a changed circumstances review and, effective January 1, 1995, revoked this countervailing duty order pursuant to section 782(h)(2) of the Act. *Ball Bearings and Parts Thereof from Thailand: Final Results of Changed Circumstances Countervailing Duty Review and Revocation of Countervailing Duty Order,* 61 FR 20799 (May 8, 1996). Accordingly, suspension of liquidation was terminated effective January 1, 1995, and the Department will not issue further instructions with respect to cash deposits of estimated countervailing duties.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: December 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

Appendix

Scope of Review

Ball Bearings, Mounted or Unmounted, and Parts Thereof

The products covered by this review, ball bearings, mounted or unmounted, and parts thereof, include all antifriction bearings which employ balls as the rolling element. During the review period, imports of these products were classifiable under the following categories: antifriction balls; ball bearings with integral shafts; ball bearings (including radial ball bearings) and parts thereof; ball bearing type pillow blocks and parts thereof; ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof; and other bearings (except tapered roller bearings) and parts thereof. Wheel hub units which employ balls as the rolling element are subject to the review. Finished but unground or semiground balls are not included in the scope of this review.

Imports of these products are currently classifiable under the following HTS item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50. This review covers all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those parts which will be subject to heat treatment after importation.

[FR Doc. 97–184 Filed 1–3–97; 8:45 am]

BILLING CODE 3510–DS–P

[C–475–819]

Notice of Rescission of Expedited Countervailing Duty Administrative Review: Certain Pasta from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of expedited countervailing duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') rescinds its expedited countervailing duty administrative review of the order covering certain pasta from Italy initiated on October 10, 1996 (61 FR 53198).

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Kristin Mowry, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 482–3798.

SUPPLEMENTARY INFORMATION:

Background

On October 10, 1996, at the request of two exporters of pasta, Pastificio Oleificio Mangimificio Bianconi S.p.A (''Bianconi'') and Pastificio Nuova Bettini S.p.A. (''Bettini''), we published

in the Federal Register a notice of initiation of an expedited administrative review of the countervailing duty order published in the Federal Register on July 24, 1996 (61 FR 38544) covering imports of certain pasta from Italy (61 FR 53198). On November 12 and 15, 1996, we received withdrawals of the requests for review from Bianconi and Bettini, respectively. These withdrawals are consistent with 19 CFR 351.214(f)(1) and (k)(3), found in *Antidumping Duties; Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* published in the Federal Register on February 27, 1996 (61 FR 7308, 7367–68). Accordingly, the Department is rescinding the expedited review.

This rescission and this notice are pursuant to section 751 of the Tariff Act of 1930, as amended.

Dated: December 19, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–183 Filed 1–3–97; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued, and are encouraged to provide a nonconfidential version of their comments. An original and five (5) copies, plus two (2) copies of any nonconfidential version, should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as ''Export Trade Certificate of Review, application number 96–00008.'' A summary of the application follows.

Summary of the Application

Applicant: U.S. Rice Industry Coalition for Exports, Inc. (''US RICE''), 1615 L Street, N.W., 7th Floor, Washington, D.C. 20036. Contact: M. Jean Anderson, counsel, Telephone:(202) 682–7217.

Application No: 96–00008.

Date Deemed Submitted: December 20, 1996.

Members (in addition to applicant): Continental Grain Company, New York, New York; Newfield Partners Ltd., Miami, Florida.

US RICE seeks a Certificate to cover the following specific Export Trade, Export Markets and Export Trade Activities and Methods of Operation.

Export Trade Products

Semi-milled and wholly milled rice, whether or not polished or glazed (Harmonized Tariff Schedule 1006.30) (''milled rice''), husked (brown) rice (Harmonized Tariff Schedule 1006.20), broken rice (Harmonized Tariff Schedule 1006.40), and paddy or rough rice (Harmonized Tariff Schedule 1006.10).

Export Markets

For purposes of allocating through an open bidding procedure the European Union's tariff rate quota: The countries of the European Union.

For purposes of Export Trade Activities and Methods of Operation paragraphs 2.–4. below: All parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. US RICE will administer a system for managing the U.S. share of the European Union (''EU'') tariff-rate quotas (''TRQs'') for milled, brown, and broken rice (roughly 38,000 tons of milled rice, 8,000 tons of brown rice and 7,000 tons of broken rice annually) agreed to as compensation to the United States for the enlargement of the EU to include Austria, Finland, and Sweden, as follows:

a. US RICE will allocate the TRQs exclusively through an open quota tender to the highest bidder(s). Any person incorporated or domiciled in the United States is eligible to bid. Bidders need not be members of US RICE and need not be included in the Certificate.

b. The quota tender system will be administered by an independent third party (''the TRQ Administrator''), who will be retained by US RICE. The TRQ Administrator may be an individual, partnership, corporation (for profit or non-profit), or any representative thereof that is not engaged in the production, milling, distribution, or sale of milled, brown, or broken rice.

c. Normally at least 45 days before the opening of each TRQ tranche, as defined by the EU, US RICE will publish notice of the bidding process for that tranche, specifying a bid date approximately 30 days before the opening of the tranche. Bidders will submit bids to the TRQ Administrator on the bid date, together with a bid deposit, initially set at $25 per metric ton. The TRQ Administrator will retain the full bid deposit for tonnage on which bids are successful, and $5 per metric ton of the deposit for unsuccessful bids, to cover costs of administering the TRQ system. The remainder will be refunded to unsuccessful bidders.

d. Following the close of the bidding, the TRQ Administrator will disclose the bids received to all bidders, and after further review of bids for conformity with bidding procedures, will notify the high bidders. High bidders will then have 48 hours to post a five percent performance bond. When all bonds have been posted, the TRQ Administrator will issue a list of winning bidders to all participants. Upon receipt of the full amounts bid, the TRQ Administrator will promptly issue Export Certificates of Quota (''ECQs'') to the winning bidders. ECQs will be freely tradable. Each performance bond will be discharged on submission of export documentation demonstrating that the

ECQ was used to export U.S. rice to the EU.

2. The bid proceeds will be distributed and otherwise used as follows:

a. All bid proceeds will be deposited in a trust fund. Each year, the TRQ Administrator will distribute funds from the preceding year's tenders to qualifying members of US RICE in proportion to each such member's percentage share by volume of total exports of U.S. rice to all destinations in the year preceding the tender (and for 1996 TRQs, 1995). No US RICE member may receive a distribution in excess of that amount.

b. Any person incorporated or domiciled in the United States that has exported U.S. rice in the current or preceding calendar year or is actively engaged in rice milling in the United States may join US RICE by executing the US RICE Operating Agreement and paying the dues of $5,000 per quota year. A member of US RICE will qualify for a particular distribution by (i) joining US RICE by January 31 of the quota year (e.g., for the distribution of proceeds from 1998 TRQs, by January 31, 1998), and in the case of distributions of proceeds from the 1996 and 1997 TRQs, by February 28, 1997; and (ii) documenting its share of U.S. rice exports for the relevant year to the TRQ Administrator.

c. Funds remaining in the trust fund after a distribution will be used as necessary to cover operating expenses, and thereafter for promotion of U.S. rice exports worldwide through activities generally comparable to those funded by the USDA's market access program.

3. The TRQ Administrator may receive confidential information and documentation of rice exports from members and prospective members of US RICE in connection with membership applications and distributions. The TRQ Administrator will maintain the confidentiality of such information and will not disclose it to any other member or any other person except to another neutral third party as necessary to process membership applications and distributions of bid proceeds.

4. US RICE and/or its Members may also:

a. exchange and discuss information regarding the structure and operation of the US RICE TRQ management system, including the types of information regarding past transactions and exports that are necessary for implementing the system;

b. assess the operation of the system and consider and implement modifications to improve the system's workability;

c. exchange and discuss information concerning U.S. and foreign agreements, legislation, and regulations affecting the US RICE TRQ management system;

d. discuss and modify association dues, bid deposit fees, and performance bonds;

e. discuss, decide on, and implement export promotion activities to be undertaken with post-distribution funds in the trust fund;

f. otherwise exchange and discuss information as necessary to implement the foregoing activities and take the necessary action to implement the US RICE TRQ management system, relating to the U.S.-EU Enlargement Agreement and any successor or related agreements, and related EU regulations;

g. provide nonconfidential information to, and consult as appropriate with, officials of the U.S. Government and the European Commission concerning the operation of the US RICE TRQ management system; and

h. meet to engage in the activities described above.

Abbreviated Amendment Procedure

New US RICE members may be included in the Certificate through an abbreviated amendment procedure. Under the procedure, US RICE will notify the Secretary of Commerce and the Attorney General, in writing, of those members of US RICE that wish to be included in the Certificate. If the Department so requests, the notification will include a certification from each such member of its domestic and export sales of rice in its preceding fiscal year. Notice of the members so identified shall be published in the Federal Register. If 30 days or more following publication in the Federal Register, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of these members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate to incorporate such members, effective as of the date on which the application for amendment was deemed submitted. If the Secretary of Commerce does not so amend the Certificate within 60 days of publication in the Federal Register, such amendment must be sought through the normal amendment procedure.

Terms and Conditions of Certificate

1. Except as expressly authorized in Export Trade Activity and Method of Operation 4(a), in engaging in Export Trade Activities and Methods of Operation, neither US RICE nor any Member shall intentionally disclose, directly or indirectly, to any other Member (including parent companies, subsidiaries, or other entities related to any Member not named as a Member) any information regarding its or any other Member's costs, production, inventories, domestic prices, domestic sales, capacity to produce products for domestic sales, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide export sale and the disclosure is limited to the prospective purchaser.

2. US RICE and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303 (a) of the Act.

Definitions

''Member'' means a member of US RICE who has been certified as a ''Member'' within the meaning of Section 325.2(l) of the regulations. A US RICE member that is not a Member may join the US RICE export trade certificate of review by requesting that US RICE file for an amended certificate. A Member may withdraw from coverage under this certificate at any time by giving written notice to US RICE, a copy of which US RICE will promptly transmit to the Secretary of Commerce and the Attorney General.

Dated: December 30, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–128 Filed 1–3–97; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 091396A]

Small Takes of Marine Mammals Incidental to Specified Activities; Taurus Space Launch Vehicles at Vandenberg Air Force Base, CA

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of seals and sea lions by harassment incidental to launches of Taurus space launch vehicles (Taurus SLV) at Launch Support Complex 576E (LSC- 576E), Vandenberg Air Force Base, CA (Vandenberg) has been issued to the U.S. Air Force for a period of 1 year.

EFFECTIVE DATE: This authorization is effective from January 1, 1997, through December 31, 1997.

ADDRESSES: The application and authorization are available for review in the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southwest Region, NMFS, 501 West Ocean Blvd. Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Marine Mammal Division, Office of Protected Resources at 301–713–2055, or Irma Lagomarsino, Southwest Regional Office at 301–980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq*.) directs NMFS to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to 1 year. The MMPA defines ''harassment'' as:

> * * *any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Summary of Request

On August 14, 1996, NMFS received a revised application from the U.S. Air Force, Vandenberg, requesting an authorization for the harassment of small numbers of harbor seals and possibly California sea lions and northern elephant seals, incidental to launches of Taurus SLVs at LSC–576E, Vandenberg. These launches would place commercial payloads into earth orbit. Because LSC–576E is located north of most other launch complexes at Vandenberg and because there are oil production platforms located off the coast to the south of LSC–576E, missions flown from LSC–576E do not fly directly on their final southward course. The normal trajectory for a LSC–576E launch is in a general west-southwest direction away from the coastline. The flight paths for each 1997 launch will proceed on an initial azimuth of 205° until approximately 24 kilometers (km)(15 miles (mi)) west of the shoreline. The Taurus SLV will then perform a dogleg maneuver left to a final mission-specific azimuth of between 180° and 197°. No Taurus SLV launch from LSC–576E will proceed southeast, overflying San Miguel or Santa Rosa islands. Orbital Sciences Corporation (OSC 1996) anticipates launching two Taurus SLVs during the 1-year period of validity for this proposed authorization.

As a result of the noise associated with the launch itself and the resultant sonic boom, there is the potential to cause a startle response to those harbor seals that haul out on the coastline south and southwest of Vandenberg and may be detectable to marine mammals in waters off Vandenberg and to the west of the Channel Islands. Launch noise would be expected to occur over the coastal habitats in the vicinity of LSC–576E while a low-level sonic boom may be heard west of the Channel Islands.

A notice of receipt of the Taurus SLV application and the proposed authorization was published on September 25, 1996 (61 FR 50276) and a 30-day public comment period was provided on the application and proposed authorization.

Comments and Responses

During the 30-day comment period, one letter was received. The comments contained in this letter are addressed below. Other than information necessary to respond to the comments, additional background information on the activity and request can be found in the proposed authorization notice and needs not be repeated here.

Comment 1: The Marine Mammal Commission (MMC) requested confirmation that the Air Force would be applying for a programmatic 5-year authorization under section 101(a)(5)(A) of the MMPA. The MMC believes that, because of the possible cumulative effects of launches at Vandenberg, a 5-year authorization is appropriate.

Response: NMFS anticipates that this 1-year authorization for Taurus SLV launches, along with others issued previously for Lockheed launch vehicles (61 FR 38437, July 24, 1996), McDonnell Douglas Delta II launch vehicles (61 FR 59218, November 21, 1996), and Titan II and IV (61 FR 64337, December 4, 1996) will be replaced by a new set of regulations, under section 101(a)(5)(A) of the MMPA, governing incidental takes of marine mammals by launches of all rocket types from Vandenberg. An application for a small take authorization under section 101(a)(5)(A) of the MMPA is under development by the Air Force.

Comment 2: The MMC recommends that, before issuing the requested authorization, NMFS review the results of monitoring done to date to determine (1) if there may have been cumulative effects on the haul-out patterns, abundance, or productivity of harbor seals that reside in the Vandenberg area, and (2) whether the current monitoring program is sufficient to detect such effects.

Response: By limiting incidental harassment authorizations to a single year as opposed to multi-year authorizations for Letters of Authorization (LOAs) issued under section 101(a)(5)(A) of the MMPA, NMFS does not believe that Congress intended NMFS to make negligible impact assessments on activities for periods greater than the period of the authorization, nor to require holders of IHAs to monitor for periods greater than the authorization. As a result, monitoring for most activities holding IHAs are designed to be event specific, that is, for a period of time prior to the event, during the event, and after

completion of the activity. Although this precludes the applicability of monitoring under a single IHA for determining long-term cumulative effects, in those cases where holders of IHAs request continuing authorizations, monitoring, over time and in conjunction with other measurements of population trends and abundances, provides information sufficient to make the necessary negligible impact determinations under section 101(a)(5)(D) of the MMPA. This is what was done for the negligible impact determination for this authorization.

Recognizing that short-term monitoring leaves unanswered the effect from cumulative impacts, the U.S. Air Force is designing research to investigate this concern. This research will use launches of Titan IVs (the rocket presumed to be having the greatest impact since it is the largest rocket launched from Vandenberg) to provide information vital for assessing long-term impacts on the physiology, behavior and survival of pinnipeds from launch noise and sonic booms. This research, which will be conducted under an MMPA section 104 research permit, is expected to begin within a year.

Therefore, while no long-term studies are currently underway on the effects on pinnipeds from launch noises or sonic booms, monitoring at Vandenberg for Titan IV and other rocket launches in the past has provided the baseline information on long-term and cumulative impacts. This information and the fact that the haul-outs along the Vandenberg coast remain active indicate that there are no immediately evident long-term, cumulative impacts. Launch noises are infrequent enough and divided between North and South Vandenberg so that these impacts are presumed to be less significant, cumulatively, than human, wildlife and pet disturbances including motorized vessels.

Comment 3: The MMC states that it should be made clear that the authorization is automatically rescinded if a marine mammal is killed as a result of the authorized activity.

Response: No marine mammals are anticipated to be killed or seriously injured as a result of launchings of Taurus SLV rockets. However, while section 101(a)(5)(D)(iv) of the MMPA provides NMFS authority to modify, suspend, or revoke an authorization if it is found that the provisions of the section are not being met, for IHA suspensions, NMFS follows procedures established for suspension of LOAs under section 101(a)(5)(A) of the MMPA. In that regard, an IHA may be suspended without notice and comment if emergency conditions exist that pose a significant risk to the well-being of the marine mammal stock, or if holder of an IHA is not in compliance with the conditions of the IHA. However, prior to revocation of an IHA, NMFS must satisfy the statutory notice and comment requirement. Therefore, section 101(a)(5)(B) allows NMFS to withdraw (revoke) or ''suspend for a time certain'' an LOA, subsequent to notice and comment, while section 101(a)(5)(C) allows a waiver of the notice and comment requirement for emergency suspensions, but not for revocations. Conditions for suspension or withdrawal of an LOA or IHA are described in 50 CFR 216.106 and 216.107.

Conclusion

Based upon the information provided in the proposed authorization, NMFS has determined that the short-term impact of the launching of Taurus SLV rockets is expected to result at worst, in a minor, temporary reduction in utilization of the haulout as seals or sea lions leave the beach for the safety of the water. These launchings are not expected to result in any reduction in the number of pinnipeds and they are expected to continue to occupy the same area. In addition, there will not be any impact on the habitat itself. Based upon studies conducted for previous space vehicle launches at Vandenberg, significant long-term impacts on pinnipeds at Vandenberg and the northern Channel Islands are unlikely.

Therefore, since NMFS is assured that the taking will not result in more than the harassment (as defined by the MMPA Amendments of 1994) of a small number of harbor seals, California sea lions, and northern elephant seals; would have only a negligible impact on the species, and would result in the least practicable impact on the stock, NMFS determined that the requirements of section 101(a)(5)(D) had been met and the incidental harassment authorization was issued.

Dated: December 27, 1996.

Ann D. Terbush,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–180 Filed 1–3–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, Finance Deputate.

ACTION: Notice.

In compliance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions concerning the proposed Personal Check Cashing Agreement Form. 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 estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received on or before March 7, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service, Finance Deputate, ATTN: Ms. Patricia Cristiano, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Patricia J. Cristiano, at (703) 607–5039.

Title, Associated Form, and OMB Number: Personal Check Cashing Agreement Form.

Needs and Uses: The collection of information is necessary to meet the Department of Defense's (DoD) requirement for cashing personal checks overseas and afloat by DoD disbursing activities, as provided in 31 U.S.C. 3342. The DoD Financial Management Regulation, Volume 5, provides guidance to DoD Disbursing Officers in the performance of this information collection. This allows the DoD disbursing officer or authorized agent the authority to offset the pay, without

prior notification, in cases where this form has been signed subject to conditions specified within the approved procedure.

Affected Public: Individuals or households.

Annual Burden Hours: 225,000.

Number of Respondents: 450,000.

Responses Per Respondent: 1.

Average Burden Per Response: 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Personal Check Cashing Agreement Form is designed exclusively to help the DoD disbursing offices expedite the collection process of dishonored checks. The front of the form will be completed and signed by the authorized individual requesting check cashing privileges. By signing the form, the individual is freely and voluntarily consenting to the immediate collection from their current pay, without prior notice, for the face value of any check cashed, plus any charges assessed against the government by a financial institution, in the event the check is dishonored. In the event the check is dishonored, the disbursing office will complete and certify the reverse side of the form and forward the form to the applicable payroll office for collection from the individual's current pay.

Dated: December 30, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–00102 Filed 1–3–97; 8:45 am]

BILLING CODE 5000–04–M

Submission for OMB review; comment request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Effectiveness of Defense Mergers.

Type of Request: New collection; Emergency Processing requested with a shortened public comment period ending January 21, 1997. An approval date of February 4, 1997 is requested.

Number of Respondents: 50.

Responses Per Respondent: 1.

Annual Responses: 50.

Average Burden Per Response: 4 hours.

Annual Burden Hours: 200.

Needs and Uses: This collection of information is necessary to meet the requirements of the National Defense Authorization Act of 1997. Section 826 thereof required the Secretary of Defense to report to Congress the results of a study of the effectiveness of defense mergers and acquisitions in eliminating excess capacity, and their effect on contractor dependence on defense-related contracts, defense employment, and competition for defense contracts. The information collected hereby, will provide the necessary data to conduct the study and compile the report to Congress.

Affected Public: Business or other for-profit.

Frequency: One time.

Respondent's Obligation: Voluntary.

DOD Action Officer: Mr. William M. Pegram.

Written comments and recommendations on the proposed information collection should be sent to Mr. Pegram, at DUSD(IA&I)/FEA, Room 2A318, The Pentagon, Washington, DC 20301–3330, or via facsimile at (703) 693–7038.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302 or via facsimile at (703) 604–6270.

Dated: December 30, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–162 Filed 1–3–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

ENVIRONMENTAL PROTECTION AGENCY

NUCLEAR REGULATORY COMMISSION

[Docket No. A–96–44]

Draft Multi-Agency Radiation Survey and Site Investigation Manual

AGENCY: U.S. Department of Defense, U.S. Department of Energy, U.S. Environmental Protection Agency, and the U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability with request for public comment.

SUMMARY: The Department of Defense (DOD), Department of Energy (DOE), U.S. Environmental Protection Agency (EPA), and the U.S. Nuclear Regulatory Commission (NRC) are announcing for public comment the availability of a draft document, entitled the ''Multi-Agency Radiation Survey and Site Investigation Manual '' (MARSSIM). MARSSIM provides information on planning, conducting, evaluating, and documenting environmental radiological surveys for demonstrating compliance with dose-based regulations. The MARSSIM, when finalized, will be a multi-agency consensus document. The agencies are seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing the document is received. The agencies will review public comments received on the draft MARSSIM as well as comments from a concurrent, independent, scientific peer review. Suggested changes will be incorporated, where appropriate, in response to those comments.

DATES: Comments received by July 7, 1997 will be considered. Comments received after that date will be considered if it is practical to do so, but no assurance can be given for consideration of late comments.

ADDRESSES: Members of the public are invited to submit written comments to EITHER the U.S. Environmental Protection Agency, ATTN: Air and Radiation Docket, Mail Stop 6102, Air Docket No. A–96–44, Room M1500, First Floor Waterside Mall, 401 M Street, S.W., Washington D.C. 20460 or the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001. Copies of all comments received by one agency will be periodically copied and sent to the others. Copies of the draft MARSSIM and all comments received may be examined or copied for a fee at the EPA Docket Room M1500, Docket No. A–96–44, First Floor Waterside Mall, 401 M Street, S.W., Washington D.C. 20460; and the NRC Public Document Room, 2120 L Street, NW, Washington DC 20555–0001. The EPA docket may be inspected from 8:00 am to 4:00 pm, Monday through Friday, excluding Federal holidays in Room M1500 at the address above. A free single copy of the draft MARSSIM may be requested by writing to: the Distribution and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001 or by fax to (301) 415–2260. The document is also available through the Internet at http://www.epa.gov/radiation/cleanup and through the National Technical

Information Service (NTIS). The NTIS document number is PB97–117659, and the NTIS Sales Desk can be reached between 8:30 a.m. and 5:00 p.m., Eastern time, Monday through Friday at (703) 487–4650; TDD (hearing impaired only): (703) 487–4639.

FOR FURTHER INFORMATION CONTACT: Any of the following points of contact for each agency for technical information (see ''Addresses'' section above for directions on obtaining a copy of the draft MARSSIM): DOE: Kenneth Duvall, Phone: (202) 586–0242, U.S. Department of Energy (EH–412), 1000 Independence Avenue, SW, Washington, DC 20585; EPA: Mark Doehnert; Phone: (202) 233–9386, U.S. Environmental Protection Agency, Mail Stop 6603J, 401 M. Street, SW, Washington DC 20460; NRC: Robert A. Meck, Phone: (301) 415–6205, U.S. Nuclear Regulatory Commission, MS T–9C24, Washington DC 20555. Questions concerning the multi-agency document development project should be addressed to CDR Colleen Petullo, U.S. Environmental Protection Agency/U.S. Public Health Service, RIENL, PO Box 98517, Las Vegas, NV 89193–8517, (702) 798–2476.

SUPPLEMENTARY INFORMATION: The MARSSIM provides information on planning, conducting, evaluating, and documenting environmental radiological surveys for demonstrating compliance with dose-based regulations. The MARSSIM, when finalized, will be a multi-agency consensus document.

MARSSIM was developed collaboratively over the past three years by the technical staffs of the four Federal agencies having authority for control of radioactive materials: DOD, DOE, EPA, and NRC (60 FR 12555). Contractors to the DOE, EPA, and NRC, and members of the public have been present during the open meetings of the MARSSIM work group.

MARSSIM's objective is to describe standardized and consistent approaches for surveys, which provide a high degree of assurance that established dose-based release criteria, limits, guidelines, and conditions of the regulatory agencies are satisfied at all stages of the process, while at the same time encouraging an effective use of resources. The techniques, methodologies, and philosophies that form the bases of this manual were developed to be consistent with current Federal limits, guidelines, and procedures.

Although Federal agency personnel are involved in the preparation of this document, the manual does not represent the official position of any participating agency at this time. An earlier draft of the document has been reviewed within the Federal agencies. Comments were received and comments from the review that reflected a technical error or flaw in logic or information flow were addressed. The other comments from the Federal agencies will be addressed along with the public comments. The public review is a necessary step in the development of a final multi-agency consensus document. The document will also receive formal technical peer review. The draft has not been approved by the participating agencies for use in part or in whole and should not be used, cited, or quoted except for the purposes of providing comments as requested.

Reviewers are requested to focus on technical accuracy, and understandability. Reviewers are also requested to address five questions while reviewing the MARSSIM:

(1) Does the MARSSIM provide a practical and implementable approach to performing radiation surveys and site investigations? Are there any major drawbacks to the proposed methods?

(2) Is the MARSSIM technically accurate?

(3) Does the MARSSIM provide benefits that are not available using current methods? What is the value of the MARSSIM in comparison with other currently available alternatives?

(4) What are the costs associated with the MARSSIM in comparison with other currently available alternatives?

(5) Is the information in the MARSSIM understandable and presented in a logical sequence? How can the presentation of material be modified to improve the understandability of the manual?

Comments may be submitted as proposed modified text, or as a discussion. Comments should be accompanied by supporting bases, rationale, or data. To ensure efficient and complete comment resolution, commenters are requested to reference the page number and the line number of the MARSSIM to which the comment applies (enter only the beginning page and line number, even if your comment applies to a number of pages or lines to follow).

Comments corresponding to an entire chapter, an entire section, or an entire table should be referenced to the line number for the title of the chapter (always line number 1), section, or table. Comments on footnotes should be referenced to the line in the main text where the footnote is indicated. Comments on figures should be referenced to the page on which the figure appears (figures do not have line numbers). The figure number should be included in the text of the comment. Comments on the entire manual should be referenced to the title page.

Title: Draft Multi-Agency Radiation Survey and Site Investigation Manual.

For the Department of Defense, dated this 20th day of December 1996.

Gary D. Vest,

Principal Assistant Deputy Under Secretary of Defense for Environmental Security.

Title: Draft Multi-Agency Radiation Survey and Site Investigation Manual.

For the U. S. Department of Energy, dated this 5th day of December 1996.

Raymond P. Berube,

Deputy Assistant Secretary for Environment.

Title: Draft Multi-Agency Radiation Survey and Site Investigation Manual.

For the U. S. Environmental Protection Agency, dated this 9th day of December 1996.

E. Ramona Trovato,

Director, Office of Radiation and Indoor Air.

Title: Draft Multi-Agency Radiation Survey and Site Investigation Manual.

For the U. S. Nuclear Regulatory Commission, dated this 2nd day of December 1996.

David Morrison,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 97–170 Filed 1–3–97; 8:45 am]

BILLING CODE 7590–01–P

Department of the Army

Corps of Engineers

Availability of Surplus Land and Buildings Located at Sierra Army Depot (SIAD), Herlong, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: This notice identifies the surplus real property located at Sierra Army Depot (SIAD), Herlong, CA. SIAD is located approximately 55 miles north northwest of Reno, NV just north of U.S. Highway 395. SIAD is a base realignment facility and major portions of the installation are being retained for active missions.

FOR FURTHER INFORMATION CONTACT: For more information regarding a particular building or parcel (i.e., acreage, floor plans, existing utilities, exact street address), contact Mr. Jimmy Spain, Base Transition Coordinator at (916) 827–4488; Mr. Larry Weed, Base Transition Officer at (916) 827–4391; or Ms. Jackie Cumpton, Realty Specialist at (916) 557–6845.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

The surplus real property consists of approximately 1,504 acres which includes approximately 960 acres along the east shore of Honey Lake and approximately 544 acres of land known as the cantonment area or Herlong parcel located at the southwest corner of the installation. The Herlong parcel consists of 6 office buildings, 1 storage building, and 4 other buildings. The current range of uses include industrial, storage, commercial, educational, and housing facilities.

Notices of interest must be submitted within 90 days from December 10, 1996. Notices of interest should be forwarded to Sierra Local Redevelopment Authority, Attention: Mr. Pat Landon, 1121–A Honey Way, P.O. Box 117, Herlong, CA 96113; (916) 827–3480.

Juanita H. Maberry,

Alternate, Army Federal Register Liaison Officer.

[FR Doc. 97–122 Filed 1–3–97; 8:45 am]

BILLING CODE 3710–EZ–M

Corps of Engineers

Notice of Availability for the Draft Supplemental Environmental Impact Statement and General Reevaluation Report of the Green Brook Flood Control Project in the Green Brook Sub-Basin of the Raritan River Basin, Middlesex, Somerset, and Union Counties in the State of New Jersey

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: The Army Corps of Engineers, New York District, in coordination with the project sponsor, the New Jersey Department of Environmental Protection, has conducted a General Reevaluation Study of an authorized flood protection project in the Green Brook Sub-Basin of the Raritan River in New Jersey. A supplement to the 1980 Final Environmental Impact Statement has been prepared in association with the Reevaluation Study. Public Information meetings are scheduled for January 1997.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed actions, Feasibility Study, and DSEIS can be addressed to Mr. Bill Richardson, New York District Army Corps of Engineers, ATTN: CENAN–PL–ES, 26 Federal Plaza, New York, NY 10278–0090, (212) 264–1275.

SUPPLEMENTARY INFORMATION:

Background

1. The Green Brook Sub-Basin is a component of the Raritan River drainage basin in north central New Jersey. The Green Brook Sub-Basin has a 65 square mile watershed. The Sub-Basin is located between the Watchung Mountains and the Raritan River in Middlesex, Somerset, and Union Counties.

2. In response to resolutions of the United States Senate Public Works Committee adopted 15 September 1955 and 10 July 1972 to adopt recommendations for flood control, the U.S. Army Corps of Engineers, New York District prepared a feasibility report and a final environmental impact statement in August 1980. A project similar to ''Plan A'' as described in the 1980 feasibility study was authorized for construction under the Water Resources Development Act of 1986.

3. The flood problems of the Green Brook Sub-Basin result from a combination of natural hydrologic and hydraulic features coupled with dense development within the floodplains. The Green Brook flows southwest from the slopes of the Watchung Mountains. The path of the streams within the sub-basin flow from relatively undeveloped mountains through a broad flat floodplain which is largely suburban and industrialized. Streams included in the study are: Ambrose Brook, Bound Brook, Bonygutt Brook, Municipal Brook, Stony Brook, Blue Brook, Cedar Brook, and Middle Brook. Flood damages in the tri-county basin are quite severe due to the level of development within the sub-basin. Notable storms which have caused flood conditions in the sub-basin occurred in May 1968, August 1971, August 1973, July 1975, September 1979, July 1984, and October 1996.

4. The Draft Supplemental Environmental Impact Statement (DSEIS) describes the impacts of the proposed project on environmental and cultural resources in the study area. The DSEIS also applies guidelines issued by the Environmental Protection Agency, under the authority of the Clean Water Act of 1977 (Public Law 96–217). An evaluation for the proposed actions on the waters of the United States was performed pursuant to the guidelines of the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act. The results of the evaluation are presented in the DSEIS.

5. This Notice of Availability is being sent to organizations and individuals known to have an interest in the project. Please bring this notice to the attention of any other individuals with an interest in this matter. Copies of the DSEIS and General Reevaluation Report are available upon request for review at the following locations:

Berkley Heights Public Library, 290 Plainfield Avenue, Berkley Heights, New Jersey.
Bound Brook Public Library, 402 Ease High Street, Bound Brook, New Jersey.
Bridgewater Public Library, Box 6700, Bridgewater, New Jersey.
Dunellen Public Library, New Market Road, Dunellen, New Jersey.
Fanwood Public Library, North Avenue and Tillotson Road, Fanwood, New Jersey.
Middlesex Public Library, 1300 Mountain Avenue, Middlesex, New Jersey.
North Plainfield Public Library, 6 Rockview Avenue, North Plainfield, New Jersey.
Piscataway Public Library, 500 Hoes Lane, Piscataway, New Jersey.
Plainfield Public Library, 8th and Park Avenue, Plainfield, New Jersey.
Scotch Plains Public Library, 1927 Bartle Avenue, Scotch Plains, New Jersey.
South Plainfield Public Library, 2840 Plainfield Avenue, South Plainfield, New Jersey.
Summit Public Library, 75 Maple Street, Summit, New Jersey.
Watchung Public Library, 12 Stirling Road, Watchung, New Jersey.

6. Requests for copies of the DSEIS may be mailed to the following address: Bill Richardson, ATTN: CENAN–PL–ES, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, New York, New York 10278–0090.

Juanita H. Maberry,

Alternate, Army Federal Register Liaison Officer.

[FR Doc. 97–121 Filed 1–3–97; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF EDUCATION

Notice of proposed information collection requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection

requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 1, 1997. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before March 7, 1997.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 30, 1996.

Arthur F. Chantker,

Acting Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Six-year Followup Study of the Student Support Services Program.

Abstract: The Planning and Evaluation Service needs to survey participants in the National Study of Student Support Services now, six years after they began postsecondary education, to evaluate the effect of receipt of Student Support Services.

Additional Information: Education needs the retention rates, transfer rates from 2-year colleges to 4-year colleges and universities, graduation rates, and the impact of Student Support Services on participants' jobs and careers. For data collection to begin April 15, 1997, this information collection should be cleared by April 1, 1997.

Frequency: One time.

Affected Public: Individuals or households; Business or other for-profit.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 9,286.

Burden Hours: 2,205.

[FR Doc. 97–119 Filed 1–3–97; 8:45 am]

BILLING CODE 4000–01–P

Notice of proposed information collection requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 28, 1997. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before March 7, 1997.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of

Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 30, 1996.

Arthur F. Chantker,

Acting Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for Grants Under the Strengthening Institutions Program.

Abstract: This information is required of institutions of higher education that apply for grants under the Strengthening institutions Program, Title III, Part A of the Higher Education Act of 1965, as amended. This information will be used in the evaluation process to determine which applicants should receive grant funds.

Additional Information: The controlling law requires that all applicants be notified of their scores and panel recommendations by June 30. To meet this deadline, the program office requests an emergency clearance, backed by the regular process.

Frequency: Annually if applying for grant.

Affected Public: Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 550.

Burden Hours: 40,400.

[FR Doc. 97–00120 Filed 1–3–97; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 5, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 30, 1996.

Arthur F. Chantker,

Acting Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Performance Report for the Ronald E. McNair Postbaccalaureate Achievement Program.

Frequency: Semi-Annually.

Affected Public: Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 99.

Burden Hours: 891.

Abstract: Ronald E. McNair Postbaccalaureate Achievement Program grantees are required to submit annual performance reports. The reports are used to evaluate project accomplishments, compliance, prior experience, and collect impact data for budget submissions and Congressional hearings.

[FR Doc. 97–118 Filed 1–3–97; 8:45 am]

BILLING CODE 4000–01–P

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10 (a) (2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: January 31, 1997, 8:30 a.m. to 5 p.m.

ADDRESSES: First Floor Conference Room, 80 F St., N.W., Washington, D.C. 20208.

FOR FURTHER INFORMATION CONTACT: Eve M. Bither, Executive Director, National Educational Research Policy and Priorities Board, 80 F St., N.W.,

Washington, D.C. 20208–7564. Telephone: (202) 208–0692; Fax: (202) 219–1528. Internet: Eve__—Bither@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (the Office) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The Act directs the Board to provide guidance to the Congress in its oversight of the Office; to advise the Untied States on the Federal educational research and development effort; and to solicit advice form practitioners, policymakers, and researchers to define research needs and suggestions for research topics. The meeting of the Board is open to the public.

The agenda for January 31 will consider the adoption of proposed by-laws; the approval of standards for the conduct and evaluation of research, and for assessing performance on contracts, grants, and cooperative agreements, as well as standards for reviewing and designating exemplary and promising programs. A final agenda will be available from the Board's office on January 15.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 80 F St., NW Washington, D.C. 20208–7564.

Dated: December 30, 1997.

Eve M. Bither,

Executive Director.

[FR Doc. 97–110 Filed 1–3–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–137]

Application to Export Electric Energy; New York State Electric & Gas Corporation

AGENCY: Office of Fossil Energy, DOE.

AGENCY: Notice of application.

SUMMARY: New York State Electric & Gas Corporation (NYSEG), a regulated investor-owned utility, has submitted an application to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 5, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–52), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: William H. Freeman (Program Office) 202–586–5883 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On December 5, 1996, NYSEG filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada pursuant to section 202(e) of the FPA. Specifically, NYSEG proposes to sell surplus electric energy, operating capacity, and/or installed capacity, on either a firm or interruptible basis, from its own generation sources or purchased from other electric utilities or Federal power marketing agencies. NYSEG asserts that it will schedule all exports consistent with the reliability criteria, standards, and guidelines of the North American Electric Reliability Council and the Northeast Power Coordinating Council.

NYSEG would arrange for the exported energy to be transmitted to Canada over one or more of the following international transmission lines for which Presidential permits (PP) have been previously issued:

Owner	Location	Voltage	Presidential permit No.
Niagara Mohawk Power Corp	Devil's Hole, NY	230 kV	PP–31
New York Power Authority	Devil's Hole, NY	230 kV	PP–30
	Niagara Falls, NY	2–345 kV	PP–74
	Fort Covington, NY	765 kV	PP–56
	Massena, NY	2–230 kV	PP–25

PROCEDURAL MATTERS: Any persons desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: John R. Tigue, Manager—Bulk Power Sales, New York State Electric & Gas Corporation, Corporate Drive, Kirkwood Industrial Park, P.O. Box 5224, Binghamton, New York 13902–5224 (Fax: 607–762–8496) *AND* Nicholas A. Giannasca, Esq., Huber Lawrence & Abell, 605 Third Avenue, 27th Floor, New York, New York 10158 (Fax: 212–661–5759).

A final decision will be made on this applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on December 30, 1996.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–167 Filed 1–3–97; 8:45 am]

BILLING CODE 6450–01–P

National Environmental Policy Act Record of Decision for the Disposal of the S1C Prototype Reactor Plant

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: This Record of Decision has been prepared on the proposed disposal

of the defueled S1C Prototype reactor plant, located in Windsor, Connecticut, pursuant to Section 102(2) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*), and in accordance with the Council on Environmental Quality regulations implementing NEPA procedures (40 CFR parts 1500–1508), and Department of Energy regulations implementing NEPA procedures (10 CFR part 1021). The Department of Energy (DOE) Office of Naval Reactors (Naval Reactors) has decided to promptly dismantle the defueled S1C Prototype reactor plant. To the extent practical, the resulting low-level radioactive metals will be recycled at existing commercial facilities that recycle radioactive metals. The remaining low-level radioactive wastes will be disposed of at the Department of Energy Savannah River Site in South Carolina.

Requests for further information should be directed to Mr. Christopher G. Overton, Chief, Windsor Field Office, Office of Naval Reactors, U.S. Department of Energy, P.O. Box 393, Windsor, CT 06095, telephone (860) 687–5610.

SUPPLEMENTARY INFORMATION: The S1C Prototype reactor plant is located on the 10.8-acre Windsor Site in Windsor, Connecticut, approximately 5 miles north of Hartford. As a result of the end of the Cold War and the downsizing of the Navy, the S1C Prototype reactor plant was permanently shut down in March 1993. Removal of the spent nuclear fuel from the S1C Prototype reactor was completed in February 1995. After defueling, S1C Prototype reactor plant systems were drained and placed in a stable protective storage condition. Since the S1C Prototype reactor plant is the only activity at this small site and there is no further need for this plant, a decision is needed on its disposal.

The alternatives analyzed in detail in the Final Environmental Impact Statement were the preferred alternative of prompt dismantlement, a deferred dismantlement alternative, and a ''no action'' alternative of keeping the defueled S1C Prototype reactor plant in protective storage indefinitely.

The alternative that DOE is selecting, the preferred alternative, involves the prompt dismantlement of the reactor plant. All structures will be removed from the Windsor Site, and the Windsor Site will be released for unrestricted use. To the extent practical, the resulting low-level radioactive metals will be recycled at existing commercial facilities that recycle radioactive metals. The remaining low-level radioactive waste will be disposed of at the DOE Savannah River Site in South Carolina. There will be an estimated total of twenty-three radioactive material shipments to the Savannah River Site and to commercial recycling facilities. One or two of the shipments to the Savannah River Site will be by rail and the remainder of the radioactive material shipments will be by truck. The Savannah River Site currently receives low-level radioactive waste from Naval Reactors sites in the eastern United States. Both the volume and radioactive content of the S1C Prototype reactor plant low-level waste fall within the projections of Naval Reactors waste provided to the Savannah River Site, which were included and analyzed in the Savannah River Site Waste Management Final Environmental Impact Statement dated July 1995.

The deferred dismantlement alternative would involve keeping the defueled S1C Prototype reactor plant in protective storage for 30 years before dismantling it. Deferring dismantlement for 30 years would allow nearly all of the gamma radiation within the reactor plant to decay away.

The ''no action'' alternative would involve keeping the defueled S1C Prototype reactor plant in protective storage indefinitely. This alternative would leave long-lived radioactivity at the Windsor Site indefinitely.

Naval Reactors distributed the Draft Environmental Impact Statement on the S1C Prototype Reactor Plant Disposal in June 1996. Comments from 28 individuals and agencies were received in either oral or written statements at a public hearing or in letters. Nearly all of the commenters expressed a preference for the prompt dismantlement alternative. The Final Environmental Impact Statement, which includes responses to public comments, has been issued and distributed to interested parties.

From an environmental perspective, no single alternative stands out as the environmentally preferred alternative. The no action alternative is the least preferable since it would leave long-lived radioactivity at the Windsor Site indefinitely and does not provide for eventual re-use of the Windsor Site. Regarding prompt dismantlement and deferred dismantlement, neither alternative stands out in this comparison, and neither is considered on balance to be environmentally preferred. Deferred dismantlement has the advantage of lower occupational radiation exposure while still providing for eventual unrestricted release of the Windsor Site. Prompt dismantlement has the advantage of not requiring long term commitment of the land for surveillance and maintenance of the S1C Prototype reactor plant. The occupational radiation exposure associated with the prompt dismantlement alternative is comparable in magnitude to the radiation exposure routinely received during operation and maintenance of Naval prototype reactors. Also, the impacts associated with the prompt dismantlement alternative have a higher degree of certainty than those associated with actions thirty years in the future. Since prompt dismantlement will result in unrestricted release of the Windsor Site at the earliest time with little occupational exposure risk to the workers, and given that the impacts associated with prompt dismantlement have a higher degree of certainty, Naval Reactors has decided to proceed with the preferred alternative of prompt dismantlement.

As discussed in the Final Environmental Impact Statement, Naval Reactors implements a large number of conservative engineering practices in its operations. These conservative engineering practices will serve to assure that environmental impacts will be very small. No additional mitigative measures have been identified which are needed to further reduce the small impacts which were described in the Final Environmental Impact Statement. Accordingly, all practicable means to avoid or minimize environmental harm from the preferred alternative have been adopted.

Issued at Arlington, VA this 30th day of December 1996.

F.L. Bowman,

Admiral, U.S. Navy, Director, Naval Nuclear Propulsion Program.

[FR Doc. 97–169 Filed 1–3–97; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of CFM Majestic Inc. from the DOE Vented Home Heating Equipment Test Procedure. (Case No. DH–008)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice grants an Interim Waiver to CFM Majestic Inc. from the existing Department of Energy (DOE or Department) test procedure

regarding pilot light energy consumption and weighted average steady-state efficiency for its models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32 vented heaters.

Today's notice also publishes a ''Petition for Waiver'' from CFM Majestic Inc. CFM Majestic Inc.'s Petition for Waiver requests DOE to grant relief from the DOE vented home heating equipment test procedure relating to the use of pilot light energy consumption in calculating the Annual Fuel Utilization Efficiency (AFUE) and the calculation of weighted average steady state efficiency of its models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32 vented heaters. CFM Majestic Inc. seeks to delete the required pilot light measurement (Q_P) in the calculation of AFUE when the pilot is off, and to test at a minimum fuel input rate of two-thirds of the maximum fuel input rate instead of the specified 50 percent ± 5 percent of the maximum fuel input rate in the calculation of AFUE. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than February 5, 1997.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. DH–008, Mail Stop EE–43, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT:

William W. Hui
U.S. Department of Energy
Office of Energy Efficiency and Renewable Energy
Mail Stop 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 Stop GC–72
Forrestal Building
1000 Independence Avenue, SW.,
Washington, DC 20585–0103
(202) 586–9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, 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 informed purchasing decisions. These test procedures appear at Title 10 CFR Part 430, Subpart B.

The Department amended the test procedure rules to provide for a waiver process by adding § 430.27 to Title 10 CFR Part 430. 45 FR 64108, September 26, 1980. Subsequently, DOE amended the 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. Title 10 CFR Part 430, § 430.27(a)(2).

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.

An Interim Waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. Title 10 CFR Part 430, § 430.27(g). An Interim Waiver remains in effect for a period of 180 days, or until DOE issues a determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On October 31, 1996, CFM Majestic Inc. filed an Application for Interim Waiver and a Petition for Waiver regarding (a) pilot light energy consumption and (b) weighted average steady state efficiency.

CFM Majestic Inc. seeks an Interim Waiver from the DOE test provisions in section 3.5 of Title 10 CFR Part 430, Subpart B, Appendix O, that requires measurement of energy input rate of the pilot light (Q_P), and the use of this data in section 4.2.6 for the calculation of AFUE, where:

$$AFUE = (4400\eta_{SS}\eta_u Q_{in\text{-}max})/(4400\eta_{SS}Q_{in\text{-}max} + 2.5(4600)\eta_u Q_P)$$

Instead, CFM Majestic Inc. requests that it be allowed to delete Q_P and accordingly, the $(2.5(4600)\eta_u Q_P)$ term in the calculation of AFUE. CFM Majestic Inc. states that instructions to turn off the transient pilot by the user when the heater is not in use are in the User Instruction Manual and on a label adjacent to the gas control valve. Therefore, the additional energy savings that result when the pilot is turned off ($Q_P = 0$) should be credited. Since the current DOE test procedure does not address pilot light energy savings, CFM Majestic Inc. asks that the Interim Waiver be granted.

CFM Majestic Inc. also seeks an Interim Waiver from the DOE test provisions in section 3.1.1 of Title 10 CFR Part 430, Subpart B, Appendix O, which requires steady state efficiency of manually controlled vented heaters with various input rates to be determined at a fuel input rate of 50 percent ± 5 percent of the maximum fuel input rate, and the use of this data in section 4.2.4 to determine the weighted average steady state efficiency needed in the calculation of AFUE. Instead, CFM Majestic Inc. requests that it be allowed to determine steady state efficiency, weighted average steady state efficiency, and AFUE at a minimum fuel input rate of two-thirds of the maximum fuel input rate for its manually controlled vented heaters which do not adjust to an input rate as low as 50 percent ± 5 percent. Since the current DOE test procedure does not address steady state testing for manually controlled vented heaters with various input rates at fuel input rates other than 50 percent ± 5 percent of the maximum fuel input rate, CFM Majestic Inc. 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 and allowance to determine weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate no greater than two-thirds of the maximum fuel input rate instead of the specified

50 percent ± 5 percent of the maximum fuel input rate have been granted by DOE to Appalachian Stove and Fabricators, Inc., 56 FR 51711, October 15, 1991; Valor Incorporated, 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.

Thus, it appears likely that CFM Majestic Inc.'s Petition for Waiver for pilot light and weighted average steady state efficiency for home heating equipment will be granted. In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting CFM Majestic Inc. an Interim Waiver for its models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32 vented heaters. CFM Majestic Inc. shall be permitted to test its models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32 vented heaters on the basis of the test procedures specified in Title 10 CFR Part 430, Subpart B, Appendix O, with the modifications set forth below:

(i) Delete paragraph 3.5 of Appendix O.

(ii) Delete paragraph 4.2.4 of Appendix O and replace with the following paragraph:

4.2.4 Weighted Average Steady-State Efficiency. (a) For manually controlled heaters with various input rates, the weighted average steady-state efficiency ($\eta_{SS\text{-}WT}$) is:

(1) At 50 percent ± 5 percent of the maximum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters, or

(2) At the minimum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters if the design of the heater is such that 50 percent ± 5 percent of the maximum fuel input rate can not be set, provided the tested input rate is no greater than two-thirds of maximum input rate of the heater.

(b) For manually controlled heater with one single firing rate, the weighted average steady-state efficiency is the steady-state efficiency measured at the single firing rate.

(iii) 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.

(iv) With the exception of the modification set forth above, CFM Majestic Inc. shall comply in all respects with the procedures specified in Appendix O of Title 10 CFR Part 430, Subpart B.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

This Interim Waiver is effective on the date of issuance by the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy. The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

CFM Majestic Inc.'s Petition for Waiver requests DOE to grant relief from the DOE vented home heating equipment relating to the pilot light and weighted average steady state efficiency. CFM Majestic Inc. seeks (a) to exclude the pilot light energy consumption in the calculation of AFUE, and (b) to determine the weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate of two-thirds of the maximum fuel input rate instead of the specified 50 percent ± 5 percent of the maximum fuel input rate. Pursuant to paragraph (b) of Title 10 CFR Part 430.27, the Department is hereby publishing the ''Petition for Waiver.''

The Department solicits comments, data, and information respecting the Petition.

Issued in Washington, DC December 27, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

October 31, 1996.

The Honorable Christine Ervin,
Assistant Secretary for Energy Efficiency & Renewable Energy,
United States Department of Energy,
Forrestal Building,
1000 Independence Avenue, S.W.,
Washington, D.C. 20585,
USA.

Dear Madame: We would like to inform you that our name was recently changed to reflect the current growth in our company. Accordingly, CFM International Inc. which was previously granted with the same waivers mentioned below was changed to CFM Majestic Inc.

Furthermore, CFM Majestic Inc. now have four subsidiaries namely, The CFM Majestic Products Company; The Majestic Products Company; Vermont Casting Inc.; and Timberline Gas Logs Inc.

CFM Majestic Inc. models DV32, DV34, DV36, DV40, DVS2, DVS3, FA20, FS30, FSDV30, HE30, HEDV30/HEDV30–1 which were granted waivers for pilot energy consumption relief for manually controlled heaters in the calculation of Annual Fuel Utilization Efficiency (AFUE) and calculation procedure for weighted average steady state efficiency for manually controlled heaters with various input rates (please refer to Federal Register Notice dated Dec. 28, 1995 & April 19, 1996—Case No. DH–004)—have been upgraded with new logs, new ceramic front burner and new model number namely DVR33, DVR36, DVT36, DVT43, DVTS2, DVRS3, HE25, FS32, FSDV32, HE32, HEB32, HEDV32 respectively. However, the same transient pilot and manually controlled gas valve which were petitioned and granted in the aforementioned waivers were used to models DVR33, DVR36, DVT36, DVT43, DVTS2, DVRS3, HE25, FS32, FSDV32, HE32, HEB32, HEDV32.

Also, we would like to inform you that models HE40 and FADV20 which were granted waivers for pilot energy consumption relief for manually controlled heaters in the calculation of Annual Fuel Utilization Efficiency (AFUE) and calculation procedure for weighted average steady state efficiency for manually controlled heaters with various input rates (please refer to Federal Register Notice dated Dec. 28, 1995 & April 19, 1996—Case No. DH–004) will not be manufactured, hence waivers previously granted to these models are no longer required.

CFM Majestic Inc. would like to submit a Petition for Waiver and an Application for Interim Waiver pursuant to Title 10 Code of Federal Regulations 430.27, as amended on November 14, 1986 for models DVR33, DVR36, DVT36, DVT43, DVTS2, DVRS3, HE25, FS32, FSDV32, HE32, HEB32, HEDV32.

Accordingly, CFM Majestic Inc. would like to request acceptance of two waivers from the test procedures which appears at 10 CFR, part 430, subpart B, Appendix O—Uniform

Test Method for Measuring the Energy Consumption of Vented Home Heating Equipment for gas appliance models included in this request. Below are excerpts from Vermont Castings Inc.'s letter to The Honorable Christine Ervin dated July 7, 1995—explaining in detail the particulars regarding the waivers requested above.

Waiver Request No. 1

This request refers to section 3.1.1—Gas fueled vented home heating equipment and section 4.2.4—Weighted average steady state efficiency. These sections state that for manually controlled heaters with various input rates the weighted average steady state efficiency is measured at a fuel rate input rate of plus or minus 5 percent of 50 percent of the maximum fuel input rate. All the gas appliance models included in this request utilize a combination gas control which has a variable pressure regulator set point which allows the user to easily vary the manifold pressure of the appliance within a fixed range of pressures. Specifically the range of manifold pressure adjustment for Natural Gas is 3.5'' w.c. to 1.7'' w.c. and for Propane Gas from 10.0'' w.c. to 4.9'' w.c. These pressure ranges allow the user to vary the fuel input rates on all models included in this request from maximum input to minimum input which is 70% of maximum input and it is therefore not possible to obtain a rate of 50% of the maximum input when the heater is operated according to Manufacturer's Installation Operating Manual. Since the 50% rate specified in the Regulations can not be normally achieved on these products we request that this requirement be waived for the gas appliances included in this request.

CFM Majestic Inc. requests to utilize the test procedure proposed by DOE on August 23, 1993—58 FR 44538. Accordingly, we request to calculate the weighted average steady state efficiency using the minimum obtainable fuel input rate provided this rate is no greater than ⅔ the maximum input rate of the heater. Specifically, the models included in this request will be tested at ⅔ of maximum fuel input rate.

The current test procedure does not credit CFM Majestic Inc. for the additional energy savings that occur when the minimum fuel input rate is limited to 70% of maximum input rate. Test data shows a significant increase in the actual overall AFUE when compared to results obtained at a rate of 50% of maximum fuel input rate. Copies of confidential test data confirming the energy savings will be forwarded to you upon request.

Waiver Request No. 2

This request refers to section 3.5—Pilot Light Measurement and section 4.2.6—Annual Fuel Utilization Efficiency (AFUE). These sections require the measurement of energy input to the pilot light (Q_p) and the use of this data in the calculation of AFUE for the energy consumed by the pilot light when the heater is not in operation.

All gas appliance models included in this request 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, and pressing the piezo ignitor. 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. Since the current test procedure does not credit CFM Majestic Inc. for the additional savings that occur when the pilot is turned off, we request the requirement to include energy input to the pilot light in AFUE calculation be waived for these appliances.

CFM Majestic Inc. requests to utilize the test procedure proposed by DOE on August 23, 1993—58 FR44538. Specifically, we request the term involving the pilot light energy consumption be deleted from the calculation of AFUE for all gas appliance models included in this request. This results in an AFUE which is equal to the heating seasonal efficiency.

Test data shows a significant increase in the actual overall AFUE when compared to results obtained when energy input to the pilot is included in the overall AFUE. Copies of confidential test data confirming the energy savings will be forwarded to you upon request.

CFM Majestic Inc. is confident that both of these waivers will be granted, as similar waivers have been granted in the past to Vermont Casting Inc., CFM International Inc. and other U.S. manufacturers. Also, the revisions to the test procedures which we request have been published by DOE as proposed changes on August 23, 1993—58 FR 44538.

Any question regarding this subject, please contact me at the above address. Your help is highly appreciated. Thank you.

Yours Truly,

Ferdinand M. Francisco,

Lab. Manager, CFM Majestic Inc.

[FR Doc. 97–168 Filed 1–3–97; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP97–158–000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

December 30, 1996.

Take notice that on December 17, 1996, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP97–158–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to upgrade the Indiana Gas Company, Inc.'s (Indiana Gas) Bloomingdale Meter and Regulation Station, an existing delivery point located in Parke County, Indiana. Panhandle makes such request under its blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to replace certain inefficient and undersized facilities with more efficient upgraded facilities so as to allow increased pressure at this delivery point. The proposed facility upgrade is classified as minor, above ground modifications, which will include the upgrade of internal components of the regulators, such as removing the current 500 psi maximum spring in the pilot of each of the four 3-inch Mooney regulators and replacing it with a 400–900 psi range spring. It is stated that such facility upgrade is proposed to increase the maximum capacity of the Bloomingdale meter station to approximately 23,700 Mcf per day, and increase the operating pressure from 275 psig to 500 psig. Panhandle indicates that the increased service availability will be provided within Indiana Gas' existing entitlements.

The estimated cost of upgrading the proposed facilities is $5,000. Panhandle states that Indiana Gas will reimburse the cost of the facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–113 Filed 1–3–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5672–8]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Approval of a Notification of Intent to Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of Agency Certification of Equipment for the Urban Bus Retrofit/Rebuild Program.

SUMMARY: The Agency received a notification of intent to certify equipment signed December 13, 1995, from Engine Control Systems Ltd. (ECS) with principal place of business at 165 Pony Dr., Newmarket, Ontario, Canada L3Y7V1 for certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR 85.1401–85.1415. The equipment is applicable to petroleum-fueled Detroit Diesel Corporation (DDC) two-cycle engines originally installed in an urban bus from model year 1979 to model year 1993, exclusive of the DDC 6L71TA 1990 model year engines, all alcohol fueled engines, and models which were manufactured with particulate trap devices (see Table A). On August 8, 1996 EPA published a notice in the Federal Register that the notification had been received and made the notification available for public review and comment for a period of 45 days (60 F1 41408). EPA has completed its review of this notification, and the comments received, and the Director of the Engine Programs and Compliance Division has determined that it meets all the requirements for certification. Accordingly, EPA approves the certification of this equipment.

The certified equipment provides 25 percent or greater reduction in exhaust emissions of particulate matter (PM) for the engines for which it is certified.

The ECS notification, as well as other materials specifically relevant to it, are contained in Public Docket A–93–42, category XIV–A, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment''. This docket is located in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

DATES: The effective date of certification is established in a letter to ECS dated December 9, 1996 for the equipment described in the ECS notification. This certified equipment may be used immediately by urban bus operators. Operators who have chosen to comply with program 1 or program 2 can utilize this equipment or other equipment that is certified for any engine that is listed in Table A that undergoes rebuild.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Compliance Programs Group, Engine Program & Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 233–9259.

SUPPLEMENTARY INFORMATION:

I. Background

By a notification of intent to certify signed December 13, 1995, ECS applied for certification of equipment applicable to petroleum-fueled Detroit Diesel Corporation (DDC) two-cycle engines originally installed in an urban bus from model year 1979 to model year 1993, exclusive of the DDC 6L71TA 1990 model year engines and models which were manufactured with particulate trap devices or alcohol fueled (see Table A). The notification of intent to certify states that the equipment being certified is an oxidation converter muffler (OCM). The OCM contains an oxidation catalyst developed specifically for diesel applications, packaged as a direct replacement for the muffler. The application demonstrates that the candidate equipment provides a 25 percent or greater reduction in emissions of particulate matter (PM) for petroleum fueled diesel engines relative to an original engine configuration with no after treatment installed. Certification is applicable to engines that are rebuilt to original specifications, or in-use engines that are not rebuilt at the time the OCM is installed provided the engine meets engine oil consumption limits specified by ECS. ECS is also certifying a 25 percent reduction in PM for engines that are retrofit/rebuilt with certified rebuild kits that do not include after treatment devices if the OCM is installed at the same time the retrofit/rebuild occurs. Currently, this applies to the DDC retrofit/rebuild kit which was certified on October 2, 1995 (60 FR 51472) for the 6V92TA MUI model and to the kit certified on July 19, 1996 (61 FR 37738) for the 6V92TA DDEC II model.

Certification of the OCM does not trigger any new program requirements for applicable engines, because the requirement to use equipment certified to achieve at least a 25% reduction has already been triggered for these engines.

Using engine dynamometer testing in accordance with the Federal Test Procedure for heavy-duty diesel engines on a 1991 DDC 6V92TA DDEC II engine, ECS documented a 26% reduction in PM emission after retrofit. The test results for this engine with the certified retrofit equipment installed meet applicable Federal emission standards for hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NOx), and smoke emissions. In chassis testing performed over the Central Business District (CBD) sequence on a 1987 DDC 6V71N engine, ECS demonstrated a 42% PM emission reduction after retrofit. Using chassis testing performed over the New York Composite (NYC) sequence on this same engine, ECS demonstrated a 37% reduction in PM emission.

Table A provides the PM emission certification levels for the ECS equipment for the specified models and model years.

TABLE A.—CERTIFICATION LEVELS

Engine models	Model year	PM Level [1] with OCM	PM Level [2] with OCM and DDC Certified Rebuild kit	Code/Family
6V92TA MUI	1979–87 ..	0.38	0.22	All.
	1988–1989	0.23	0.17	All.
6V92TA DDEC I	1986–87 ..	0.23	N/A	All.
6V92TA DDEC II	1988–90 ..	0.23	0.17	All.
	1991	0.23	N/A	
	1992–93 ..	0.19	N/A	All.

TABLE A.—CERTIFICATION LEVELS—Continued

Engine models	Model year	PM Level [1] with OCM	PM Level [2] with OCM and DDC Certified Rebuild kit	Code/Family
6V71N	1973–89 ..	0.38	N/A	All.
6V71T	1985–86 ..	0.38	N/A	All.
6L71TA	1988–89 ..	0.23	N/A	All.
6L71TA DDEC	1990–91 ..	0.23	N/A	All.

[1] The original PM certification levels for the 1991 6V92TA DDEC II, and 6L71TA DDEC engine models are based on Family Emission Limits (FELs)under EPA's averaging, banking and trading program (AB&T). These limits are higher than the 1991 PM standard of 0.25 g/bhp-hr. The PM level listed in this table for the engines that are equipped with the OCM provide at least a 25% reduction from the FEL. The 1992 to 1993 6V92TA DDEC II engine models were also certified using FELs under the AB&T program and likewise the PM levels for the engines equipped with the OCM represent at least a 25% reduction from the FEL.

[2] For 6V92TA MUI and 6V92TA DDEC II models that are rebuilt using a certified DDC emissions retrofit kit, ECS is certifying the PM engine emissions to reduced levels as provided in Table A. provided the OCM is installed at the same time the rebuild with the certified DDC upgrade kit takes place. The DDC upgrade kit certification notifications were published in the **Federal Register** on October 2, 1995 (60 FR51472) and July 19,1996 (61 FR37738) respectively.

Under Program 1, all rebuilds or replacements of applicable engines must use equipment certified to reduce PM levels by at least 25 percent. This requirement will continue for the applicable engines until such time as it is superseded by equipment that is certified to trigger the 0.10 g/bhp-hr emission standard for less than a life cycle cost of $7,940 (in 1992 dollars).

ECS has established PM certification levels as specified in Table A for this equipment. Operators who choose to comply with Program 2 and install this equipment, will use the specified PM emission levels in their calculation of fleet level attained.

II. Summary and Analysis of Comments

EPA received comments from two parties on this notification. The Detroit Diesel Corporation (DDC) had a number of comments in the following areas: test engine selection, extrapolation of test results, reductions in non-volatile particulate matter, certification of equipment for use on different stages of engine rebuild, certified emission levels, incomplete parts listing and representivity of test data. The Engelhard Corporation commented on the following areas: worst case demonstration, incomplete parts listing, representivity of test data to cover all engines and types, and the ability of the OCM to reduce PM emissions.

DDC stated that the test configuration of the 1991 DDC 6V92TA DDEC II engine was not clearly documented and that the original configuration of the test engine was a 1992 code 4T engine intended for use with a particulate trap. DDC questioned the relevance of testing performed on an engine with a unique calibration originally intended for use on trap equipped engines. DDC noted that test data it developed during new engine certification testing for the 1991 4C rating (a non-trap configuration) had a total PM level of 0.218 g/bhp-hr with a soluble fraction (SOF) of 21.5%. DDC questioned how this engine could be considered ''worst case''. Given that oxidation catalysts primarily reduce the SOF portion of PM, DDC questioned whether the OCM could reduce PM emissions on the 1991 code 4C rating by 25% when the entire SOF fraction is only 21.5%.

Based on the information presented by ECS, it is unclear whether the engine rating at the time of testing was in the 4T or the 4C configuration. It was not clear from ECS that the engine had been converted from it's original 4T rating. Also, background historical information for this engine could not be provided. Since there is nothing in the record which indicates that the engine was converted to the 4C configuration, the Agency assumes that it was tested in the original 4T configuration. Therefore, it is apparent that DDC's comments relative to SOF content of the 4C configuration relative to the test performed on the 4T configuration would not be relevant in the certification being discussed. However, it is noted that because an oxidation catalyst mainly reduces only the SOF portion of PM, it would not be possible to obtain a 25% reduction in PM for any engine for which the SOF portion of PM is less than 25%. EPA requests information from industry and the general public with regard to the percentage of SOF that particular in-use engines produce. This information would be considered for the certification being discussed in this notice and in regard to the previous certifications of oxidation catalysts under the urban bus retrofit/rebuild program.

In regard to DDC's and Engelhard's contention that the 1991 6V92TA DDEC II engine would not represent the worst case according to the regulations, EPA agrees. However, the 1987 6V71N does qualify as a ''worst case'' engine for testing purposes under the urban bus retrofit regulations, and test results from this engine provide the basis for the certification discussed herein.

DDC questioned the relevancy of the chassis dynamometer test results obtained on the 6V71N engine using the Central Business District (CBD) and New York Composite (NYC) cycles and noted that EPA should not rely on the chassis test results in assessing whether the OCM technology meets requirements to reduce PM emission by 25%. In response, the regulations allow a certifier to use chassis based test procedures representative of typical urban bus operation to show compliance with the 25% or greater PM reduction requirement. The CBD simulates stop and go performance of urban buses in the city and the NYC was incorporated to represent some higher average speeds not seen in the CBD which an urban bus may on occasion encounter. After review, EPA found the proposed chassis testing plan to be acceptable and approved the use of chassis testing to demonstrate the 25% reduction in PM.

EPA agrees with the comment from Engelhard and DDC that it is tenuous to base certification of OCMs, intended for engines using non-particulate trap ratings, on testing where the 4T-trap based rating was utilized. However, ECS provided acceptable chassis test results performed on a non-trap engine that demonstrate reduction of PM by at least 25%.

Engelhard also stated that the reduction of 26% demonstrated on the

6V92TA DDEC II engine does not demonstrate a sufficient margin beyond the 25% level to account for in-use deterioration of the catalyst over the 150,000 mile performance warranty period. EPA finds that the results of this test are not conclusive because the engine configuration tested apparently does not represent an urban bus engine that could be used to demonstrate PM reduction under the retrofit/rebuild program since it was apparently in a calibration for a particulate trap equipped engine. However, chassis testing data presented by ECS shows a decrease in PM of at least 37% providing ample margin beyond the required 25% reduction.

In the notification, ECS sought to use the OCM kit on engines which were not in need of rebuild at the time of OCM installation based on a review of specified engine conditions. DDC commented that certification should be approved only with respect to engines that have been rebuilt to original specifications as the retrofit/rebuild requirements do not apply until the operator rebuilds an engine. DDC agreed that under Program 2 operators could conceivably install certified add-on equipment without rebuilding the base engine and use the certified emission level in their fleet averaging, but expressed concerns that the engine may have worn cylinders or fuel injection components in need of rebuild and, as a result, the engine out PM emissions may be high. DDC stated that engine wear conditions would create difficulty in achieving the certification level when applying the OCM to an engine which has not been rebuilt.

DDC's claim that program requirements do not apply until an operator rebuilds an engine concerns compliance programs. Operators choosing to comply with Program 1 are not required to take any action until an affected engine is rebuilt or replaced. However, operators choosing to comply with Program 2 must ensure their fleet is equal to or less than their target fleet level at all times. Thus, program requirements apply continuously to Program 2 operators. In addition, if an operator desires to be able to change between programs, the regulations require that both programs be complied with prior to the switch.

While it is true that Program 1 requirements become effective when the engine is rebuilt, EPA encourages the installation of certified equipment prior to the time it is required under the regulations in accordance with the manufacturer's instructions.

In regard to DDCs' concern that engine wear needs to be evaluated prior to installing this equipment, ECS has modified its application to remove the language referring to ''specified engine calibrations'' which DDC stated was vague and unenforceable and will instead require that operators determine the oil consumption rate for an engine to determine engine wear and condition prior to installing the OCM. If the rate of oil consumption exceeds 1.5 quarts of consumption per 10 hours of operation, ECS will require that the engine be rebuilt prior to OCM installation. Furthermore, ECS is responsible for meeting the performance warranty for a period of 150,000 miles for each engine under this certification. EPA believes that operators will rebuild engines when necessary in order to keep their fleet in reasonable operating condition. The decision to rebuild will not be affected by the option to install a catalyst. Rather, operators will only choose to install the catalyst in order to reduce emissions, and not in place of a needed rebuild. It is noted that the chassis testing data presented demonstrates a 37% to 42% reduction in the case where the engine was rebuilt. Based on these levels of reduction, it is apparent there should be ample margin between the in-use emissions of an engine that the operator finds is not in need of a rebuild to reasonably project that the levels stated in Table A can be met.

DDC questioned reported reductions in the non-volatile PM fraction with the OCM, noting that it is commonly accepted that oxidation catalysts are effective in oxidizing volatile particulate, but have little effect on the non-volatile component. In response, ECS explains that effective diesel oxidation catalysts will have some activity towards reduction of the non-volatile or insoluble portion of diesel particulate. This activity allows the catalyst to clean itself from carbon build-up and prevents catalyst fouling, particulate build-up and eventual plugging of the substrate. ECS also stated that it is important to recognize that, in the measurements taken, the volatile organic fraction and non-volatile organic fractions were made using the direct filter injection gas chromatography analysis DFI/GC technique developed by Southwest Research Institute. Using this procedure some small amount of high molecular weight solubles that did not volatize may exist in the unvolatized particulate sample which would account for the reduction seen. ECS stated that since diesel engine oxidation catalysts all operate on the same basic principle, the points being made relative to volatile vs. non-volatile components of urban bus PM emissions apply to the industry as a whole and should not be confined to the ECS certification review process. EPA concurs that this issue should be addressed on an industry-wide basis. Further, EPA does not have sufficient information to resolve this issue based on the comments submitted. Therefore, EPA requests that industry and the public provide any additional information on this matter so that resolution may be reached in the future.

DDC and Engelhard commented that the rebuild on the 6V71N engine appeared to be incomplete. DDC noted that the rebuild performed did not include fuel injectors, piston rings, or cylinder liners all of which would be replaced during a normal rebuild and which, if not replaced, would cause inflated PM levels. DDC stated that if the Agency is to rely on the chassis test data for certification of the OCM, it should first make certain that it was properly rebuilt to the original engine configuration prior to the testing. In response, ECS has provided additional documentation that the piston rings, cylinder liners and injectors were replaced at the time of rebuild and that the engine was rebuilt to standard specifications. The failure to include this in the original notification materials was an oversight.

With regard to certified emission levels, DDC commented that the proposed certification levels do not represent a full 25% reduction. For example, for the 1991 6V92TA DDEC engine codes 3C and 4C, the original certification testing yielded PM emission levels of 0.25 and 0.22 g/bhp-hr, respectively, and the proposed certification level of 0.23 g/bhp-hr given in Table A represents only a 8% reduction on average from the original certification test levels.

In response, the pre-rebuild levels listed in section 85.1403 (c)(1)(iii)(A) were determined by EPA based on certification results or engineering data and judgement. In Table A, of today's notice, ECS has listed the PM levels to which it is certifying for listed models and years. In a number of instances the certification levels shown represent a 25% reduction from the pre-rebuild levels that were listed in section 85.1403(c)(1)(iii)(A) or the regulations. In other instances, the number reflects a 25% reduction from the level that was certified by DDC during new engine certification.

In the case of the 1991 6V92TA DDEC II 4C engine configuration, the new engine certification testing by DDC yielded a PM emission level of 0.22 g/bhp-hr. However, DDC certified the engine to a family emission level (FEL)

of 0.30 g/bhp-hr. The certification level of 0.23 g/bhp-hr PM provides for more than a 25% reduction from the original DDC certification level or FEL for this engine and from the pre-rebuild level of section 85.1403(c). In previous urban bus retrofit/rebuild certifications, EPA has based certification on the FEL which the original manufacturer certified to meet in-use. In fact, the ECS certification levels for the models listed are identical to those for which oxidation catalyst kits have been certified to date. In declaring a FEL, the engine manufacturer states the emission level it will achieve in-use. That is to say, even though the certification test level is determined, the engine manufacturer declares a different emission level that it can meet in-use. Because the urban bus retrofit/rebuild program applies to in-use buses, and since the rebuild certifier is certifying that a rebuilt engine with the retrofit equipment will meet the rebuild certification level during the warranty period, it makes sense to apply the in-use certification level or FEL as a basis for the reduction. To require certifiers of urban bus retrofit/rebuild equipment to reduce emissions from an initial level that the original manufacturer did not use during the original certification would not be reasonable. As stated, EPA used the FEL as a basis for the 25% reduction in previous decisions. EPA does not believe it would be reasonable to change the basis for the 25% reduction as DDC has requested.

DDC noted that in order to ensure optimum engine performance, emissions durability and fuel economy, DDC specifies maximum exhaust back pressure limits for all DDC engines. DDC noted that there was a small backpressure increase during testing and questioned whether the catalyst used in testing had been aged prior to the test. DDC also noted that the instructions to be given to operators did not include backpressure specifications or procedures for checking backpressure after the catalyst is installed. ECS has stated that careful attention will be paid to optimizing the exhaust backpressure to a level comparable to the original muffler. The catalyst used during testing was aged or degreened to provide representative in-use performance. ECS stated that it does not anticipate that checking the backpressure should be required under normal circumstances. However, the converter mufflers certified in this notice and produced by ECS include a port to allow in-use backpressure checks and ECS has developed a procedure for checking and cleaning the converter muffler that will be distributed to operators who purchase the kit.

DDC commented that EPA should seek assurances that the certified hardware will be available for all engine bus combinations. ECS has indicated it has completed design work on the majority of converter mufflers required for this market. If any specific design should be encountered for which a converter muffler cannot be provided which will meet the performance criterion, it will be reported to EPA. This coupled with the fact that other companies have already certified equipment for the engines covered under this application should provide adequate coverage of the marketplace.

Engelhard commented that because thermal insulation was required on the pre-catalyst exhaust on testing performed on the 6V92TA DDEC II engine, insulation should be required on all pre-catalyst components for ECS converter mufflers to be covered by certification. In response, ECS explained that no insulation was used during the chassis tests performed on the 6V71 engine for which PM reductions were demonstrated. Insulation of the exhaust system is not necessary for OCM installation on 6V71, 6V92 and 6L71 mechanical engine families as the exhaust temperatures are sufficient for proper unit function. For the engine dynamometer testing performed on the 6V92TA DDEC II engine, the entire exhaust system was insulated. ECS subsequently performed additional testing which indicates that the temperature loss between the turbocharger and converter muffler is insignificant and that insulation on the piping between the turbocharger outlet and the converter muffler is not needed. However, ECS has determined that the actual converter muffler must be insulated in order to maintain minimum catalyst temperature for the DDEC II engine. Accordingly, ECS has designed all converter mufflers for use on these engines to include either insulation located within the muffler shell or via an external wrap/blanket over the muffler casing.

Engelhard raised a concern based on the different exhaust temperature profiles and engine out emissions that exist relative to engines that are naturally aspirated, turbo charged or turbo-charged after-cooled engines. Engelhard questioned whether an engine that achieves a 25% reduction on a naturally aspirated engine could achieve the same on a turbo-charged engine. Engelhard stated that without a demonstration that 25% reduction in total PM could be obtained on all versions of the 6V71, engine certification should not be granted for all engines. Unfortunately, while Engelhard raised some interesting questions in this area, it did not provide any data or information on catalyst efficiency as it relates to different temperatures that could be used to substantiate its claim. At this point, EPA does not have information which would lead it to conclude that the ECS catalyst would not be able to provide the 25% reduction on the models it has identified. However, it is noted that in testing the 1991 6V92TA DDEC II engine, ECS provides information that the OCM reduces emissions by 26% on an engine where the temperature reached a maximum of 320 degrees Centigrade. These results address the concern relative to the ability of the OCM to reduce PM emissions on engines that operate at the lower end of the temperature spectrum. In regard to the issue of differing emission rates, EPA needs information to conclusively deal with this on an industry-wide basis and EPA welcomes such information from the public and industry.

DDC commented that certification of the ECS equipment should not cause DDC to have additional liability. DDC cited language in the preamble to the final rule published in the Federal Register on April 21, 1993, page 21381. DDC's concern was centered around the following statement, ''* * * However, if an engine manufacturer supplies retrofit/rebuild equipment, it is responsible for the emissions performance of the equipment.'' DDC suggested that it was EPA's intent to make engine manufacturers accept additional liability for rebuild hardware which they sell and which is subsequently used in a rebuild which has been approved under the program. The statement simply means that if the engine manufacturer supplies retrofit equipment as part of a certified rebuild kit (such as the DDC certified upgrade kit) then the manufacturer is responsible for the warranties associated with the retrofit/rebuild regulations. If, on the other hand, the manufacturer sells equipment for rebuild through its normal sales process, and such sale is not part of a certified kit with which the manufacturer is affiliated, the manufacturer is not liable for equipment performance beyond its normal liability. That is to say, for equipment not sold by the manufacturer to be included in a certified kit under the retrofit/rebuild program, the manufacturer is not responsible for the defect warranty or the performance warranty that is associated with the retrofit/rebuild program. The retrofit/rebuild equipment

certifier, however, is responsible for these warranties.

III. Certification Approval

The Agency has reviewed this notification, along with comments received from interested parties, and finds that the equipment described in this notification of intent to certify:

(1) Reduces particulate matter exhaust emissions by at least 25 percent, without causing the applicable engine families to exceed other exhaust emissions standards;

(2) Will not cause an unreasonable risk to the public health, welfare, or safety;

(3) Will not result in any additional range of parameter adjustability; and,

(4) Meets other requirements necessary for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR Sections 85.1401 through 85.1415). The Agency hereby certifies this equipment for use in the urban bus retrofit/rebuild program as discussed below in section IV.

IV. Operator Requirements and Responsibilities

This equipment may be used immediately by urban bus operators who have chosen to comply with either Program 1 or Program 2, but must be properly applied. Currently, operators having certain engines who have chosen to comply with Program 1 must use equipment certified to reduce PM emissions by 25 percent or more when those engines are rebuilt or replaced. Today's Federal Register notice certifies the above-described ECS equipment as meeting that PM reduction requirement. Only equipment that has been certified to reduce PM by 25% or more may be used by operators with applicable engines who have chosen Program 1. Urban bus operators who choose to comply with Program 1 may use the certified ECS equipment (or other certified equipment) until such time as the 0.10 g/bhp-hr standard is triggered for the applicable engines.

Operators who choose to comply with Program 2 and use the ECS equipment will use the appropriate PM emission level from Table A when calculating their fleet level attained (FLA).

As stated in the program regulations (40 CFR 85.1400 through 85.1415), operators are required to maintain records for each engine in their fleet to demonstrate that they are in compliance with the program requirements beginning January 1, 1995. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–41 Filed 1–3–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5673–4]

Notice of Federal Advisory Committee Meeting, ORD Board of Scientific Counselors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2), notice is hereby given that the Environmental Protection Agency (EPA), Office of Research and Development's (ORD), Board of Scientific Counselors (BOSC), will hold its Executive Committee Meeting, January 13–14, 1997, at the Ritz-Carlton Hotel, 1250 South Hayes Street, Arlington, Virginia. On Monday, the meeting will begin at 1:00 p.m. and will recess at 5:00 p.m., and on Tuesday, January 14, the meeting will begin at 8:00 a.m. and will adjourn at 4:30 p.m. All times noted are Eastern Time. Agenda items include, but are not limited to, BOSC Operating Principles, Laboratory Peer Review Discussion, ORD Research Plan Evaluation: Methods Development and Process and Procedures for Formulating Research Plans. Anyone desiring a draft BOSC agenda may fax their request to Shirley R. Hamilton (202) 260–0929. The meeting is open to the public. Any member of the public wishing to make comments at the meeting, should contact Shirley Hamilton, Designated Federal Official, Office of Research and Development (8701), 401 M Street, SW., Washington, DC 20460; by telephone at (202) 260–0468. In general, each individual making an oral presentation will be limited to a total time of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Official, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA (MC8701), 401 M Street, SW., Washington, DC 20460, 202–260–0468.

Dated: December 24, 1996.

Joseph K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 97–104 Filed 1–3–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

December 24, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments March 7, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0599.

Title: Implementation of Sections 3(n) and 332 of the Communications Act.

Form No.: N/A.

Type of Review: Revision of an existing collection.

Respondents: State or local governments; Businesses or other for-profit; Small businesses or organizations.

Number of Respondents: 85.

Estimated Time Per Response: 1.66 hours.

Total Annual Burden: 141 hours.

Needs and Uses: Collection of information complies with creation of regulatory symmetry among similar mobile services. The information is necessary to ensure that commercial mobile radio service is made available to the public at reasonable rates and on resonable terms in a competitive marketplace. The information is used by Commission staff in carrying out its duties under the Communications Act. This collection is being revised to eliminate a one-time collection requirement and a collection requirement that must have been filed by August 10, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–96 Filed 1–3–97; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Submitted to OMB for Review and Approval

December 27, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 5, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0710.

Title: Policy and Rules Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996—CC Docket 96–98 First Report and Order.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit; State, Local and Tribal Governments.

Number of and Estimated Time for Response are as follows:

Type of information submitted	Responses	Time per response	Total burden
a. Submission of Information Necessary to Reach Agreement	255	100 hours	25,500 hours.
b1. Submission of Agreements to the State Commission (new)	255	1 hour	255 hours.
b2. Submission of Agreements to the State Commission (pre-existing Class A)	80	1 hour	80 hours.
b3. Submission of Agreements to the State Commission (Non Class A)	500	1 hour	500 hours.
c. Burden of Proof Regarding Interconnection and Access to Unbundled Network Elements.	1,000	25 hours	25,000 hours.
d. Collocation	1,000	25 hours	25,000 hours.
e. Notification of the State Commission	30	1 hour	30 hours.
f. Rural and Small Carriers	500	10 hours	5,000 hours.
g1. Pole Attachment Modifications	1,050,000	30 minutes	525,000 hours.
g2. Maintaince Modification Notifications	12,250	30 minutes	6,125 hours.
h1. Pole Attachment Requests	2,500	1 hour	2,500 hours.
h2. Pole Attachment Denials	250	3 hours	750 hours.
i1. Dispute Resolution Complainants	250	4–25 hours	7,250 hours.
j. Economic Cost Studies to Determine Rates for Interconnection	100	1,440 hours	144,000 hours.
k. Cost Studies on Avoidable Costs to Determine Resale Discounts	200	480 hours	96,000 hours.
l. Economic Cost Studies to Determine Reciprocal Rates	100	1,440 hours	144,000 hours.
m. Measurement of Traffic	550	700 hours	385,000 hours.
n. File Required for Arbitration	200	4 hours	800 hours.
o. Determination of Rates for Interconnection . . . State Commission Review	50	2,160 hours	108,000 hours.
p. Determination of Resale Discount Percentage . . . State Commission Review	50	640 hours	32,000 hours.
q. Petition for Incumbent LEC Status	30	1 hour	30 hours.
r. Use of Proxies by State . . . Articulating Reasons for Choice	50	120 hours	6,000 hours.
s. Preparation of Forward-looking Economic Cost Studies to Establish Rates for Transport.	50	720 hours	36,000 hours.

Total Annual Burden: 1,574,820 hours.

Needs and Uses: CC Docket 96–98, First Report and Order, the Commission adopts rules and regulations to implement parts of the Sections 251 and 252 that affect local competition. Specifically, the Order required incumbent local exchange carrier (LEC's) to offer interconnection, unbundled network elements, transport and termination, and wholesale rates for retail services to new entrants; that incumbent LECs' price such services at rates that are cost based and just and reasonable; and that they provide access to rights-of way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–97 Filed 1–3–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Uniform Financial Institutions Rating System

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of adoption of policy statement.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) (Board) has considered the proposed revisions to the Uniform Financial Institutions Rating System (UFIRS) as approved by the Federal Financial Institutions Examination Council (FFIEC) on December 9, 1996. On December 20, 1996, the Board adopted the updated UFIRS as a policy statement of the FDIC and rescinded the 1979 statement of policy published in the FDIC's regulatory service (*FDIC Law, Regulations and Related Acts*) at page 5079.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Daniel M. Gautsch, Examination Specialist, (202) 898–6912, Office of Policy, Division of Supervision. For legal issues, Linda L. Stamp, Counsel, (202) 898–7310, Supervision and Legislation Branch, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is a Federal financial institutions regulatory agency under the Federal Financial Institutions Examination Council Act of 1978. The FFIEC adopted an updated UFIRS after a notice and request for comment was published in the Federal Register on July 18, 1996 at 61 FR 37472. On December 9, 1996, the Task Force on Supervision of the FFIEC approved under delegated authority the updated UFIRS to update the rating system to address changes in the financial services industry and in supervisory policies and procedures occurring since the rating system was adopted in 1979.

Section 303(a)(2) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803(a)) (Riegle Act) provides that the FDIC shall, consistent with the principles of safety and soundness, statutory law and policy, and the public interest, work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. Section 303(a)(1) of the Riegle Act requires the FDIC to review its own regulations and written policies and to streamline those regulations and policies where possible. To fulfill the section 303 mandate, the FDIC has been reviewing on an interagency basis and internally, its regulations and written policies to identify those areas where streamlining or updating is appropriate. As a result of those reviews, the FDIC is adopting the updated UFIRS effective for examination commenced on or after January 1, 1997.

The text of the policy statement follows:

Uniform Financial Institutions Rating System

Introduction

The Uniform Financial Institutions Rating System (UFIRS) was adopted by the Federal Financial Institutions Examination Council (FFIEC) on November 13, 1979. Over the years, the UFIRS has proven to be an effective internal supervisory tool for evaluating the soundness of financial institutions on a uniform basis and for identifying those institutions requiring special attention or concern. A number of changes, however, have occurred in the banking industry and in the Federal supervisory agencies' policies and procedures which have prompted a review and revision of the 1979 rating system. The revisions to UFIRS include the addition of a sixth component addressing sensitivity to market risks, the explicit reference to the quality of risk management processes in the management component, and the identification of risk elements within the composite and component rating descriptions.

The revisions to UFIRS are not intended to add to the regulatory burden of institutions or require additional policies or processes. The revisions are intended to promote and complement efficient examination processes. The revisions have been made to update the rating system, while retaining the basic framework of the original rating system.

The UFIRS takes into consideration certain financial, managerial, and compliance factors that are common to all institutions. Under this system, the supervisory agencies endeavor to ensure that all financial institutions are evaluated in a comprehensive and uniform manner, and that supervisory attention is appropriately focused on the financial institutions exhibiting financial and operational weaknesses or adverse trends.

The UFIRS also serves as a useful vehicle for identifying problem or deteriorating financial institutions, as well as for categorizing institutions with deficiencies in particular component areas. Further, the rating system assists Congress in following safety and soundness trends and in assessing the aggregate strength and soundness of the financial industry. As such, the UFIRS assists the agencies in fulfilling their collective mission of maintaining stability and public confidence in the nation's financial system.

Overview

Under the UFIRS, each financial institution is assigned a composite rating based on an evaluation and rating of six essential components of an institution's financial condition and operations. These component factors address the adequacy of capital, the quality of assets, the capability of management, the quality and level of earnings, the adequacy of liquidity, and the sensitivity to market risk. Evaluations of the components take into consideration the institution's size and sophistication, the nature and complexity of its activities, and its risk profile.

Composite and component ratings are assigned based on a 1 to 5 numerical scale. A 1 indicates the highest rating, strongest performance and risk management practices, and least degree of supervisory concern, while a 5 indicates the lowest rating, weakest performance, inadequate risk management practices and, therefore, the highest degree of supervisory concern.

The composite rating generally bears a close relationship to the component ratings assigned. However, the composite rating is not derived by computing an arithmetic average of the component ratings. Each component rating is based on a qualitative analysis of the factors comprising that component and its interrelationship with the other components. When assigning a composite rating, some components may be given more weight than others depending on the situation at the institution. In general, assignment of a composite rating may incorporate any factor that bears significantly on the overall condition and soundness of the financial institution. Assigned composite and component ratings are disclosed to the institution's board of directors and senior management.

The ability of management to respond to changing circumstances and to address the risks that may arise from

changing business conditions, or the initiation of new activities or products, is an important factor in evaluating a financial institution's overall risk profile and the level of supervisory attention warranted. For this reason, the management component is given special consideration when assigning a composite rating.

The ability of management to identify, measure, monitor, and control the risks of its operations is also taken into account when assigning each component rating. It is recognized, however, that appropriate management practices vary considerably among financial institutions, depending on their size, complexity, and risk profile. For less complex institutions engaged solely in traditional banking activities and whose directors and senior managers, in their respective roles, are actively involved in the oversight and management of day-to-day operations, relatively basic management systems and controls may be adequate. At more complex institutions, on the other hand, detailed and formal management systems and controls are needed to address their broader range of financial activities and to provide senior managers and directors, in their respective roles, with the information they need to monitor and direct day-to-day activities. All institutions are expected to properly manage their risks. For less complex institutions engaging in less sophisticated risk taking activities, detailed or highly formalized management systems and controls are not required to receive strong or satisfactory component or composite ratings.

Foreign Branch and specialty examination findings and the ratings assigned to those areas are taken into consideration, as appropriate, when assigning component and composite ratings under UFIRS. The specialty examination areas include: Compliance, Community Reinvestment, Government Security Dealers, Information Systems, Municipal Security Dealers, Transfer Agent, and Trust.

The following two sections contain the composite rating definitions, and the descriptions and definitions for the six component ratings.

Composite Ratings

Composite ratings are based on a careful evaluation of an institution's managerial, operational, financial, and compliance performance. The six key components used to assess an institution's financial condition and operations are: capital adequacy, asset quality, management capability, earnings quantity and quality, the adequacy of liquidity, and sensitivity to market risk. The rating scale ranges from 1 to 5, with a rating of 1 indicating: the strongest performance and risk management practices relative to the institution's size, complexity, and risk profile; and the level of least supervisory concern. A 5 rating indicates: the most critically deficient level of performance; inadequate risk management practices relative to the institution's size, complexity, and risk profile; and the greatest supervisory concern. The composite ratings are defined as follows:

Composite 1

Financial institutions in this group are sound in every respect and generally have components rated 1 or 2. Any weaknesses are minor and can be handled in a routine manner by the board of directors and management. These financial institutions are the most capable of withstanding the vagaries of business conditions and are resistant to outside influences such as economic instability in their trade area. These financial institutions are in substantial compliance with laws and regulations. As a result, these financial institutions exhibit the strongest performance and risk management practices relative to the institution's size, complexity, and risk profile, and give no cause for supervisory concern.

Composite 2

Financial institutions in this group are fundamentally sound. For a financial institution to receive this rating, generally no component rating should be more severe than 3. Only moderate weaknesses are present and are well within the board of directors' and management's capabilities and willingness to correct. These financial institutions are stable and are capable of withstanding business fluctuations. These financial institutions are in substantial compliance with laws and regulations. Overall risk management practices are satisfactory relative to the institution's size, complexity, and risk profile. There are no material supervisory concerns and, as a result, the supervisory response is informal and limited.

Composite 3

Financial institutions in this group exhibit some degree of supervisory concern in one or more of the component areas. These financial institutions exhibit a combination of weaknesses that may range from moderate to severe; however, the magnitude of the deficiencies generally will not cause a component to be rated more severely than 4. Management may lack the ability or willingness to effectively address weaknesses within appropriate time frames. Financial institutions in this group generally are less capable of withstanding business fluctuations and are more vulnerable to outside influences than those institutions rated a composite 1 or 2.

Additionally, these financial institutions may be in significant noncompliance with laws and regulations. Risk management practices may be less than satisfactory relative to the institution's size, complexity, and risk profile. These financial institutions require more than normal supervision, which may include formal or informal enforcement actions. Failure appears unlikely, however, given the overall strength and financial capacity of these institutions.

Composite 4

Financial institutions in this group generally exhibit unsafe and unsound practices or conditions. There are serious financial or managerial deficiencies that result in unsatisfactory performance. The problems range from severe to critically deficient. The weaknesses and problems are not being satisfactorily addressed or resolved by the board of directors and management. Financial institutions in this group generally are not capable of withstanding business fluctuations. There may be significant noncompliance with laws and regulations. Risk management practices are generally unacceptable relative to the institution's size, complexity, and risk profile. Close supervisory attention is required, which means, in most cases, formal enforcement action is necessary to address the problems. Institutions in this group pose a risk to the deposit insurance fund. Failure is a distinct possibility if the problems and weaknesses are not satisfactorily addressed and resolved.

Composite 5

Financial institutions in this group exhibit extremely unsafe and unsound practices or conditions; exhibit a critically deficient performance; often contain inadequate risk management practices relative to the institution's size, complexity, and risk profile; and are of the greatest supervisory concern. The volume and severity of problems are beyond management's ability or willingness to control or correct. Immediate outside financial or other assistance is needed in order for the financial institution to be viable. Ongoing supervisory attention is necessary. Institutions in this group

pose a significant risk to the deposit insurance fund and failure is highly probable.

Component Ratings

Each of the component rating descriptions is divided into three sections: an introductory paragraph; a list of the principal evaluation factors that relate to that component; and a brief description of each numerical rating for that component. Some of the evaluation factors are reiterated under one or more of the other components to reinforce the interrelationship between components. The listing of evaluation factors for each component rating is in no particular order of importance.

Capital Adequacy

A financial institution is expected to maintain capital commensurate with the nature and extent of risks to the institution and the ability of management to identify, measure, monitor, and control these risks. The effect of credit, market, and other risks on the institution's financial condition should be considered when evaluating the adequacy of capital. The types and quantity of risk inherent in an institution's activities will determine the extent to which it may be necessary to maintain capital at levels above required regulatory minimums to properly reflect the potentially adverse consequences that these risks may have on the institution's capital.

The capital adequacy of an institution is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The level and quality of capital and the overall financial condition of the institution.
- The ability of management to address emerging needs for additional capital.
- The nature, trend, and volume of problem assets, and the adequacy of allowances for loan and lease losses and other valuation reserves.
- Balance sheet composition, including the nature and amount of intangible assets, market risk, concentration risk, and risks associated with nontraditional activities.
- Risk exposure represented by off-balance sheet activities.
- The quality and strength of earnings, and the reasonableness of dividends.
- Prospects and plans for growth, as well as past experience in managing growth.
- Access to capital markets and other sources of capital, including support provided by a parent holding company.

Ratings

1 A rating of 1 indicates a strong capital level relative to the institution's risk profile.

2 A rating of 2 indicates a satisfactory capital level relative to the financial institution's risk profile.

3 A rating of 3 indicates a less than satisfactory level of capital that does not fully support the institution's risk profile. The rating indicates a need for improvement, even if the institution's capital level exceeds minimum regulatory and statutory requirements.

4 A rating of 4 indicates a deficient level of capital. In light of the institution's risk profile, viability of the institution may be threatened. Assistance from shareholders or other external sources of financial support may be required.

5 A rating of 5 indicates a critically deficient level of capital such that the institution's viability is threatened. Immediate assistance from shareholders or other external sources of financial support is required.

Asset Quality

The asset quality rating reflects the quantity of existing and potential credit risk associated with the loan and investment portfolios, other real estate owned, and other assets, as well as off-balance sheet transactions. The ability of management to identify, measure, monitor, and control credit risk is also reflected here. The evaluation of asset quality should consider the adequacy of the allowance for loan and lease losses and weigh the exposure to counterparty, issuer, or borrower default under actual or implied contractual agreements. All other risks that may affect the value or marketability of an institution's assets, including, but not limited to, operating, market, reputation, strategic, or compliance risks, should also be considered.

The asset quality of a financial institution is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The adequacy of underwriting standards, soundness of credit administration practices, and appropriateness of risk identification practices.
- The level, distribution, severity, and trend of problem, classified, nonaccrual, restructured, delinquent, and nonperforming assets for both on- and off-balance sheet transactions.
- The adequacy of the allowance for loan and lease losses and other asset valuation reserves.
- The credit risk arising from or reduced by off-balance sheet transactions, such as unfunded commitments, credit derivatives, commercial and standby letters of credit, and lines of credit.
- The diversification and quality of the loan and investment portfolios.
- The extent of securities underwriting activities and exposure to counterparties in trading activities.
- The existence of asset concentrations.
- The adequacy of loan and investment policies, procedures, and practices.
- The ability of management to properly administer its assets, including the timely identification and collection of problem assets.
- The adequacy of internal controls and management information systems.
- The volume and nature of credit documentation exceptions.

Ratings

1 A rating of 1 indicates strong asset quality and credit administration practices. Identified weaknesses are minor in nature and risk exposure is modest in relation to capital protection and management's abilities. Asset quality in such institutions is of minimal supervisory concern.

2 A rating of 2 indicates satisfactory asset quality and credit administration practices. The level and severity of classifications and other weaknesses warrant a limited level of supervisory attention. Risk exposure is commensurate with capital protection and management's abilities.

3 A rating of 3 is assigned when asset quality or credit administration practices are less than satisfactory. Trends may be stable or indicate deterioration in asset quality or an increase in risk exposure. The level and severity of classified assets, other weaknesses, and risks require an elevated level of supervisory concern. There is generally a need to improve credit administration and risk management practices.

4 A rating of 4 is assigned to financial institutions with deficient asset quality or credit administration practices. The levels of risk and problem assets are significant, inadequately controlled, and subject the financial institution to potential losses that, if left unchecked, may threaten its viability.

5 A rating of 5 represents critically deficient asset quality or credit administration practices that present an imminent threat to the institution's viability.

Management

The capability of the board of directors and management, in their

respective roles, to identify, measure, monitor, and control the risks of an institution's activities and to ensure a financial institution's safe, sound, and efficient operation in compliance with applicable laws and regulations is reflected in this rating. Generally, directors need not be actively involved in day-to-day operations; however, they must provide clear guidance regarding acceptable risk exposure levels and ensure that appropriate policies, procedures, and practices have been established. Senior management is responsible for developing and implementing policies, procedures, and practices that translate the board's goals, objectives, and risk limits into prudent operating standards.

Depending on the nature and scope of an institution's activities, management practices may need to address some or all of the following risks: credit, market, operating or transaction, reputation, strategic, compliance, legal, liquidity, and other risks. Sound management practices are demonstrated by: active oversight by the board of directors and management; competent personnel; adequate policies, processes, and controls taking into consideration the size and sophistication of the institution; maintenance of an appropriate audit program and internal control environment; and effective risk monitoring and management information systems. This rating should reflect the board's and management's ability as it applies to all aspects of banking operations as well as other financial service activities in which the institution is involved.

The capability and performance of management and the board of directors is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The level and quality of oversight and support of all institution activities by the board of directors and management.
- The ability of the board of directors and management, in their respective roles, to plan for, and respond to, risks that may arise from changing business conditions or the initiation of new activities or products.
- The adequacy of, and conformance with, appropriate internal policies and controls addressing the operations and risks of significant activities.
- The accuracy, timeliness, and effectiveness of management information and risk monitoring systems appropriate for the institution's size, complexity, and risk profile.
- The adequacy of audits and internal controls to: promote effective operations and reliable financial and regulatory reporting; safeguard assets; and ensure compliance with laws, regulations, and internal policies.
- Compliance with laws and regulations.
- Responsiveness to recommendations from auditors and supervisory authorities.
- Management depth and succession.
- The extent that the board of directors and management is affected by, or susceptible to, dominant influence or concentration of authority.
- Reasonableness of compensation policies and avoidance of self-dealing.
- Demonstrated willingness to serve the legitimate banking needs of the community.
- The overall performance of the institution and its risk profile.

Ratings

1 A rating of 1 indicates strong performance by management and the board of directors and strong risk management practices relative to the institution's size, complexity, and risk profile. All significant risks are consistently and effectively identified, measured, monitored, and controlled. Management and the board have demonstrated the ability to promptly and successfully address existing and potential problems and risks.

2 A rating of 2 indicates satisfactory management and board performance and risk management practices relative to the institution's size, complexity, and risk profile. Minor weaknesses may exist, but are not material to the safety and soundness of the institution and are being addressed. In general, significant risks and problems are effectively identified, measured, monitored, and controlled.

3 A rating of 3 indicates management and board performance that need improvement or risk management practices that are less than satisfactory given the nature of the institution's activities. The capabilities of management or the board of directors may be insufficient for the type, size, or condition of the institution. Problems and significant risks may be inadequately identified, measured, monitored, or controlled.

4 A rating of 4 indicates deficient management and board performance or risk management practices that are inadequate considering the nature of an institution's activities. The level of problems and risk exposure is excessive. Problems and significant risks are inadequately identified, measured, monitored, or controlled and require immediate action by the board and management to preserve the soundness of the institution. Replacing or strengthening management or the board may be necessary.

5 A rating of 5 indicates critically deficient management and board performance or risk management practices. Management and the board of directors have not demonstrated the ability to correct problems and implement appropriate risk management practices. Problems and significant risks are inadequately identified, measured, monitored, or controlled and now threaten the continued viability of the institution. Replacing or strengthening management or the board of directors is necessary.

Earnings

This rating reflects not only the quantity and trend of earnings, but also factors that may affect the sustainability or quality of earnings. The quantity as well as the quality of earnings can be affected by excessive or inadequately managed credit risk that may result in loan losses and require additions to the allowance for loan and lease losses, or by high levels of market risk that may unduly expose an institution's earnings to volatility in interest rates. The quality of earnings may also be diminished by undue reliance on extraordinary gains, nonrecurring events, or favorable tax effects. Future earnings may be adversely affected by an inability to forecast or control funding and operating expenses, improperly executed or ill-advised business strategies, or poorly managed or uncontrolled exposure to other risks.

The rating of an institution's earnings is based upon, but not limited to, an assessment of the following evaluation factors:

- The level of earnings, including trends and stability.
- The ability to provide for adequate capital through retained earnings.
- The quality and sources of earnings.
- The level of expenses in relation to operations.
- The adequacy of the budgeting systems, forecasting processes, and management information systems in general.
- The adequacy of provisions to maintain the allowance for loan and lease losses and other valuation allowance accounts.
- The earnings exposure to market risk such as interest rate, foreign exchange, and price risks.

Ratings

1 A rating of 1 indicates earnings that are strong. Earnings are more than sufficient to support operations and maintain adequate capital and allowance levels after consideration is

given to asset quality, growth, and other factors affecting the quality, quantity, and trend of earnings.

2 A rating of 2 indicates earnings that are satisfactory. Earnings are sufficient to support operations and maintain adequate capital and allowance levels after consideration is given to asset quality, growth, and other factors affecting the quality, quantity, and trend of earnings. Earnings that are relatively static, or even experiencing a slight decline, may receive a 2 rating provided the institution's level of earnings is adequate in view of the assessment factors listed above.

3 A rating of 3 indicates earnings that need to be improved. Earnings may not fully support operations and provide for the accretion of capital and allowance levels in relation to the institution's overall condition, growth, and other factors affecting the quality, quantity, and trend of earnings.

4 A rating of 4 indicates earnings that are deficient. Earnings are insufficient to support operations and maintain appropriate capital and allowance levels. Institutions so rated may be characterized by erratic fluctuations in net income or net interest margin, the development of significant negative trends, nominal or unsustainable earnings, intermittent losses, or a substantive drop in earnings from the previous years.

5 A rating of 5 indicates earnings that are critically deficient. A financial institution with earnings rated 5 is experiencing losses that represent a distinct threat to its viability through the erosion of capital.

Liquidity

In evaluating the adequacy of a financial institution's liquidity position, consideration should be given to the current level and prospective sources of liquidity compared to funding needs, as well as to the adequacy of funds management practices relative to the institution's size, complexity, and risk profile. In general, funds management practices should ensure that an institution is able to maintain a level of liquidity sufficient to meet its financial obligations in a timely manner and to fulfill the legitimate banking needs of its community. Practices should reflect the ability of the institution to manage unplanned changes in funding sources, as well as react to changes in market conditions that affect the ability to quickly liquidate assets with minimal loss. In addition, funds management practices should ensure that liquidity is not maintained at a high cost, or through undue reliance on funding sources that may not be available in times of financial stress or adverse changes in market conditions.

Liquidity is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The adequacy of liquidity sources compared to present and future needs and the ability of the institution to meet liquidity needs without adversely affecting its operations or condition.
- The availability of assets readily convertible to cash without undue loss.
- Access to money markets and other sources of funding.
- The level of diversification of funding sources, both on- and off-balance sheet.
- The degree of reliance on short-term, volatile sources of funds, including borrowings and brokered deposits, to fund longer term assets.
- The trend and stability of deposits.
- The ability to securitize and sell certain pools of assets.
- The capability of management to properly identify, measure, monitor, and control the institution's liquidity position, including the effectiveness of funds management strategies, liquidity policies, management information systems, and contingency funding plans.

Ratings

1 A rating of 1 indicates strong liquidity levels and well-developed funds management practices. The institution has reliable access to sufficient sources of funds on favorable terms to meet present and anticipated liquidity needs.

2 A rating of 2 indicates satisfactory liquidity levels and funds management practices. The institution has access to sufficient sources of funds on acceptable terms to meet present and anticipated liquidity needs. Modest weaknesses may be evident in funds management practices.

3 A rating of 3 indicates liquidity levels or funds management practices in need of improvement. Institutions rated 3 may lack ready access to funds on reasonable terms or may evidence significant weaknesses in funds management practices.

4 A rating of 4 indicates deficient liquidity levels or inadequate funds management practices. Institutions rated 4 may not have or be able to obtain a sufficient volume of funds on reasonable terms to meet liquidity needs.

5 A rating of 5 indicates liquidity levels or funds management practices so critically deficient that the continued viability of the institution is threatened. Institutions rated 5 require immediate external financial assistance to meet maturing obligations or other liquidity needs.

Sensitivity to Market Risk

The sensitivity to market risk component reflects the degree to which changes in interest rates, foreign exchange rates, commodity prices, or equity prices can adversely affect a financial institution's earnings or economic capital. When evaluating this component, consideration should be given to: management's ability to identify, measure, monitor, and control market risk; the institution's size; the nature and complexity of its activities; and the adequacy of its capital and earnings in relation to its level of market risk exposure.

For many institutions, the primary source of market risk arises from nontrading positions and their sensitivity to changes in interest rates. In some larger institutions, foreign operations can be a significant source of market risk. For some institutions, trading activities are a major source of market risk.

Market risk is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The sensitivity of the financial institution's earnings or the economic value of its capital to adverse changes in interest rates, foreign exchange rates, commodity prices, or equity prices.
- The ability of management to identify, measure, monitor, and control exposure to market risk given the institution's size, complexity, and risk profile.
- The nature and complexity of interest rate risk exposure arising from nontrading positions.
- Where appropriate, the nature and complexity of market risk exposure arising from trading and foreign operations.

Ratings

1 A rating of 1 indicates that market risk sensitivity is well controlled and that there is minimal potential that the earnings performance or capital position will be adversely affected. Risk management practices are strong for the size, sophistication, and market risk accepted by the institution. The level of earnings and capital provide substantial support for the degree of market risk taken by the institution.

2 A rating of 2 indicates that market risk sensitivity is adequately controlled and that there is only moderate potential that the earnings performance or capital position will be adversely affected. Risk management practices are satisfactory for the size, sophistication, and market risk accepted by the

institution. The level of earnings and capital provide adequate support for the degree of market risk taken by the institution.

3 A rating of 3 indicates that control of market risk sensitivity needs improvement or that there is significant potential that the earnings performance or capital position will be adversely affected. Risk management practices need to be improved given the size, sophistication, and level of market risk accepted by the institution. The level of earnings and capital may not adequately support the degree of market risk taken by the institution.

4 A rating of 4 indicates that control of market risk sensitivity is unacceptable or that there is high potential that the earnings performance or capital position will be adversely affected. Risk management practices are deficient for the size, sophistication, and level of market risk accepted by the institution. The level of earnings and capital provide inadequate support for the degree of market risk taken by the institution.

5 A rating of 5 indicates that control of market risk sensitivity is unacceptable or that the level of market risk taken by the institution is an imminent threat to its viability. Risk management practices are wholly inadequate for the size, sophistication, and level of market risk accepted by the institution.

By Order of the Board of Directors dated at Washington, D.C., this 20th day of December, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–155 Filed 1–3–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 202–011375–027.

Title: Trans-Altantic Conference Agreement.

Parties: POL-Atlantic, Orient Overseas Container Line (UK) Ltd., Transportacion Maritima Mexicana, S.A. de C.V., Neptune Orient Lines Ltd., Hyundai Merchant Marine Co., Ltd., P&O Containers Limited, Nippon Yusen Kaisha, Tecomar S.A. de C.V., Hanjin Shipping Co., Ltd., Atlantic Container Line AB, Cho Yang Shipping Co. Ltd., Sea-Land Service, Inc., A.P. Moller-Maersk Line, Nedlloyd Lijnen BV, Hapag Lloyd Ag, Mediterranean Shipping Co., S.A., DSR-Senator Lines.

Synopsis: The proposed modification, which pertains to through intermodal point rates, exempts service contracts covering ''non-containerizable cargo'' and/or shipments to and/or from any place in the former Soviet Union from the requirement that rates for through transportation to and/ or from inland points covered by contracts be constructed only by combining rates covering inland portions with rates covering ocean port-to-port portions. Such shipments are also exempt from the application of standard assessorial charges published in tariffs of the contracting carrier parties. The above exemptions expire on December 31, 1997.

Agreement No.: 232–011559.

Title: CMA/Croatia Line Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: Compagnie Maritime D'Affretement (''CMA'') Croatia Line Rijeka (''Croatia Line'').

Synopsis: The proposed Agreement authorizes the parties to charter space to and from each other on vessels they operate in the trades between U.S. East Coast ports, and inland and coastal points served via those ports, and ports and points of the Mediterranean Sea, Red Sea, Arabian Gulf and Indian Subcontinent. The parties may also coordinate their sailings, jointly advertise sailings, establish equipment pools, and jointly contract for terminal and other shoreside services. The parties have requested expedited approval.

Agreement No.: 224–201012.

Title: Port of Oakland/American President Lines Preferential Crane Assignment.

Parties: The City of Oakland (''Port'') American President Lines, Ltd. (''APL'').

Synopsis: The proposed agreement authorizes APL the nonexclusive preferential right to use three container cranes and other equipment at berths 60–63 at the Port's Middle Harbor Terminal Area.

By order of the Federal Maritime Commission.

Dated: December 30, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 97–111 Filed 1–3–97; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 224–201014.

Title: Port of San Francisco/Madrigal-Wan Hai Lines Terminal Agreement.

Parties: City and County of San Francisco (''Port''), Madrigal-Wan Hai Lines (''Madrigal'').

Synopsis: The proposed Agreement grants Madrigal the non-exclusive right to use the Port's South Container Terminal, located at piers 94/96, and provides for discounted dockage and wharfage rates. The Agreement's term is five years.

Agreement No.: 224–201014–001.

Title: Port of San Francisco/Madrigal-Wan Hai Lines Terminal Agreement.

Parties: City and County of San Francisco (''Port''), Madrigal-Wan Hai Lines (''Madrigal'').

Synopsis: The proposed amendment provides that the Port will indemnify, defend and hold Madrigal harmless from all losses, expenses, claims, actions or liabilities to the extent they are caused by the negligence or willful misconduct of the Port.

By order of the Federal Maritime Commission.

Dated: December 31, 1996.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–166 Filed 1–3–97; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

International Consultants, Inc., 1032 Chuck Danley Blvd., Suite E, Mt. Pleasant, SC 29464. Officer: Paul A. Flaherty, President.

Horizon Trading Company, Inc., 1510 H Street, N.W., Suite 500, Washington, D.C. 20005. Officer: J. Browning Rockwell, Pres./Dir./Stockh.

Hilldrup Transfer and Storage, Inc., d/b/a Hilldrup Moving & Storage, 4022 Jefferson Davis Highway, Stafford, VA 22555. Officers: Charles G. McDaniel, President, Hilton G. Marshall, Vice President of Finance.

Ultimate Media Express Inc., d/b/a Ultimate Express, 144–25, 155th Street, Jamaica, NY 11434. Officers: Diane M. Correll, President, James W. Correll, Sr., Sec. Treasurer.

Dated: December 30, 1996.

[FR Doc. 97–112 Filed 1–3–97; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Privacy Act of 1974: Altered System of Records

AGENCY: Office of the Assistant Secretary for Management and Budget, Office of the Secretary, HHS.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the U.S. Department of Health and Human Services (HHS) is publishing a notice of a proposed altered system of records, 09–90–0024, ''Financial Transactions of HHS Accounting and Finance Offices.'' The principal purpose for the changes is in order to comply with the requirements of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, Sec. 31001). The proposal includes new and modified routine uses described below for this system.

DATES: HHS submitted a report of an altered system to the Office of Management and Budget and to the Congress on December 24, 1996. The new routine uses and the amendments to existing routine uses will take effect without further notice 40 days after the date of publication, unless HHS receives comments which would result in a contrary determination. Other changes incorporated in the notice below will take effect upon publication.

ADDRESSES: Please address comments to: Deputy Assistant Secretary, Finance Room 739–H, Hubert H. Humphrey Building, 200 Independence Ave., SW, Washington, D.C. 20201. Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Mundstuk Privacy Act Coordinator, Office of Financial Policy, DASF/ASMB, Room 705–D, Hubert H. Humphrey Building, 200 Independence Ave, SW, Washington, D.C. 20201, Telephone: (202) 690–6228.

SUPPLEMENTARY INFORMATION: The system notice was last published in full at 59 FR 7675 (1994). It was subsequently amended at 59 FR 55845 (1994).

On April 26, 1996, the Congress passed Pub. L. 104–134, Sec. 31001 known as the ''Debt Collection Improvement Act of 1996'' (DCIA). The purposes of this Act are to: (1) maximize collections of delinquent debts owed to the Government, (2) minimize the costs of debt collection, (3) reduce losses arising from debt management activities, (4) ensure that the public is fully informed of the Federal Government's debt collection policies, (5) ensure debtors are cognizant of their financial obligations to repay amounts owed to the Government, (6) ensure that debtors have all appropriate due process rights, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures, and (7) encourage agencies, when appropriate to sell delinquent debts, particularly debts with underlying collateral, and rely on the experience and expertise of private sector professionals to provide debt collection services to Federal agencies.

The DCIA authorizes and requires several new techniques for collecting debts and claims, and we have modified existing routine uses and added ones to implement this statute. In particular, we have modified use 1 to provide for payment by methods other than checks.

We have amended use 11(b) to allow disclosure to the Treasury Department for purposes of administrative offset even when Treasury will not be the agency that effects the offset. We have amended use 11(e) to conform with the provision for using debt collection agents or contractors in the statute as amended by the DCIA. We have added uses 18–21 to provide for new techniques authorized by the DCIA. Use 18 allows the computer matching of debtors and federal employees. Use 19 allows disclosures to commercial reporting agencies.

Use 20 allows disclosure to Treasury or a Debt Collection Center to collect the debt. Use 21 allows disclosures in connection with selling the debt. Because all of these are for purposes of recovering or liquidating debts, they are compatible with the purposes for which HHS maintains this system.

Other revisions were made (1) to eliminate areas where the Social Security Administration (SSA) is referenced since SSA is no longer a part of HHS; (2) to improve the quality of the document by making minor editorial changes; and (3) to combine the two Appendices into one Appendix, including the updating of system records locations.

The complete system notice is republished below.

Dated: December 23, 1996.

John J. Callahan,

Assistant Secretary for Management and Budget.

SYSTEM NAME:

Financial Transactions of HHS Accounting and Finance Offices, HHS/OS/ASMB.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendix 1.

Memoranda copies of claims submitted for reimbursement of travel and other expenditures while on official business may also be maintained at the administrative office of the HHS employee. Records concerning outstanding debts may also be maintained at the program office or by the designated claims officer apart from the finance office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who receive a payment from the Operating Divisions (OPDIV) Headquarters, Area and District offices and all persons owing monies to these HHS components. Persons receiving payments include, but are not limited to, travelers on official business, grantees, contractors, consultants, and recipients of loans and scholarships. Persons owing monies include, but are not limited to, persons who have been overpaid and who owe HHS a refund and persons who have received from HHS goods or services for which there is a charge or fee (e.g., Freedom of Information Act requesters).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identification number, address, purpose of payment, accounting

classification and amount paid. Also, in the event of an overpayment and for outstanding loans, grants or scholarships, the amount of the indebtedness, the repayment status and the amount to be collected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Budget and Accounting Act of 1950 (Pub. L. 81–784); Debt Collection Act of 1982 (Pub. L. 97–365); Debt Collection Improvement Act of 1996 (Pub. L. 104–134, Sec. 31001).

PURPOSE(S):

These records are an integral part of the accounting systems at OPDIVs Headquarters and specific Area and District locations. The records are used to keep track of all payments to individuals, exclusive of salaries and wages, based upon prior entry into the systems of the official commitment and obligation of government funds. When a person is to repay funds advanced as a loan or scholarship, etc., the records will be used to establish a receivable record and to track repayment status. In the event of an overpayment to a person, the record is used to establish a receivable record for recovery of the amount claimed. The records are also used internally to develop reports to the Internal Revenue Service (IRS) and applicable State and local taxing officials of taxable income. This is a Department-wide notice of payment and collection activities at all locations listed in Appendix 1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records will be routinely disclosed to the Treasury Department in order to effect payment.

2. Records may be disclosed to members of Congress concerning a Federal financial assistance program in order for members to make informed opinions on programs and/or activities impacting on legislative decisions. Also, disclosure may be made to a congressional office from an individual's record in response to an inquiry from the congressional office made at the request of the individual in order to be responsive to the constituency.

3. In the event HHS deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

4. A record from this system may be disclosed as a ''routine use'' to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

5. A record from this system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to its decision on the matter.

6. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service (IRS) or the Civil Rights Commission, issue a subpoena to HHS for records in this system of records, HHS will make such records available, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

7. Where a contract between a component of HHS and a labor organization recognized under E.O. 11491 provides that the agency will disclose personal records relevant to the organization's mission, records in the system of records may be disclosed to such organization.

8. A record may be disclosed to the Department of Justice, to a court, or other tribunal, or to another party before such tribunal, when: (1) HHS, or any component thereof; (2) Any HHS employee in his/her official capacity; (3) Any HHS employee in his/her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (4) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

9. A record about a loan applicant or potential contractor or grantee may be disclosed from the system of records to credit reporting agencies to obtain a credit report in order to determine the person's credit worthiness.

10. When a person applies for a loan under a loan program as to which the OMB has made a determination under I.R.C. 6103(a)(3), a record about his/her application may be disclosed to the Treasury Department to find out whether he/she has a delinquent tax account, for the sole purpose of determining the person's creditworthiness.

11. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

a. To another Federal agency so that agency can effect a salary offset;

b. To the Treasury Department or another Federal agency in order to effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);

c. To the Treasury Department to request the person's mailing address under I.R.C. 6103(m)(2) in order to help locate the person or to have a credit report prepared;

d. To agents of HHS and to other third parties, including credit reporting agencies, to help locate the person or to obtain a credit report on him/her, in order to help collect or compromise a debt;

e. To debt collection agents or contractors under 31 U.S.C. 3718 or under common law to help collect a past due amount or locate or recover debtors' assets;

f. To the Justice Department for litigation or for further administrative action; and

g. To the public, as provided by 31 U.S.C. 3720E, in order to publish or otherwise publicly disseminate information regarding the identity of the person and the existence of a nontax debt.

Disclosure under part (d) and (g) of this routine use is limited to the individual's name, address, social security number, and other information necessary to identify the person. Disclosure under parts (a)–(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from IRS may be disclosed to a credit reporting agency under part (d) only for purposes of preparing a credit report on the individual.

12. A record from this system may be disclosed to another Federal agency that

has asked HHS to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States. Disclosure under this routine use is limited to: name and address, Social Security number, and other information necessary to identify the individual; information about the money payable to or held for the individual; and other information concerning the administrative offset.

13. Disclosure with regard to claims or debts arising under or payable under the Social Security Act may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)) or the Federal Claims Collection Act of 1986 (31 U.S.C. § 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed the Federal Government. Disclosure of records is limited to the individual's name, address, Social Security number, and other information necessary to establish the individual's identity; the amount, status and history of the claim; and the agency or program under which the claim arose.

14. Information in this system of records is used to prepare W–2s and 1099 Forms to submit to the Internal Revenue Service and applicable State and local governments items considered to be included as income to a person: certain travel related payments to employees, all payments made to persons not treated as employees (e.g., fees to consultants and experts), and amounts written-off as legally or administratively uncollectible, in whole or in part.

15. A record may be disclosed to banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the person has given his/her credit card number for this purpose.

16. Records may be disclosed to a contractor (and/or to its subcontractor) who has been engaged to perform services on an automated data processing (ADP) system used in processing financial transactions. The contractor may have been engaged to develop, modify and test a new ADP system, including both software and hardware upgrades or enhancements to such a system; perform periodic or major maintenance on an existing ADP system; audit or otherwise evaluate the performance of such an ADP system; and/or operate such a system.

17. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

18. A record from this system may be disclosed to any Federal agency or its agents in order to participate in a computer matching of a list of debtors against a list of Federal employees. Disclosure of records is limited to debtors' names, names of employers, taxpayers identifying numbers, addresses (including addresses of employers), and dates of birth, and other information necessary to establish the person's identity.

19. A record may be disclosed to a commercial reporting agency that a person is responsible for a current claim, in order to aid in the collection of claims, typically by providing an incentive to the person to repay the claim or a debt timely. Disclosure of records is limited to information about a person as is relevant and necessary to meet the principal purpose(s) for which it is intended to be used under the law.

20. A record from this system may be disclosed to the Treasury Department or to an agency operating a Debt Collection Center designated by the Treasury in order to effect a collection of past due amounts.

21. If HHS decides to sell a debt pursuant to 31 U.S.C. § 3711(i), a record from the system may be disclosed to purchasers, potential purchasers, and contractors engaged to assist in the sale or to obtain information necessary for potential purchasers to formulate bids and information necessary for purchasers to pursue collection remedies.

Disclosure to Consumer Reporting Agencies

Disclosure pursuant to 5 U.S.C. § 552a(b)(12): Disclosure may be made from this system to ''consumer reporting agencies,'' as defined in 31 U.S.C. § 3701(a)(3). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government, typically, to provide an incentive for debtors to repay their debts timely, by making these debts part of their credit records.

Disclosure of records is limited to the individual's name, address, social security number, and other information necessary to establish the individual's identity; the amount, status and history of the claim; and the agency or program under which the claim arose. The disclosure will be made only after the procedural requirements of 31 U.S.C. § 3711(e) have been followed.

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System

STORAGE:

Hard copy documents are maintained in file folders at agency headquarters and area/district office sites; and on computer disc pack and magnetic tape at central computer sites.

RETRIEVABILITY:

This varies according to the particular accounting system within the HHS Operating Divisions, Area and District Offices. Usually the hard copy document is filed by name within accounting classification. Computer records may be indexed by social security number and voucher number. Intra-departmental uses and transfers concern the validation and certification for payment, and for HHS internal audits.

SAFEGUARDS:

1. Authorized Users: Employees and officials directly responsible for programmatic or fiscal activity, including administrative and staff personnel, financial management personnel, computer personnel, and managers who have responsibilities for implementing HHS funded programs.

2. Physical Safeguards: File folders, reports and other forms of personnel data, and electronic diskettes are stored in areas where fire and life safety codes are strictly enforced. All documents and diskettes are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas. Magnetic tapes and computer matching tapes are locked in a computer room and tape vault.

3. Procedural Safeguards: Password protection of automated records is provided. All authorized users protect information from public view and from unauthorized personnel entering an office. The safeguards described above were established in accordance with HHS Chapter 45–13 of the General Administration Manual; and the HHS ADP System Manual Part 6, ''ADP Systems Security.''

RETENTION AND DISPOSAL:

Records are purged from automated files once the accounting purpose has been served; printed copy and manual documents are retained and disposed of in accordance with General Accounting Office principles and standards as authorized by the National Archives and Records Service.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Health and Human Services, DHHS, Assistant Secretary for Management and Budget, Office of the Secretary, Room 510A, Hubert H. Humphrey Building, Washington, DC 20201.

NOTIFICATION PROCEDURE:

Inquiries should be made, either in writing or in person, to the organizations listed under ''Location'' in Appendix 1, with the exception of Food and Drug Administration records. For those records, contact:

FDA Privacy Act Coordinator (HFW–30)
Food and Drug Administration
5600 Fishers Lane
Rockville, MD 20857

The individual making the inquiry must show proof of identity before information is released. Give name and social security number, purpose of payment or collection (travel, grant, etc.) and, if possible, the agency accounting classification.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also clearly specify the record contents being sought, and may include a request for an accounting of disclosures that have been made of their records, if any. (These access procedures are in accordance with HHS regulations (45 CFR 5b.5(a)(2)).)

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above, and reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Travel vouchers submitted by the individual; grant, contract and loan award document; delinquent loan, grant and scholarship record; consultant invoice of services rendered; and application for travel advance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix 1

Location

Indian Health Service Area Offices (IHS)

Aberdeen Area, IHS
Federal Building
115 Fourth Ave., SE
Aberdeen, SD 57401

Alaska Area, IHS
250 Gambell Street
Anchorage, AK 99501

Albuquerque Area, IHS
505 Marquette NW
Suite 1502
Albuquerque, NM 57102–2163

Albuquerque Headquarters West, IHS
300 San Mateo, NE
Suite 500
Albuquerque, NM 87108

Bemidji Area, IHS
203 Federal Building
Bemidji, MN 56601

Billings Area, IHS
711 Central Avenue
Billings, MT 59103

California Area, IHS
1825 Bell Street
Sacramento, CA 95825–1097

Nashville Area, IHS
3310 Perimeter Hill Drive
Nashville, TN 37211

Navajo Area, IHS
P.O. Box ''G''
Window Rock, AZ 86515–5004

Oklahoma Area IHS
3625 NW 56th Street
Five Corporation Plaza
Oklahoma City, OK 73112

Phoenix Area, IHS
3738 North 16th Street
Suite ''A''
Phoenix, AZ 85016–5981

Portland Area, IHS
1220 SW Third Avenue
Room 476
Portland, OR 97204–2892

Office of Health Program Research and Development, IHS
7900 South ''J'' Stock Road
Tucson, AZ 85746–9352

Food and Drug Administration District Offices (FDA)

Food and Drug Administration, FDA
60 Eighth Street, NE
Atlanta, GA 30309

Food and Drug Administration, FDA
Boston District Office
One Montvale Avenue
Stoneham, MA 62180

Food and Drug Administration, FDA
599 Delaware Avenue
Buffalo, NY 14202

Food and Drug Administration, FDA
Room 700
Federal Office Building
850 3rd Avenue (at 30th Street)
Brooklyn, NY 11232

Food and Drug Administration, FDA
61 Main Street
West Orange, NJ 07052

Food and Drug Administration, FDA
Room 1204
US Customhouse
2nd and Chestnut Streets
Philadelphia, PA 19106

Food and Drug Administration, FDA
900 Madison Avenue
Baltimore, MD 21201

Food and Drug Administration, FDA
San Juan District Office
PO Box 5719 PTA
De Tierra Station
San Juan, PR 00906–5719

Food and Drug Administration, FDA
Room 1222
Main Post Office Building
433 West Van Buren Street
Chicago, IL 60607

Food and Drug Administration, FDA
1560 East Jefferson Avenue
Detroit, MI 48207

Food and Drug Administration, FDA
1141 Central Parkway
Cincinnati, OH 45202

Food and Drug Administration, FDA
240 Hennepin Avenue
Minneapolis, MN 55401

Food and Drug Administration, FDA
3032 Bryan Street
Dallas, TX 75204

Food and Drug Administration, FDA
4298 Elysian Fields
New Orleans, LA 70122

Food and Drug Administration, FDA
National Center for Toxicological Research
Jefferson, AR 72079

Food and Drug Administration, FDA
1009 Cherry Street
Kansas City, MO 64106

Food and Drug Administration, FDA
US Courthouse and Courthouse Building
1114 Market Street, Room 1002
St. Louis, MO 63101

Food and Drug Administration, FDA
Building 20
Denver Federal Center
PO Box 25087
Denver, CO 80255–0087

Food and Drug Administration, FDA
Federal Office Building
Room 506
50 United National Plaza
San Francisco, CA 94102

Food and Drug Administration, FDA
1521 West Pico Boulevard
Los Angeles, CA 90015

Food and Drug Administration, FDA
22201 23rd Avenue, SE
Bothell, WA 98021–4421

Food and Drug Administration, FDA
Headquarters Office
5600 Fishers Lane
Room 11–83
Parklawn Building
Rockville, MD 20857

Centers for Disease Control and Prevention (CDC)

Centers for Disease Control and Prevention, CDC

Accounting Section (CO–5)
Robert A. Taft Laboratories
4676 Columbia Parkway
Cincinnati, OH 45226

Centers for Disease Control and Prevention, CDC
and
Agency for Toxic Substances and Disease Registry (ATSDR)
Financial Management Office
1600 Clifton Road NE, (M/S D–04)
Atlanta, GA 30333

Health Care Financing Administration (HCFA)

Health Care Financing Administration, HCFA
Room C3–0927
7500 Security Boulevard
Baltimore, MD 21244

National Institutes of Health (NIH)

National Institutes of Health, NIH
Building 1, Room 222
Rocky Mountain Laboratory
Hilton, MT 59840

National Institutes of Health, NIH
National Institute of Mental Health
WAW Building, Room 562
St. Elizabeth's Hospital
Washington, DC 20032

National Institutes of Health, NIH
Frederick Cancer Research Facility
Fort Detrick Building, Room 427
Frederick, MD 21702–1201

National Institutes of Health, NIH
National Institutes of Environmental Health Sciences
Room B2–03, Building 101
Research Triangle Park, NC 27709

National Institutes for Health, NIH
National Institute on Drug Abuse
Addiction Research Center
Building C, Room 248
4940 Eastern Avenue
Baltimore, MD 21224

National Institutes for Health, NIH
Headquarters Office
Operations Accounting Branch
Building 31, Room B1–B63
9000 Rockville Pike
Bethesda, MD 20892–0134

Individual records of the following HHS Operating Divisions may be obtained from the Program Support Center (PSC):

Administration for Children and Families (ACF)

Administration on Aging (AoA)

Agency for Health Care Policy and Research (AHCPR)

Indian Health Service (IHS)

Substance Abuse and Mental Health Services Administration (SAMHSA)

Office of the Secretary (OS)

Program Support Center (PSC)

Program Support Center, PSC
Division of Fiscal Services
5600 Fishers Lane
Room 16–05
Rockville, MD 20857

[FR Doc. 97–16 Filed 1–3–97; 8:45 am]

BILLING CODE 4150–04–P

Food and Drug Administration

[Docket No. 96N–0290]

AM–Rho Laboratories, Inc.; Revocation of U.S. License No. 991–001

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 991–001) and the product license issued to AM–Rho Laboratories, Inc., Jacksonville, FL, for the manufacture of Source Plasma. In a letter to FDA dated April 11, 1996, AM–Rho Laboratories, Inc., voluntarily requested revocation of its establishment and product licenses. In a letter dated July 3, 1996, FDA informed the firm that the establishment and product licenses for its Jacksonville location were revoked.

DATES: The revocation of the establishment license (U.S. License No. 991–001) and the product license became effective July 3, 1996.

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 991–001) and product license for the manufacture of Source Plasma of AM–Rho Laboratories, Inc., 4130 Salisbury Rd., suite 2100, Jacksonville, FL 32216.

FDA inspected AM–Rho Laboratories, Inc., from October 16, 1995, through November 9, 1995. The inspection also involved a concurrent investigation that included interviews with individuals knowledgeable in the daily operations of the firm. The inspection of the facility and concurrent investigation revealed serious deviations from applicable Federal regulations. The deficiencies noted included, but were not limited to, the following: (1) Failure to properly immunize donors (21 CFR 640.66) by: (a) Permitting nonphysicians, working without a physician present, to inject at least 37 donors with red blood cell antigen; (b) immunizing at least one donor during plasmapheresis; and (c) permitting nonphysicians to select antigens and schedule immunizations; (2) failure to adequately determine donor suitability by: (a) Not excluding for the required 8-week period at least 21 donors who lost whole blood (21 CFR 640.63(e)); (b) routinely reevaluating donor hematocrit without recording the initial hematocrit values; and (c) routinely not complying with established standard operating procedures that required the cross checking of donors against deferral logs; (3) failure to maintain complete, accurate, and concurrent donor records (21 CFR 606.160) by: (a) Routinely forging physician's signatures on numerous records; (b) not completing maintenance and calibration records concurrently with work done; (c) inaccurate documentation of red blood cells not returned to the donor; (d) documenting as destroyed red blood cells that were returned to the donor; and (e) not providing a unit number for certain plasmapheresis products; (4) failure to maintain and follow standard operating procedures (21 CFR 606.100(b)) by: (a) Inadequately preparing phlebotomy sites on at least 25 donors; (b) not following the procedure for verifying correct reinfusion of red blood cells; and (c) permitting donors to leave the premises before the minimum time for postimmunization observation.

FDA concluded that the serious nature of the deficiencies identified during the inspection and during the concurrent investigation of AM–Rho Laboratories, Inc., were the direct consequence of the establishment's disregard for the applicable regulations and standards in the license application. FDA determined that these deficiencies constitute a danger to the public health that warranted suspension under 21 CFR 601.5(b) and 601.6(a). Additionally, the deficiencies noted demonstrated management's failure to exercise control over the facility relating to compliance and to assure adequate training and supervision of personnel as required by 21 CFR 600.10(a) and (b) and 606.20(a) and (b).

In a November 27, 1995, letter to the firm, FDA suspended the establishment license (U.S. License No. 991–001) and product license for Source Plasma. In a February 14, 1996, letter to FDA, the firm stated it would not seek reinstatement of the suspended license (U.S. License No. 991–001) and would destroy all plasma products in inventory. In a letter to FDA dated April 11, 1996, AM–Rho Laboratories, Inc., requested voluntary revocation of U.S. License No. 991–001.

FDA has placed copies of the letters relevant to the license revocation on file under the docket number found in brackets in the heading of this document with the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under 21 CFR 601.5(a), section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 991–001) and the product license for the manufacture of Source Plasma issued to AM–Rho Laboratories, Inc., Jacksonville, FL 32216, were revoked effective July 3, 1996.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67(c).

Dated: December 19, 1996.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 97–186 Filed 1–3–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0080]

Determination of Regulatory Review Period for Purposes of Patent Extension; Olean

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Olean and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that food additive product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For food and color additives: (1) The testing phase begins on the date a major health or environmental effects test is begun and ends on the date a petition relying on the test and requesting the issuance of a regulation for use of the additive under section 409 or 721 of the Federal Food, Drug, and Cosmetic Act (the act) is initially submitted to FDA. An ''environmental effects'' test may be any test which: (a) Is reasonably related to the evaluation of the product's health effects, or both; (b) produces data necessary for marketing approval; and (c) is conducted over a period of not less than 6-months duration, excluding time required to analyze or evaluate test results. (2) The approval phase begins on the date a petition requesting the issuance of a regulation for use of the additive under section 409 or 721 of the act is initially submitted to FDA and ends upon whichever of the following occurs last: (a) The regulation for the additive becomes final; or (b) objections filed against the regulation that result in a stay of effectiveness are resolved and commercial marketing is permitted; or (c) proceedings resulting from objections to the regulation, after commercial marketing has been permitted and later stayed pending resolution of the proceedings, are finally resolved and commercial marketing is permitted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a color or food additive will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(2)(B).

FDA recently approved for marketing the food additive product Olean (olestra). Olean is used in place of fats and oils in prepackaged ready-to-eat savory (i.e., salty or piquant, but not sweet) snacks. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Olean (U.S. Patent No. 4,005,196) from Proctor & Gamble Co. and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 9, 1996, FDA advised the Patent and Trademark Office that this food additive product had undergone a regulatory review period and that the listing of Olean represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Olean is 5,418 days. Of this time, 2,191 days occurred during the testing phase of the regulatory review period, while 3,227 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a major health or environmental effects test was begun:* April 2, 1981. The applicant does not specifically state a date when a test involving this food additive product was begun. However, FDA records indicate that the test was begun on April 2, 1981.

2. *The date a petition requesting the issuance of a regulation for use of the food additive under section 409 of the act was initially submitted:* April 1, 1987. FDA has verified the applicant's claim that the petition for Olean was initially submitted on April 1, 1987.

3. *The date the regulation for the food additive petition became effective:* January 30, 1996. The applicant claims that the regulation for the food additive became effective on January 24, 1996. However, FDA records indicate that, by its terms, the regulation for the food additive became effective on January 30, 1996 (61 FR 3118, January 30, 1996).

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In this application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 7, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore,

any interested person may petition FDA, on or before July 7, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 25, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 97–138 Filed 1–3–97; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Joint Meeting of the Nonprescription Drugs and Anti-Infective Drugs Advisory Committees

Date, time, and place. January 22, 1997, 8:30 a.m., Holiday Inn—Gaithersburg, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Ermona B. McGoodwin or Danyiel A. D'Antonio, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Nonprescription Drugs Advisory Committee, code 12541, or Anti-Infective Drugs Advisory Committee, code 12530. Please call the hotline for information concerning any possible changes.

General function of the committee. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Anti-Infective Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

Agenda—open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 13, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The joint committees will discuss issues relating to a health-care continuum model. In the Federal Register of June 17, 1994 (59 FR 31402 through 31452) the agency published a proposed rule for OTC health-care antiseptic drug products, i.e., patient preoperative skin preparations, surgical hand scrubs, and health-care personnel and antiseptic handwashes. In response to the proposed rule, the agency received a number of requests to consider a health-care continuum as a model for the regulation of OTC health-care antiseptic drug products. The proposed model defines six drug product categories (preoperative skin preparation, surgical hand scrub, health-care personnel handwash, food handler handwash, antimicrobial handwash, and antimicrobial body wash) and proposes testing requirements, key characteristics, and labeling for each of the categories. The model also proposes that the public health impact of these products is the lowest for consumer use products and continuously increases through the model as follows: Antimicrobial hand washes, antimicrobial body washes, food handler handwash, health-care personnel handwash, surgical hand scrub, and preoperative skin preparation. Conversely, the model proposes that the size of the population impacted by these products continuously decreases from consumer use products to professional use products. FDA is seeking an evaluation of the model's impact on public health in light of the isolation of pathogenic bacteria-bearing plasmids encoding for both topical antiseptic and multiple antibiotic resistance and is soliciting the advice and opinions from the advisory committees on this issue. The agency encourages investigators, academicians, and manufacturers of these products to respond to this notice with information bearing on this issue and to present their views on this issue before the committees.

A Joint Meeting of the Nonprescription Drugs Advisory Committee and the Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. January 23, 1997, 8:30 a.m., Holiday Inn—Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Tracy K. Riley or Joan C. Standaert, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Nonprescription Drugs Advisory Committee, code 12541, or Cardiovascular and Renal Drugs Advisory Committee, code 12533. Please call the hotline for information concerning any possible changes.

General function of the committee. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Cardiovascular and Renal Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for used in cardiovascular and renal disorders.

Agenda—open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 8, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committees will jointly discuss issues relevant to professional labeling indications for aspirin. A citizen petition requested that the Commissioner of Food and Drugs approve various vascular professional labeling indications for aspirin. FDA has already acted on some of the issues raised, while others have not been resolved. FDA is now soliciting advice and opinions from the advisory committees regarding the use of aspirin for expanded professional labeling indications for aspirin. Issues to be discussed include the use of aspirin in patients deemed to be at elevated risk of cardiovascular events due to some form of vascular disease or other conditions implying an increased risk of occlusive vascular disease (i.e., patients undergoing coronary, cerebral, or peripheral arterial revascularization procedures; patients with chronic nonvalvular atrial fibrillation; patients requiring hemodialysis access with a fistula or shunt; patients with chronic stable angina; and other patients deemed to be at elevated risk). The agency encourages investigators, academicians, and members of the pharmaceutical industry with information about the use of aspirin in patients at increased risk of cardiovascular events to respond to this notice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 20, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–92 Filed 1–3–97; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

National Mammography Quality Assurance Advisory Committee

Date, time, and place. January 13, 1997, 9 a.m., and January 14 and 15, 1997, 8 a.m., Bethesda Marriott Hotel, Grand Ballroom, 5151 Pooks Hill Rd., Bethesda, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–897–9400 and reference the FDA Committee meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, January 13, 1997, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 6:30 p.m.; open committee discussion, January 14, 1997, 8 a.m. to 6 p.m.; open committee discussion, January 15, 1997, 8 a.m. to 3 p.m.; Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Mammography Quality Assurance Advisory Committee, code 12397. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee advises the agency on developing appropriate quality standards and regulations for the use of mammography facilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 2, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 13, 14, and 15, 1997, the committee will discuss the proposed final regulations under the Mammography Quality Standards Act (MQSA) of 1992. Copies of the proposed final regulations may be obtained by submitting a written request to MQSA, c/o KRA, 1010 Wayne Ave., suite 850, Silver Spring, MD 20910, or faxing a request to 301–495–9410.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

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Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

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The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 20, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–93 Filed 1–3–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4153–D–01]

Revocation and Redelegation of Authority to FHA Comptroller

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revocation, and redelegation of authority to the FHA Comptroller.

SUMMARY: To assist in the efficient management of the Office of Housing, the Assistant Secretary for Housing—Federal Housing Commissioner is herein transferring, from the Deputy Assistant Secretary for Operations, to the FHA Comptroller, authority regarding asset sales of Secretary-held multifamily mortgages.

EFFECTIVE DATE: November 8, 1996.

FOR FURTHER INFORMATION CONTACT: Robert G. Hunt, Director, Management Services Division, Office of Housing, Room 9116, Department of Housing and Urban Development, Washington, DC 20410, (202) 708–0826. A telecommunications device for the hearing impaired is available via the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In this document, the Assistant Secretary for Housing—Federal Housing Commissioner is transferring responsibilities related to the asset sales

of Secretary-held multifamily mortgages. These responsibilities, previously handled by the Deputy Assistant Secretary for Operations, will now be handled by the FHA Comptroller. The Assistant Secretary for Housing—Federal Housing Commissioner has determined that, from an organizational standpoint, these functions more appropriately belong with the FHA Comptroller.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates authority as follows:

Section A. Authority Redelegated.

The FHA Comptroller is redelegated:

1. The authority to recommend the terms and conditions under which the Department offers for sale Secretary-held multifamily mortgages and the accompanying assigned mortgage notes, including all related assets, if any; upon approval of the recommendations, the authority to offer for sale such mortgages and assigned mortgage notes, including all related assets, if any; and the authority to execute agreements in the name of the Secretary pursuant to which the Secretary-held multifamily mortgages and the accompanying assigned mortgage notes, including all related assets, if any, may be sold.

2. The authority to take or cause to be taken, and direct any action necessary to initiate or respond to correspondence on behalf of the Department concerning the sale of Secretary-held multifamily mortgages and the accompanying assigned mortgage notes, including all related assets, if any;

3. The authority to take or cause to be taken, and direct any action necessary to consummate the sale of Secretary-held multifamily mortgages and the accompanying assigned mortgage notes, including all related assets, if any. Without limiting the generality of the foregoing, this authority shall include the execution, acknowledgement, seal and delivery, on behalf of the Secretary of (i) assignments of the mortgages and/or deeds of trust; (ii) perfection and assignments of UCC financing statements; (iii) document delivery notices; (iv) assignments of collateral mortgage loan documents; (v) mortgage note endorsements, deeds of trust note endorsements and mortgage notes; (vi) release of regulatory agreements; (vii) letters to mortgagors/borrowers, insurance companies and taxing authorities advising them of the sale and/or transfer of the mortgage loans, as well as letters as may be necessary to residents of projects secured by the Secretary-held multifamily mortgage loans; and (viii) such other documents as are necessary to effect the sale and/or transfer of the Secretary-held multifamily mortgages and the accompanying assigned mortgage notes, including any related assets, if any.

4. The authority to take or cause to be taken, and direct any action necessary to compromise and resolve breach notices concerning the sale of Secretary-held multifamily mortgages and the accompanying assigned mortgage notes, including all related assets, if any. Without limiting the generality of the foregoing, this authority shall include the execution, acknowledgement, seal and delivery, on behalf of the Secretary, of all documents responding to, accepting, rejecting or compromising breach notices as well as the taking of such other action as may be necessary on behalf of the Secretary to respond to, accept, reject or compromise breach notices.

5. The authority to coordinate and be deciding official for all of the Office of Housing's responsibilities for litigation concerning the sale of Secretary-held multifamily mortgages and the accompanying assigned mortgages notes, including all related assets, if any.

6. The authority to take all other actions as may be necessary to effect the sale and/or transfer of the Secretary-held multifamily mortgages and the accompanying assigned mortgage notes, including any related assets, if any.

Section B. Authority to Further Redelegate.

The FHA Comptroller may further redelegate the authority granted within Section A, above.

Section C. Authority Revoked.

This document revokes the redelegation of authority at 61 FR 15818, published on April 9, 1996.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 8, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 97–142 Filed 1–3–97; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Privacy Act of 1974—Public Notice Alteration of System of Records

The Department of the Interior proposes to alter a system of records managed by the Office of Occupational Safety and Health to add four new categories of information on individuals covered by the system. The system being altered, ''Safety Management Information System—Interior, DOI–60,'' is described in the notice published in its entirety below. The system was previously described as ''Safety Management Information System—Interior, OS–60,'' as published on January 17, 1989 (54 FR 1800).

The Safety Management Information System was established to assist the Department in reducing its employee injury and accident rate. The System presently contains employee injury, accident and personnel data records. To improve the quality, timeliness and efficiency of injury and accident reporting and analysis, four additional types of information are being added to the System: employee birth date, home address, sex and salary. This additional information will allow employees and supervisors to report injuries and accidents electronically from their computer workstations. This will eliminate duplication of costly forms and administrative processes, afford employees and supervisors a secure one-time entry process, provide a high degree of accuracy, allow timely and multiple use of injury compensation information needed by Department of Labor, permit real time safety analysis, and require no new user technical support or computer hardware.

All other changes in the notice describing ''Safety Management Information System—Interior DOI–60'' are editorial in nature. They clarify and update existing statements and reflect organizational, address and other miscellaneous administrative revisions which have occurred since the previous publication of the material in the Federal Register.

As required by the Privacy Act of 1974, the Office of Management and Budget, the Senate Committee on Governmental Affairs, and the House Committee on Government Reform and Oversight have been given notice of this proposed Privacy Act system alteration.

The Privacy Act of 1974 requires that the public be provided with a 30-day period in which to comment on the Department's proposal to alter ''Interior—DOI–60.'' The Office of Management and Budget, in its Circular A–130, requires a 40-day period in which to review such proposals. Written comments on this proposal can be addressed to the Departmental Privacy Act Officer, Department of the Interior, Office of the Secretary, 1849 ''C'' Street NW, Mail Stop 1414 MIB, Washington, DC 20240, telephone (202) 208–6045, fax 202–208–5048. Comments received within 40 days of publication in the Federal Register will be considered.

The notice shall be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: December 24, 1996.

Sue Ellen Sloca,

Departmental Privacy Act Officer.

INTERIOR/DOI–60

SYSTEM NAME:

Safety Management Information System—Interior, DOI–60.

SYSTEM LOCATION:

U.S. Department of the Interior, Office of Occupational Safety and Health, P.O. Box 25007 (D–115), Denver, Colorado 80225.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Department of the Interior, contractors, concessionaires, and public visitors to Interior facilities who have been involved in an accident resulting in personal injury and/or property damage.

CATEGORIES OF RECORDS IN THE SYSTEM:

For individuals covered by the system: Name of individual; Social Security Number, birth date, sex, home address, occupation, and salary (for employees of the Department, only) of the individual; date and location of the accident; data elements about the accident for analytical purposes; and a descriptive narrative concerning what caused the accident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 5 U.S.C. 7901, (2) 26 U.S.C. 2671–2680, (3) 31 U.S.C. 240–243, (4) 29 CFR Part 1960, (5) Executive Order 12196.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) To provide summary data of injury, illness and property loss information to the bureaus in a number of formats for analytical purposes in order for them to improve accident prevention policies, procedures, regulations, standards, and operations; (b) To provide listings of individual cases to bureaus to insure that accidents occurring are reported through the Safety Management Information System; and (c) To adjudicate tort and employee claims.

Disclosures outside the Department of the Interior may be made: (1) To a Federal, State or local government agency that has partial or complete jurisdiction over the claim or related claims; (2) To provide to the Department of Labor quarterly summary listings of fatalities and disabling injuries and illnesses in compliance with 29 CFR 1960.6; (3) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (4) Of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; and (5) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING AND ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Official records are maintained and stored in electronic form on a host computer housed in the system location office. They are created and updated on the individual workstations of any/all employees and supervisors, Departmentwide, that can communicate, electronically, with the host computer.

RETRIEVABILITY:

Records are retrieved both by personal identifiers of covered individuals and by data elements associated with the accidents via automated lookup tables.

SAFEGUARDS:

(1) Access to the records is limited to Departmental employees who have an official need to use the records in the performance of their duties. Access to the records is controlled by (a) required user IDs and passwords, and by (b) unique identifying personnel characteristics of users.

(2) Personal information is electronically tagged upon input into the system by employees or supervisors. It is not displayed or printed from the workstations of individuals not authorized to have access to it. It is protected from unauthorized access, during transmission, by electronic transmission encryption.

(3) Records are stored in a controlled area, secured from unauthorized access by electronic firewall, and maintained with safeguards meeting the requirements of ''the Computer Security Guidelines for Implementing the Privacy Act of 1974'' (43 CFR 2.51)

RETENTION AND DISPOSAL:

Records are retained in accordance with National Archives and Records Administration's General Records Schedule (GRS) 10, Item 5; GRS 18, Item 11; and GRS–20.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Chief System Administrator, Safety Management Information System, U.S. Department of the Interior, Office of Occupational Safety and Health, P.O. Box 25007 (D–115), Denver, Colorado 80225.

NOTIFICATION PROCEDURE:

A request for notification of the existence of records shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60. It shall state that the requester seeks information about himself/herself.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63. It shall state that the requester seeks information about himself/herself.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71. It shall state that the requester seeks information about himself/herself.

RECORD SOURCE CATEGORIES:

Employees involved in accidents. Supervisors of employees involved in accidents, supervisors of operations where public visitors are involved in accidents, officials responsible for oversight of contractors and concessionaires, safety professionals and other management officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No parts of this system are exempted from provisions of the act.

[FR Doc. 97–84 Filed 1–3–97; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

[OR–030–1220: G5–0288]

Notice of Postponement and Announcement of Meeting of Southeast Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management (BLM), Interior.

ACTION: Notice of postponement of meeting of Southeast Oregon Resource Advisory Council; Notice of announcement of meeting of Southeast Oregon Resource Advisory Council.

SUMMARY: Notice is given that the meeting of the Southeast Oregon Resource Advisory Council scheduled for January 27 and 28, 1997 is postponed to February 27 and 28, 1997. The meeting location remains the same: The Holiday Inn, 1249 Tapadera Avenue, Ontario, Oregon.

Public comments will be received from 12:00 p.m. to 12:15 p.m., Feb. 27, 1997. Topics to be discussed during the meeting are administrative activities of the Council, the Southeastern Oregon Resource Management Plan, and the Interior Columbia Basin Ecosystem Management Project and the proposed rules regarding BLM's law enforcement authority.

DATES: The Southeast Oregon Resource Advisory Council meeting will be in at 8:00 a.m. and run to 5:00 p.m. Feb. 27, and, 8:00 a.m. to 12:00 noon on Feb. 28, 1997.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918; (Telephone 541–473–3144).

Lynn P. Findley,

Assistant District Manager, Operations.

[FR Doc. 97–127 Filed 1–3–97; 8:45 am]

BILLING CODE 4310–33–M

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice to reinstate a previously approved collection.

SUMMARY: The Department of the Interior has submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (Act) a request for emergency processing to reinstate the collection of information discussed below. The Act requires that OMB provide interested Federal agencies and the public an opportunity to comment on information collection requests. The Act also provides that 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.

DATES: Submit written comments by February 5, 1997.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0057), 725 17th Street, NW., Washington, DC 20503.

Send a copy of your comments to the Chief, Engineering and Standards Branch, Mail Stop 4700, Minerals Management Service, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Standards Branch, Minerals Management Service, telephone (703) 787–1600. You may obtain copies of the proposed collection of information and related forms by contacting MMS's Information Collection Clearance Officer at (703) 787–1242.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart C, Pollution Prevention and Control.

OMB Number: 1010–0057.

Abstract: The information collected consists of information that MMS uses to assess the ability of a lessee to prevent or contain pollution in offshore waters. Responses to this collection of information are mandatory.

Description of Respondents: Federal Outer Continental Shelf oil, gas, and sulphur lessees.

Estimated Number of Respondents: 130.

Frequency: The reporting and recordkeeping requirements and number of respondents vary by section and are on occasion or monthly.

Estimated Annual Burden on Respondents: Reporting burden of 12,440 hours and recordkeeping burden of 137,070 hours, for a total of 149,510 burden hours. The average burden per respondent for both reporting and recordkeeping is estimated to be 1,150 hours.

Estimated Annual Other Costs to Respondents: $250,000 annualized one-time cost for the collection of meteorological data from selected sites to determine cumulative impacts of air quality within the 100-kilometer radius of the Breton National Wilderness Area.

Type of Request: Emergency reinstatement without change of a previously approved collection and subsequent extension of a currently approved collection of information.

Form Number: N/A.

Comments: The OMB is required to make a decision on a request for emergency processing within the time period requested by the agency submitting the collection of information. We requested approval within 7 days after OMB receives our request. OMB may approve an emergency request for 120 days.

During that period of emergency approval, MMS will immediately resubmit a request to OMB for a standard 3-year extension of this collection of information. OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of that request. Therefore, your comments are best ensured of being considered by OMB if OMB receives them within that time period.

The publication of this notice for comments will serve as notice for both submissions to OMB. All comments will become a matter of public record.

On July 11, 1996, MMS provided an opportunity for comments (61 FR 36565) as required by 5 CFR 1320.8(d). No comments were received in response to that notice.

Bureau Clearance Officer: Carole de Witt (703) 787–1242.

Dated: December 4, 1996.

E.P. Danenberger,

Acting Deputy Associate Director for Operations and Safety Management.

[FR Doc. 97–193 Filed 1–3–97; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Submission of Study Package to Office of Management and Budget; Review Opportunity for Public Comment

AGENCY: Department of the Interior; National Park Service; Martin Luther King, Jr., National Historic Site; Mojave National Preserve; Virgin Islands National Park.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) Visitor Services Project and three parks (Martin Luther King, Jr., National Historic Site in Georgia; Mojave National Preserve in California; Virgin

Islands National Park in the U.S. Virgin Islands) propose to conduct visitor surveys to learn about visitor demographics and visitor opinions about services and facilities in each of these three parks. The results of the surveys will be used by park managers to improve the services they provide to visitors while better protecting park natural and cultural resources. Study packages that include the proposed survey questionnaires for these three proposed park studies have been submitted to the Office of Management and Budget for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on these three proposed information collection requests (ICR). Comments are invited on: (1) the need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The purpose of the three proposed ICRs is to document the demographics of visitors to the three parks, to learn about the motivations and expectations these visitors have for their park visits, and to obtain their opinions regarding services provided by the three parks and the suitability of the visitor facilities maintained in the three parks. This information will be used by park planners and managers to plan, develop, and operate visitor services and facilities in ways that maximize use of limited park financial and personnel resources to meet the expectations and desires of park visitors.

There were no public comments received as a result of publishing in the Federal Register a 60 day notice of intention to request clearance of information collection for these three surveys.

DATES: Public comments will be accepted for thirty days from the date listed at the top of this page in the Federal Register.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20530; and also to: Margaret Littlejohn; Cooperative Park Studies Unit; Department of Forest Resources; College of Forestry, Wildlife and Range Sciences; University of Idaho; Moscow, ID 83844–1133.

FOR FURTHER INFORMATION OR A COPY OF THE QUESTIONNAIRE SUBMITTED FOR OMB REVIEW, CONTACT:
Margaret Littlejohn, 208–885–7863.

SUPPLEMENTARY INFORMATION:

Title: National Park Service (NPS) Visitor Services Project Visitor Surveys at Three Parks.

Form: Not applicable.

OMB Number: To be assigned.

Expiration Date: To be assigned.

Type of Request: Request for new clearance.

Description of Need: The National Park Service needs information concerning visitor demographics and visitor opinions about the services and facilities that the National Park Service provides in each of these three parks. The proposed information to be collected regarding visitors in these three parks is not available from existing records, sources, or observations.

Description of Respondents: A sample of visitors to each of these three parks.

Estimated Average Number of Respondents: 360 at Martin Luther King, Jr., National Historic Site; 432 at Mojave National Preserve; and 728 at Virgin Islands National Park.

Estimated Average Number of Responses: 360 at Martin Luther King, Jr., National Historic Site; 432 at Mojave National Preserve; and 728 at Virgin Islands National Park.

Estimated Average Burden Hours Per Response: 12 minutes.

Estimated Annual Reporting Burden: 72 hours at Martin Luther King, Jr., National Historic Site; 86.4 hours at Mojave National Preserve; and 146 hours at Virgin Islands National Park.

Estimated Frequency of Response: One time.

Dated: December 31, 1996.

Terry N. Tesar,

Information Collection Clearance Officer, Audits and Accountability Team, National Park Service.

[FR Doc. 97–136 Filed 1–3–97; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–740 (Final)]

Sodium Azide from Japan

AGENCY: United States International Trade Commission.

ACTION: Cancellation of hearing and briefs.

EFFECTIVE DATE: December 30, 1996.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov or ftp://ftp.usitc.gov*).

SUPPLEMENTARY INFORMATION: On December 30, 1996, the Department of Commerce informed the Commission that a suspension agreement had been signed in the subject investigation. Accordingly, the Commission hereby cancels the hearing on the investigation currently scheduled for January 7, 1997, the prehearing briefs currently due December 31, 1996, and the posthearing briefs currently due January 14, 1997.

AUTHORITY: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 30, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–131 Filed 1–3–97; 8:45 am]

BILLING CODE 7020–02–P

PAROLE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: The first Tuesday of each month throughout Calendar Year 1997, at 3:30 p.m., with the exception of those months in which the Commission gives public notice of the holding of a quarterly business meeting.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed to the public pursuant to 5 U.S.C. 552b(c)(10).

MATTERS TO BE CONSIDERED: The following matters will be considered during the monthly meetings covered by this announcement:

Prisoner and parolee appeals to the National Appeals Board under 28 CFR 2.26, and initial decisions regarding original jurisdiction cases under 28 CFR 2.17,

whenever such cases are found to require discussion among the Commissioners prior to voting. These decisions pertain to cases initially heard by examiners wherein inmates of Federal prisons or persons on Federal parole have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5862.

Dated: December 20, 1996.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 97–287 Filed 1–2–97; 2:24 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Proposed Collection; Comment Request: Correction

ACTION: Correction.

SUMMARY: In notice document 96–33023 beginning on page 68303 in the issue of Friday, December 27, 1996, make the following correction:

On page 68303 in the first column, after the sentence, ''The Department of Labor is particularly interested in comments which:'' insert the following:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

On page 68303 in the second column under **ADDRESSES**, the following statement is added after the telephone number: (This is not a toll-free number).

In the section **FOR FURTHER INFORMATION CONTACT**, the following statement is added after the telephone number: (This is not a toll-free number).

Dated: December 30, 1996.

Jeffrey C. Crandall,

Director of Planning.

[FR Doc. 97–165 Filed 1–3–97; 8:45 am]

BILLING CODE 4510–79–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review and approval of a new information collection under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Joint NRC/EPA Survey of Sewage Sludge/Ash.

2. Current OMB approval number: None.

3. How often the collection is required: This is a one-time collection.

4. Who is required or asked to report: Selected publicly owned treatment works (POTWs), and Agreement States.

5. The number of annual respondents: 600 POTWs for the questionnaire, and 300 POTWs for sample collection, plus 29 Agreement States for reporting of Zip Codes.

6. The number of hours needed annually to complete the requirement or request: An average of 2 hours per respondent for questionnaires and 6 hours each for selected respondents for collecting samples, plus 8 hours each for 29 Agreement States. The total burden is 3,232 hours.

7. Abstract: The survey will obtain national estimates of the levels of radioactive materials in sludge and ash at POTWs, estimate the extent to which radioactive contamination comes from either NRC/Agreement State licensees or from naturally occurring radioactivity, and support possible rulemaking decisions by NRC and EPA. NRC and EPA will send questionnaires to selected POTWs. Based on the results of that survey, NRC will identify approximately 300 POTWs from which samples of sewer sludge/ash will be taken and analyzed. Results of the full survey will be published for use by Federal agencies, States, POTWs, and local POTW officials.

Submit, by March 7, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW., (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 20th of December, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 97–156 Filed 1–3–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards, Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy and on Severe Accidents Rescheduled; Notice of Meeting

A joint meeting of the ACRS Subcommittees on Materials and Metallurgy and on Severe Accidents scheduled to be held on January 9, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland, as been rescheduled to allow more time for discussion. The meeting has been rescheduled for January 9, 1997, 12:30 p.m. until 3:30 p.m. All other items pertaining to this meeting remain the same as previously published in the Federal Register on December 24, 1996 (61 FR 67859).

For further information contact: Mr. Noel F. Dudley, cognizant ACRS staff engineer, (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: December 30, 1996.
Paul Boehnert,
Acting Chief, Nuclear Reactors Branch.
[FR Doc. 97–178 Filed 1–3–97; 8:45 am]
BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38094; File No. SR–NASD–96–49]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Extension of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature Until July 31, 1997

December 30, 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 December 16, 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 Change

The NASD proposes to extend, until July 31, 1997, the effectiveness of certain rules governing the operation of The Nasdaq Stock Market, Inc.'s (''Nasdaq'') Small Order Execution System (''SOES''). Specifically, these SOES rules, which were previously approved by the Commission on a pilot basis on December 23, 1993 [1] and recently extended through January 31, 1997,[2] provide for: (1) a reduction in the minimum exposure limit for unpreferenced SOES orders from five times the maximum order size to two times the maximum order size, and for the elimination of exposure limits for preferenced orders (''SOES Minimum Exposure Limit Rule''); and (2) implementation of an automated function for updating market maker quotations when the market maker's exposure limit has been exhausted (''SOES Automated Quotation Update Feature''). These rules are part of a set of SOES rules approved by the SEC on a pilot basis known as the Interim SOES Rules.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In it 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

The Commission originally approved the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature on a one-year pilot basis in December 1993, along with two other SOES rules which have since lapsed.[4] Since December 1993, the SEC has approved five NASD proposals to extend the effectiveness of the rules, with the most recent approval extending the rules through January 31, 1997.[5] With this filing the NASD proposes to further extend the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature until July 31, 1997, so that the rules can continue on an uninterrupted basis until the SEC has had an opportunity to consider Nasdaq's proposals to amend SOES, SelectNet, and a variety of NASD rules to conform to the SEC's new limit order display rule, Rule 11Ac1–4, and amendments to SEC Rule 11Ac1–1(c)(5), the so-called ECN Rule.[6]

As described in more detail below, because the NASD believes implementation of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have been associated with positive developments in the markets for Nasdaq securities and clearly have not had any negative effects on market quality, the NASD believes it is appropriate and consistent with the maintenance of fair and orderly markets and the protection of investors for the Commission to approve a further limited extension of the effectiveness of these rules. The NASD believes the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature reflect a reasoned approach by the NASD to address the adverse effects on market liquidity attributable to active intra-day trading activity through SOES, while at the same time not compromising the ability of small, retail investors to receive immediate executions through SOES. Specifically, these rules are designed to address concerns that concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transaction prices, wider spreads, and the loss of liquidity for individual and institutional investor orders.

The NASD believes that the same arguments and justifications made by the NASD in support of approval of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and five extensions of these rules are just as compelling today as they were when the SEC relied on them to initially approve these rules. In sum, the NASD continues to believe that concentrated bursts of SOES activity by active order-entry firms contribute to increased short-term volatility, wider spreads, and less market liquidity on Nasdaq and that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature are an effective means to minimize these adverse market impacts. In addition, given the increased utilization of SOES since the SOES Maximum Order Size Rule lapsed at the end of March 1995, the NASD believes it is even more imperative that the SOES Minimum Exposure Limit Rule and the SOES

[1] *See* Securities Exchange Act Release No. 33377 (December 23, 1993), 58 FR 69419 (December 30, 1993) (''Interim SOES Rules Approval Order'').

[2] *See* Securities Exchange Act Release No. 37502 (July 30, 1996), 61 FR 40869 (August 6, 1996) (''Interim SOES Rules Extension Order'').

[3] As first approved by the Commission on December 23, 1993, the Interim SOES Rules had four components: (1) the SOES Minimum Exposure Limit; (2) the Automated Quotation Update; (3) a reduction in the maximum size order eligible for execution through SOES from 1,000 shares to 500 shares (''SOES Maximum Order Size''); and (4) the prohibition of short sales through SOES. The SOES Maximum Order Size Rule lapsed effective March 28, 1995 and the rule prohibiting the execution of short sales through SOES lapsed effective January 26, 1995.

[4] *See* Interim SOES Rules Approval Order, *supra* note 1.

[5] *See* Interim SOES Rules Extension Order, *supra* note 2, and Securities Exchange Act Release Nos. 35275 (January 25, 1995), 60 FR 6327 (February 1, 1995); 35535 (March 27, 1995), 60 FR 16690 (March 31, 1995); 36311 (September 29, 1995), 60 FR 52438 (October 6, 1995) (''October 1995 Extension Order''); and 36795 (January 31, 1996), 61 FR 4504 (February 6, 1996).

[6] *See* Securities Exchange Act Release No. 38008 (December 2, 1996), 61 FR 64550 (December 5, 1996). Should the Commission approve SR–NASD–96–43 prior to July 31, 1997, the rule amendments contained in that filing would supersede and replace the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature where appropriate.

Automated Quotation Update Feature remain in effect to help to ensure the integrity of the Nasdaq market and prevent waves of SOES orders from a handful of SOES order-entry firms from degrading market liquidity and contributing to excessive short-term market volatility.

The NASD notes that the SEC made specific findings in the Interim SOES Rules Approval Order that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature were consistent with the Act. In particular, the SEC stated in its approval order that:

a. Because the benefits for market quality of restricting SOES usage outweighs any potential decrease in pricing efficiency, the Commission concludes that the net effect of the proposal is to remove impediments to the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that the proposed rule changes are designed to produce accurate quotations, consistent with Sections 15A(b)(6) and 15A(b)(11) of the Act. In addition, the Commission concludes that the benefits of the proposal in terms of preserving market quality and preserving the operational efficiencies of SOES for the processing of small size retail orders outweigh any potential burden on competition or costs to customers or broker-dealers affected adversely by the proposal. Thus, the Commission concludes that the proposal is consistent with Section 15A(b)(9) of the Act in that it does not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.[7]

b. The Commission also concludes that the proposal advances the objectives of Section 11A of the Act. Section 11A provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions, fair competition among market participants, and the practicality of brokers executing orders in the best market. The Commission concludes that the proposal furthers these objectives by preserving the operational efficiencies of SOES for the processing of small orders from retail investors.[8]

c. The Commission believes that it is appropriate to restrict trading practices through SOES that impose excessive risks and costs on market makers and jeopardize market quality, and which do not provide significant contributions to liquidity or pricing efficiency. . . . The Commission believes that it is more important to ensure that investors seeking to establish or liquidate an inventory position have ready access to a liquid Nasdaq market and SOES than to protect the ability of customers to use SOES for intra-day trading strategies.[9]

d. The Commission believes that there are increased costs associated with active intra-day trading activity through SOES that undermine Nasdaq market quality * * *. Active intra-day trading activity through SOES can also contribute to instability in the market.[10]

e. In addition, these waves of executions can make it difficult to maintain orderly markets. Given the increased volatility associated with these waves of intra-day trading activity, market makers are subject to increased risks that concentrated waves of orders will cause the market to move away. As a result, individual market makers may be unwilling to narrow the current spread and commit additional capital to the market by raising the bid or lowering the offer. When market makers commit less capital and quote less competitive markets, prices can be expected to deteriorate more rapidly. Accordingly, the Commission believes that it is appropriate for the NASD to take measured steps to redress the economic incentives for frequent intra-day trading inherent in SOES to prevent SOES activity from having a negative effect on market prices and volatility.[11]

f. The Commission does not believe that intra-day trading strategies through SOES contribute significantly to market efficiency in the sense of causing prices to reflect information more accurately.[12]

g. The Commission has evaluated each of the proposed modifications to SOES, and concludes that each of the modifications reduces the adverse effects of active trading through SOES and better enables market makers to manage risk while maintaining continuous participation in SOES. In addition, the Commission does not believe that any of the modifications will have a significant negative effect on market quality. To the extent that any of the modifications may result in a potential loss of liquidity for small investor orders, the Commission believes that these reductions are marginal and are outweighed by the benefits of preserving market maker participation in SOES and increasing the quality of executions for public and institutional orders as a result of the modifications.[13]

h. The Commission * * * has determined that the instant modifications to SOES furthers the objectives of investor protection and fair and orderly markets, and that these goals, on balance, outweigh any marginal effects on liquidity for small retail orders, and any anti-competitive effects on order entry firms and their customers. The Commission concludes that the ability of active traders to place trades through a system designed for retail investors can impair market efficiency and jeopardize the level of market making capital devoted to Nasdaq issues. The Commission believes that the rule change is an appropriate response to active trading through SOES, and that the modifications will reduce the effects of concentrated intra-day SOES activity on the market.[14]

The NASD believes these significant statutory findings by the SEC regarding the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and the SEC's assessment of the likely benefits to the marketplace that would result from the rules have been confirmed and substantiated by econometric studies on the effectiveness of the Interim SOES Rules conducted by the NASD's Economic Research Department[15] and an independent economist commissioned by the NASD.[16] When the SEC approved the Interim SOES Rules, it stated that ''[a]ny further action the NASD seeks with respect to SOES—extension of these modifications upon expiration, or introduction of other changes—will require independent consideration under Section 19 of the Act.'' [17] In addition, the SEC stated that, should the NASD desire to extend these SOES changes or modify SOES, the Commission would expect ''the NASD to monitor the quality of its markets and assess the effects of the approved SOES changes on market quality for Nasdaq securities.'' Also, if feasible, the SEC instructed the NASD to provide a quantitative and statistical assessment of the effects of the SOES changes on market quality; or, if an assessment is not feasible, the SEC stated that the NASD should provide a reasoned explanation supporting that determination.

In sum, the NASD's study found that:

• Since the SOES changes went into effect in January 1994, the statistical evidence indicated that when average daily volume, stock price, and stock price volatility are held constant through regression techniques, quoted percentage spreads in Nasdaq securities experienced a decline in the immediate period of following implementation of the changes and have continued to decline since then. The statistical evidence also showed that the narrowing of quoted percentage spreads became more pronounced and robust the longer the Interim SOES Rules were in effect. In particular, quoted spreads in cents per share for the 500 largest Nasdaq National Market (''NNM'') securities experienced a sharp decline

[7] Interim SOES Rules Approval Order, *supra* note 1, 58 FR at 69423.

[8] *Id.*

[9] *Id.* at 69424–25.

[10] *Id.*

[11] *Id.* at 69425–26.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 69429.

[15] *See* letter from Gene Finn, Vice President & Chief Economist, NASD, to Katherine England, Assistant Director, National Market System & OTC Regulation, SEC, dated October 24, 1994 (letter submitted in connection with the NASD's N•PROVE filing, SR–NASD–94–13 (the NASD later withdrew this filing)).

[16] *See* The Association Between the Interim SOES Rules and Nasdaq Market Quality, Dean Furbush, Ph.D., Economists, Inc., Washington, D.C., December 30, 1994 (''Furbush Study'').

[17] Interim SOES Rules Approval Order, *supra* note 1, 59 FR at 69429.

from April 28 to May 12 and from June 23 to July 18.[18]

• With the exception of a brief, market-wide period of volatility experienced by stocks traded on Nasdaq, the New York Stock Exchange, and the American Stock Exchange during the Spring of 1994, the volatility of Nasdaq securities appears to be unchanged in the period following implementation of the changes; and

• A smaller percentage of Nasdaq stocks experienced extreme relative price volatility after implementation of the rules and that these modifications, in turn, suggest a reduction in relative volatilities since the rules were put into effect.

The Furbush Study found that there was a statistically significant improvement in effective spreads for the top 100 Nasdaq stocks (based on dollar volume) during the three month period following implementation of the rules. Moreover, the study also found that the most significant improvement in effective spreads for the top 100 stocks occurred for trade sizes between 501 and 1,000 shares, precisely the level that was made ineligible for SOES trading by the Interim SOES Rules. In addition, the study found that the average number of market makers for the top ten Nasdaq-listed stocks increased from 44.3 to 46.0, or 3.8 percent, and from 30.2 to 30.9 for the top 100 stocks, or 2.3 percent. Although correlation does not necessarily imply causation, as noted by the SEC when it approved the Interim SOES Rules and extensions of the Interim SOES Rules, the NASD believes that positive market developments clearly have been associated with implementation of the Interim SOES Rules.

The NASD also believes that these studies of the effectiveness of the Interim SOES Rules lend credence to another NASD study that was submitted to the SEC in support of approval of the Interim SOES Rules.[19] In the May 1993 SOES Study, the NASD found that concentrated waves of orders entered into SOES by active order-entry firms resulted in discernible degradation to the quality of the Nasdaq market. Specifically, the study found, among other things, that: (1) bursts of orders entered into SOES by active order entry firms frequently result in a decline in the bid price and a widening of the bid-ask spread; (2) that there is a significant positive relationship between increases in spreads and volume attributable to active order-entry firms as it related to total SOES volume per security; and (3) activity by active order-entry firms resulted in higher price volatility and less liquidity—higher price changes are associated with high active trading firm volume, even after controlling for normal price fluctuations.

The NASD also believes market activity since the SOES Maximum Order Size Rule lapsed on March 28, 1995, provides further support for the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and the NASD's economic rationale for these rules. In particular, an analysis prepared by the NASD's Economic Research Department clearly illustrates that there has been a dramatic increase in SOES volume since the SOES Maximum Order Size Rule lapsed and that many market maker positions have been abandoned. These two phenomena appear to be linked. Those Nasdaq stocks that have experienced the greatest decline in the number of market makers are the ones that have experienced the greatest increase in SOES volume since the rule lapsed.[20] The NASD believes these figures indicate that the relaxation of one of the Interim SOES Rules may have contributed to some of the adverse market developments that the NASD was seeking to avoid through implementation of the Interim SOES Rules (*e.g.*, degradation in market maker participation and market liquidity).[21] Accordingly, the NASD believes that any further relaxation of the Interim SOES Rules by permitting the SOES Minimum Exposure Limit Rule or the SOES Automated Quotation Update Feature to lapse would further harm the Nasdaq market. In light of the significance of these figures and their indicated adverse ramifications upon the Nasdaq market, the NASD also believes that SEC reconsideration of its position with respect to the entry of 1,000-share orders into SOES is warranted.

The NASD also has prepared another report that the NASD believes illustrates that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have had no adverse impact on the market for Nasdaq securities.[22] This report was in response to the Commission's request in the October 1995 Extension Order that the NASD:

> Monitor the extent to which exposure limits are exhausted, the extent to which the automated quotation update feature is used, and the effects these two aspects have on liquidity. Moreover, the Commission expects the NASD to consider the possibility of enhancements to eliminate the potential for delayed and/or inferior executions.[23]

In sum, the December 1995 Monitoring Report found that it is very infrequent occurrence for a market maker to have its exposure limit exhausted in a NNM security. In particular, from the period October 2, 1995 to November 22, 1995, there were, on average, 83 instances per day where a market maker's exposure limit in NNM securities was exhausted.[24] Thus, given the fact that there was an average of 44,062 market making positions in NNM securities and 3,932 NNM securities trading per day during this time period, the impact of these individual exposure limit exhaustions on the availability of SOES to investors throughout the trading day was infinitesimal. Each market making position experienced .0019 exposure limit exhaustions per day over this time period and each NNM securities experienced .0211 exhaustions per day. Moreover, while Nasdaq could not readily determine the extent to which the exposure limit exhaustions occurred simultaneously in the same security, given the stark infrequency with which the exposure limit exhaustions occurred, the NASD believes it is extremely improbable that a NNM security would experience a situation where the SOES exposure limits for all market makers in that stock were exhausted at the same time. Indeed, this

[18] Some press reports have attributed the recent decline in spreads for Nasdaq stocks to the publication, on May 26 and 27, 1994, of newspaper articles in *The Wall Street Journal, The Los Angeles Times* and other publications reporting the results of an economic study conducted by two academicians that illustrated the lack of odd-eighth quotes for active Nasdaq stocks. Contrary to these press reports, this study shows that spreads had indeed narrowed before publication of these articles (from April 28 to May 12), stabilized at these narrower levels from mid-May until June 23, and declined again from June 23 to July 18.

[19] *See* NASD Department of Economic Research: Impact of SOES Active Trading Firms on Nasdaq Market Quality (May 12, 1993) (''May 1993 SOES Study''). *See also* Securities Exchange Act Release No. 32313 (May 17, 1993), 58 FR 29647 (publication of the study for comment).

[20] *See* letter from Richard G. Ketchum, Executive Vice President & Chief Operating Officer, NASD, to Brandon Becker, Director, Division of Market Regulation, SEC, dated August 1, 1995.

[21] The NASD believes that elimination of the ban against short sales through SOES did not have a dramatic negative market effect because the NASD's short sale rule was approved during the time that the ban was in effect.

[22] *See* Monitoring Report of Exhaustion of SOES Exposure Limits and the Usage of Nasdaq Automated Quotation Update Feature, NASD Economic Research Department, December 18, 1995.

[23] October 1995 Extension Order, *supra* note 5, 60 FR at 52439, n. 12 (''December 1995 Monitoring Report'').

[24] The highest number of exposure limits exhausted on any day during this period was 119 on November 21, 1995 and the lowest number was 47 on October 4, 1995.

conclusion is borne out by the extremely short time-span in which SOES orders are executed. Specifically, the report shows that, on average, SOES orders are executed 1.62 seconds after entry and that 98.5 percent of all SOES orders are executed within three seconds.[25]

The report also showed that SOES exposure limit exhaustions tend to cluster in active NNM securities with high numbers of market makers. This further illustrates the extremely low probability that all market makers in the same security would ever have their exposure limits exhausted simultaneously. Lastly, examining one trading day, the report shows that active SOES order entry firms accounted for 92 percent of the exposure limit exhaustion, as might be expected given that these firms account for 89 percent of SOES dollar volume. Accordingly, the NASD and Nasdaq believe that the SOES Minimum Exposure Limit Rule has had a very negligible, if any, impact on the availability of SOES to small, retail investors.

The report also found that the Automated Quotation Update Feature appears to be used extensively by some market making firms. Specifically, the report shows that the quote update feature is used by 126 market makers for 10,644 market making positions. Thus, this feature is currently being used by 26 percent of the market makers and for 24 percent of all market making positions. In addition the report showed that, on average, 3,394 quotations a day were generated by the quote update feature from October 2, 1995 to November 21, 1995. Accordingly, the NASD and Nasdaq believe that the Automated Update Feature has effectively served its intended purpose of helping to maintain continuous quotations in Nasdaq, minimize ''closed quote'' conditions, and avoid unexcused market maker withdrawals, thereby promoting market liquidity.

Accordingly, the NASD believes the Commission should properly view these two SOES rules as strictures that are highly correlated with improvements in market liquidity, not as rules that have had or could have a damaging effect on liquidity. The NASD and Nasdaq also believe the monitoring report illustrates that implementation of the Automated Quotation Update Feature and the SOES Minimum Exposure Limit Rule have not diminished the significant benefits provided to investors through the automatic execution capabilities of SOES. Simply put, these two SOES rules have in no way altered the operation of SOES as an automatic execution system that affords small, retail investors immediate executions at the inside market.

Moreover, in the Interim SOES Rules Extension Order, an order approving a proposal identical to the NASD's instant proposal, the SEC found that the continued effectiveness of the SOES Minimum Exposure Limit Rule ''provides customers fair access to the Nasdaq market and reasonable assurance of timely executions.''[26] With respect to the SOES Automated Quotation Update Feature, the SEC also stated that it believes ''that extending the automated update feature is consistent with the Act and, in particular, the Firm Quote Rule. The update function provides market makers the opportunity to update their quotations automatically after executions through SOES; under the Commission's Firm Quote Rule, market makers are entitled to update their quotations following an execution and prior to accepting a second order at their published quotes.''[27]

Therefore, in light of the above-cited statutory findings made by the SEC when it first approved the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and extensions of these rules, coupled with the NASD's findings that these rules have been associated with positive market developments in terms of lower spreads on Nasdaq and less stocks with extreme relative price volatility, the NASD believes it would be consistent with the Act for the Commission to extend the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature for an additional six-month period. Moreover, even if the Commission is unwilling to find positive significance in the NASD's statistical analyses, at the very least, these studies indicate that the market has not been harmed by implementation of these rules.[28]

The NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act. Among other things, 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. Specifically, the NASD is proposing to extend the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature until July 31, 1997 because of concerns that concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transaction prices, wider spreads, and the loss of liquidity for individual and institutional investor orders, all to the detriment of public investors and the public interest. The NASD believes the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have operated to rectify this situation while continuing to provide an effective opportunity for the prompt, reliable execution of small orders received from the investing public. Accordingly, in order to protect investors and the public interest, the NASD believes the SEC should approve an additional six-month extension of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature through July 31, 1997, so that small investors' orders will continue to receive the fair and efficient executions that SOES was designed to provide.

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[25] The report also found that SOES orders can experience brief execution delays in isolated instances, as one order took as long as 87 seconds to be executed. While the NASD could not readily identify the reasons for these infrequent execution delays, the NASD believes these delays are likely the result of two factors. First, consistent with the NASD's short-sale rule, short sales entered into SOES cannot be executed on down bids. Second, waves of SOES orders transmitted by active SOES order-entry firms cause queues to develop in the processing of SOES orders, which, in turn, causes execution delays.

[26] Interim SOES Rules Extension Order, *supra* note 2, 61 FR at 40870.

[27] *Id.* (footnotes omitted).

[28] Even if the Commission concludes that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have had no impact on market quality, the NASD believes the Commission's approval of New York Stock Exchange (''NYSE'') Rule 80A on a permanent basis illustrates that the Commission and would still have a sufficient basis to approve an extension of the rules for a six-month period. In particular, the SEC's discussion of the statutory basis for approval of NYSE Rule 80A focused in large part on the fact that Rule 80A did not have any adverse impacts on market quality on the NYSE and that, as a result, the NYSE should be given the latitude to take reasonable steps to address excessive volatility in its marketplace. *See* Securities Exchange Act Release No. 29854 (October 24, 1994), 56 FR 55963 (October 30, 1994). Accordingly the NASD believes the SEC should afford the NASD the same regulatory flexibility that it afforded the NYSE to implement rules reasonably designed to enhance the quality of Nasdaq and minimize the effects of potentially disruptive trading practices.

Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature apply across the board and do not target any particular user or participant, as all dealers may set their exposure limits at two times the tier size and all dealers may elect to utilize the automated quote update feature. Accordingly, the NASD believes that these rule changes are not anticompetitive, as they are uniform in application and they seek to preserve the ability of SOES to provide fair and efficient automated executions for small investor orders, while preserving market maker participation in SOES and market liquidity.

Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. The NASD is seeking to continue the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature so that SOES activity may not result in misleading quotations in the Nasdaq market. Market makers place quotes in the Nasdaq system and these quotes comprise the inside market and define the execution parameters of SOES. When volatility in the SOES environment causes market makers to widen spreads or to change quotes in anticipation of waves of SOES orders, quotes in the Nasdaq market become more volatile and may be misleading to the investing public. Accordingly, absent continuation of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature, the quotations published by Nasdaq may not reflect the true market in a security and, as a result, there may be short-term volatility and loss of liquidity in Nasdaq securities, to the detriment of the investing public. Further, the continuation of the automated refresh feature will ensure that a market maker's quotation is updated after an exposure limit is exhausted. Uninterrupted use of this function will maintain continuous quotations in Nasdaq as market makers exhausting their exposure limits in SOES will not be subject to a ''closed quote'' condition or an unexcused withdrawal from the market.

Finally, the NASD believes that the proposed rule change is consistent with significant national market system objectives contained in Section 11A(a)(1)(C) of the Act. This provision states it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things: (i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; and (iii) the practicality of brokers executing investor orders in the best market. Specifically, the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature advance each of these objectives by preserving the operational efficiencies of SOES for the processing of small investors' orders, by maintaining current levels of market maker participation through reduced financial exposure from unpreferenced orders, and by reducing price volatility and the widening of market makers' spreads in response to the practices of order entry firms active in SOES.

In addition, for the same reasons provided by the SEC when it approved the Interim SOES Rules that are cited above in the text accompanying footnotes 7 through 14, the NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act.

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.

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 coping 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 January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–147 Filed 1–3–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38092; File No. SR–NASD–96–52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Reporting of Short Sale Transactions by Market Makers Exempt from the NASD's Short Sale Rule

December 27, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 17, 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

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

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

The NASD is proposing to amend its Automated Confirmation Transaction (''ACT'') Service rules to require all Primary Market Makers (''PMMs'') to mark their ACT reports to denote when they have relied on the PMM exemption to the NASD's short sale rule.[2] In order to afford NASD members ample time to modify their automated systems to comply with the proposed rule change, the NASD proposes to establish an effective date for the rule change in a Notice-to-Members announcing Commission approval of the proposal, which Notice-to-Members shall be published within thirty days of Commission approval of the proposal and which effective date shall be no longer than three weeks after the date of publication of the Notice. The text of the proposed rule change is as follows. (Deletions are bracketed.)

* * * * *

NASD Rule 6130

* * * * *

(d) Trade Information To Be Input

Each ACT report shall contain the following information:

(1)–(5). No change.

(6) A symbol indicating whether the transaction is a buy, sell, sell short, sell short exempt [*] or cross;

(7)–(12). No change.

[* The ''sell short'' and ''sell exempt'' indicators must be entered for all customer short sales, including cross transactions, and for short sales effected by members that are not qualified market makers pursuant to Rule 3350.]

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

On June 29, 1994, the SEC approved the NASD's short sale rule applicable to short sales in Nasdaq National Market (''NNM'') securities on an eighteen-month pilot basis through March 5, 1996.[3] The NASD's short sale rule prohibits member firms from effecting short sales at or below the current inside bid as disseminated by Nasdaq whenever that bid is lower than the previous inside bid.[4] The rule is in effect during normal domestic market hours (9:30 a.m. to 4:00 p.m., Eastern Time).

In order to ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is involved, the rule provides an exemption to ''qualified'' Nasdaq market makers. Even if a market maker is able to avail itself of the qualified market maker exemption, it can only utilize the exemption from the short sale rule for transactions that are made in connection with bona fide market making activity. If a market maker does not satisfy the requirements for a qualified market maker, it can remain a market maker in the Nasdaq system, although it cannot take advantage of the exemption from the rule.

To be a ''qualified'' market maker, a market maker must satisfy the Nasdaq Primary Market Maker (''PMM'') Standards. Under the PMM Standards, a market maker must satisfy at least two of the following four criteria to be eligible for an exemption from the short sale rule: (1) The market maker must be at the best bid or best offer as shown on Nasdaq no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its ''proportionate'; volume in the stock.[5] If a market maker is a PMM for a particular stock, there is a ''P'' indicator next to its quote in that stock.

If a member firm is a PMM in 80 percent or more of the securities in which it has registered, the firm may immediately become a PMM (*i.e.*, a qualified market maker) in an NNM security be registering and entering quotations in that issue. Otherwise, it may become a PMM in a stock only after it has registered in the stock as a regular Nasdaq market maker an satisfied the PMM qualification standards for the next review period. The ability of a member firm to achieve and maintain PMM status in 80 percent of the NNM issues in which it is registered also has other corollary effects in market maker registration situations involving initial public offerings, secondary offerings, mergers and acquisitions.

In order to enhance the NASD's ability to surveil for compliance with the short-sale rule, when the Commission approved the NASD's short-sale rule it also approved an NASD proposal to require NASD members to append a designator to their ACT reports to denote whether their sale transactions were long sales, short sales, or exempt short sales. However, market makers exempt from the short-sale rule are not required to append ''sell short'' or ''sell short exempt'' to their ACT reports.[6] Accordingly, in order to enhance the NASD's ability to surveil for potential abuses of the market maker exemption and examine and monitor the market impacts of the market maker exemption, the NASD is

[2] A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale members must adhere to the definition of a ''short sale'' contained in SEC Rule 3b–3, which rule is incorporated into Nasdaq's short sale rule by NASD Rule 3350(k)(1).

[3] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) (''Short Sale Rule Approval Order''). The termination date for the pilot program has subsequently been extended through October 1, 1997, *See* Securities Exchange Act Release Nos. 36171 (August 30, 1995), 60 FR 46651; 36532 (November 30, 1995), 60 FR 62519; 37492 (July 29, 1996), 61 FR 40693; and 37919 (November 1, 1996), 61 FR 57934.

[4] Nasdaq calculated the inside bid or best bid from all market makers in the security (including bids on behalf of exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an ''up bid'' or a ''down bid.'' Specifically, an ''up bid'' is denoted by a green ''up'' arrow and a ''down bid'' is denoted by a red ''down'' arrow. Accordingly, absent an exemption from the rule, a member cannot effect a short sale at or below the inside bid for a security in its proprietary account or a customer's account if there is a red arrow next to the security's symbol on the screen. In order to effect a ''legal'' short sale on a down bid, the short sale must be executed at a price at least a 1/16th of a point above the current inside bid. Conversely, if the security's symbol has a green up arrow next to it, members can effect short sales in the security without any restrictions.

[5] Specifically, the proportionate volume test requires a market maker to account for volume of at least 1½ times its proportionate share of overall volume in the security for the review period. For example, if a security has 10 market makers, each market maker's proportionate share volume is 10 percent. Therefore, the proportionate share volume is one-and-a-half times 10, or 15 percent of overall volume.

[6] Specifically, the footnote to NASD Rule 6130(d)(6) provides that ''[t]he 'sell short' and 'sell short exempt' indicators must be entered for all customer short sales, including cross transactions, and for short sales effected by members that are not qualified market makers pursuant to Rule 3350.''

proposing to delete the footnote to NASD Rule 6130(d)(6), thereby requiring all exempt market makers to mark their ACT reports to denote when they have relied on the market maker exemption.[7] In this connection, the NASD also notes that SEC staff has expressed preliminary concerns with the fact that the NASD's short sale rule does not apply uniformly to all market participants by virtue of the market maker exemption. As a result, to justify retention of the market maker exemption, SEC staff has indicated that the NASD must, among other things, conduct a thorough analysis of the use and effects of the market maker exemption.

The NASD believes the short-sale information that would be gathered upon approval of this rule filing would be a necessary and critical component of such an analysis of the market maker exemption.

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6) of the Act.[8] 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, and to remove impediments to and perfect the mechanism of a free and open market. Specifically, the NASD believes that requiring exempt market makers to mark their ACT reports to denote when they have relied on the market maker exemption will help to enhance the ability of NASD Regulation, Inc. to monitor whether market makers are abusing the exemption and facilitate the NASD's ability to examine the market impacts of the market maker exemption from the short sale rule.

[7] In this connection, consistent with SEC statements regarding the intraday netting obligations of firms under SEC Rule 3b–3, the NASD notes that it will be permissible for firms to conduct a ''firm-wide netting'' of long and short positions once a day. Accordingly, the NASD believes it would be permissible for a Nasdaq trading desk to receive a stock position report at the opening and net those trades effected by the Nasdaq trading desk against this position throughout the day to determine whether particular sale was long or short. Of course, if a firm has developed the capability to continuously net its positions throughout that day, that firm would have to rely on such updated position reports to determine whether a particular sale was long or short. *See* Securities Exchange Act Release No. 27938 (April 23, 1990), 55 FR 17949, 17950.

[8] 15 U.S.C. § 78o–3(b)(6).

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 proposes 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the proposed rule change be approved on an accelerated basis. The NASD believes that good cause exists to accelerate approval of the proposal because of the NASD's need to commence capturing exempt sales by exempt market makers through ACT for a sufficient time in advance of the expiration of the pilot program for the rule on October 1, 1997. With the information collected, the NASD's Economic Research Department can conduct a meaningful and statistically significant study on, among other things, the market impact of the market maker exemption from the rule.

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, NW., Washington, DC 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 File No. SR–NASD–96–52, and should be submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[9] 17 CFR 200.30–3(a)(12) (1996).

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–38091; File No. SR–NASD–96–55]

Self-Regulatory Organizations; Notice of Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to Primary Market Maker Standards

December 27, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 23, 1996, the Nasdaq Stock Market, Inc. (''Nasdaq'') 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 Nasdaq. 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

Nasdaq, a wholly owned subsidiary of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), proposes to temporarily waive NASD Rule 4612, regarding primary Nasdaq market maker standards for the remainder of the current pilot period of the Nasdaq Short Sale Rule [2] or until new primary market maker standards can be devised.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] On November 1, 1996, the Commission extended the pilot period of the NASD Short Sale Rule through October 1, 1997. Securities Exchange Act Release No. 37917 (November 1, 1996), 61 FR 57934 (or approving on an accelerated basis an extension to the NASD's Short Sale Rule through October 1, 1997).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq has evaluated its existing qualification criteria in the primary market maker standards rule, Rule 4612 (a) and (b), in light of the new SEC rules regarding a Nasdaq market maker's order handling obligations (''Order Handling Rules'').[3] Nasdaq strongly believes that because of the potential changes in quotation and trading activity in Nasdaq securities when the Order Handling Rules become effective, the existing numerical criteria used to qualify a registered market maker as a primary market maker will be significantly affected. Because the precise effects on market maker quotes and trades are not possible to predict until Nasdaq can develop practical experience with new patterns of activity under the Order Handling Rules, Nasdaq believes that it should attempt to minimize the possible harmful unintended consequences that could occur by leaving the current standards in place. Accordingly, Nasdaq believes that the existing standards should be temporarily suspended on the same schedule for the phase in of the Order Handling Rules which commence on January 10, 1997.

Under existing Rule 4612, a registered Nasdaq Market Maker may be deemed to be a primary market maker in national market securities if the market maker meets two of three criteria: (1) The market maker maintains the best bid or best offer as shown on Nasdaq no less than 35% of the time; (2) a market maker maintains a spread no greater than 102% of the average dealer spread; and (3) no more than 50% of a market maker's quotation changes occur without a trade execution. In addition, if a registered market maker meets only one of the above criteria, it may nevertheless qualify as a primary market maker if the market maker accounts for volume at least 1½ times its proportionate share of overall volume in the stock. The review period for meeting any of these criteria is one calendar month.

Commencing on January 10, 1997,[4] the Order Handling Rules will go into effect. These new rules will require Nasdaq market makers to change their quotes when they are in receipt of customer limit orders that improve upon their current quotations. Furthermore, under newly refined best execution principles enunciated by the SEC, market makers will be required to execute orders under different circumstances from today. Finally, entities that are not market makers, (*e.g.*, electronic communication networks (''ECNs'')), will participate in Nasdaq and may have a substantial impact on quotations and executions. Nasdaq believes that each of the current criteria will be affected. For example, as to the 102% of average dealer spread test, dealer quotes will not be driven not merely by the market maker's proprietary interests, but also the interests of customers that place limit orders with the market maker. Under the new rules, a quote of a market maker driven by a customer limit order will be indistinguishable from that of a quote driven by a customer order. In addition, the test regarding the percentage of time in which the market maker's quote is at the inside will also be driven to some extent by customer limit order interest. Further, because ECNs will be able to drive the inside price, the parameters for this factor may need to be reevaluated. Finally, Nasdaq believes that the ''quote change to executed trade ratio test'' will also be affected by customer limit orders which may be changed or cancelled by the customer without the market maker being involved in an execution. At this time, however, Nasdaq believes it is virtually impossible to predict with any accuracy precisely how market makers will change their quotation and execution patterns.

Because of this uncertainty, Nasdaq believes that it is in the public investor's best interests to temporarily suspend the operation of the primary market maker standards that currently exist. If the standards are not suspended, and there is a significant shift in the patterns of quotation and executions, Nasdaq believes that market makers operating under the existing standards and earning the primary market maker designation could conceivably lose that status. Nasdaq believes that loss of the designation would mean that market makers without the designation would not be permitted to avail themselves of the short sale exemption for primary market makers. If a significant number of registered market makers were to lose the short sale exemption, or if a single market maker that handled a significant portion of the order flow in a security were to lose the exemption, Nasdaq believes liquidity in that particular stock could be seriously harmed.

Therefore, Nasdaq is proposing that starting on February 1, 1997, any market maker making a market in any of the initial 50 stocks selected for the first phase of implementation of the Order Handling Rules on January 10, 1997, will be able to avail itself of the short sale exemption for qualified market makers found in Rule 3350(c)(1). Similarly, Nasdaq proposes that as stocks are phased in to the new Order Handling Rules, any registered market maker in the stock would be deemed to be qualified for purposes of the short sale qualified market maker exemption.

In seeking to temporarily suspend the use of the primary market maker qualification criteria, Nasdaq believes that the suspension of the criteria is an appropriate balance between the need for limitations on the market maker short sale exemption and the potential for loss of liquidity and market disruption in a period when new patterns and practices of trading are first being developed. Nasdaq believes that the period of time in which the Order Handling Rules are first being implemented may be a period of uncertainty for market makers and investors alike and that the prudent course of action would be to identify and eliminate as many potential areas for increasing that uncertainty as possible. Nasdaq has identified this issue as a critical area of uncertainty and believes that the suspension of the market maker qualification standards on a temporary basis is an appropriate market quality response. Nasdaq believes that this relief will enable Nasdaq market makers to better satisfy investor liquidity demands and could help to promote pricing efficiency.

Nasdaq also plans to develop new standards as soon as practicable after the Order Handling Rules become effective and Nasdaq can obtain experience with the manner in which the new rules affect market makers. Nasdaq plans to obtain the data from January and discuss the practices among staff and with the Quality of Markets Committee.

Nasdaq believes that the proposed rule change is consistent with Section

[3] These rules include Rule 11Ac1-4, the customer limit order display rule and amended Rule 11Ac1-1, amendments to the firm quote rule regarding the display of priced orders entered by market makers or specialists into electronic communications networks. *See* Securities Exchange Act Release No. 37619 (September 6, 1996); 61 FR 48290 (Order Handling Rules Adopting Release).

[4] Nasdaq has requested relief from the January 10, 1997 commencement date of the Order Handling Rules. Nasdaq seeks to commence compliance with the rules on January 13, 1997, because of concerns that it would pose an untenable system change risk to attempt to rush the introduction of new trading system software during the trading week. If the SEC grants the relief sought, the commencement date for this proposed rule change would also be January 13, 1997. Thus, in the course of the filing on this proposed rule change, while Nasdaq refers to January 10, 1997, as the commencement date, if the SEC grants the relief requested, the actual implementation date would be January 13, 1997.

15A(b)(6) of the Act[5] in that it is designed to prevent fraudulent and manipulative acts and facilitates transactions in securities. In particular, Nasdaq believes this temporary amendment to the existing rule should provide market makers with certainty regarding whether they are entitled to an exemption under the rule which should promote market efficiency and enhance the orderliness of the market during a transition period. Nasdaq further believes the proposed rule change should also help in reducing investor confusion at this time and thereby promote efficient and fair markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(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

Nasdaq has requested that the Commission find good cause pursuant to Section 19(b)(2)[6] for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. The date that the Order Handling Rules go into effect and Nasdaq must make system changes to accommodate the new regulatory requirements is January 10, 1997. Because Nasdaq believes that market makers must be provided with information regarding the exemption from the short sale rule as soon as possible before February 1, 1997, Nasdaq requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register. The alternative is potential confusion and market disruption as market makers may be unsure about whether they are in fact eligible to sell short in the course of their market making activities.

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 File No. SR–NASD–96–55, and should be submitted by January 16, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–150 Filed 1–3–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–38084; File No. SR–NASD–96–48]

Self-Regulatory Organizations; Notice of Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to: (1) Rule 4770 of the SOES Rules, Regarding the Fees Charged for Executions and Cancellation of Orders Entered in SOES, and (2) Rule 7010, Related to Charges for Orders and Cancellation of Orders Entered Into SelectNet

December 24, 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 December 16, 1996, the Nasdaq Stock Market, Inc. (''Nasdaq'') 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 Nasdaq. 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

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''), The Nasdaq Stock Market, Inc., (''Nasdaq''), a wholly owned subsidiary of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), is herewith filing a proposed rule change to amend: (1) Rule 4770 of the Small Order Execution System (''SOES'') Rules, regarding the fees charged for executions and cancellation of orders entered in SOES, and (2) Rule 7010, related to charges for orders and cancellation of orders entered into SelectNet. Nasdaq has requested that the Commission approve the proposed rule change on an accelerated basis. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

Rule 4700 Small Order Execution System (SOES)

* * * * *

Rule 4770.

[A fee of $.005 per share shall be assessable to SOES Market Makers for all transactions executed through SOES provided, however, that the minimum charge per execution shall be $.50 and the maximum charge per execution shall be $1.00.]

(a) A fee for orders executed through SOES shall be assessed, to be allocated as follows: the SOES Market Maker executing the order shall be assessed $0.50 per transaction and the SOES Order Entry Firm of SOES Market Maker entering the order shall be assessed $0.50 per order.

(b) For each order entered by a SOES Order Entry Firm of a SOES Market Maker that is cancelled, the SOES Order Entry Firm or SOES Market Maker that cancels such order shall be assessed a fee of $0.25.

* * * * *

Rule 7000 Charges for Services and Equipment

* * * * *

Rule 7010 System Services

(a)–(d) No changes.

(e) SelectNet Service.

The following charges shall apply to the use of SelectNet:

Transaction Charge—$2.50/side

Cancellation Fee—$.25/per order

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

The NASD and Nasdaq have evaluated the current fee structures for SOES and the SelectNet system that will be changed to accommodate the new SEC rules regarding a Nasdaq market maker's order handling obligations, *i.e.*, Rule 11Ac1–4 (the customer limit order display rule) and amended Rule 11Ac1–1 (amendments to the firm quote rule regarding the display of priced orders entered by market makers or specialists into electronic communications networks (''ECNs'').[1] The NASD and Nasdaq have determined, as explained below, to restructure SOES and SelectNet fees because of changes to their operation as addressed in recently filed NASD proposed rule changes stemming from the SEC's new rules. All of the recommended fee changes are contingent upon commencement of the new NASD rules.

(1) SOES Fees

SOES is Nasdaq's small order execution system in which orders 1,000 shares or less are automatically executed against available Nasdaq market makers.

In a separate rule filing before the Commission,[2] Nasdaq has proposed to make significant changes to SOES to permit market makers to comply with new obligations to display customer limit orders in their quotations and to execute orders at such quotes only up to actual displayed size, as opposed to an artificial ''tier size'', as currently occurs. Moreover, among other things, the NASD and Nasdaq have proposed to allow market makers to enter customer market and marketable limit orders into SOES, unlike the current SOES Rules which prohibit market maker entry of such orders, unless the market makers self-preference those orders, i.e., direct them to themselves. Because the order handling rules change the current approach to market maker quoting in Nasdaq securities from a pure dealer-driven quote to a more order-driven quote, the NASD and Nasdaq believe that the disparate application of the current SOES fee structure to the market maker should be changed to take into account the new process by which quotes are established and orders are executed. Accordingly, the NASD and Nasdaq propose to establish a charge assessed against both sides to the transaction regardless of the size of the transaction—both the order entry firm and the market maker will be charged for the execution in SOES. Under the new fee structure, if an order entry firm or a market maker were to enter an order of 1,000 shares into SOES, and that order were executed against a single market maker, the firm entering the order (whether a market maker or order entry firm) would be assessed $.50 and the market maker executing the order would be assessed $.50. If a SOES order entered by an order entry firm were executed against multiple market makers, the order entry firm would be charged a single $0.50 fee while each market maker participating in the executions would also be charged a $.50 fee.

The NASD and Nasdaq have proposed this charge against both parties to an execution in recognition of the significant market structure changes caused by the SEC rules, the respective use of Nasdaq facilities to support SOES operations by both market makers and order entry firms, and the significant benefits that both sides of the trade receive in the new SOES. Unlike in the past when the quotations represented solely market maker proprietary interest, in the new environment market makers may be displaying a priced order under the customer limit order display rule. Because market makers may be quoting a particular price in order to attract order flow, it is appropriate to assess them a reasonable fee for using SOES to obtain executions.

The fee structure is fair and reasonable in that it is similar to transaction charges assessed in the securities industry for automatic executions. The system that the NASD and Nasdaq are providing to the membership attempts to provide members with an economically efficient means of accessing public quotations and executing securities transactions at these published prices. Moreover, it equitably allocates charges to both sides of the transaction that are utilizing this public facility, both of whom benefit from the execution and both of whom consume resources in utilizing the system. In this new structure, there is no reason to allocate all of the costs in operating SOES to the market maker. Instead, the more equitable allocation of costs is to charge both the order entry firm and the order execution firm. In this way, both parties to the transaction are allocated the costs that Nasdaq incurs in developing and operating this system.[3]

(2) SOES and SelectNet Cancellation Fees

The NASD and Nasdaq also authorized a new fee related to cancellations entered into SOES and SelectNet.[4] The fee adopted for orders entered into either system is $0.25 for each order cancelled. Neither SOES nor SelectNet currently have an order cancellation fee. However, Nasdaq has taken note of the significant number of orders entered into both systems and cancelled, sometimes almost simultaneously with order entry. By way of example, on a typical day, approximately 161,400 SelectNet orders may be entered, while approximately 125,600 of such orders are cancelled. Only 19,000 are executed. In SOES, of approximately 100,000 orders entered, 30,000 typically are cancelled.[5] Moreover, many cancellations occur within a 30 second period after order entry. For example, on November 8, 1996, the heaviest user of SelectNet entered 70,000 orders, and cancelled a total of almost 64,000 orders, of which 30,000 were cancelled within 30 seconds of order entry. Such use of the system requires that Nasdaq construct its system to handle the large system and network utilization that occurs in such use. Accordingly, recognizing that order cancellations consume significant system resources, Nasdaq adopted a cancellation fee to achieve an equitable allocation of the communications costs associated with the Nasdaq network

[1] *See* Securities Exchange Act Release No. 37619A (September 6, 1996); 61 FR 48290 (September 12, 1996) (Order Handling Rules Adopting Release).

[2] *See* Securities Exchange Act Release No. 38008 (December 2, 1996); 61 FR 64550 (December 5, 1996); (publishing notice of filing of SR–NASD–96–43).

[3] Under NASD Rules, members are permitted to either absorb the costs assessed, or to pass the fee along to the ultimate customer.

[4] It should be noted that SelectNet fees will remain as currently structured. It should also be noted that the SelectNet transaction fee applies to both sides of the transaction. Moreover, the fee will apply to all parties using the system, including electronic communications networks whose priced orders are accessed by NASD members entering orders into SelectNet,

[5] Data was extracted from November 20, 1996, data.

among all firms that utilize the capacity of the system.

Nasdaq believes that for the foregoing reasons the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act in that the proposed fees provide for the equitable allocation of reasonable fees among members using facilities and systems operated by Nasdaq meet the requirements of Section 15A(b)(5) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(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 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 submissions should refer to File No. SR–NASD–96–48 and should be submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–152 Filed 1–3–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38087; File No. SR–PSE–96–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Stock Exchange Incorporated Relating to Its Rules on Executions of ''Odd Lot'' Equity Orders

December 24, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 1996, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') 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 self-regulatory organization. On December 17, 1996, the PSE submitted an amendment (''Amendment No. 1'') to the proposed rule change.[3] 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

The PSE is proposing to amend its rules on executions of ''odd lot'' equity orders. Under the rule change, odd lot limit orders will be placed in the front of the book for priority and book display purposes. The rule change will also modify the basis on which limit, stop limit and stop orders must be executed. In addition, the rule change will prohibit certain practices involving the entry of odd-lot orders. Finally, the proposal will modify the Exchange's odd lot rule in order to remove certain provisions that no longer apply to executions of odd lot orders on the Exchange.

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 self-regulatory Organization 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 self-regulatory organization 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. Purpose

The Exchange is proposing this rule change in order to provide better service to customers and to be competitive with other exchanges.[4] The Exchange is proposing to modify Rule 5.34(b) (''Odd Lot Executions'') to provide as follows:

First, with regard to market orders, the proposal states that an odd lot market order shall be executed off the price reflected in the consolidated quote system's best bid/offer. (The current rule states that such orders shall be filled at the price of the first round lot transaction which takes place on the primary market, plus if a buy order, or minus if a sell order, an odd lot differential, if any.)

Second, with regards to limit orders, the proposed rule states that an odd lot limit order shall be filled at, or better than, the price of the first regular way round lot transaction that is at, or better than, the limit order's price printed on the consolidated tape from the security's primary market.[5] It further states that such odd lot orders shall be allowed to establish precedence without regard to priority of existing round-lot bids or offers at that price. (The current rule states that such orders shall be filled at the price of the first round lot transaction which takes place on the primary market, which in the case of a buy order is below the specified limit by the amount of the trading differential, or by a greater amount; or which in the case of a sell order is above the specified limit by the amount of the trading differential, or by a greater amount; plus

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE to Janet Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, dated December 17, 1996. In Amendment No. 1, the PSE clarified the purpose of the rule change and made technical corrections to the text of the rule.

[4] *See* Amendment No. 1, *supra* note 3.

[5] *See* amendment No. 1, *supra* note 3.

if a buy order, or minus if a sell order, an odd lot differential, if any).

Third, with regard to stop orders, the proposal states that an odd lot stop order to buy shall become a market order when a regular way round lot transaction takes place at or above the price of the stop order on the primary market.[6] An odd lot stop order to sell shall become a market order when a regular way round lot transaction takes place at or below the price of the stop order on the primary market.[7] (The current rule states that an odd lot stop order becomes a market order when a round lot transaction takes place on the primary market, which in the case of a buy order is at or above the stop price; or which in the case of a sell order is at or below the stop price; and it further states, that the order shall then be filled at the price of the next round lot transaction which takes place on the primary market, plus if a buy order, or minus if a sell order, an odd lot differential, if any.)

Fourth, the proposed rule states that it shall be inconsistent with the purpose and intent of this Rule to engage in the following actions: (a) The unbundling of round-lots for the purpose of entering odd-lot limit orders in the comparable amounts; (b) the failure to aggregate odd-lot orders into round-lots when such orders are for the same account or for various accounts in which there is a common monetary interest; and (c) the entry of both buy and sell odd-lot limit orders in the same stock before one of the orders is executed for the purpose of capturing the ''spread'' in the stock. It further states that, in general, the Exchange views order entry practices that are intended to circumvent the round-lot auction market as abuses of the intent and purpose of the odd-lot system and such practices shall be considered violations of these rules.

Finally, the Exchange is proposing to remove several provisions from the rules relating to odd lot executions that no longer apply. First, the Exchange is proposing to eliminate all provisions in Rule 5.34(b) on odd lot differentials. Second, the proposal modifies rule 5.34(b) to eliminate the distinction between ''PMP stocks'' and ''non-PMP stocks.'' [8]

2. Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, in that it is designed to facilitate transactions in securities and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose 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

Written comments on the proposed rule change 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 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 submission 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–35 and should by submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–151 Filed 1–3–97; 8:45 am]

BILLING CODE 8010–01–M

[6] *Id.*

[7] *Id.*

[8] ''PMP'' stocks are those for which Exchange specialists provide primary market protection. Today, such protection applies to all stocks that may be executed on P/COAST, the Exchange's automatic execution system for equity securities.

[Release No. 34–38093; File No. SR-Phlx–96–32]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Index Options Exercise Advices

December 27, 1996.

I. Introduction

On July 29, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 1042A, Exercise of Option Contracts, and Floor Procedure Advice (''Advice'') G–1, retitled Index Option Exercise Advice Forms. On December 4, 1996, the Exchange submitted Amendment No. 1 to their proposal to provide that the deadline for submitting a memorandum to exercise and an exercise advice form will be ''no later than 4:30 p.m. or fifteen minutes after the close of trading, if it occurs at a time other than the regular close of trading.'' [3] Currently, the deadline for such submissions is ''no later than 4:30 p.m.'' In addition, the Phlx proposed to codify that anyone intending to exercise index options must complete a memorandum to exercise and/or an exercise advice form in compliance with the exercise cut-off time and must exercise the amount of

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, Phlx, to Matthew Morris, Office of Market Supervision, Division of Market Regulation, Commission, dated December 4, 1996 (''Amendment No. 1''). According to the Phlx, the purpose of this change is to clarify that modified hours are not limited to trading hours extending beyond 4:15 p.m., but include any modification to Exchange trading hours, including an early close. As such, the Phlx's revised rule language does not alter the Exchange's original intent. (The Commission notes that the Exchange inadvertently filed Amendment No. 1 to the rule proposal as Amendment No. 2.)

option contracts indicated on such forms.

The proposed rule change appeared in the Federal Register on August 28, 1996.[4] No comments were received on the proposed rule change. This order approves the Phlx's proposal, as amended.

II. Background and Description

Exchange Rule 1042A and Advice G–1 govern the exercise of index options.[5] Specifically, Exchange Rule 1042A(a)(i) requires that a memorandum to exercise any American-style index option contract must be received or prepared by the Phlx member organization no later than 4:30 p.m. on the day of exercise. In addition, Exchange Rule 1042A(a)(ii) requires the submission of an exercise advice form to the Exchange no later than 4:30 p.m. when exercising American-style index option contracts.[6]

In this regard, the Exchange has attempted to create a level playing field among option investors by maintaining a cut-off time to ensure that all exercise decisions occur promptly after the close of trading. Consequently, to prevent fraud and unfairness, a long option holder is prohibited from exercising index options on non-expiration days based on information obtained after the cut-off.[7]

The Exchange currently proposes to amend these provisions such that the exercise cut-off time would be 4:30 p.m. or fifteen minutes after the close of trading, if it occurs at a time other than the regular close of trading. For instance, on certain days prior to a holiday, the Exchange may cease trading broad-based index options at 1:15 p.m. Under the current rule, however, the exercise cut-off time would remain at 4:30 p.m., regardless of when trading ceased. In comparison, under the proposal, the exercise cut-off time in the above example would change to 1:30 p.m.

With respect to trading hours extending beyond 4:15 p.m., the Exchange notes that in certain situations a trading rotation may occur after the ordinary 4:10 or 4:15 p.m. close of trading. For instance, if a halt in the trading of a component issue causes an index option to halt trading, and if the index option re-opens at 4:00 p.m., an opening rotation may need to be conducted. Because such rotation may result in extended trading hours, the exercise cut-off time under the proposal would be fifteen minutes after the end of the rotation. In this manner, a cut-off time of fifteen minutes after the close of trading will ensure that index option traders and investors have adequate time to make exercise decisions.

In addition, the Exchange proposes to adopt an amendment procedure to facilitate changes in exercise decisions prior to the cut-off time. The amended exercise advice form and amendment procedure should add certainty to the exercise process by clarifying how a change in a decision to exercise should be indicated to the Exchange. In this manner, when amending an exercise decision, a new exercise advice form must be filed with the Exchange, listing all exercise decisions, not just the one being amended. Omitting one series means that no exercise of that series is intended and a violation of the rule occurs if that series is exercised. Further, all exercise advice forms, whether original or those amending previous submissions, must be filed prior to the exercise cut-off time.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5),[8] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to securities, as well as to protect investors and the public interest, by allowing a reasonable amount of time to submit an exercise decision when trading hours are modified or extended. The Commission believes that the amendments to Exchange Rule 1042A and Advice G–1 which modify the deadline for submitting exercise advice forms and memoranda will benefit market participants by enabling them to make investment decisions based upon the evaluation of their final positions after having completed trading for the day. Specifically, the proposal clarifies the application of Exchange Rule 1042A and Advice G–1 during periods when trading ends at a non-regular time. This clarification should help ensure that market participants have neither an inadequate nor an excessive amount of time in order to make their option exercise decisions after the close of trading.[9]

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, because the revised rule language contained in Amendment No. 1 only serves to clarify the Exchange's submitted proposal, no new regulatory concerns are raised. In addition, the Phlx's rule proposal was subject to a full notice and comment period, and no comments were received. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. 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

[4] *See* Securities Exchange Act Release No. 37593 (August 21, 1996), 61 FR 44379 (August 28, 1996).

[5] The Exchange notes that with respect to index option contracts, clearing members are also required to follow the procedures of the Options Clearing Corporation (''OCC'') for tendering exercise notices. Exercise notices are the exercise instructions required by OCC and are distinct from exercise advices which are required by Exchange rules.

[6] The Phlx notes that Exchange Rule 1042A previously allowed the submission of a memorandum to exercise and an exercise advice form until five minutes after the close of trading. *See* Securities Exchange Act Release No. 32991 (September 30, 1993), 58 FR 52337 (October 7, 1993) (File No. SR-Phlx–92–31). Specifically, the exercise cut-off time for narrow-based index options was 4:15 p.m. or five minutes after the close of trading, and for broad-based index options it was 4:20 p.m. or five minutes after the close of trading. When the exercise cut-off time was changed to 4:30 p.m., however, the language ''or five minutes after the close of trading'' was deleted. *See* Securities Exchange Act Release No. 37077 (April 5, 1996), 61 FR 16156 (April 11, 1996) (File No. Phlx–95–86). As such, the Phlx's current proposal resurrects this concept.

[7] Pursuant to Exchange Rule 1042A(b), however, these requirements are not applicable on the last business day before expiration, generally an ''expiration Friday.'' The above requirements are also not applicable to European-style index options which, by definition, cannot be exercised prior to expiration. Lastly, the Exchange notes that the procedures for exercising equity option contracts, contained in Exchange Rule 1042, are not affected by this rule proposal.

[8] 15 U.S.C. § 78f(b) (1988).

[9] The Commission notes that any change to the Phlx's regular trading hours for affected options would require an amendment to Exchange Rule 1042A and Advice G–1 in order to maintain the appropriate time interval allowed between the close of trading and the required submission of exercise forms and memoranda.

public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–32 and should be submitted by January 27, 1997.

IV. Conclusion

For the foregoing reasons, the Commission finds that the Phlx's proposal is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–96–32), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–148 Filed 1–3–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 12/20/96

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–2026.

Date filed: December 17, 1996.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0026 dated December 10, 1996 r1; Within Southeast Asia (US Territories); PTC3 0031 dated December 10, 1996 r2; Southeast Asia-SW Pacific (US Territories); (Summary attached.); Intended effective date: expedited January 15, 1996.

Docket Number: OST–96–2027.

Date filed: December 17, 1996.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0024 dated December 10, 1996 r1; PTC3 0025 dated December 10, 1996 r2–3; PTC3 0027 dated December 10, 1996 r4; PTC3 0028 dated December 10, 1996 r5–6; PTC3 0029 dated December 10, 1996 r7; PTC3 0030 dated December 10, 1996 r8; PTC3 0032 dated December 10, 1996 r9; PTC3 0033 dated December 10, 1996 r10; PTC3 0034 dated December 10, 1996 r11; Expedited TC3 Resolutions; Intended effective date: expedited January 15, 1996.

Docket Number: OST–96–2031.

Date filed: December 19, 1996.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Reso 033f; Local Currency Rate Changes—Pakistan; Intended effective date: upon government approvals.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–124 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 20, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–2028.

Date filed: December 17, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 14, 1997.

Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, applies for renewal of authority to engage in scheduled foreign air transportation of persons, property, and mail between the terminal point Los Angeles, California, and Mexico City, Mexico, and beyond Mexico City to the following points: Guatemala City, Guatemala; San Salvador, El Salvador; Tegucigalpa, Honduras; Managua, Nicaragua; San Jose, Costa Rica; Panama City, Panama; Barranquilla, Colombia; Maracaibo and Caracas, Venezuela; Port of Spain, Trinidad and Tobago; Georgetown, Guyana; Paramaribo, Suriname; Sao Paulo, Rio de Janeiro, Brasilia and Belem, Brazil; Montevideo, Uruguay; and Buenos Aires, Argentina.

These services are authorized on segment 4 of United's Certificate of Public Convenience and Necessity for Route 566.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–125 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary of Transportation

[Docket No. OST–96–1188]

National Freight Transportation Policy

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: Final Policy Statement.

SUMMARY: The Department of Transportation is publishing a final policy statement on freight transportation that establishes the most important principles that will guide Federal decisions affecting freight transportation across all modes. The aim of these guiding principles is to direct decisions to improve the Nation's freight transportation systems to serve its citizens better by supporting economic growth, enhancing international competitiveness and ensuring the system's continued safety, efficiency and reliability while protecting the environment. We are maintaining Docket No. OST–96–1188 to receive comments or suggestions that could be useful in preparing future editions of this policy statement. It is our intention to update the statement periodically as warranted by changing conditions and events.

EFFECTIVE DATE: January 6, 1997.

ADDRESSES: Submit written, signed comments to Docket No. OST–96–1188, the Docket Clerk, U.S. Department of Transportation, Room PL–401, C–55, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 9:00 a.m. and 5:00 p.m., ET, Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Swerdloff, Office of Economics, at (202) 366–5427, Office of the Secretary, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5:00 p.m. ET, Monday through Friday, except Federal holidays.

Summary of Written Submissions to the Docket

Written responses to the Notice of Proposed Policy (NPP) were received

[10] 15 U.S.C. § 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12).

from a total of 18 organizations representing a broad range of governmental and private sector entities. Virtually all commented favorably on the DOT's decision to prepare a freight transportation policy, in response to the Intermodal Surface Transportation Efficiency (ISTEA), which emphasized that freight transportation needed greater attention by planning and development agencies, and because it would be useful to State and local government to set out a framework for addressing freight transportation issues. Some suggestions for modifying the statement appeared in several submissions and are discussed below.

Several commentors were critical of the NPP because it was at too high a level of generality and that it was, therefore, of less utility to those outside the Department seeking information on future Federal priorities and programmatic or regulatory directions. Some thought that the policy statement should expand upon the general principles and include how the DOT would apply them in establishing strategic plans for addressing national freight transportation requirements. Several stated that the policy should, in fact, include specific actions the DOT anticipated for improving the freight transportation system. On the other hand, one commentor was concerned that the DOT's expressed role in freight transportation infrastructure planning and development not extend beyond general principles and broad national goals, leaving to the States the responsibility for setting local priorities and solutions that reflected local political and economic realities. The policy statement and the principles presented are intended as guidance for the development of more specific strategic action plans, proposals or decisions by the DOT, Congress, and State and local governments. We believe the policy principles presented in the statement describe, in general, the role and responsibilities of the DOT in freight transportation matters. In response to the comments that the policy statement include actions the DOT anticipates for improving national freight transportation, an addendum has been added to present examples of such activities that are either underway or to be initiated in the near term.

Several comments suggested that the NPP include greater attention to multi-state, regional and local economic and transportation differences that need to be taken into account in developing freight transportation solutions. This issue was also raised in regard to the general concern that as a nation we should address the growing demand on our domestic freight transportation systems from international trade. These commentors noted that the Federal Government should consider these impacts on our transportation facilities as part of future international trade agreements. The policy statement has been revised to account for variability in State, regional and local requirements and conditions that must be considered in applying these policy principles.

The integrated nature of the Nation's transportation system, freight and passenger, has been noted in the final policy statement in response to a suggestion of one commentor.

Concern was expressed by some that although there is agreement with the general goal of greater freight transportation efficiency, we should, at the same time, understand that other important goals, such as improved air quality and safety, present restraints that may not allow for maximum efficiency in our freight transportation systems. While this point is well taken, it applies to a number of the general principles stated in the policy. Under varying circumstances or local situations a number of the guiding principles can be in conflict, necessitating trade-offs and compromises in reaching solutions that satisfy all parties. We believe the original policy statement addressed this point and that added discussion is unnecessary.

Several commentors questioned the policy principle that efficient pricing systems are to be encouraged that reflect the full costs of developing, maintaining and operating public transportation infrastructure. They noted that this could lead to higher user costs or be exploited by local governments as a source of general revenue. The policy advocates the use of appropriate and efficient pricing which does not include excessive charges for general revenue purposes. We believe the principle, as presented, is correct and should be advanced.

A number of other wording changes have been made in response to specific comments submitted to the docket. These changes are, for the most part, for clarification or emphasis purposes and have not altered the purpose or objectives of the principles as stated in the NPP.

Freight Transportation Policy Statement

I. Introduction

This statement of guiding principles for the Nation's freight transportation system sets forth a DOT policy framework that will help shape important decisions affecting freight transportation across all modes. Our interest is to ensure the nation has a safe, reliable, and efficient freight transportation system that supports economic growth and international competitiveness both now and in the future, while protecting and contributing to a healthy and secure environment. The goal of this statement is to provide guidance for making the Nation's transportation system serve its citizens better. To achieve this goal, new partnerships must be formed among public agencies, the freight transportation industries and shippers.

Highways, airports, rail facilities, ports, pipelines, waterways, intermodal transportation, and the freight carriers and shippers they serve all play a vital role in the Nation's economic health. The integrated nature of the Nation's transportation facilities and operations is an important feature that must be accounted for in the establishment of principles and actions that are directed at improving freight transportation. An efficient transportation system results in lower production and logistics costs for U.S. firms and better prices for consumers. In order to compete successfully in international markets U.S. firms must be able to rely on an efficient domestic freight transportation system that is effectively managed. The system also must support achievement of other national goals by fostering safe, effective, timely and environmentally sound freight transportation that improves the quality of life for all U.S. citizens.

Effective freight transportation policy and planning must consider that much of our transportation infrastructure is provided by the different levels of government and that major portions are put in place by private capital. The policy must allow for variations in State, regional and local conditions, requirements and resources. Further, the fusion of public and private investment creates economic opportunities but also may raise regulatory conflicts, and both must be considered in national freight policy and planning.

II. Recent Trends in Freight Movements

Freight moves on systems of increasingly integrated supply chains and distribution networks operating in States and metropolitan areas, as well as regionally, nationally, and internationally. Reliance on just-in-time production and current inventory management practices have increased the demand for more efficient and reliable freight transportation. Shippers are increasingly rationalizing the mix of

transportation, inventory, handling, and loss and damage costs, striving to reduce their total logistics costs. They are using increasingly fast, reliable transportation in place of large inventories.

The productivity of freight transportation firms and their ability to provide timely and reliable service depends not only on the efficiency of individual modal systems and the effectiveness of the laws and regulations under which they operate, but also on the efficiency of intermodal facilities that govern the effectiveness of their connections to one another. U.S. intermodal freight transportation links the various modes to meet customers market needs by providing integrated origin-to-destination service. It utilizes advanced technologies and operating systems designed to enhance productivity, reduce transportation costs, increase service speed and quality for shippers and lower prices for consumers.

International freight movement takes advantage of the latest innovations in the global marketplace that reduce cost and better serve the customer. Customers are establishing global supply chains. Innovations that are developed by individual carriers are copied by others when results in savings or service are seen. The use of real-time, interactive electronic data interchange, and vessel/asset sharing agreements all provide more efficient and rapid transportation of international freight movements.

Contractual regimes governing the movement of freight have been established by the private sector which sometime result in conflicts with public regulations and create impediments to the safe and efficient operation of freight transportation. Government typically regulates the safety, and environmental aspects of infrastructure and equipment. It also may be appropriate for Government to facilitate problem solving and provide technical assistance where private and public sector requirements create barriers to safe and efficient freight movement. Economic consequences are increasingly a matter of market decisions by the private sector.

III. Principles of Federal Freight Transportation Policy

The following eight principles provide the basis for a Federal freight transportation policy and describe the Federal role in freight transportation:

1. Provide funding and a planning framework that establishes priorities for allocation of Federal resources to cost-effective infrastructure investments that support broad national goals.

2. Promote economic growth by removing unwise or unnecessary regulation and through the efficient pricing of publicly financed transportation infrastructure.

3. Ensure a safe transportation system.

4. Protect the environment and conserve energy.

5. Use advances in transportation technology to promote transportation efficiency, safety and speed.

6. Effectively meet our defense and emergency transportation requirements.

7. Facilitate international trade and commerce.

8. Promote effective and equitable joint utilization of transportation infrastructure for freight and passenger service.

1. Provide funding and a planning framework that establishes priorities for allocation of Federal resources to cost-effective infrastructure investments that support broad national goals.

Enactment of ISTEA, with its requirement for greater emphasis on intermodal and freight policy issues, marked a new era in transportation investment decision-making. The transportation planning process has become increasingly important. Metropolitan and State officials are now encouraged to include major freight distribution issues in their planning processes. They are also urged to work with carriers and industry to find ways for improving the efficiency of freight movements while protecting the environment. Thus, the transportation planning procedures adopted in ISTEA are aimed at an improved approach to developing freight transportation policy at all levels of government.

While much of the surface transportation infrastructure is provided by the private sector (e.g., rail freight facilities, waterside and truck terminals, oil and gas pipelines), much of the infrastructure would not be built or maintained without public financial support that is affected by Federal policies. Private facilities are often dependent on public investment for their effectiveness, (e.g., waterside terminals that require public channels, etc.). Federal participation may be appropriate when infrastructure investment projects have a national or regional significance or when Federal involvement may facilitate the resolution of a freight transportation problem. The value of a particular transportation facility is often dependent on the existence and effectiveness of a regional or national network that is a Federal concern and responsibility.

In cooperation with DOT and other Federal agencies, the Office of Management and Budget (OMB) has established guidelines for the economic analysis of Federal infrastructure investments.[1] The guidelines apply rigorous cost-benefit standards to all proposed investments, including a provision that requires the measurement of costs and benefits over a project's life-cycle. The OMB guidelines also encourage, when appropriate, private sector participation in infrastructure projects and more cost-effective State and local infrastructure investment programs.

2. Promote economic growth by removing unwise or unnecessary regulation and through the efficient pricing of publicly financed transportation infrastructure.

Although freight transportation services are provided almost exclusively by the private sector, the Federal Government plays an essential role in maintaining competition in the transportation marketplace and in protecting the public from unsafe and environmentally damaging transportation operations. By promoting competition, Federal policies can help to foster an environment that encourages improvements and changes that reduce transportation and logistics costs. National objectives for the freight transportation system can be addressed through Federal activities such as the deregulation of entry and ratemaking in the trucking and air cargo industries, in order to foster an effective, competitive freight transportation environment.

As the logistical requirements of businesses become more complex, some shippers and transportation providers will rely increasingly on intermodal services. Such services should not be hindered by artificial constraints. Physical and institutional barriers that impede the flow of freight from one mode of transportation to another should be eliminated. The elimination of physical and operational barriers to freight intermodal operations is primarily the responsibility of transportation carriers, shippers, and State and local government. The Federal Government, however, may take action to improve inadequate public infrastructure to support essential freight intermodal operations or to reduce legal and regulatory barriers such as those that until 1996 impeded

[1] Executive Order 12893, ''Principles for Federal Infrastructure Investments,'' Federal Register, Volume 59, No. 20, January 31, 1994.

railroad ownership of barge and trucking companies. The Federal Government may also encourage State and local governments to take necessary action, or in extreme cases even preempt them, in order to reduce statutory impediments to intermodal transportation.

The prices charged for public sector transportation facilities and services determine whether they are used efficiently. Public facilities costs that are not included in the transportation rates paid by shippers may lead to inefficient use of the Nation's limited transportation resources. Whenever feasible, fees and taxes adequate to cover the cost of building, operating, and maintaining public infrastructure facilities should be recovered from the parties that use and benefit from them. However, fees that exceed the cost of providing freight services will adversely affect the efficiency and effectiveness of the transportation system and should be avoided.

Federal actions must be evaluated not only for their short-term impacts but for their longer-term consequences for maintaining viable, competitive, multimodal freight transportation to serve the Nation. Therefore, freight regulatory and investment policies must take into account the linkages between freight transportation performance and economic performance at the local, regional, national, and international levels both today and in the future. The DOT has completed a comprehensive assessment of its regulations as part of the National Performance Review. It will reexamine its policies, programs, and regulations periodically to assess their effectiveness and whether they should be continued.

3. Ensure a safe transportation system.

Making the transportation system safer is a critical Federal policy objective. Because the marketplace alone may not be effective in producing an acceptable level of public safety, the Federal Government will continue to promote transportation safety through regulation; through enforcement, engineering and education; and through support of voluntary compliance efforts by industry. Success in maintaining and improving the safety of our freight transportation networks requires the cooperation of each level of government and the private sector.

The Federal Government will continue to support safety research and the dissemination of information related to safety. The DOT will continue to support activities to improve the information base needed to monitor the safety performance of all freight transportation modes including the full social costs of accidents. Federal research will focus on the causes of transportation accidents: the role of truck, rail, aircraft, and vessel design and performance in accidents and their solutions, as well as the contribution of human factors and infrastructure design. The Federal Government will also continue to work with the private sector on a cooperative basis, to ensure that proven safety advances are rapidly incorporated into practice, especially when substantial public benefits will result from their adoption.

4. Protect the environment and conserve energy.

Responsible environmental protection is another important Federal policy objective and, like transportation safety, environmental protection requires the cooperation of all levels of government and the private sector. The total social costs of environmental degradation are not borne by the transportation users (e.g., the social costs associated with pollution are not reflected in the costs incurred by the users or prices charged for transportation services). Thus, the Federal Government plays, and must continue to play, an important role in reducing these social costs and ensuring that they are more accurately reflected in the price of transportation services through appropriate regulation or modifications to existing programs. In addition, the Federal Government will continue to support research and technology development that is directed at increasing transportation productivity while maintaining environmental protection.

In pursuing its environmental protection objective, the Federal Government needs to continue to assess the impacts of environmental regulation on the performance of transportation operations and will work with the private sector and the environmental community to implement appropriate environmental protection measures and technologies in a cost effective and environmentally sound manner. The Federal Government will seek to develop regulations that contain performance based rather than technology specific standards or criteria so as to permit industry flexibility and innovation in meeting regulatory requirements. DOT will continue working to promote and develop techniques for conserving energy and for better quantifying the social costs of environmental and community degradation.

5. Use advances in transportation technology to promote transportation efficiency, safety and speed.

Application of advanced technology in the transportation system offers significant opportunities to improve its safety, efficiency, capacity, and productivity.

Private firms invest in advanced communication, navigation, surveillance, and information technologies which improve the efficiency of their operations. These advanced technologies facilitate the movement and tracking of goods and vehicles as well as the exchange of information among carriers and their customers in the intermodal transportation system. They also offer tools for strengthening intermodal connections. Public and private investments for applying these advanced technologies to the air, highway, marine, and rail infrastructures have improved the overall efficiency of the transportation system.

DOT's Federal role in research and development of technologies is to promote the efficiency and safety of the national transportation system and to support the application of technologies in the movement of freight. Specifically, DOT provides leadership for the interagency coordination of Federal transportation research. This includes maintaining close dialogue with the private sector and State and local governments to ensure that DOT research funding reflects the priorities of freight transportation users and providers. DOT will coordinate Federally funded research to ensure that there is no redundancy. DOT will maintain a leadership role in development of an intermodal research framework.

Advances in information technology are having a dramatic effect on transportation requirements and the planning of future capacity investments. DOT works with the private sector to facilitate communications across modes for intermodal compatibility of technology applications, such as Global Positioning Systems (GPS) and Geographic Information Systems (GIS). DOT coordinates with other Federal agencies, such as the Department of Defense and the National Oceanic and Atmospheric Administration, to ensure that underlying data (such as weather and positioning information) required as input to these various systems continue to be available.

DOT will continue to work closely with the freight industry to ensure that the United States is well represented in

international transportation technology and standards forums.

6. Effectively meet defense and emergency transportation requirements.

Recent changes in our Nation's defense strategy and the downsizing of the U.S. military establishment have increased the need for effective deployment of those forces in times of a national emergency. They have emphasized the need for rapid deployment of large numbers of people and large amounts of material on short notice. Similarly, when natural disaster strikes, a high-quality, multimodal transportation system is critical to ensuring the safety of the affected population and the ability of local, State and Federal officials to start rebuilding devastated communities. Deploying personnel, equipment, and supplies through the air, over land or on the seas, requires well-planned, maintained, and sufficient alternative transportation systems and facilities for both the military mission and disaster relief operations.

The Department of Defense has adopted policies that will require greater use of civilian transportation resources in meeting its transportation needs. The Nation's freight transportation operators, therefore, have an essential role to play in the mobilization and deployment of personnel, equipment, and supplies in the event of a national emergency or a natural disaster. The DOT will continue to work with the Department of Defense, other Federal agencies, and the transportation community to identify short- and long-term national defense and emergency transportation requirements and to ensure that the transportation system can meet those requirements.

7. Facilitate international trade and commerce.

To retain and enhance the Nation's competitive position and its economic vitality, domestic firms must have access to foreign markets through an efficient transportation system. A competitive international transportation industry requires highly efficient connections to and within the domestic transportation system. Where international trade agreements are being negotiated, as in the case of the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO), regulatory policy decisions that primarily affect international freight movements will also take into account their implications for domestic freight operations and competition as well as the interests of States and localities affected by such policy decisions. Government can provide new opportunities for American exporters by leading trade negotiations with the European Union, with other industrialized countries, and with emerging markets, such as those in Asia and Latin America, and by providing technical assistance programs to promote American transportation and infrastructure technologies.

8. Promote effective and equitable joint utilization of transportation infrastructure for freight and passenger service.

The efficient use of the Nation's transportation infrastructure may require the joint use of facilities by freight and passenger transport operators. When appropriate, the Federal Government, in conjunction with State and local agencies and the private sector, will support the equitable sharing of transportation facilities and infrastructure and reasonable compensation for their use.

Potential safety problems and reduced freight transportation operations efficiency may arise from the sharing of facilities. These concerns should be taken into account in policy initiatives that address the joint use of facilities. The DOT will continue to support research in this area and will encourage transportation firms to adopt new technologies and operating practices that would reduce the adverse consequences that may arise from the joint use of facilities.

Addendum

The following is a list of near term DOT initiatives that may have significant implications for freight transportation. They are representative of a much larger number of activities underway or anticipated by the DOT that will improve the safety, efficiency, reliability and environmental performance of the freight systems consistent with the guiding principles presented in this policy statement. Included are development, operating, research and regulatory activities that affect individual as well as intermodal freight systems, and the cooperation of public and private entities.

ISTEA Reauthorization: The Intermodal Surface Transportation Efficiency Act of 1991 expires at the end of fiscal year 1997, and the DOT has completed its outreach and analysis effort and is in the process of developing the Administration's proposal for reauthorization. The central elements of ISTEA—strategic infrastructure investments, intermodalism, flexibility, intergovernmental partnerships, a strong commitment to safety, and enhanced planning—have been well received and successful and should be preserved. The goal for reauthorization is to develop a proposal for the next century that allows our Nation to preserve our competitive advantage throughout the world and maintain the well being of our citizens. There are a number of freight transportation issues that are being considered, including:

Increased Funding Flexibility: Alternatives are under study for increasing the flexibility for use of Federal funds for projects that improve the connectivity of freight transportation systems and for the development or improvement of freight terminals that serve more than a single mode of transportation.

Truck Size and Weight Regulation: The DOT is currently conducting a comprehensive analysis of the effects of changing current truck size and weight regulations on safety, transportation costs, modal competition, and environmental and energy impacts. The results of this effort, which should be completed in early 1997, will be reported to the Congress and used in the evaluation of any proposed changes to current truck size and weight regulations. The range of alternatives being studied include maintaining the status quo, increasing individual State regulatory authority over truck size and weight limits, and increasing Federal responsibility in establishing greater national uniformity.

Highway Cost Allocation Study: The Department is conducting an analysis of the responsibility of highway user groups for both the direct and external costs of the highway program as well as alternative methods for collecting revenues from users. This study, which should be completed in 1996, will provide an analytic capability to evaluate alternative highway user tax and other revenue collection options that may arise in ISTEA reauthorization, including the cost responsibility of the heavy combination vehicles.

National Highway System (NHS): Programs that provide national connectivity, increase the capacity of the system and improve the flow of traffic, such as the National Highway System and its intermodal connectors, will be continued. The NHS, approximately 160,000 miles of major roads, represents only 4 percent of the total mileage but carries 75 percent of heavy truck traffic. All major rail-truck intermodal facilities will be connected to the NHS.

Border Crossings: We are concerned about the special trade-related

transportation needs of certain areas of the country, particularly along the Mexican and Canadian borders and the North-South corridors that serve them, that will facilitate trade resulting from NAFTA. Programs will be considered that are designed to improve the flow of trade and traffic across the borders.

Intelligent Transportation Systems (ITS): Consideration is being given to investments in ITS technologies that hold the promise of increasing the carrying capacity and efficiency of our current infrastructure. ITS is expected to increase the capacity of our transportation system at a fraction of the cost of traditional infrastructure building. ITS also is expected to provide substantial safety and environmental benefits. One major element of this program—particularly focused on freight transportation—is the Commercial Vehicles Information System and Networks (CVISN) which will develop standards and protocols to allow freight carriers to electronically exchange information required by regulatory authorities using commercially available communications infrastructure. The goal of the CVISN is to provide greater compatibility of the information systems owned and operated by state/local governments, carriers, and other stakeholders.

Rail-Highway Grade Crossings: The current program under ISTEA will be considered for continuation as part of the reauthorization effort. The program provides funds for rail-highway grade crossing improvements and for the conduct of studies and dissemination of information on better grade crossing designs and construction safety measures that will, in part, improve the safety performance of the freight transportation system .

Implementation of the NAFTA Agreement: We will continue working with our Canadian and Mexican partners to improve the safety, efficiency, and productivity of freight transportation among the three nations while protecting U.S. safety standards, including the improvement of enforcement of cross-border truck safety requirements.

Deploy Global Positioning System for Transportation Purposes: The DOT is the designated lead agency for all Federal civil GPS matters and will coordinate the development and implementation of Federal augmentation measures to the basic GPS for civil transportation applications. We will coordinate activities to minimize cost and duplication. The DOT will work to augment GPS to: improve aviation navigation during adverse weather conditions and increase airways capacity and efficiency; facilitate railroads' ability to implement positive train control systems increasing safety and capacity; be a component of the Intelligent Transportation System (ITS) reducing congestion and improving railroad grade crossing safety; improve harbor approach and intra-harbor safety nationwide and track movement of tankers through Prince William Sound; improve safety and efficiency of ships moving through the St. Lawrence Seaway and Panama Canal; and more rapidly locate and respond to motor vehicle accidents, hazardous materials spills and vessels in distress.

Pipeline Risk-based Programs: The DOT will continue the examination of gas and hazardous liquid pipeline regulations to incorporate up-to-date technology and to more fully incorporate risk-based factors in the prioritization and selection of safety requirements.

Conclude Additional International Aviation Agreements: We will continue efforts to reach new agreements with other nations that open new and improved opportunities for U.S. airlines in international passenger and air cargo markets, and strengthen and expand the competitive international aviation marketplace.

Shipyard Revitalization Initiative: Assist efforts within the shipbuilding and repair industry to compete internationally by helping firms convert from defense to civilian markets. This includes ensuring fair international competition, improving competitiveness through technology transfer and applied research, eliminating unnecessary regulations, financing ship sales for both export and U.S. flag operations, and assisting in international marketing.

National Dredging Policy: We are implementing the report of the Interagency Working Group on the Dredging Process, by working with Federal and State agencies to resolve impediments to dredging projects that are necessary to maintain shipping channels in the major U.S. ports.

Voluntary Intermodal Sealift Agreement: We will continue development of this program in partnership with U.S. flag carriers and the Department of Defense to achieve agreement from carriers to commit intermodal sealift capacity in time of war or national emergency and to maximize DOD's use of the U.S. maritime industry's intermodal capacity.

Issued in Washington, DC on December 27, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 97–139 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

DATES: The meeting will be held on January 22 and 23, 1997 beginning at 8:30 a.m. on January 22. Arrange for oral presentations by January 15, 1997.

ADDRESSES: The meeting will be held at Allied Signal Engines, 111 South 34th, Phoenix, Arizona 85034 in the Kachina Conference Room.

FOR FURTHER INFORMATION CONTACT: Jackie Smith, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held January 22 and 23, 1997 at Allied Signal Engines, 111 South 34th, Phoenix, Arizona.

The agenda for the meeting will include:

- Opening remarks.
- FAA Report.
- Joint Aviation Authorities Report.
- Review Action Items.
- Executive Committee (EXCOM) Report.
- Significant Regulatory Differences Discussion.
- Flight Test Harmonization Working Group (HWG) Report.
- Engine HWG Report and Vote.

Thursday, January 23, 1997

- Powerplant Installation HWG Report.
- Electromagnetic Effects HWG Report.

—HIRF

—Lightning

- Loads and Dynamics HWG Report and Vote.

- General Structures HWG Report.
- Braking Systems HWG Report.
- Airworthiness Assurance Working Group Report and Vote
- Systems Design and Analysis (25.1309) HWG Report.
- Closure

—Action Items
—Schedule for Future Meetings
—Draft Agenda for Next Meeting

The Aviation Rulemaking Advisory Committee will vote on the following documents during the January 1997 meeting:

- Bird Strike (Engines HWG)
- Repairs (Airworthiness Assurance Working Group)
- Revised Landing Gear Shock Absorption Test Requirements (Loads and Dynamics HWG)

Anyone interested in obtaining a copy of these documents should contact the individual listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 15, 1997, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on December 30, 1996.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–174 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 96–49]

Achieving Interoperability With Dedicated Short Range Communication

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: With this notice the Federal Highway Administration (FHWA) is requesting comments on three items of concern relating to the implementation of dedicated short range communication (DSRC) systems specified in the Intelligent Transportation Systems National Architecture. These issues are as follows:

(1) Should the FHWA require that DSRC systems purchased with Federal-aid highway funds and ITS Federal funds meet draft standard specifications, such as that of the American Society for Testing Materials (ASTM) proposed Draft #6 standard and the Committee for European Normalisation (CEN) draft documents N473, N474, and N505 prior to their formal adoption as industry standards in an effort to reduce the proliferation of non-interoperable systems? Should the FHWA also include message set requirements, such as the Commercial Vehicle Information Systems and Networks (CVISN) Dedicated Short Range Communications Interface Requirements of April 2, 1996 (Johns Hopkins University-Applied Physics Lab)? Should compliance with specific draft standards be required for Commercial Vehicle Operations (CVO) applications only; for both CVO and Electronic Toll and Traffic Management (ETTM) applications; or for CVO, ETTM, and additional applications?

(2) Should the FHWA require that DSRC systems purchased with Federal-aid highway funds and ITS Federal funds meet an escalating interoperability formula? An example would be that first, all CVO applications must be nationally interoperable; second, all new (after specified date) and upgrading electronic toll collection systems and other DSRC applications must be interoperable with CVO applications.

(3) Should a single standard be developed for all applications, or should separate standards be developed with an assumption that trucks and buses, and perhaps other users, would likely require separate technology to perform those functions?

DATES: The FHWA requests comments by February 1, 1997.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 96–49, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Michael P. Onder, Intelligent Transportation Systems Joint Program Office, (202) 366–2639; Ms. Beverly M. Russell, Office of Chief Counsel, (202) 366–1355, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15, e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In the 1980's a novel approach to facilitating transportation developed. The dedicated short range communication (DSRC) industry, as it came to be known, utilized radio frequency systems to facilitate hands-off data communication between vehicles and electronic reading devices on the roadside. This application of communications technology to transportation has enabled motorists to pay highway tolls and commercial motor vehicles to clear weigh stations and ports of entry without stopping. The main hardware components of the DSRC system consist of a transponder, or tag, mounted on a vehicle, communicating wirelessly with a roadside reading device. The transponder, or tag, stores at a minimum a unique ID number that is received by the reading device and is matched to a corresponding record on a computer system that identifies the vehicle/container/rolling stock and its associated records. The benefits derived from installation of this new technology reflect a significant return on investment; especially in the toll and fleet management business.

The Department of Transportation's Intelligent Transportation Systems (ITS) program was established by Congress in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914). In the ISTEA, Congress directed the Department to develop and implement standards and protocols to promote widespread use of ITS. *See* Pub. L. 102–240, § 6053(b), 105 Stat. at 2190 (as codified at 23 U.S.C. 307 note). A precursor to the development of standards has been the formation of a National System Architecture which provides a framework that describes how system components should work and interact. A system architecture addresses how system data flows, how various traffic and traveler information message formats are structured, how electrical interfaces are formed, and which communication system mediums are used for data transmission. The Department began an intensive ITS National Architecture Program in December 1994, and concluded with 29 user services in July, 1996. The 29 user

services have been defined to date as part of the national planning and architectural development process. A 30th user service (Highway-Rail Intersection) has recently been defined and is now being included in the national architectural process. The National Architecture envisions a transportation system in which DSRC is the favored method of wireless communication for Commercial Vehicle Operations (CVO) and for Electronic Toll and Traffic Management (ETTM) applications. The objectives of CVO services are to increase productivity of commercial vehicle regulatory agencies and commercial vehicle operators, and to enhance the safety of CVO drivers and vehicles. Examples of CVO services include automated permit and registration acquisition, vehicle performance monitoring, and hazardous materials incident response. ETTM allows drivers to pay highway tolls without stopping, and allows traffic managers to use transponders as probes in high traffic volume areas to facilitate incident detection.

Application of DSRC

The largest installed base of DSRC systems are in electronic toll collection (ETC) systems. The northeastern region of the United States, where nearly two-thirds of all tolls in the United States are collected, has electronic toll collection systems in place from Virginia to Maine. ETC systems are also in place in California, Texas, Louisiana, Oklahoma, Kansas, Georgia, and Florida. Upcoming ETC systems are planned for widespread use in such high travel areas as the Maryland, Illinois, and Indiana tollways and the Pennsylvania, Ohio, and Florida turnpikes. None of the electronic toll facilities are interoperable with regard to reciprocity in collecting tolls. Relatively few are interoperable in terms of either utilizing the same transponder devices or having a common reading device that could read different transponders. Recent procurement requests from Maryland and Florida have addressed regional interoperability. Today there are several hundred thousand transponders in use on tollways. In the near future there are expected to be several million transponders in use. The problems caused by this lack of standards and interoperability will grow in intensity as demand and usage grow.

Commercial Vehicle Operations do not have as large an installed base of transponders as ETC. Currently there are two major areas of operations in the United States where heavy vehicles are cleared electronically as they pass weigh stations. These are the I–75 corridor in the Mid-West and the I–5, I–8, and I–10 corridors on the West Coast. The I–75 corridor, under the Advantage CVO Project, has 29 sites electronically linked from Florida through Ontario to allow for non-stop clearance of commercial vehicles as they are weighed at highway speeds. The three corridors on the West Coast comprise the HELP, Inc. Pre-Pass system which operates in a similar fashion to the Advantage CVO Project. Soon to be installed are CVO DSRC systems along the I–95 corridor from Virginia to Maine. Both Idaho and Utah also have installed electronic clearance systems, and the State of Washington is in the process of implementing such a program. In addition, DSRC systems are currently being installed in four international border crossing sites at Otay Mesa, California, Nogales, Arizona, Buffalo, New York, and Detroit, Michigan. In the planning stages for installation of DSRC equipment are the Laredo and El Paso, Texas and the Blaine, Washington border crossings, as well as sites in seven model deployment states for CVISN. Interoperability tests have been done successfully between Advantage CVO and HELP, Inc. with equipment that is compatible with the ASTM draft #6 proposed standard. Requirements for interoperability are in place; letters of agreement, have been used to ensure that only equipment that is compatible with the ASTM draft #6 proposed standard be used at the border crossing sites and in the model deployment States. However, a major growth of DSRC systems is also expected with CVO projects, and the problem of non-seamless transportation between DSRC sites will only be exacerbated without interoperability standards.

Problem

The problem is that DSRC standards governing the wireless communication between the transponder and reader, and the message sets on the transponder, do not exist. Therefore, interoperability does not exist between the equipment of different manufacturers. Interoperability, in this case, is the ability of a roadside reading or interrogation device of one manufacturer to meaningfully process the data from any given transponder mounted in a vehicle. Over the past six years, the DSRC industry has been unable to agree upon a path for standardizing DSRC at levels one and two of the International Standards Organization's Open Systems Interconnect (OSI) reference model, which deals with the air interface and the physical properties of the system. During the same time frame, the FHWA has been developing the architecture for CVO and other ITS Programs. This development has matured to the point that the FHWA is ready to initiate seven model deployments of CVISN and the Intelligent Transportation Infrastructure in four major metropolitan areas to test the system under operational conditions. In order for the fundamental concept of wireless vehicle to roadside communication to be viable for commercial fleets, it is essential that interoperability exist nationwide. Therefore, the FHWA believes it must insist that model deployments be interoperable with each other. If the industry stalemate continues, the FHWA may be forced to seek a process to stop the proliferation of non-interoperable DSRC systems. To continue to allow Federal funds to be invested in non-compatible systems will exacerbate the problem. As a result, unless the DSRC industry can identify a solution to non-interoperability immediately, the FHWA will be forced to find an interoperability solution that will not only support the near term deployment, but also the long term expanded deployments that are expected to be utilizing Federal-aid funds.

Solicitation for Public Comment

In the House report accompanying the 1996 DOT appropriations bill, the Committee on Appropriations explicitly stated that the Department should require that Federally supported ITS operations tests be consistent and compatible with the National Architecture to promote interoperability. H.R. Rep. No. 177, 104th Cong., 1st Sess. (1995). In the spirit of that requirement, this notice is being issued to solicit public comment on the following issues.

(1) Should the FHWA require that DSRC systems purchased with Federal-aid highway funds and ITS Federal funds meet draft standard specifications, such as that of the American Society for Testing Materials (ASTM) proposed Draft #6 standard and the Committee for European Normalisation (CEN) draft documents N473, N474, and N505 prior to their formal adoption as industry standards in an effort to reduce the proliferation of non-interoperable systems? Should the FHWA also include message set requirements, such as the Commercial Vehicle Information Systems and Networks (CVISN) Dedicated Short Range Communications Interface Requirements of April 2, 1996 (Johns Hopkins University-Applied Physics Lab)? Should compliance with specific

draft standards be required for Commercial Vehicle Operations (CVO) applications only; for both CVO and Electronic Toll and Traffic Management (ETTM) applications; or for CVO, ETTM, and additional applications?

The FHWA must continue to meet schedules for deployment of ITS projects using DSRC as the communications medium. Our understanding is that at least two competing products exist that comply with the open architecture of ASTM draft #6. On the other hand, it is also our understanding that the European standard (CEN) is not used in any products available in the United States that use the 902–928 MHz spectrum. To disrupt the project schedules could have a severely detrimental effect on the ITS program. Although we desire to minimize any detrimental effect on the program, we also understand the need of the industry to set the DSRC standards. Our strongest desire is for standards to be set that will best serve the users and the industry. It is not our intention to institute a standards process that would not be agreeable to the industry and users.

(2) Should the FHWA require that DSRC systems purchased with Federal-aid highway funds and ITS Federal funds meet an escalating interoperability formula? An example would be that first, all CVO applications must be nationally interoperable; second, all new (after specified date) and upgrading ETC systems must be interoperable with CVO applications; third, all other new (after specified date) and upgrading DSRC applications must be interoperable with CVO applications?

Nationwide interoperability is critical for the efficient operation of vehicles using DSRC equipment transiting the nation, especially commercial vehicles. As such, it is imperative that CVO programs be built with a national focus. ETC programs, on the other hand, are focused on regional travel, and its customers may not be very concerned about interoperability outside the local travel area, with exception to commercial carriers. The same regional emphasis may hold true with other DSRC applications, like in-vehicle signing or transit vehicle signal priority, parking payments, and traffic network performance monitoring. It may not be practical to immediately hold all users of DSRC equipment to a single national standard. Instead, a course of action to achieve national interoperability may be to include a migration plan that requires CVO applications to adhere to a national DSRC standard, followed by DSRC applications with regional emphasis. A —best fit— date can be specified for new and upgrading regional projects to begin adherence with the national standard.

(3) Should a single standard be developed for all DSRC applications, or should separate standards be developed with an assumption that trucks and buses, and perhaps other users, would likely require separate technology to perform those functions?

The FHWA recognizes that CVO and ETTM applications, as well as other DSRC applications, have different requirements that have also shaped the design and operation of the equipment. While it may be desirable to have a single standard, it may not be practical. The FHWA is requesting comments on whether the agency should pursue the single standard approach, encourage the development of dual standards (one for the short term and one for the long term), or sponsor dual standards for the short term and pursue single standards for the next generation of DSRC?

The FHWA is looking to the industry and users to come to some agreement as to DSRC standards for both the short term (1–3 years) and the long term (4–10 years). The FHWA has demonstrated its willingness to assist in this process by funding standards development organizations for this purpose. The solution to this problem must be sought together through a team effort by all of the stakeholders. The successful implementation of the ITS model deployments is not possible without a demonstrated willingness on the part of all parties to seek a solution through the established standard setting processes. The FHWA has further demonstrated its willingness to pursue a solution by funding a contractor to meet one-on-one with purchasers and manufacturers of DSRC equipment to develop a concept of operations, a migration plan, and a draft memorandum of agreement between purchasers of DSRC equipment. The FHWA has also been participating in all discussions sponsored by ITS America that have been taking place between users and manufacturers. We are now looking for the industry to do its part. The FHWA would prefer that the industry set the necessary standards through the consensus building process that the FHWA is sponsoring. In the meantime, the FHWA is seeking comments on how it can most effectively administer the ITS programs, that rely on DSRC systems, without the necessary standards in place.

Authority: Pub. L. 102–240, § 6053(b) (as codified at 23 U.S.C. 307 note); 49 CFR 1.48.

Issued on: December 24, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 97–172 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–22–P

Surface Transportation Board

[STB Docket No. AB–488X]

Ludington & Northern Railway, Inc.—Abandonment Exemption—in Mason County, MI

Ludington & Northern Railway, Inc. (L&N) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its entire line of railroad from the south line of Michigan Highway 116 in Hamlin Township south and east through Pere Marquette Township to terminus in the city of Ludington, in Mason County, MI, a distance of 2.54 miles.

L&N 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.

Where, as here, the carrier is abandoning its entire line, the Board does not normally impose labor protection under 49 U.S.C. 10505(g) unless the evidence indicates the existence of a corporate affiliate that will: (1) continue rail operations; or (2) realize significant benefits in addition to being relieved of the burden of deficit operations by its affiliated railroad. *See T and P Railway-Abandonment-in Shawnee, Jefferson and Atchison Counties, KS,* Docket No. AB–381, *et. al.* (ICC served Apr. 27, 1993). Because these conditions do not appear to exist here, employee protection conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 5, 1997, unless stayed pending reconsideration. Petitions to stay that do

not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by January 16, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 27, 1997, 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: Thomas F. McFarland, Jr., Attorney for Ludington & Northern Railway, Inc., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

L&N 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 January 10, 1997. 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: December 30, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary.

[FR Doc. 97–181 Filed 1–3–97; 8:45 am]

BILLING CODE 4915–00–P

[1] 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.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] 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.

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1996 Rev., Supp. No. 4]

Surety Companies Acceptable on Federal Bonds, American Interstate Insurance Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1996 Revision, on page 34283 to reflect this addition:

American Interstate Insurance Company. BUSINESS ADDRESS: 1807 Highway 190 West, DeRidder, Louisiana, 70634–6005. PHONE: (318) 463–9052. UNDERWRITING LIMITATION *b*/: $2,578,000. SURETY LICENSES *c*/: AR, GA, IN, KY, LA, ME, MN, MS, PA, SC, SD, TX, VA, WI, WY. INCORPORATED IN: Louisiana.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://www.ustreas.gov/treasury/bureaus/finman/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000499–7.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–7116.

Dated: December 23, 1996.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 97–95 Filed 1–3–97; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

[IA–17–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–17–90 (TD 8571), Reporting Requirements for Recipients of Points Paid on Residential Mortgages (§§ 1.6050H–1 and 1.6050H–2).

DATES: Written comments should be received on or before March 7, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements for Recipients of Points Paid on Residential Mortgages.

OMB Number: 1545–1380.

Regulation Project Number: IA–17–90

Abstract: These regulations require the reporting of certain information relating to payments of mortgage interest. Taxpayers must separately state on Form 1098 the amount of points and the amount of interest (other than points) received during the taxable year on a single mortgage and must provide to the payer of the points a separate statement setting forth the information being reported to the IRS.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 37,644.

Estimated Time Per Respondent: 7 hrs. 31 min.

Estimated Total Annual Burden Hours: 283,056.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 23, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–94 Filed 1–3–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Performance Review Board Members

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This Notice is issued to revise the membership of the United States Information Agency (USIA) Performance Review Board.

DATES: Upon publication.

FOR FURTHER INFORMATION CONTACT:

Ms. Kathleen Kelly (Co-Executive Secretary), Supervisory Personnel Management Specialist, Office of Personnel, International Broadcasting Bureau, U.S. Information Agency, 330 Independence Avenue, S.W., Washington, D.C. 20547, Tel: (202) 619–2102; or

Ms. Patricia H. Noble (Co-Executive Secretary), Chief, Civil Service Division, Office of Human Resources, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, Tel: (202) 619–4617.

SUPPLEMENTARY INFORMATION: In accordance with Section 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (P.L. 95454), the following list supersedes the U.S. Information Agency Notice (60 FR 203, October 20, 1995).

Chairperson: Associate Director for Management Henry Howard, Jr. (Presidential Appointee)

Deputy Chairperson: Acting Associate Director for International Broadcasting Bureau Eva Jane Fritzman

Career SES Members:

Hattie Baldwin, Director, Office of Civil Rights

Alfred Davidson, Deputy of Network Operations, Office of Engineering

Sidney Davis, Director of Programs, Voice of American Programs

James Hulen, Director, Office of Strategic Planning

Rick Ruth, Deputy Chief of Staff, Office of the Director

Stanley Silverman, Director, Office of the Comptroller

Alterante Career SES Members:

Daniel Campbell, Director, Office of Technology

Earl Klitenic, Director of Business Development

Ronald Linz, Deputy for Systems Engineering

This supersedes the previous U.S. Information Agency Notice (60 FR 203 October 20, 1995)

Dated: December 30, 1996.

Henry Howard, Jr.,

Associate Director for Management, U.S. Information Agency.

[FR Doc. 97–179 Filed 1–3–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Board of Veterans' Appeals (BVA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0042.

Title and Form Number: Statement of Accredited Representative in Appealed Case, VA Form 646.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Need and Uses: The form is used by an accredited representative of a veterans' service organization to present argument to the BVA on behalf of an appellant whom the service organization represents. Further, it aids the VA in assuring that rights to representation have been honored by establishing that the record has been made available to the representative for review and presentation of argument.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 40,000 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before February 5, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: December 17, 1996.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–190 Filed 1–3–97; 8:45 am]

BILLING CODE 8320–01–P

Associated Health Professions Review Subcommittee of the Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice that a meeting of the

Associated Health Professions Review Committee of the Special Medical Advisory Group will be held January 29 and 30, 1997. This committee will review and recommend changes in Veterans Health Administration's (VHA) role and priorities in education and training, specifically with reference to the use of associated health professionals in the delivery of healthcare. Associated health disciplines are defined as all healthcare providers other than medicine. Each year, approximately 45,000 students in associated health professions receive all or part of their training program clinical experience at VA facilities. The meeting on both days will be held at the Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 230, Washington, DC. The meeting will convene at 9:30 a.m. on January 29, and 8:30 a.m. on January 30. The meeting will adjourn on January 29 at 4:30 p.m., and at 12 noon on January 30.

On January 29, the Committee will review the current status of associated health training in VA and the Nation, the future of VHA, and the associated health workforce needs for future healthcare delivery systems. The Committee will plan the activities to accomplish the Committee's goals.

On January 30, the Committee will begin the activities to accomplish the Committee's goals and make additional work assignments.

Both days' meetings will be open to the public up to the meeting capacity of the room. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Linda Johnson, Ph.D., R.N., Acting Director, Associated Health Professions Office (143), at 202–273–8372.

Dated: December 31, 1996.

By direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–191 Filed 1–3–97; 8:45 am]

BILLING CODE 8320–01–M

VA Innovations in Nursing Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice that the first meeting of the VA Innovations in Nursing Advisory Committee will be held January 15 and 16, 1997, and will start at 8:00 a.m. on both days and end approximately 4:30 p.m. The meeting will be held in Room 230, at VA Headquarters, 810 Vermont Avenue, NW, Washington, DC.

This purpose of the committee is to study and formulate recommendations to the Under Secretary for Health on how VA can generally promote and support health care innovations in which nurses play key leadership and clinical roles and which promote VHA's reengineering efforts.

On January 15, the Committee will define issues and assign tasks to subgroups. Additionally, public comment may be offered from 3:00 p.m. until 3:30 p.m. On January 16, the Committee will outline and plan future activities to accomplish the Committee's goals.

The meeting will be open to the public. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact the Designated Federal Official for the Committee: Ms. Charlotte F. Beason, Ed.D., RN, at (202) 273–8422.

Dated: December 31, 1996.

By direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–192 Filed 1–3–97; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Monday
January 6, 1997

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 571 and 595

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Final Rule and Proposed Rule and Air Bag Deactivation; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 109]

RIN 2127–AG60

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Final rule.

SUMMARY: This rule extends until September 1, 2000, the time period during which vehicle manufacturers are permitted to offer manual cutoff switches for the passenger-side air bag for vehicles without rear seats or with rear seats that are too small to accommodate rear facing infant seats. Rear facing infant seats cannot be used safely in front of an air bag, and should ordinarily be placed in the back seat. The purpose of the option for manual cutoff switches is to ensure that the vehicle manufacturers have a means of accommodating their customers' need to carry rear facing infant seats in vehicles without rear seats or with rear seats that are too small for these devices. The agency is extending the time period for the option to ensure that manufacturers have adequate time to implement better, automatic solutions.

DATES: *Effective Date:* The amendments made in this rule are effective February 5, 1997.

Petitions: Petitions for reconsideration must be received by February 20, 1997.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For information about air bags and related rulemakings: Visit the NHTSA web site at http://www.nhtsa.dot.gov and select ''AIR BAGS Information about air bags.''

For non-legal issues: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: Mr. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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I. Background

While air bags are providing significant overall safety benefits, NHTSA is very concerned because current designs have adverse effects in some situations. Most important, while passenger side air bags are estimated to have saved 164 lives to date, they have also killed 32 children in relatively low speed collisions. Eighteen of those deaths have occurred this year. Driver air bags, by contrast, are estimated to have saved 1500 lives to date. The agency is aware of 19 relatively low speed crashes in which a driver has been killed by the air bag.

Within the past year, the agency has published two documents in the Federal Register to address this subject. On November 9, 1995, NHTSA published a request for comments to inform the public about NHTSA's efforts to reduce the adverse effects of air bags, and to invite the public and industry to share information and views with the agency. 60 FR 56554.

On August 6, 1996, the agency published a notice of proposed rulemaking (NPRM) to reduce the adverse effects of air bags, especially those on children. 61 FR 40784. The NPRM proposed several amendments to Standard No. 208, *Occupant Crash Protection,* and Standard No. 213, *Child Restraint Systems.*

In the August 1996 NPRM, the agency explained that eventually, either through market forces or government regulation, it expects that ''smart'' passenger-side air bags will be installed in passenger cars and light trucks to mitigate these adverse effects. NHTSA indicated that, for purposes of the NPRM, it considered smart air bags to include any system that automatically prevents an air bag from injuring the two groups of children that experience has shown to be at special risk from air bags: infants in rear-facing child seats, and children who are out-of-position (because they are unbelted or improperly belted) when the air bag deploys.

NHTSA proposed that vehicles lacking smart passenger-side air bags would be required to have new, attention-getting warning labels. By limiting the labeling requirement to vehicles without smart passenger-side air bags, NHTSA hoped to encourage the introduction of the next generation of air bags as soon as possible. NHTSA proposed to define smart air bags broadly to give manufacturers flexibility in making design choices. The agency requested comments concerning whether it should require installation of smart air bags and, if so, on what date such a requirement should become effective.

NHTSA also proposed to expand an existing option that permits manufacturers to install manual cutoff switches for the passenger-side air bag for vehicles without rear seats or with rear seats that are too small to accommodate rear facing infant seats. That option is scheduled to expire on September 1, 1997 for passenger cars and September 1, 1998 for light trucks. The agency proposed to extend the option for a longer period of time, and to expand it to cover all vehicles.

II. Overview and Summary

NHTSA is implementing a comprehensive plan of rulemaking and other actions (e.g., primary enforcement of State safety belt use laws) addressing the adverse effects of air bags. As part of that plan, NHTSA is issuing three separate, but related, notices today. Each notice is intended to ensure that some or all or the risks are reduced, and benefits retained, to the maximum extent possible. They provide immediate and/or interim solutions to the problem. A later notice, a proposal to require smart air bags, would provide a permanent solution.

In this final rule, which is based on the August 1996 NPRM, NHTSA is extending until September 1, 2000, a provision in Standard No. 208 permitting vehicle manufacturers to offer manual cutoff switches for the passenger air bag for new vehicles without rear seats or with rear seats that are too small to accommodate rear-facing infant restraints.

The other rulemaking actions addressing the adverse side effects of air bags are as follows:

- Also based on the August 1996 NPRM, the agency issued on November 22, 1996, a final rule amending Standards No. 208 and No. 213 to require improved labeling on new vehicles and child restraints to better ensure that drivers and other occupants are aware of the dangers posed by passenger air bags to children. The labeling places particular emphasis on placing rear-facing infant restraints in the rear seats of vehicles with operational passenger air bags. 61 Fed. Reg. 60206; November 27, 1996. The new labels are required on vehicles not equipped with smart passenger air bags beginning February 25, 1997, and on child restraints beginning May 27, 1997.
- NHTSA is also issuing an NPRM to temporarily amend Standard No. 208 to permit or facilitate approximately 20 to 35 percent depowering of current air bags.
- The agency also is issuing an NPRM proposing to permit motor vehicle dealers and repair businesses to deactivate, upon the request of consumers, driver and passenger air bags that do not meet the agency's criteria for smart air bags. Final action is expected in early 1997.
- In addition to these actions, NHTSA will issue a separate supplemental NPRM (SNPRM) to require a phasing-in of smart air bags, beginning on September 1, 1998, and to establish performance requirements for those air bags. The proposal will be issued in early 1997.

III. Current and Proposed Requirements Concerning Manual Cutoff Switches

Until smart passenger-side air bags can be installed in new vehicles, the improved labeling requirements recently announced by the agency will better ensure that drivers and other occupants are aware of the dangers posed by air bags to unbelted children and children in rear-facing child seats located in the front seat. Adult occupants will ideally respond to the labels by ensuring that, whenever possible, a child occupies the back seat of a vehicle, instead of the front, and is properly restrained there. Further, the adult will ensure that if a child, other than an infant in a rear-facing child seat, must sit in the front seat, the child is properly restrained and the seat is moved all the way back.

For rear-facing infant seats, however, securing them tightly in a front seat using the vehicle safety belts and moving the front seat all the way back will not protect an infant because the child seat would still extend too far forward. The infant's head would still be located very close to the air bag. For this reason, a rear-facing child seat should *never* be placed in a seating position with an activated air bag. However, some vehicles do not have back seats, or have back seats which are not large enough to accommodate a rear-facing child seat.

To address this dilemma, on May 23, 1995, NHTSA published a final rule allowing manufacturers the option of installing a manual device that motorists could use to deactivate the front passenger-side air bag in vehicles that are manufactured on or after June 22, 1995, and that cannot accommodate rear-facing child seats anywhere except in the front seat. In addition to limiting the types of vehicles which were permitted to have the manual cutoff switch, the final rule also included a number of conditions that had to be satisfied. The manual cutoff switch had to use an ignition key to turn off the air bag and to turn on the air bag by manual means. The manufacturer had to also install a warning light that was separate from the air bag readiness indicator and would indicate when the air bag was turned off. The light had to be visible to both the driver and passenger. The manufacturer had to include information on the manual cutoff switch in the owner's manual. Finally, the option was only available for passenger cars manufactured before September 1, 1997, and light trucks manufactured before September 1, 1998. The agency decided to place a time limit on the option for manual cutoff switches because it believed that better, automatic solutions would soon be available.

In the August NPRM, NHTSA proposed to extend the period of availability of the option for manual cutoff switches and to permit installation of those devices in all vehicles with passenger air bags lacking smart capability. The agency issued this proposal out of concern that smart air bags were not becoming available as quickly as anticipated, and that the need to place rear facing infant seats in the front seat goes beyond vehicles lacking rear seats that can accommodate these devices.

The agency noted that some children have special medical problems requiring close monitoring, which cannot be accomplished if the driver places the child in the rear seat. The agency had received a number of comments concerning this problem in response to a request for comments concerning adverse effects of air bags published in the Federal Register on November 9, 1995 (60 FR 56554).[1]

NHTSA also noted that a second reason for permitting manual cutoff switches in all vehicles is that the deep-seated desire of some parents to keep their infants near them under their close and watchful eye may be sufficiently strong that they choose to place their children in the front seat instead of the rear seat where the child would be safer.[2] The agency stated that it was concerned that some parents may decide to place a rear-facing child seat in the front seat where the infant can be closely monitored, even in the presence of an activated air bag and warning labels. NHTSA noted that while it does not wish to encourage parents to place children in the front seat, a cutoff switch would enable these parents to eliminate the risk from the air bag.

NHTSA requested comments on the availability of alternative automatic devices, and how such availability should affect its decision regarding the manual cutoff switch option. The agency also requested comments on whether it should endeavor to further encourage smart passenger-side air bags by specifying an expiration date for the manual cutoff switch option and, if so, what date.

The agency noted that many commenters to the November 1995 request for comments expressed concern about the potential for misuse of a manual cutoff switch. A switch could be misused either by a driver or other vehicle occupant deactivating the air bag when an occupant other than a child in a rear facing child seat is present, or by a driver simply forgetting to reactivate the air bag after using such a restraint. In either case, the air bag would not be available to protect persons who could benefit from its deployment.

In the Preliminary Regulatory Evaluation (PRE) for this rulemaking, NHTSA assessed possible benefit trade-offs associated with a manual cutoff switch provided for the right front passenger seat and intended to be used when a rear-facing child restraint is placed there. The agency stated that it appeared that there would be more

[1] Among other things, the parents of an infant with medical problems commented that those medical problems require them to be able to monitor the child and that cannot be done with the child in the back seat. The agency also noted that the National Association of Pediatric Nurse Associates & Practitioners had submitted a comment identifying a number of medical conditions for which infants would need to be monitored closely, indicating a need for those children to be transported in the front seat. That organization stated that approximately two percent of all children (which translates into about 400,000 children under the age of 5 and close to 100,000 under the age of one) have some type of medical condition or disability which requires some type of nonmedical assistive technology. Also, about 0.1 percent (or about 20,000 children under the age of five and 5,000 infants) require medical technology assistance such as respirators, surveillance devices, or nutritive assistance devices.

[2] A child is safer in the back seat of a vehicle, regardless of whether the vehicle has an activated passenger air bag in the front seat.

benefits to allowing a cutoff switch than losses if misuse levels were below seven percent. NHTSA noted that its educational efforts would focus on preventing such misuse, and also noted that the requirement for an extra warning light would reduce the possibility of drivers forgetting to reactivate the air bag after using a rear-facing child restraint in the front seat. Currently, pursuant to Standard No. 208, a yellow warning light displays the message ''AIR BAG OFF'' whenever the right front passenger air bag is deactivated by someone operating the cutoff switch.

Based on discussions with Ford, the vehicle manufacturer with the largest number of manual cutoff switches,[3] NHTSA stated that it was not aware of any misuse problems with these devices. Nevertheless, NHTSA specifically requested comments on whether there are any quantitative data or other information concerning the likelihood of manual cutoff switches being misused. The agency stated that it was particularly interested in information derived from the real-world experience with the vehicles equipped with manual cutoff switches.

IV. Summary of Comments

NHTSA received comments concerning its August 1996 proposal on manual cutoff switches from vehicle manufacturers, suppliers, safety groups, and private individuals. Commenters generally supported extending the period of availability of the existing option for manual cutoff switches. The comments were mixed, however, with respect to expanding the option to cover all vehicles. A variety of commenters, including the domestic auto manufacturers and several insurance and safety groups, opposed such an expansion. Some were concerned about the potential misuse of the cutoff, while others thought that such an expansion would inadvertently and unavoidably compromise various safety messages, i.e., that rear facing infant seats should always be placed in the back seat and that the back seat is the safest place for all children.

This section summarizes comments concerning whether the option for cutoff switches should be extended in time and/or expanded in scope. Comments concerning what specific requirements should apply to cutoff switches, assuming they are permitted, are addressed later in this document.

A. Vehicle Manufacturers

The American Automobile Manufacturers Association (AAMA), representing GM, Ford, and Chrysler, recommended that the current option for installing manual cutoff switches in certain vehicle configurations be continued. It noted that its members are already on record as considering this approach to be an interim measure until systems that can discriminate occupant weight and location have been proven to be sufficiently reliable and effective for production vehicle use.

AAMA recommended, however, that the allowable use of manual cutoff switches not be expanded to cover other vehicle configurations than those currently permitted. That organization noted that the cutoff switch option currently allowed in Standard No. 208 provides a method to manually deactivate the passenger side air bag in vehicles where the alternative of placing a rear-facing child seat in the rear seat of the vehicle does not exist because of the configuration of the vehicles' interior. AAMA stated that in these vehicles, there may be specific crash situations where a properly utilized manual cutoff switch could provide a benefit. That commenter added, however, that there are no data publicly available to evaluate the net effectiveness of a cutoff switch—particularly considering the long term potential for misuse. Therefore, AAMA believes that for other vehicle configurations that already offer preferable alternatives to placing rear-facing child seats in the vehicles' front seat, the net potential benefit of a cutoff switch is questionable.

GM stated that it supports the agency's proposal to extend indefinitely the currently permitted use of manual cutoff switches for passenger air bags. That company noted that it is currently installing these switches in its 1997 regular and extended full size pickup trucks. GM stated that its review of the various automatic suppression technologies currently being developed is ongoing. According to that commenter, as automatic suppression technology becomes production capable, its ability to replace manual suppression systems will be evaluated and, when appropriate, implemented as quickly as possible. GM stated that it does not agree with the agency's proposal to expand the allowable use of manual cutoff switches to include vehicles other than the configurations currently permitted.

Ford stated that it supports extension beyond September 1, 1998 of the existing option to install manual deactivation switches in vehicles that cannot fit rear-facing infant restraints in the rear seat, because it may be unable to install automatic deactivation for children in all pickup trucks by that date. Ford stated, however, that it opposes expansion of the option to passenger cars and other vehicles that can fit rear-facing infant restraints in the rear seat, because automatic (weight threshold) deactivation technology has now advanced sufficiently to be considered for future models of such vehicles.

Chrysler stated that it is concerned about the many opportunities for misuse of cutoff switches, even if their use is limited to the vehicles in which they may now be installed. That company stated that drivers are faced with a dilemma about how to use a cutoff switch with three passenger front seating. Given the confusion associated with this problem and ordinary driver distractions, it believes that the potential for misuse of cutoff switches could exceed the seven percent ''breakeven'' figure cited by the agency in its Preliminary Regulatory Evaluation for the August 1996 NPRM.

Chrysler also argued that it believes cutoff switches may discourage seat belt use, and dilute the message that children should be seated in the rear seat. Chrysler stated that given NHTSA's statement that the likelihood of injuries/fatalities is 29 percent less for someone sitting in the rear seat instead of in the front seat, this encouragement of front seat use alone could negate the purported benefits of cutoff switches.

Toyota stated that it believes manual cutoff switches are the most reliable resolution currently available when used as intended, i.e., to install a rearward facing infant restraint. That company indicated that it is planning to provide such switches in its 1998 model year pickup trucks. Toyota stated that, with respect to vehicles other than those without adequate seats for rear facing infant seats, manual cutoff switches have some inherent problems.

Honda stated that it is extremely concerned about the potential for misuse or abuse of manual cutoff switches by some users. That company stated that vehicle operators may inadvertently forget to deactivate the air bag with the switch when necessary, or may intentionally deactivate the passenger air bag with the cutoff switch when it is not appropriate to do so. Honda stated it believes the manual cutoff switch represents the least

[3] At the time of the NPRM, NHTSA knew of only three models utilizing cutoff switches—the model year 1996 Ford Ranger pickup, the model year 1997 Ford F150 pickup, which was introduced in February 1996, and the LE and SE versions of the model year 1996 Mazda B-series pickup trucks, which are equipped with an optional passenger side air bag.

effective of any solutions to the problem of air bag induced injuries.

Mercedes Benz stated that unless required by law, it will not offer any type of manual cutoff switch because of expected driver misuse or non-use.

Volvo stated that it believes manual cutoff switches should be allowed for all categories of vehicles. That manufacturer stated that this technology must be considered an interim solution. Volvo stated it believes market forces will act as soon as more advanced technology is available and will make any manually operated system obsolete. Therefore, that company believes there should be no time limit for when manual cutoff switches should no longer be allowed.

Volvo noted that in Europe, due to customer requests, most manufacturers have developed new car retail service procedures for deactivation and reactivation of passenger side air bags. Volvo recommended making new car retail service procedures legal in the U.S. for all customers who wish to deactivate the passenger side air bag.

BMW stated that it believes manual cutoff switches remain a practical alternative and allowing them on all vehicles is a reasonable interim solution. That company stated that it is important to offer parents alternatives until advanced technologies can be developed and implemented. BMW stated that if the fast pace of technology for advanced systems continues at its current rate, it expects that the need for an allowance for manual devices may be eliminated about the year 2002.

BMW noted that as an alternative to manual devices, a more direct approach consists of temporarily deactivating the air bag. That manufacturer stated that it believes that NHTSA could develop procedures similar to those being utilized by vehicle manufacturers in Europe. In Europe, a BMW dealer is allowed to temporarily deactivate the passenger air bag for individuals who may have a special need or normally transport children after advising them of the benefits of air bags and approval forms are signed.

B. Dealers

The National Automobile Dealers Association (NADA) supported the agency's proposal to expand the option for manual cutoff switches to cover all vehicles.

C. Suppliers

TRW stated that it believes the cutoff switch to be the most positive means of shutting off the air bag if understood and used properly, and therefore supported allowing its use in all vehicles. However, TRW recommended continued use of the cutoff switch only until more inclusive, automatic means can be demonstrated and adopted.

Autoliv stated that manual cutoff switches should be considered as an interim solution. That company stated that it believes market forces will generate devices for automatic deactivation and that a time limit for permitting manual cutoff switches is unnecessary. Autoliv also argued that another reason for not setting a time limit is that there may be a justification for a combination of manual and automatic systems, highly depending on the direction that the development of automatic systems takes.

D. Child Seat Manufacturers

Cosco stated that it believes cutoff switches should immediately be permitted in all vehicles as the fastest way of providing an option for those who must, or prefer to, have a baby in the front seat. That company stated that it does not believe permitting cutoff switches will delay the introduction of smart bags, but will allow the thoughtful and intelligent introduction of effective smart systems.

Cosco also commented that certain car beds, including its ''Dream Ride,'' are compatible with seating positions equipped with air bags. Cosco cited a test performed by NHTSA for this conclusion. Cosco stated that such car beds that have been proven to be compatible with air bags do not require the deactivation of the air bag. That commenter stated that until cutoff switches or other devices are adopted, NHTSA should make an effort to inform parents that a car bed is an acceptable alternative, especially since, for medically fragile infants and also for cars with non-compatible rear vehicle belts, a car bed is their only option.

E. Insurance, Safety, and Medical Groups

IIHS stated that it does not support NHTSA's proposal to allow manual cutoff switches in all vehicles with passenger air bags. That organization stated that it is concerned that cutoff switches will not be an effective solution to the problem of child deaths and may lead to additional harm to other vehicle occupants. According to IIHS, some people undoubtedly would use the switches correctly, but it is likely that many parents and other drivers would misuse the switches. That commenter stated that there is no reason to believe that many adults who allow children to ride unrestrained or improperly restrained would use air bag deactivation switches correctly.

IIHS also cited a danger that manual cutoff switches send consumers a mixed message by encouraging drivers to place infants and children in the front seat. That commenter noted that a central objective of the educational effort to reduce the adverse effects of passenger air bags is to convince adults that infants and children should ride in rear seats. A recent Institute survey of vehicles in parking lots found rear-facing restraints in the front seat of cars with passenger air bags only 9 percent of the time, compared with 36 percent in cars without passenger air bags. IIHS stated that it would be a mistake if, as a result of switches, more infants and children are placed in the front seat.

The National Association of Independent Insurers (NAII) stated that it is extremely concerned by the proposal to allow use of manual switches to allow vehicle users to deactivate passenger-side air bags. NAII cited several concerns about this issue previously raised by IIHS and stated that, in NAII's estimation, many people may run a greater risk of getting injured simply because they have forgotten to turn the switch back on.

Advocates for Highway and Auto Safety (Advocates) stated that while it would support an extension of time for the installation of manual cutoff switches in vehicles without back seats, it believes that NHTSA should encourage the use of automatic weight sensors and should not permit the installation of manual cutoff switches in vehicles with back seats. According to that organization, permitting the installation of manual cutoff switches in all passenger vehicles would result in potential safety risks for many passengers due to the inevitable misuse of cutoff switches. Advocates stated that the misuse of cutoff switches is foreseeable and will result in a safety trade-off that will, in fact, undermine the proven life saving benefits of air bags.

Advocates argued that permitting manual cutoff switches in all vehicles will make air bag protection subject to the vagaries of what the agency has in the past referred to as operator error. The safety benefits of air bags will then depend on the ability and willingness of adults to set the switch in the ''off'' position for infants or toddlers but return it to the ''on'' position for other passengers. Advocates stated that it is convinced that manual cutoff switches will not be correctly used. Advocates also stated that while it has not quantified the potential risk, it believes that the higher level of exposure of non-infant occupants to risk when an air bag is turned off will far exceed the present

level of adverse effects of passenger-side air bags on children in rear-facing child restraints.

Advocates also argued that the manual cutoff switch sends the wrong safety message to parents. According to that commenter, the existence of a manual switch strongly implies that it is safe to place infants and children in the front seat.

Public Citizen stated that it opposes installation of air bag on/off switches. That organization argued that this proposal is misguided and would undercut the automatic nature of air bags. One of the disadvantages, according to Public Citizen, is the danger that the air bag will be left off for adult passengers when it should be on. That commenter also stated that the proposal sends a wrong and deadly message—that it's okay for kids to ride in the front seat. Public Citizen stated that a far preferable technical change would be a minimum trigger speed of approximately 15 mph, which would significantly reduce the number of low speed crash air bag inflations, the type of crash in which children are being killed and injured.

SafetyBeltSafe U.S.A. stated that it agrees that cutoff switches may be a necessary, temporary solution for some vehicles, but they should not be permitted beyond a specified date.

National Safe Kids Campaign (NSKC), whose chairman is C. Everett Koop, M.D., stated that it believes that in the best interest of children, manual cutoff switches should be required until smart passenger-side air bags are developed. That organization stated that while there are behavioral issues associated with cutoff switches, it recognizes that families with small children will sometimes need to transport them in the front seat as a last resort. That organization stated that the cutoff switch gives the responsible parent/driver the option to turn off the air bag deployment system and then more safely transport an infant or child in the front seat.

Kathleen Weber, Director of the Child Passenger Research Program at the University of Michigan Medical School, supported the agency's proposal. Ms. Weber stated that despite all the warnings in the world, parents want to put babies in the front seat, and older children also like to ride up front with the driver. That commenter stated that, with respect to the latter, it is becoming increasingly clear that, even when older children are suitably restrained by a lap/shoulder belt, they can easily and unpredictably move forward to adjust the radio, pick up something from the floor, or brace themselves in anticipation of a crash, inadvertently placing themselves at great risk of injury or death. Ms. Weber stated that parents need the option of suppressing deployment of passenger air bags by either manual or automatic means, and also urged the agency to address this problem for owners of current vehicles.

The American Academy of Pediatrics (AAP) stated that it is very concerned about the possibility of extending and expanding the availability of manual air bag cutoff switches. That organization stated that efforts to educate families through labels regarding the potential dangers of air bags to infants in rear facing child seats have demonstrated that compliance is extremely difficult to accomplish. AAP expressed concern that with a manual cutoff switch, drivers may fail to deactivate the air bag when the rear facing seat is present or fail to reactivate the air bag after an appropriate deactivation. That organization stated that increased availability of the manual cutoff switch would lead to the development of a much larger fleet of vehicles in which such misuse could result. AAP stated that ensuring proper use of the cutoff switch by so many drivers would entail an enormous and extremely difficult educational challenge and would almost surely result in a significant amount of misuse.

AAP stated that it is also concerned that the availability of a manual cutoff switch will dilute the important message that ''Back Seat is Best.'' That organization stated that although many parents feel that they need a manual cutoff switch so that they can place an infant in the front seat for observation, the number of children who actually have a medical need for observation is smaller than parents realize. In fact, AAP stated the number of such children is very small. AAP argued that consumer concerns could better be addressed through a focused, short-term education effort until a passive deactivation air bag system can be implemented.

AAP stated that the transportation of children with special needs who must be observed should be addressed on a case-by-case basis by the child's physician. That organization stated that the vast majority of the small number of children for whom observation may be medically desirable can be safely transported in a car bed in the front-seat position, which would not be affected by a passenger-side air bag. AAP added that the duration of time that this level of observation is necessary is usually extremely short—i.e., a few months. AAP stated that older children with high-risk medical needs, such as children on ventilators, usually need to be the back seat anyway, since they need large quantities of equipment and must be accompanied by skilled care givers at their sides.

The National Association of Children's Hospitals and Related Institutions (NACHRI) stated that it has serious concerns with the proposal to permit manual air bag cutoff switches for any vehicle without a smart passenger side air bag, although it understands and supports the existing option for vehicles in which rear facing child seats can only be used in the front seat. That organization stated that key public awareness campaigns are currently presenting one message as an absolute—infants in rear facing child seats should never ride in the front seat of a vehicle with a passenger side air bag. NACHRI stated that while this message is only now taking hold with the public, it questions how NHTSA would, if manual switches are permitted in all vehicles, adjust the message without hampering the credibility of all child passenger safety public awareness efforts. NACHRI also stated that another message—the safest place for all children is in the back seat—would also be seriously affected by a change in regulation on manual cutoff switches.

NACHRI stated that it recognizes that there are a small number of pediatric medical conditions that require close monitoring during vehicle travel, e.g., complications of prematurity. NACHRI recommended, however, that instead of permitting cutoff switches for all vehicles—and addressing the resulting public education and safety issues—it may be simpler to educate the small number of parents of medically fragile infants to ride with another adult whenever possible or to stop the vehicle periodically to monitor the infant.

Dr. Phyllis Kiehl of LaTouche Pediatrics stated that she strongly encouraged the cutoff switch option for vehicles without smart air bags, while also arguing that the introduction of smart air bags should be mandated.

Philip O. Morton, Chairman of the Board of the American Tinnitus Association, expressed concern about the connection between vehicle air bag deployment and the corresponding incidence of tinnitus. Mr. Morton urged that on/off switches be available for all vehicle air bags, including driver air bags.

F. Other Commenters

Safe Ride News urged NHTSA to require rather than permit the use of cutoff switches for all vehicles without smart air bags.

A number of private individuals requested that cutoff switches be provided. Some, including persons concerned that air bag deployment may cause hearing problems for persons with tinnitus or hyperacusis, requested that cutoff switches be provided for both passenger and driver air bags.

V. Agency Decision

A. Option for Manual Cutoff Switches

NHTSA believes there is a consensus that the only fully effective solution to the problem of adverse effects from passenger-side air bags is smart bags. Moreover, the vehicle manufacturers have indicated that they plan to introduce these devices as soon as they become available.

The agency is encouraged that several suppliers commenting on the August 1996 NPRM indicated that smart bags can begin to be phased in beginning with the model year 1999 fleet, i.e., approximately September 1, 1998. To help ensure that these devices are introduced expeditiously, the agency plans to publish shortly a separate SNPRM to propose performance requirements for smart air bags and to propose a phase-in schedule for requiring these devices.

In the meantime, and after considering the comments, NHTSA has decided to extend until September 1, 2000, the time period during which vehicle manufacturers are permitted under Standard No. 208 to offer manual cutoff switches for the passenger-side air bag for vehicles without rear seats or with rear seats that are too small to accommodate rear facing infant seats. The agency has decided not to expand the option to additional vehicles. The reasons for the agency's decision are presented below.

1. Time Period for Manual Cutoff Switches

The agency initially decided to place a time limit on the current option for manual cutoff switches for passenger air bags because it believed that better, automatic solutions would soon be available. The option was only available for passenger cars manufactured before September 1, 1997, and light trucks manufactured before September 1, 1998.

A variety of circumstances have changed since the agency issued its current rule on manual cutoff switches in May 1995. First, there is uncertainty concerning the extent to which smart air bags will be available by September 1, 1998. As indicated above, NHTSA is encouraged that several suppliers commenting on the August 1996 NPRM indicated that smart bags can begin to be phased in beginning with the model year 1999 fleet, i.e., approximately September 1, 1998. However, this would not mean that vehicle manufacturers would be able to install smart bags on all of the models for which they would use manual cutoff switches by that date.

Second, a consensus has emerged concerning the need to develop and implement smart passenger air bags as soon as possible, and manufacturers and suppliers are working toward that end. Moreover, the agency is announcing plans to issue an SNPRM to propose performance requirements for smart air bags and a phase-in schedule for requiring these devices. Given these developments, the agency believes there is less reason to have concern that the availability of an option for manual cutoff switches will delay implementation of better solutions.

Given the importance of ensuring that the vehicle manufacturers have a means of accommodating their customers' need to carry rear facing infant restraints in some vehicles without rear seats or with rear seats that are too small to accommodate these devices, NHTSA has decided to extend the current option to September 1, 2000. While there is some uncertainty as to how long the option needs to be extended, the agency believes the record shows that the vehicle manufacturers should be able to implement some type of smart air bag for these vehicles by that time.

2. Types of Vehicles for Which Manual Cutoff Switch Option Should be Available

As discussed above, while NHTSA initially decided to permit manual cutoff switches to be offered only on vehicles without rear seats or with rear seats that are too small to accommodate rear-facing child restraints, it proposed to expand the option to cover all vehicles. As summarized above, a variety of commenters urged that the cutoff option be expanded to other vehicles, arguing that parents want to place their children in the front seat and that an expanded option would provide an interim solution to the problem of air bag deaths until smart air bags are introduced and would provide time for the orderly introduction of smart air bags. Proponents of wider availability of manual cutoff switches asserted that the needs of vehicle owners for a means of turning air bags off could be met by such switches because they provide a means of turning off air bags in appropriate situations. Some commenters argued that the agency should respond to those needs by adopting a requirement that manufacturers install manual cutoff switches in all vehicles, rather than a permissive option for manufacturers. Some commenters also argued that this requirement should apply to driver-side air bags as well as passenger-side air bags. One proponent expressed the view that cutoff switches provide the most ''positive'' means of shutting of air bags.

After considering the comments, however, the agency has decided not to expand the option to include additional vehicles. The reasons for this decision are explained below.

The agency begins by acknowledging that, given current air bag designs, there are situations in which there is a need or a strong desire to turn off passenger-side air bags in vehicles with large enough rear seats to accommodate a rear-facing child restraint. An example of this is the situation in which a rear facing infant restraint must be placed in the front seat so that a special medical condition of the infant can be closely monitored. The need to turn off passenger-side air bags by means of a manual cutoff switch or deactivation will cease when smart air bags are introduced.

NHTSA concludes that the objective of allowing air bags to be turned off in appropriate circumstances can best and most quickly be met by permitting motor vehicle dealers and repair businesses to deactivate driver and passenger-side air bags upon the request of vehicle owners without expanding the cutoff switch option to cover additional types of vehicles. As indicated above, the agency is issuing a separate NPRM on the subject of deactivation. Allowing deactivation would not only provide a means of turning off the air bags in vehicles not covered by the cutoff option, but also in vehicles covered by the option, but not equipped with a cutoff switch.

For those situations in which there is a need to turn off an air bag, deactivation is just as good a solution as a cutoff switch in some respects, and better in others. Deactivation is just as effective as a cutoff switch for enabling parents to eliminate the risk to their children. Parents who need to use the front passenger seat for transporting a child can have their passenger-side air bag deactivated. Deactivation also provides an answer to the concerns of some groups of drivers, e.g., short-statured drivers who sit very close to the steering wheel and drivers with tinnitus or hyperacusis, while the agency conducts further studies.

Deactivation, accompanied by appropriate labels, can provide as much visible assurance that an air bag has been deactivated as a cutoff switch can. Under the agency's proposal, a vehicle

owner would be able to readily determine if the air bag was off by means of the labels that the agency is proposing be placed on vehicles whose air bags have been deactivated.

Finally, just like manual cutoff switches, deactivation would solve the immediate problem and thus buy time for the intelligent and thoughtful introduction of smart bags. By providing a means to eliminate the risk to children, the agency and industry will have the opportunity to take appropriate care in completing the development of and in introducing smart air bags.

NHTSA believes that deactivation is superior to widespread use of cutoff switches in a number of respects. First, deactivation is a much speedier answer to the need to turn off air bags than expanding the option for manual cutoff switches. Significant time would be needed by vehicle manufacturers to do the designing and retooling necessary to install cutoff switches in future vehicles for which such work has not already been done. More specifically, vehicle manufacturers have advised that development and installation of cutoff switches would take at least one year. In contrast, no redesigning or retooling is needed for deactivation. Indeed, deactivation would be available immediately upon the issuance of a final rule. Moreover, deactivation is the only method for addressing vehicles already on the road, which are the bulk of the problem. The agency notes that even if it were to require or permit cutoffs for future vehicles, it would still have to authorize deactivation for existing vehicles and those future vehicles built before the switches could be installed.

Second, deactivation is a narrower and more focused solution than a cut off switch requirement or than a cutoff switch option to which manufacturers responded by installing cutoff switches in all or most vehicles. Under that scenario of nearly universal installation, cutoff switches would be provided without regard to need. By contrast, deactivation would be sought primarily just in those circumstances in which it is needed. This more focused aspect of deactivation would reinforce the message that air bags are generally good, and that only in limited circumstances is it appropriate to turn them off.

For reasons discussed by a wide range of commenters, including auto makers, consumer groups, insurance groups, and medical groups, there is a possibility that widespread availability of manual cutoff switches could easily do more harm than good, in terms of overall effect on safety. NHTSA is seeking to provide relief where needed while minimizing, consistent with the safety of children and others, the number of air bags that are turned off. The agency believes that the possibility of a net adverse effect on safety is less likely with deactivation given the expectation noted above that deactivation would be sought primarily by persons with a particular need. Moreover, the agency has proposed procedures that would ensure that owners who are contemplating deactivation of their air bags are made aware of the circumstances in which deactivation may be appropriate, based upon the comparison of the risks of turning the air bag off versus leaving it on. This would reduce the possibility of unnecessary or inappropriate turning off of air bags, and should result in a better net effect on safety.

Third, deactivation would be less costly in terms of overall consumer costs than across-the-board provision of manual cutoff switches. Air bags would be deactivated only in those vehicles whose owners requested deactivation. As a result, costs would also be more equitably distributed, since the costs would be borne by those choosing to have their vehicles modified. Conversely, all new vehicle purchasers would have to pay for manual switches if they were universally installed.

NHTSA also believes that the early introduction and availability of smart air bag technology could be aided by allowing the vehicle manufacturers to focus their attention and resources on completing development of that technology rather than spending additional resources on, and otherwise being distracted by, designing manual cutoff switches for all vehicles. In addition, there are several other considerations that argue against diverting manufacturer efforts into expanding the availability of cutoffs. To the extent that vehicle manufacturers depower their air bags in the near future pursuant to another NHTSA proposal, the potential benefits of cutoff switches would be reduced. Further, the agency sees little point in pushing the vehicle manufacturers toward a technology that would so quickly be made obsolete by smart air bags.

NHTSA recognizes that deactivation would have some disadvantages as compared to cutoff switches. One disadvantage is that deactivation of an air bag for the benefit of one user of a particular vehicle would make the air bag unavailable for other users of that vehicle. By contrast, cutoff switches could be used by the various different occupants of a vehicle to suit their own needs with respect to air bag protection. Further, once an air bag was deactivated, a person would have to make a greater investment of time and expense to have it reactivated. While these disadvantages were considered by the agency in making its decision, the agency believes they are outweighed by the factors discussed above.

NHTSA wishes to address the suggestion by some commenters that infants with a special medical condition can be placed in a car bed instead of a rear facing infant seat, and that a car bed can safely be used in front of an air bag. Given the limited information that is available, NHTSA is not prepared to recommend placing a car bed in front of an air bag. The agency did conduct a test in which the air bag deployed primarily over the top of a car bed, barely contacting the bed. However, NHTSA used an infant dummy that was not instrumented, and thus did not obtain measurements of the potential for injury. The agency notes that there is no available infant dummy of less than 10 pounds weight that is instrumented to make such measurements. The agency does not know how hard the air bag impacted the bed, or what the effect the impact would have on a four, five or ten pound infant, with or without a medical problem. Moreover, the agency does not know the extent to which that particular test was representative of current vehicle seats and air bags. Finally, NHTSA notes that car beds cannot fit on bucket seats.

B. Performance Requirements for Manual Cutoff Switches

Several commenters urged that, assuming manual cutoff switches are permitted, various changes should be made in the requirements for those switches and accompanying indicator lights. Volvo stated that if manual cutoff switches are permitted, all modes of air bag activation should be indicated, i.e., air bag on vs. air bag off. That manufacturer also suggested that this status indication might be accompanied by symbols showing who is the appropriate occupant in the seat for the indicated mode and who is not. Volvo stated that manufacturers should be given full freedom in finding a suitable location for the air bag status indication. That company stated that it is desirable that the indication be visible for all front seat occupants, but a provision that requires the indication be close to the cutoff switch is unnecessarily design restrictive. Volvo also suggested that other options for the device used to operate the cutoff switch, i.e., other than the ignition key, should be considered.

Nissan stated that if NHTSA expands the ability of manufacturers to install manual air bag cutoff switches, the

agency should make changes to Standard No. 208's current indicator light requirements. Nissan noted that the Standard currently specifies that if a vehicle is equipped with a single indicator for both a driver and passenger air bag, and if the vehicle is equipped with a cutoff device, the readiness indicator must monitor only the readiness of the driver air bag when the passenger air bag has been deactivated by means of the cutoff device. Nissan expressed concern that this requirement means that the operability of the cutoff switch indicator, the cutoff switch, and the passenger air bag cannot be diagnosed when that air bag is deactivated by the cutoff switch. That manufacturer requested that the current requirements be amended to allow use of a system that continuously monitors, diagnoses and displays system status for all components, including the driver air bag, passenger air bag, cutoff switch and the cutoff switch indicator, if the readiness indicator does not illuminate solely upon the action of deactivating the passenger air bag via the cutoff switch.

Land Rover stated that if the opportunity to install cutoff switches is expanded, additional rulemaking should be conducted to specify the mode of operation including details about whether and under what conditions the air bag should be automatically reactivated.

AAP stated that if NHTSA should choose to permit wider use of the manual cutoff switch, then it recommends that a visible, audible and non-deactivatable warning signal be required to indicate that the air bag is on or off. NSKC stated that if the agency decides to require manual cutoff switches, it also becomes absolutely necessary to require some type of warning light and warning sound in the control panel of the dashboard which informs or reminds the driver that the air bag has been deactivated. Autoliv stated that it cannot be emphasized enough that a clear indication of the passenger air bag mode to the driver is crucial to the safe use of the manual cutoff switch. Autoliv suggested that this switch could be further improved by alerting the driver about the passenger bag mode (off or on) each time the driver turns the ignition key on.

As discussed above, Standard No. 208 currently specifies a number of requirements for manual cutoff switches. The manual cutoff switch must make it necessary to use an ignition key to turn off the air bag and to turn on the air bag by manual means. The manufacturer must also install a warning light which is separate from the air bag readiness indicator and which would indicate that the air bag was turned off. The light must be visible to both the driver and passenger. The manufacturer must include information on the manual cutoff switch in the owner's manual.

For a number of reasons, NHTSA is reluctant to make any significant changes in the current performance requirements for manual cutoff switches. First, the agency has already completed a rulemaking to determine what requirements should apply to manual cutoff switches, and has no reason to believe that significant changes are necessary. Second, manual cutoff switches are now being provided in a number of vehicles, and consumers are becoming familiar with them. Some kinds of changes in the requirements for manual cutoff switches could potentially cause confusion. For example, Standard No. 208 currently requires that it be necessary to use manual means to reactivate the air bag after it has been deactivated by use of the cutoff switch. Considerable confusion could result from a change in this requirement such that air bags in newer vehicles reactivated automatically after use of a cutoff switch, while air bags in older vehicles did not.

While the agency is not adding additional performance requirements, it notes that manufacturers can voluntarily provide additional features, such as audible signals or extra lights, as long as the Standard's specific requirements are met.

NHTSA has concluded that there is merit to Nissan's request for a change in Standard No. 208's current air bag indicator light requirements. As discussed above, the Standard currently specifies that if a vehicle is equipped with a single indicator for both a driver and passenger air bag, and if the vehicle is equipped with a cutoff device, the readiness indicator must monitor only the readiness of the driver air bag when the passenger air bag has been deactivated by means of the cutoff device. The purpose of this requirement was to ensure that drivers would not miss a message that the driver air bag was not functional, simply because the passenger side bag was intentionally deactivated. The agency agrees with Nissan that this problem would not occur in a system that continuously monitors, diagnoses and displays system status for all components, including the driver air bag, passenger air bag, cutoff switch and the cutoff switch indicator, so long as the readiness indicator does not illuminate solely upon the action of deactivating the passenger air bag via the cutoff switch. NHTSA is therefore making a change to accommodate Nissan's suggestion. The change provides additional flexibility and does not impose any new requirements.

C. Effective Date

NHTSA is making today's amendments effective 30 days after publication in the Federal Register. The agency finds good cause for this effective date. The amendments will ensure that vehicle manufacturers can continue to have a means of accommodating their customers' need to carry rear facing infant seats in vehicles without rear seats or with rear seats that are too small for these devices. The amendments do not impose any additional requirements but instead relieve a restriction.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''significant'' under the Department of Transportation's regulatory policies and procedures. The action is considered significant because of the degree of public interest in this subject.

NHTSA estimates the cost of a voluntarily installed manual cutoff switch at a little over five dollars.

A full discussion of costs and benefits can be found in the agency's regulatory evaluation for this rulemaking action, which is being placed in the docket.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. The final rule primarily affects motor vehicle manufacturers. Almost all motor vehicle manufacturers would not qualify as small businesses.

C. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the human environment.

D. Executive Order 12612 (Federalism)

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

E. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. Section 571.208 is amended by revising S4.1.5.1(b), S4.5.2, and S4.5.4, to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

* * * * *

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

* * * * *

(b) For the purposes of sections S4.1.5 through S4.1.5.3 and S4.2.6 through S4.2.6.2 of this standard, an *inflatable restraint system* means an air bag that is activated in a crash.

* * * * *

S4.5.2 *Readiness indicator.* An occupant protection system that deploys in the event of a crash shall have a monitoring system with a readiness indicator. The indicator shall monitor its own readiness and shall be clearly visible from the driver's designated seating position. If the vehicle is equipped with a single readiness indicator for both a driver and passenger air bag, and if the vehicle is equipped with a cutoff device permitted by S4.5.4 of this standard, the readiness indicator shall monitor the readiness of the driver air bag when the passenger air bag has been deactivated by means of the cutoff device, and shall not illuminate solely because the passenger air bag has been deactivated by the manual cutoff switch. A list of the elements of the system being monitored by the indicator shall be included with the information furnished in accordance with S4.5.1 but need not be included on the label.

* * * * *

S4.5.4 *Passenger Air Bag Manual Cutoff Device.*

Passenger cars, trucks, buses, and multipurpose passenger vehicles manufactured before September 1, 2000 may be equipped with a device that deactivates the air bag installed at the right front passenger position in the vehicle, if all the conditions in S4.5.4.1 through S4.5.4.4 are satisfied.

* * * * *

Issued on December 26, 1996.

Donald C. Bischoff,

Executive Director.

[FR Doc. 96–33306 Filed 12–30–96; 11:00 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 108]

RIN 2127–AG59

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: NHTSA is proposing to amend the agency's occupant crash protection standard to ensure that vehicle manufacturers can depower all air bags so that they inflate less aggressively. The agency is taking this action as part of its comprehensive efforts to reduce the fatalities and injuries that current air bag designs are causing in relatively low speed crashes to small, but growing numbers of children, and occasionally to adult drivers. Taken together, these efforts would affect all existing air bag vehicles, as well as those produced in the next several model years.

Based on agency research and analysis regarding the optimal range of air bag ''depowering,'' the agency has tentatively concluded that an average depowering of 20 to 35 percent would reduce the risk of fatalities in low speed crashes, while substantially preserving the life saving capabilities of air bags in higher speed crashes. The agency is considering the adoption of either, or both, of two different approaches that would permit or facilitate, but not require, such depowering of current air bags. One approach would be to reduce the stringency of the chest acceleration requirement which an unbelted dummy must meet in a crash test at speeds up to 30 mph. The other approach was recently requested by the American Automobile Manufacturers Association in a letter superseding its earlier petition for rulemaking. It would replace the unbelted crash test requirement with a sled test protocol incorporating a 125 millisecond standardized crash pulse. NHTSA is seeking comments and information concerning the relative desirability of these two approaches, including supporting data from industry for the sled test. The agency also seeks comments on whether the same or different requirements should apply to the passenger and driver positions.

There is a possibility that while this rulemaking would prevent a significant number of air bag fatalities, and make it possible to design air bags so that they save increased numbers of belted occupants, it could also result in an even larger number of unbelted occupants not being saved by air bags. Accordingly, the agency is requesting comments on the appropriate duration of such an amendment. If there are adverse safety tradeoffs, and smart air bags offer a way of preventing air bag fatalities while not causing similar tradeoffs, it would be desirable to limit the duration of the amendment so that depowering is only an interim measure. NHTSA currently contemplates that the amended requirement would remain in effect for both passenger and driver air bags until smart air bags are installed pursuant to a mandated phase-in schedule. Establishing that schedule and appropriate performance requirements will be the subject of a separate rulemaking proceeding.

NHTSA is also announcing its granting of a petition by Anita Glass Lindsey to commence a rulemaking proceeding to consider whether to specify the use of a dummy representing a small-statured female in testing the performance of safety belts and air bags.

DATES: Comments must be received by February 5, 1997.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: For information about air bags and related rulemakings: Visit the NHTSA web site at http://www.nhtsa.dot.gov and select ''AIR BAGS: Information about air bags.''

For non-legal issues: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: J. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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I. Background

In 1984, the Department of Transportation issued a final rule requiring the installation of automatic protection (e.g., air bags, automatic belts, passive interiors) in passenger cars. 49 Fed. Reg. 28962; July 17, 1984. The Department took this step to increase the protection of vehicle occupants, especially unbelted ones. At the time, only 12.5 percent of occupants wore their safety belts, and only one state required all motorists to buckle up.

In 1991, Congress mandated the installation of air bags in both passenger cars and LTV's with a gross vehicle weight rating (GVWR) of 8,500 pounds or less. (LTV's generally include vans, pickup trucks, buses, and sport utility vehicles with a gross vehicle weight rating of 10,000 pounds or less). The Intermodal Surface Transportation Efficiency Act required that air bags be put in all new cars by the beginning of model year 1998 and in all new LTV's by the beginning of model year 1999.

Much has changed since 1984, and even since 1991. The cumulative production of air bag cars and LTV's reached the 10,000,000 mark for driver air bag vehicles during model year 1992 and for dual air bag vehicles during model year 1995. Air bags are now standard equipment on most passenger

cars and LTV's. As of the end of model year 1996, approximately 56 million air bag vehicles have been produced for sale in the United States.[1] Safety belt use has reached approximately 68 percent.[2] Forty-nine States and the District of Columbia require the use of safety belts, and all jurisdictions require the use of child safety seats. While males account for a sizable majority of the nonusers of safety belts, females still account for 40 percent of the nonusers.[3]

NHTSA estimates that air bags have deployed more than 800,000 times in crashes and have saved approximately 1,664 lives (164 passengers and 1,500 drivers) as of November 1996. Unfortunately, air bags also have fatally injured at least 32 children, 1 adult passenger, and 19 drivers in low severity crashes in the United States. Apart from the nine fatally-injured infants (included in the figure of 32 above), most of the fatally-injured occupants were unbelted. Thus, while the number of people being saved by air bags is growing annually, so is the much smaller, but significant number of people being fatally injured by air bags.

A. How Air Bags Work

When a vehicle has a frontal impact, its occupants begin to move forward in response to pre-impact braking or the deceleration of the vehicle during the impact. If unrestrained, front-seat occupants will move forward in a fraction of a second and hit the steering wheel, dashboard or windshield. To move into place in time to catch the occupants in moderate and high speed crashes, air bags must inflate very quickly—faster than the blink of an eye.

To ensure that the air bag provides enough resistance to keep large as well as small occupants from ''bottoming out'' the air bag and hitting the vehicle interior, the amount of gaseous pressure within air bags must be carefully modulated. This is done by controlling both the rate at which gas is pumped into the air bag as well as the rate at which the gas is released from the air bag through vents or the porosity of the fabric.

An example from a non-automotive context will help to show the importance of modulating the air pressure in air bags. Vented air cushions are sometimes used by stunt performers who jump or dive from a great height to absorb the energy of their fall. If the vents don't allow enough of the pressure in the cushion to be released as the performer hits it, the cushion will be too rigid and will fail to absorb enough of the performer's energy, causing injury. On the other hand, if the vents release too much pressure, the cushion will ''bottom out,'' thus allowing the performer to strike the ground, also causing injury.

B. Circumstances of Air Bag Fatalities

Air bags need time, and space, to inflate. The sudden release of energy by an inflating air bag can harm some front seat occupants, particularly if they are too close to the air bag at the time of deployment. Properly restrained occupants of a vehicle seat moved back from the dashboard as far as possible, and even most unrestrained teenagers and adults, will meet the air bag after the initial, sudden release of energy. However, some occupants either start out very close to the steering wheel or dashboard or end up there. Most child fatalities attributed to an air bag fall into one of two groups: (1) infants riding in rear-facing infant seats, thus placing them very close to the air bag at the time of deployment, or (2) older children riding forward-facing without any type of restraint, thus allowing them to slide forward during pre-crash braking so that they were too close to the air bag when it deployed. A majority of the fatally-injured drivers were short-statured women who moved the driver's seat forward. More than half of the fatally-injured drivers were not using any type of restraint.

II. The Safety Problem: Frontal Impacts and Air Bags—Lives Saved, and Lives Lost

The number of air bag fatalities and the likelihood of those fatalities must be carefully compared to the likelihood of other related events in evaluating solutions to the causes of those fatalities.

A. Frontal Impacts

Frontal impacts are the number one fatality and injury-causing mode of crash, resulting in 64 percent of all driver and right-front passenger fatalities and 65 percent of all driver and right-front passenger AIS 2–5 injuries. (AIS 2–5 stands for Abbreviated Injury Scale levels of moderate to critical injuries.) The estimated fatality and injury totals for 1994 are shown below. The injuries are those for National Accident Sampling System-Crashworthiness Data System (NASS–CDS) towaway accidents only. (See table below.)

1994 FATALITIES AND MODERATE TO SERIOUS INJURIES IN FRONTAL IMPACTS

[Passenger Cars and Light Trucks]

	Drivers	Right front passengers	Total
Fatalities	13,437	3,814	17,251
Injuries	124,484	30,299	154,783
Total	[4] 137,921	[5] 34,113	172,034

[4] The numbers of fatalities and injuries for drivers far exceed those for passengers in large measure because approximately 80 percent of front seat occupants are drivers.

[5] The figures for right front passengers include the following figures for children under the age of 13: approximately 266 fatalities and 643 moderate to serious injuries.

[1] Over 27,000,000 of those vehicles have both driver and passenger air bags.

[2] Belt use among fatally injured front seat occupants of cars and LTV's is lower, approximately 37 percent, based on 1995 data from the Fatal Accident Reporting System (FARS). The lowness of this rate reflects a number of factors, including the belt use rate by motorists in general and the effectiveness of belt use in preventing fatal injury. A more useful belt use rate is the rate among occupants involved in potentially fatal crashes. Those crashes include all fatal crashes as well as all crashes in which there would have been a fatality but for belt use. The use rate in potentially fatal crashes is slightly over 50 percent.

[3] This figure is based on a September 1994 study by Reinfurt et al. of belt use in North Carolina.

B. Air Bags: Lives Saved, and Lives Lost

As the agency has confronted the problem of low speed fatalities and injuries from air bags, it has faced a serious dilemma. On the one hand, air bags have proven to be highly effective in reducing fatalities, and are resulting in substantial net benefits in terms of lives saved. The agency estimates that, to date, air bags have saved 1,664 drivers and passengers (1,500 drivers and 164 passengers).[6] Current air bags could save an estimated slightly more than 3,000 lives each year in passenger cars and light trucks when all cars on the road are equipped with dual air bags.

At the same time, air bags are actually causing fatalities in some situations, especially to children. As of November 30, 1996, NHTSA's Special Crash Investigation program had identified 32 crashes in this country in which the deployment of the passenger air bag resulted in fatal injuries to a child. The agency has examined all air bag cases with child fatalities in its Fatal Accident Reporting System (FARS) and believes it has identified all cases involving air bag-related fatalities. One adult passenger has been fatally injured (a woman in her 90's). On the driver side, 19 drivers[7] have been fatally injured in this country. (See table below.)

AIR BAGS: CUMULATIVE LIVES SAVED AND FATALITIES CAUSED (1986–PRESENT)

[Passenger Cars and Light Trucks]

	Drivers	Right front passengers	Total
Lives saved	1,500	164	1,664
Fatalities caused	19	33	52
Net lives saved	1,481	131	1,612

Passenger Fatalities. The annual number of fatalities involving children is steadily growing; all have occurred in 1993 and later calendar years. As noted above, 32 children have been fatally injured to date. (See tables below.)

It appears that the children most at risk are infants in rear-facing infant restraints and children not using any type of restraint. All of the infant fatalities (9) involved infants in rear-facing child seats. Most of the other children were not using any type of safety restraint. Of those other children, 18 were unrestrained, two more were wearing only the lap belt with the shoulder belt behind them, and two were wearing a lap and shoulder belt at the time of the crash. In addition, there was a one-year-old child who was fatally injured while riding in a child seat that was not belted to the vehicle seat. (See table below.)

Most children were either infants or children aged 4–7 years old. (See table below.)

The crashes in which the children were fatally injured involved pre-impact braking, and occurred at relatively low speeds. Infants in rear-facing child seats are very close to the dashboard even before pre-impact braking. As to almost all of the older children, the nonuse, or improper use of safety belts in conjunction with pre-impact braking resulted in their forward movement such that they were very close to the instrument panel and the air bag system when the air bag deployed. Because of this proximity, the children appear to have sustained fatal head or neck injuries from the deploying passenger air bag.

In addition to the 32 children who have been fatally injured during passenger air bag deployments, as noted above, one adult, a woman in her 90's, sustained a fatal injury that appears to be due to an air bag deployment.

INFANT PASSENGER AIR BAG-RELATED FATALITIES (IN REAR-FACING INFANT SEATS)

[By MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total No. of infant passenger air bag fatalities	No. of vehicles produced w/ passenger air bags
MY 89	.....	.....	.....	.....	.....	.....	.....	.....	.....	78,000
MY 90	.....	.....	.....	.....	.....	.....	.....	.....	.....	149,000
MY 91	.....	.....	.....	.....	.....	.....	.....	.....	.....	44,000
MY 92	.....	.....	.....	.....	.....	.....	.....	.....	.....	421,000
MY 93	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,352,000
MY 94	.....	.....	.....	.....	.....	.....	1	1	2	5,547,000
MY 95	.....	.....	.....	.....	.....	.....	2	4	6	8,936,000
MY 96	.....	.....	.....	.....	.....	.....	.....	1	1	10,750,000
Total	.....	.....	.....	.....	.....	.....	3	6	9	27,277,000

[6] This estimate of gross savings is cumulative, through November 1, 1996. The net savings would be 1,612.

[7] The figure of 19 is based on information that NHTSA has developed through NHTSA's Special Crash Investigation program and is not a census. Studies of FARS data are underway to obtain a more precise figure.

CHILD (NON-INFANT) PASSENGER AIR BAG-RELATED FATALITIES

[By MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total No. of child (non-infant) passenger air bag fatalities	No. of vehicles w/passenger air bags
MY 89	.....	.....	.....	.....	.....	.....	.....	.....	.....	78,000
MY 90	.....	.....	.....	.....	.....	.....	.....	.....	.....	149,000
MY 91	.....	.....	.....	.....	.....	.....	.....	.....	.....	44,000
MY 92	.....	.....	.....	.....	.....	.....	.....	.....	.....	421,000
MY 93	.....	.....	.....	.....	1	1	1	.....	3	1,352,000
MY 94	.....	.....	.....	.....	.....	3	1	1	5	5,547,000
MY 95	.....	.....	.....	.....	.....	1	3	8	12	8,936,000
MY 96	.....	.....	.....	.....	.....	.....	.....	3	3	10,750,000
Total	.....	.....	.....	.....	1	5	5	12	23	27,277,000

AGE OF CHILDREN FATALLY INJURED IN AIR BAG DEPLOYMENTS

<1	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
9	1	.....	1	5	7	4	3	.....	2	.....	.....	.....	.....	32

TYPE OF RESTRAINT USED BY CHILDREN FATALLY INJURED BY AIR BAGS

Type of restraint used	No. of children
None	18
Lap belt only	2
Lap and shoulder belt	2
Rear-facing infant restraint attached to vehicle seat	9
Forward-facing child restraint attached to vehicle seat	.....
Booster seat	.....
Other[8]	1
Total	32

[8] One fatally injured child was reportedly strapped into a forward facing child seat, but the child seat was not attached to the vehicle seat.

Driver Fatalities. As of November 15, 1996, NHTSA's Special Crash Investigation (SCI) program had identified 19 minor to moderate severity crashes in which fatal injuries to the driver were associated with the deployment of the driver air bag.[9] The data suggest that unrestrained small-statured and/or older drivers are more at risk than other drivers from a driver air bag. (See tables below.) The agency notes that older drivers are more at risk than younger drivers under a wide range of crash circumstances, regardless of type of restraint used.

NHTSA notes that these driver fatalities are very rare in comparison to the number of vehicles equipped with driver air bags and to the number of drivers saved by air bags. Further, NHTSA notes that the last reported fatality in the United States of a female driver 5 feet 2 inches or shorter in an air bag deployment occurred in November 1995, 13 months ago.

Proper belt use is important. Ten of the 19 drivers were known to have been unrestrained at the time of the crash. Of the six persons properly using both lap and shoulder belts, two appeared to be out of position (slumped over the wheel due to medical conditions). (See tables below.)

DRIVER AIR BAGS: FATALITIES AND LIVES SAVED—ALL DRIVERS

[Fatalities Shown by MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Driver air bag fatalities	Drivers saved by air bag	No. of vehicles produced w/ driver air bags
MY 89	.....	.....	.....	.....	.....	.....	1	.....	1	.....	500,000
MY 90	.....	1	1	.....	1	2	1	.....	6	.....	2,500,000
MY 91	.....	.....	2	2	1	.....	1	.....	6	.....	2,867,000
MY 92	.....	.....	.....	.....	1	1	.....	.....	2	.....	5,084,000
MY 93	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	7,597,000
MY 94	.....	.....	.....	.....	.....	2	1	.....	3	.....	9,886,000
MY 95	.....	.....	.....	.....	.....	.....	.....	1	1	.....	13,686,000
MY 96	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	14,055,000
Total	.....	1	3	2	3	5	4	1	19	1,500	56,175,000

[9] But see footnote 7 below concerning reported driver fatalities in Canada.

DRIVER AIR BAG FATALITIES—WOMEN (5′2″ OR LESS)

[By MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total No. of driver air bag fatalities (women 5′2″ or less)	No. of vehicles produced w/ driver air bags
MY 89	.....	.....	.....	.....	.....	.....	1	.....	1	500,000
MY 90	.....	1	.....	.....	1	.....	1	.....	3	2,500,000
MY 91	.....	.....	1	1	.....	.....	1	.....	3	2,867,000
MY 92	.....	.....	.....	.....	1	1	.....	.....	2	5,084,000
MY 93	.....	.....	.....	.....	.....	.....	.....	.....	.....	7,597,000
MY 94	.....	.....	.....	.....	.....	.....	1	.....	1	9,886,000
MY 95	.....	.....	.....	.....	.....	.....	.....	.....	.....	13,686,000
MY 96	.....	.....	.....	.....	.....	.....	.....	.....	.....	14,055,000
Total	.....	1	1	1	2	1	4	.....	10	56,175,000

DRIVER AIR BAG FATALITIES—OTHER ADULTS

[By MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total No. of driver air bag fatalities (other adults)	No. of vehicles produced w/ driver air bags
MY 89	.....	.....	.....	.....	.....	.....	.....	.....	.....	500,000
MY 90	.....	.....	1	.....	.....	2	.....	.....	3	2,500,000
MY 91	.....	.....	1	1	1	.....	.....	.....	3	2,867,000
MY 92	.....	.....	.....	.....	.....	.....	.....	.....	.....	5,084,000
MY 93	.....	.....	.....	.....	.....	.....	.....	.....	.....	7,597,000
MY 94	.....	.....	.....	.....	.....	2	.....	.....	2	9,886,000
MY 95	.....	.....	.....	.....	.....	.....	.....	1	1	13,686,000
MY 96	.....	.....	.....	.....	.....	.....	.....	.....	.....	14,055,000
Total	.....	.....	2	1	1	4	.....	1	9	56,175,000

AGE OF DRIVERS FATALLY INJURED IN AIR BAG DEPLOYMENTS

<20	20–29	30–39	40–49	50–59	60–69	70–79	>80	Total
1	1	4	4	2	1	6	.....	19

TYPE OF RESTRAINT USED BY DRIVERS FATALLY INJURED IN AIR BAG DEPLOYMENTS

Type of restraint used	No. of drivers
None	10
Belts misused	1
Lap and shoulder belt (Driver blacked out and slumped forward at time of crash due to medical condition)	2
Lap and shoulder belt	4
Unknown	2
Total	19

Comparison of Passenger and Driver Air Bag Fatalities

Several comparisons need to be drawn between the trends and patterns of child fatalities and the apparent trends and patterns of driver fatalities. The annual number of child fatalities is clearly growing steadily as the number of deployments increases. The annual number of adult fatalities does not appear to be growing. If anything, it appears to be decreasing, based on currently identified fatalities. (See tables below.)

Most child fatalities (24 of 32) have occurred in model year 1994 and 1995 vehicles. In contrast, only 4 of the 19 driver fatalities have occurred in a vehicle manufactured after model year 1992. The absence of fatalities in recent model year vehicles appears even more pronounced in the case of women 5 feet 2 inches or shorter. Only one woman 5 feet 2 inches or shorter has died in a post model year 1992 vehicle.[10] Most fatalities of short-statured women occurred in model year 1990–1992 vehicles. (See tables below.)

[10] NHTSA is aware of a number of fatalities in Canada reportedly related to air bag deployment, but only two in recent times. One was a November 1996 crash in Canada in which a 5 foot 3 inch belted female driver was fatally injured in a model year 1996 Ford Ranger. In addition, there was a November 1996 crash in which a 5 foot 2 inch belted female driver was fatally injured in a model year 1993 Lexus. These Canadian accidents are not included in the driver fatality figures cited in this notice. (Similarly, lives saved by air bags outside the United States are not included in the savings.)

COMPARISON OF DRIVER AND CHILD AIR BAG-RELATED FATALITIES BY CALENDAR YEAR OF FATALITY

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total
Drivers									
Women (5′2″ or less)	.....	1	1	1	2	1	4	.....	10
Other adults	.....	.....	2	1	1	4	.....	1	9
Total	.....	1	3	2	3	5	4	1	19
Children									
Children (non-infant)	.....	.....	.....	.....	1	5	5	12	23
Infants	.....	.....	.....	.....	.....	.....	3	6	9
Total	.....	.....	.....	.....	1	5	8	18	32

COMPARISON OF DRIVER AND CHILD AIR BAG-RELATED FATALITIES BY MODEL YEAR OF FATALITY

	MY 89	MY 90	MY 91	MY 92	MY 93	MY 94	MY 95	MY 96	Total
Drivers									
Women (5′2″ or less)	1	3	3	2	.....	1	.....	.....	10
Other adults	.....	3	3	.....	.....	2	1	.....	9
Total	1	6	6	2	.....	3	1	.....	19
Children									
Non-infant Children	.....	.....	.....	.....	3	5	11	4	23
Infants	.....	.....	.....	.....	.....	2	6	1	9
Total	.....	.....	.....	.....	3	7	17	5	32

Potential Number of Persons Saved Versus the Potential Number Fatally Injured by Current Air Bags

The dilemma faced by NHTSA, and ultimately the public, is how to address the problem of low speed fatalities from air bags while preserving their substantial life-saving benefits. Based on analyses of real world data, NHTSA estimates that if all passenger cars and light trucks on the road today had current air bags, there would be more than 3,000 lives saved each year, as compared to a no-air-bag fleet (assuming current belt use rates). More than two-thirds of the persons saved would be persons not using any type of safety belt.

On the driver side, 616 belted drivers and 1,686 unbelted drivers would be saved, for a total of 2,302 lives saved. This is a *net* figure, i.e., it accounts for the possibility of 25 drivers being fatally injured annually by an air bag. Given that the average annual rate of driver fatalities for the last five years appears to be three, and that the annual rate does not appear to be increasing, the projected figure of 25 may be somewhat overstated.

The potential number of lives saved by passenger air bags is much smaller than driver air bags primarily because the passenger seat is occupied much less frequently than the driver seat. If all passenger cars and light trucks had current passenger air bags, the agency estimates that 223 belted and 491 unbelted passengers aged 13 and above would be saved annually, for a total of 714 lives.

However, this figure of 714 would be partially offset by air bag-related fatalities involving children 12 and under. If current rates of child fatalities were experienced in an all-air-bag fleet, 128 children would be fatally injured by air bags annually, again assuming no technological improvements, changes to air bags, or behavioral changes by vehicle operators (e.g., ensuring that any children placed in the front seat properly use occupant restraints or, preferably, placing children in the rear seat). The figure of 128 includes 90 forward-facing children, most of whom would be unbelted, and 38 infants in rear-facing child restraints.

NHTSA emphasizes that this and the other rulemaking proceedings and related efforts are intended to ensure that risks of adverse side effects of air bags are reduced so that these theoretically projected air bag fatalities do not materialize, while the potential benefits of air bags are retained, to the maximum extent possible. Thus, the agency anticipates, e.g., that these other actions will result in proper use of restraints by increased numbers of people and that the number of children fatally injured would not be so high as 128. However, the agency does not have a basis for estimating the exact effect. Further, NHTSA recognizes that to the extent that one countermeasure is effective, the potential benefits of another countermeasure could be reduced. The Preliminary Regulatory Evaluation (PRE) for this rulemaking gives an illustrative example of the effect that labeling could have in reducing the benefits of depowering if the labeling were 10 percent effective in inducing more parents to place their young children in the rear seat. (See page IV–54.) Likewise, a countermeasure may reduce the potential disbenefits of another countermeasure. To the extent that belt use is increased, the potential disbenefits of depowering for unbelted occupants would be reduced. NHTSA solicits suggestions for how it can attempt to quantify the interaction between its various initiatives for

increasing belt use and decreasing the adverse side effects of air bags.

Projected Annual Lives Saved by and Fatalities Due to Air Bags [11]

PASSENGER CARS AND LIGHT TRUCKS

	Drivers	Right front passengers	Total
Lives Saved	2,327	714	3,041
Fatalities	25	128	153

III. Search for Solutions

Over the last five years, NHTSA has taken a variety of steps to alert the public to the dangers posed by air bags to children and to explore measures for reducing and even eliminating those dangers. The steps taken in 1991–1995 were recounted in an NPRM published by the agency on August 6, 1996. 61 Fed. Reg. 40784.

In the August 1996 NPRM, the agency proposed several amendments to Standard No. 208, *Occupant Crash Protection,* and Standard No. 213, *Child Restraint Systems,* to reduce the adverse effects of air bags, especially those on children. The agency explained that eventually, either through market forces or government regulation, it expects ''smart'' passenger air bags to be installed in passenger cars and light trucks to mitigate these adverse effects. NHTSA indicated that, for purposes of the NPRM, it considered smart passenger air bags to include any system that automatically prevents an air bag from injuring the two groups of children that experience has shown to be at special risk from air bags: infants in rear-facing child seats, and children who are out-of-position (because they are unbelted or improperly belted) when the air bag deploys.

NHTSA proposed that vehicles lacking smart passenger air bags would be required to have new, attention-getting warning labels and permitted to have a manual cutoff switch for the passenger air bag. By limiting the labeling requirement to vehicles without smart passenger air bags, NHTSA hoped to encourage the introduction of the next generation of air bags as soon as possible. NHTSA proposed to define smart air bags broadly to give manufacturers flexibility in making design choices. The agency requested comments concerning whether it should require installation of smart air bags and, if so, on what date such a requirement should become effective. NHTSA also requested comments on whether it should, as an alternative, set a time limit on the provision permitting manual cutoff switches for passenger air bags in order to assure the timely introduction of smart passenger air bags. Finally, the agency proposed to require rear-facing child seats to bear new, enhanced warning labels. In a section in the August 1996 NPRM titled ''Future Agency Considerations,'' the agency also provided a discussion of possible technological changes to address the forcefulness of air bag deployment, ongoing agency efforts to evaluate the effects of such changes, and possible future agency regulatory actions.

C. Recent Petitions for Rulemaking

Two weeks before the agency published its NPRM, the Parents' Coalition for Air Bag Warnings submitted a petition requesting the agency to commence a rulemaking proceeding to require that the following warning label be placed on dashboard of vehicles with passenger air bags:

''WARNING: DO NOT SEAT CHILDREN IN THE FRONT PASSENGER SEAT. AIR BAG DEPLOYMENT CAN CAUSE SERIOUS INJURY OR DEATH TO CHILDREN.''

After the agency's publication of the August 1996 NPRM, the American Automobile Manufacturers Association (AAMA) submitted a petition for rulemaking requesting that NHTSA immediately announce, by means of a ''direct final rule,'' an amendment to Standard No. 208 to replace the current 30 mph unrestrained dummy barrier crash test requirement with a sled test protocol incorporating a 143 millisecond standardized crash pulse. The petitioner contended that the standard's current requirement ''directly dictates the level of the air bag's inflator power and it is the level of inflator power that unnecessarily increases the risk of injury to vehicle occupants during air bag deployment.'' AAMA also requested that the agency separately issue a notice of proposed rulemaking to propose requirements to improve the safety of drivers and passengers who are extremely close to the air bag at the time of deployment, based on the latest International Standards Organization (ISO) test practices. AAMA recommended the use of the Hybrid III small female dummy in the driver position and appropriate child dummy in the passenger position.

On September 1, 1996, Ms. Anita Glass Lindsey petitioned the agency to commence rulemaking to specify the use of a test dummy representing a 5th percentile female [12] in testing the performance of safety belts and air bags. Currently, Standard No. 208 specifies the use of only a 50th percentile male test dummy. [13]

On September 17, 1996, the National Transportation Safety Board (NTSB) issued a number of safety recommendations to NHTSA for reducing the problem of child fatalities caused by air bags. These recommendations are as follows:

1. Immediately evaluate passenger air bags based on all available sources, including NHTSA's recent crash testing, and then publicize the findings and modify performance and testing requirements, as appropriate, based on the findings of the evaluation.

2. Immediately revise Federal Motor Vehicle Safety Standard 208, *Occupant Crash Protection,* to establish performance requirements for passenger air bags based on testing procedures that reflect actual accident environments, including pre-impact braking, out-of-position child occupants (belted and unbelted), properly positioned belted child occupants, and with the seat track in the forward-most position.

3. Evaluate the effect of higher deployment thresholds for passenger air bags in combination with the recommended changes in air bag performance certification testing, and

[11] This projection is based on the assumption that all passenger cars and light trucks on the road have driver and passenger air bags. It does not take into consideration the impact of this proposal or any of the other agency actions described in the Overview and Summary section above.

[12] A 5th percentile Hybrid III dummy has a standing height of 5 feet and a weight of 110 pounds.

[13] A 50th percentile Hybrid III dummy has a standing height of 5 feet, 8 inches and a weight of 172 pounds.

then modify the deployment thresholds based on the findings of the evaluation.

4. Establish a timetable to implement intelligent air bag technology that will moderate or prevent the air bag from deployment if full deployment would pose an injury hazard to a belted or unbelted occupant in the right front seating position, such as a child who is seated too close to the instrument panel, a child who moves forward because of pre-impact braking, or a child who is restrained in a rear-facing child restraint system.

5. Determine the feasibility of applying technical solutions to vehicles not covered by NHTSA's proposed rulemaking of August 1, 1996, to prevent air bag-induced injuries to children in the passenger position.

On November 8, 1996, the Center for Auto Safety (CFAS) petitioned the agency to amend Standard No. 208 to specify that a vehicle's air bags must not deploy in a crash if the vehicle's change of velocity is less than 12 mph. CFAS noted that many of the crashes resulting in air bag fatalities, especially those of children, involved very low changes in vehicle velocity. CFAS also petitioned the agency to institute investigations of several vehicle models for alleged defects related to air bag deployment.

On November 13, 1996, the AAMA submitted a letter that modified the proposal in its August 1996 petition for rulemaking. In place of the 143 millisecond standardized crash pulse, AAMA requested a sled test protocol incorporating a 125 millisecond standardized crash pulse.

Finally, on November 20, 1996, CFAS and Public Citizen petitioned the agency to begin rulemaking to require dual inflation air bags. These bags would inflate more slowly, and thus less aggressively, than current air bags in low-speed crashes. In higher-speed crashes, they would inflate at the same rate as current air bags. The petitioners assert that their proposal is the best solution in the near future and is superior to depowering, since depowering involves ''some trade-off in safety protection and will not add significant protection for unrestrained children.''

IV. Overview of Comprehensive NHTSA Plan for Addressing Problem

NHTSA is implementing a comprehensive plan of rulemaking and other actions (e.g., primary enforcement of State safety belt use laws) addressing the adverse effects of air bags. As part of that plan, NHTSA is issuing three separate, but related, notices today. Each notice is intended to ensure that some or all of the risks are reduced, and benefits retained, to the maximum extent possible. They provide immediate and/or interim solutions to the problem. A later notice, a proposal to require smart air bags, would provide a permanent solution.

In this notice, NHTSA is proposing to temporarily amend the agency's occupant crash protection standard to help reduce the fatalities and injuries that current air bags are causing in relatively low speed crashes to small, but growing numbers of children, and occasionally to adults. Based on agency research and analysis regarding the optimal range of air bag depowering, the agency has tentatively concluded that an average depowering of 20 to 35 percent would reduce the risk of fatalities in low speed crashes, while substantially preserving the life-saving capabilities of air bags in higher speed crashes.

The agency is considering the adoption of either, or both, of two different approaches that would permit or facilitate an approximate 20 to 35 percent average depowering of current air bags. One approach would be to temporarily reduce the stringency of the chest acceleration requirement that an unbelted dummy must meet in a crash test at speeds up to 30 mph. The other approach would be to temporarily adopt the AAMA's modified proposal for a sled test protocol incorporating a 125 millisecond standardized crash pulse.

NHTSA is seeking comments and information concerning the relative desirability of these two approaches, including supporting data from industry with respect to the sled test. It is also requesting comments on the appropriate duration of such a temporary amendment. NHTSA anticipates that it would remain in effect for both the passenger and driver seating positions until smart air bags are installed pursuant to a mandated phase-in schedule, which will be the subject of a separate rulemaking proceeding. Finally, comments are sought on whether the same or different requirements should apply to the passenger and driver positions.

The other rulemaking actions addressing the adverse side effects of air bags are as follows:

- Based on the August 1996 NPRM, the agency issued on November 22, 1996, a final rule amending Standards No. 208 and No. 213 to require improved labeling on new vehicles and child restraints to better ensure that drivers and other occupants are aware of the dangers posed by passenger air bags to children. The labeling places particular emphasis on placing rear-facing infant restraints in the rear seats of vehicles with operational passenger air bags. 61 FR 60206; November 27, 1996. The new labels are required on vehicles not equipped with smart passenger air bags beginning February 25, 1997, and on child restraints beginning May 27, 1997.
- Based on the same NPRM, the agency is issuing a final rule extending until September 1, 2000, a provision in Standard No. 208 permitting vehicle manufacturers to offer manual cutoff switches for the passenger air bag for new vehicles without rear seats or with rear seats that are too small to accommodate rear-facing infant restraints.
- The agency also is issuing an NPRM proposing to permit motor vehicle dealers and repair businesses to deactivate, upon the request of consumers, driver and passenger air bags that do not meet the agency's criteria for smart air bags. Final action is expected in early 1997.
- In addition to these actions, NHTSA will issue a separate supplemental NPRM (SNPRM) to require a phasing-in of smart air bags, beginning on September 1, 1998, and to establish performance requirements for those air bags. The proposal will be issued in early 1997.

The next two tables summarize the rulemaking actions included in the agency's comprehensive program to address these air bag problems:

ACTIONS ADDRESSING PROBLEMS ASSOCIATED WITH PASSENGER AIR BAGS

	Existing vehicles	Vehicles produced in next several model years	Vehicles produced thereafter
Passenger air bags.	Labels. New, attention-getting labels focusing on dangers of air bags to children, to be mailed by vehicle manufacturers to owners of existing air bag vehicles. Deactivation. Proposal to allow deactivation of passenger air bag that doesn't have cutoff switch and doesn't qualify as a smart air bag.	Labels. Final rule requiring new, attention-getting labels focusing on dangers of air bags to children, in vehicles whose passenger air bag doesn't qualify as a smart air bag, and on child seats. Cutoff switches. Final rule extending until Sept. 1, 2000, provision allowing cutoff switch for vehicles (a) which lack a back seat that can accommodate rear-facing infant seats, and (b) whose passenger air bag doesn't qualify as a smart air bag. Deactivation. Proposal to allow deactivation of passenger air bag that doesn't have cutoff switch and doesn't qualify as a smart air bag. Depowering. Proposal to temporarily allow depowering of passenger air bags that don't qualify as smart air bags.	Smart air bags. NPRM proposing to phase in requirement for smart air bags.
Driver air bags.	Labeling. New, attention-getting labels urging all occupants to use their safety belts and sit as far back as possible to be mailed by vehicle manufacturers to owners of existing air bag vehicles. Deactivation. Proposal to allow deactivation of driver air bags.	Labeling. Final rule requiring new labels urging all occupants to use their safety belts and sit as far back as possible. Deactivation. Proposal to allow deactivation of driver air bags that don't qualify as smart air bags. Depowering. Proposal to temporarily allow depowering of driver air bags that don't qualify as smart air bags.	Smart air bags. NPRM proposing to phase in requirement for smart air bags.

In addition to these actions, the agency is participating with automobile manufacturers, air bag suppliers, insurance companies and safety organizations in a coalition effort to address the adverse effects of air bags by increasing the use of safety belts and child seats. Substantial benefits could be obtained from achieving higher safety belt use rates. If the safety belt use rate were 75 percent in potentially fatal crashes instead of the current level of 52.6 percent, an additional 4,000 lives would be saved annually.

The coalition has a three-point program that seeks to educate the public about safety belt and child seat use, work with state and local officials to improve enforcement of safety belt and child seat use laws and seek the enactment of ''primary'' safety belt use laws. In States with ''secondary'' safety belt use laws, law enforcement officials are hampered in their ability to enforce the requirement to use safety belts because their inability to stop and ticket motorists for the sole reason of the motorists' failure to use their safety belts. A motorist may be ticketed by an official for such failure only if the official has a separate basis for stopping the motorist, such as the violation of a separate traffic law.

A 1995 NHTSA analysis of FARS data on restraint use among fatally injured motor vehicle occupants from 1983 to 1994 indicates that primary enforcement is the most important aspect of a safety belt use law affecting the rate of safety belt use. For virtually all states with a primary enforcement law, statistically significant increases associated with the presence of such a law were detected using several different methods. The analysis suggests that the increase in use rates attributable to the enactment of a use law can be estimated to be (on the average) at least 25 percentage points, while the additional increase attributable to primary enforcement of the law is at least 15 additional percentage points. These increases in safety belt use translate into an estimated 12.6 percent decrease in fatalities in a state that enacts a safety belt use law, and an additional 5.9 percent decline in fatalities in a state that authorizes primary enforcement of the law.

State data support these findings. On average, states with a primary safety belt law have usage rates that are 10–15 percentage points higher than states with secondary laws. In California and Louisiana, states which recently upgraded their laws to allow for primary enforcement, safety belt usage increased by 13 and 17 percentage points, respectively.

V. Depowering Air Bags

A. Results of NHTSA Test Program

To determine whether current air bags can be depowered to a degree that makes a significant contribution to reducing the risk of serious or fatal injury to occupants, especially children, without substantial loss of protection for teenagers and adults, the agency initiated the research testing and analysis program discussed in the August 1996 NPRM. NHTSA explained:

The agency has initiated a research testing and analysis program * * * at the Vehicle Research and Test Center, the agency's in-house laboratory in Ohio. The program's objectives are to:

- Assess the performance of air bag systems in current production vehicles in particular crash conditions, including the effects on out-of-position children.
- Assess the level of improvement possible in out-of-position performance from changes to existing air bag components, including downloaded air bags, as well as newly developed pre-production systems.
- Provide visibility for air bag-related technology, thus promoting the rapid adoption of newer technologies that will

help solve the out-of-position occupant injury problem.

The immediate focus of the program is on the passenger out-of-position problem as related to children. Several vehicle models have been selected based upon field accident investigations and air bag design characteristics. Both domestic and foreign vehicles are included in the selection. The test conditions include four different child positions similar to those recommended by ISO [International Standards Organization], and represent worst case occurrences. These tests will provide ''baseline'' performance of air bag systems when a child is an out-of-position occupant.

NHTSA is inviting vehicle manufacturers and air bag and component suppliers to provide state-of-the-art air bag systems. Systems that show significant improvements over baseline performance for out-of-position children will also be tested with adult-sized dummies in full-scale crash conditions required in Federal standards.

The test program will also address other aspects of air bag safety following the out-of-position child study. These include out-of-position driver tests, vehicle crash sensor testing, and testing of advanced air bag systems. The out-of-position driver testing will focus on small-sized female occupants who are sometimes injured due to the close proximity to the steering-wheel air bag system. Testing will continue into fiscal year 1997.
(61 FR 40784, at 40799; August 6, 1996.)

NHTSA has now tested the depowered air bags solicited from the vehicle manufacturers. The air bags had been depowered through the removal of certain amounts of propellant. While some of the air bags were depowered up to 60 percent, most of them were depowered an average of approximately 20 to 35 percent. However, their design (e.g., folding patterns and venting) had not been optimized for the reduced levels of power. As noted below, the agency believes optimization of the tested air bags would have significantly enhanced their performance.

NHTSA tested baseline air bags (i.e., air bags of current design) and depowered air bags on the passenger side in three different vehicles, and on the driver side in one vehicle.[14] NHTSA conducted these tests using modified versions of recommended test procedures formally adopted and issued in early 1996 by the ISO for evaluating child restraint system interactions (ISO TR 14645) and out-of-position vehicle occupant interactions (ISO TR 10982) with deploying air bags. For the passenger air bags, the agency conducted various tests using out-of-position three-year-old and six-year-old child dummies and normally-positioned, belted and unbelted 50th percentile male dummies.[15] For the driver air bags, the agency conducted various tests using out-of-position 5th percentile female dummies and normally-positioned, belted and unbelted 50th percentile male dummies. The agency also used computer-assisted mathematical modeling in an attempt to assess the effects of depowering on the forces experienced by occupants in air bag deployments.

The results of the agency's analysis of this testing, as well as other available information, are included in the PRE. Portions of the PRE are summarized below.

B. Effects of Depowering and Optimizing

Overview. The agency's testing and other available information [16] indicated that depowering by an average of 20 to 35 percent substantially reduced injury measures for persons close to the air bag, especially out-of-position children, while producing only small increases in injury measures for adult dummies. In the agency's testing, depowering more than 35 percent resulted in more substantial increases in adult dummy injury measures with a large additional reduction in out-of-position child dummy injury measures for only the more aggressive air bags. Thus, it appears that depowering at levels more than an average of 35 percent could result in losing a significant portion of the benefits being provided by air bags without a commensurate reduction in child injury risk. (However, it is possible that some of today's air bags are so aggressive that they could, if optimized, be depowered by more than 35 percent without substantial losses in adult benefits.)

The reductions in injury measures achieved by depowering an average of 20–35 percent would contribute significantly to solving the problem created by overly aggressive air bags.[17] While this average level of depowering would not eliminate all of the risk of serious injury to all persons currently at risk, it would eliminate much of the risk. The agency's other rulemaking actions would reduce the residual risk.

As noted above, the tested air bags were depowered, but not optimized. Had they been optimized, the injury measures for belted passengers would likely have decreased even more and those for belted drivers would likely have improved. Thus, they would have offered increased safety for belted occupants.[18]

Summary of Effects of Depowering on Air Bag-Related Fatalities for Particular At-Risk Occupant Groups

The ability of depowering to prevent air bag fatalities to occupants would vary depending on a number of factors, especially the location and belt use of the occupant. As shown in testing by the agency of passenger air bags, the forces exerted by a deploying air bag generally decrease as a function of increasing distance from the air bag module. Although the surface of an expanding air bag in its initial moments of inflation is potentially lethal, it rapidly changes within inches into an injury-preventing and life-saving surface as it inflates and moves away from its storage location. Thus, the farther away an occupant is from an air bag as it starts to inflate, the better off that occupant will be. While this is true for depowered as well as current air bags, depowering can significantly reduce the size of the zone within which serious injury is possible or likely.

Passengers. The at-risk groups are infants and young children. Properly belted, forward-facing children who are on a vehicle seat moved all the way back, should be at essentially no risk from a deploying, depowered air bag,

[14] The passenger air bag testing began in February 1996. The testing of passenger air bags to estimate the effects of depowering was completed in September. However, the testing of advanced passenger air bag designs and test conditions continues. Testing of driver air bags was conducted from May to September of this year. More tests of driver air bags are planned for the future.

[15] NHTSA did not conduct tests to determine the effects of the depowered air bags on an infant dummy (i.e., nine-month-old dummy) in rear-facing child restraints because the design of the depowered bags would have precluded obtaining meaningful measurements of those effects. Since all of the vehicles had top-mounted air bags (i.e., on top of the dashboard), the air bags would have tended to deploy above the child restraints instead of directly impacting them. This assessment appears consistent with the near total absence of top-mounted air bags from the list of air bags involved in the fatal injury of infants. None of the nine air bags was mid-mounted.

[16] Among the other items of information were the results of testing performed by AAMA using out-of-position dummies representing a six-year-old child, a 5th percentile female and a 50th percentile male.

[17] The actual amount that the air bag in each specific vehicle model would need to be depowered to achieve these benefits would vary depending on the aggressivity of its air bag system. The least aggressive air bags might need less than 20 to 35 percent depowering, while the most aggressive ones might need more, as much as 60 percent.

[18] The agency's belief that depowered air bags will provide increased benefits to real world occupants compared to current air bags is based in part on actual crash data regarding the performance of air bags in an Australian passenger car, the Holden Commodore, which is described below.

even if they are leaning forward while belted. Moderately out-of position, forward-facing children would receive substantial benefits. Severely out-of-position, completely unbelted forward-facing children would receive some benefits. Given their proximity to the air bag, infants in rear-facing child restraints would likely receive only small, unquantifiable benefits from depowered air bags.[19]

Drivers. To the extent that there is an at-risk group, it is short-statured women. Short, belted drivers on a vehicle seat moved as far back as their stature permits would receive substantial benefits, particularly with respect to neck injuries. They are not likely to move as far forward as unbelted drivers during pre-crash braking and during the initial stages of a crash. Benefits for unbelted drivers on a vehicle seat moved all the way forward would depend on the drivers' proximity to the air bag at the time of deployment. If they are at least two or three inches away at the time of deployment, they should receive some benefits from depowering with respect to chest and head injuries. Depowering should help all drivers with respect to arm injuries.

Overall Effects of Depowering. The PRE estimates the potential overall effects of depowering on all forward-facing children, teenage and adult occupants under the two alternative proposals, the 80 g alternative and the generic sled test alternative. Both proposals would produce a mixture of benefits and disbenefits, with the benefits primarily accruing to children and belted teenage and adult occupants, and the disbenefits primarily accruing to unbelted teenage and adult occupants.

The magnitude of the benefits and disbenefits are estimated in the PRE by two different methods. Method One includes only fatalities, while Method Two includes fatalities and serious injuries. The results of Method One, which produces slightly smaller upper end values for lives saved and for foregone savings of lives, are discussed below.

1. Passenger Air Bags

Child Passengers. *Older, Forward-Facing Children.* Depowering could prevent a significant number of the 90 annual fatalities projected above for forward-facing children[20] in an all air bag fleet for passenger cars and LTV's. The PRE estimates that 39 of the projected 90 fatalities could be prevented by depowering air bags by an average of 20 to 35 percent. This includes all of the lap and shoulder belted children who might otherwise be fatally injured and most of the moderately out-of-position children.[21] With the additional depowering possible under the generic sled alternative,[22] up to 83 of the projected 90 fatalities could be prevented since more of the severely out-of-position children could be benefited. Thus, depowering would make it safe, from the standpoint of the air bag, to place a child in the front seat when necessary, assuming that the child was properly restrained in a vehicle seat that was moved all the way back. The agency emphasizes that, even in the absence of an air bag, the rear seat is a significantly safer place for children to ride than the front seat.

Rear-Facing Children (Infants). Based on HIC reductions achieved in testing the effects of depowered air bags on three- and six-year-old dummies, the agency believes that depowering could prevent the death of some of the 38 projected fatalities of infants. However, for reasons explained below, the agency cannot quantify those savings.

As noted above, the agency did not perform any testing of depowered air bags with infants in rear-facing infant seats. Thus, the agency does not have any baseline versus depowered air bag data for rear-facing child restraints to estimate the potential benefits of depowering. However, HIC data from the testing of severely out-of-position three- and six-year-old children indicate that HIC was substantially reduced by depowering, but not typically below the assumed infant injury reference value of 500 HIC. HIC data are relevant because the primary cause of rear-facing infant fatalities in air bag deployments has been skull fractures. Since it is not possible at this time to make appropriate adjustments to reflect greater susceptibility of infants to fatal head injury, the HIC data for dummies representing older children could not be used to estimate potential benefits of depowering for infants. The agency has not made a specific, quantified estimate because of its roughness and therefore its questionable value.

Teenage and Adult Passengers. Depowering air bags to an average of 20 to 35 percent would likely benefit belted teenage and adult passengers on balance, but could necessitate foregoing the opportunity to save some unbelted teenage and adult passengers.[23] These estimates are based on chest g measures because, as noted in the PRE, chest g's are the most important measure for assessing the effects on teenagers and adults, since chest g's appear to have a stronger relationship to fatality risk than HIC. Further, the HIC increases due to depowering in this range were not that significant.

Belted Teenage and Adult Passengers. The agency's PRE assumes a 2.4 g decrease in chest g's for belted passengers under the 80 g alternative, using an air bag that had been depowered but not optimized. This assumption was based on test results showing a 2.4 g decrease in chest g's, although mathematical modeling predicted almost no change for belted passengers. Under the generic sled test alternative, a decrease of 1.9 chest g's is assumed, based on mathematical modeling. Both decreases would result in saving additional lives compared to current air bag designs.

As noted above, NHTSA believes that a greater decrease in chest g's, and therefore a greater increase in life-saving potential, would have occurred had the air bags not only been depowered, but also optimized for the new power level. The depowered air bags tested by NHTSA were not optimized in ways that would likely have reduced the chest g's even more. For example, the air bags were not optimized with respect to their venting rates.

The agency believes that it is unlikely that the vehicle manufacturers would depower their air bags without also optimizing them. NHTSA believes that the manufacturers would, out of reasonable prudence, do both.

This is significant because real world data from Australia regarding the performance of depowered driver air bags optimized for belted occupants suggests that depowering and

[19] As the agency has emphasized in numerous contexts, infants in rear-facing child restraints should NEVER be placed in the front seat of a vehicle with an operational passenger air bag.

[20] As noted above, the age range of the forward-facing children fatally injured during air bag deployments is one to nine years old.

[21] These estimated savings are based on the significant reductions in neck injury criteria values observed in all three tested vehicles. These values are the most important ones for estimating fatality risk, since neck injury has been the typical fatal injury mechanism for these children.

[22] As reflected below in the discussion of the alternative proposals, it is assumed in the PRE that the depowering of any air bags more than 35 percent is achievable only under the second alternative proposal (i.e., AAMA's generic sled pulse) since it appears that HIC or other injury criteria could not be met under the first alternative proposal (80 g limit on chest g's in the unbelted 30 mph test) with air bag systems depowered significantly above 35 percent.

[23] As noted below, the occupants can essentially eliminate the risk to them by the simple act of buckling their safety belts.

optimizing current U.S. air bags could significantly increase the effectiveness of air bags for belted occupants and lead to large savings of lives. Those data, drawn from crashes involving Holden passenger cars,[24] indicate that air bags with lap/shoulder belts reduced AIS 2+ injuries to drivers by 39 percent compared to lap/shoulder belts alone. By comparison, current U.S. air bags have an AIS 2+ effectiveness of 22 percent when lap and shoulder belts are worn. According to the PRE:

The air bag systems in the Commodore are designed to deploy as unaggressively as possible while still providing the necessary protection to occupants of different size, weight and sex who will be potentially involved in a variety of collisions. Great efforts have been taken in the development of the inflators and cushions to ensure they present as little risk as possible to occupants during inflation. Since the air bags have been designed to operate in conjunction with the safety belts, they are only required to decelerate the occupant's head and upper torso, as the primary load path is through the belts. This is fundamentally different from many other air bag designs, especially those used to protect unrestrained occupants. Systems optimized to protect unrestrained occupants typically utilize high-performance inflators in conjunction with cushions with low venting rates. This combination ensures that the air bags are sufficiently stiff to decelerate unbelted occupants.

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If such increased effectiveness could be obtained for belted passengers, it would offset a significant portion of the potential adverse impact of depowering estimated below on unbelted passengers. As discussed in the PRE, current NHTSA analyses indicate that air bags in this country are 8.5 percent effective in reducing belted fatalities. If the relationship in overall effectiveness of the Holden bag to the U.S. air bags for AIS 2+ injuries were the same for fatalities, the effectiveness of U.S. air bags for preventing fatalities to belted occupants could be as high as 15 percent. If depowering and optimizing U.S. air bags increased their effectiveness to that level, large savings in the lives of belted occupants could result.

The agency seeks comments, on a model-by-model basis, if possible, from the vehicle manufacturers on what specific optimization measures they would adopt and on whether such optimization could be accomplished and incorporated in production air bags within the time frame projected by the vehicle industry for introduction of the depowered air bags. As noted below, AAMA projected that its members could begin introducing depowered air bags within 6–9 months and complete the process across their fleets within a year after those first introductions. NHTSA solicits comments as to what effect, if any, efforts to optimize these air bags prior to their introduction might have on the schedule for their introduction. Comment is also sought whether adoption of the sled test suggested by AAMA would enable vehicle manufacturers to accelerate the introduction of optimized and depowered air bags. The agency also requests comments on what effects, if any, the optimization of air bag performance for the benefit of belted occupants would have on air bag effectiveness for unbelted occupants. Finally, comment is sought on the Holden data and the reasonableness of the assumption in the PRE that effectiveness of U.S. air bags in reducing belted fatalities could be raised substantially in the next several years through depowering and optimizing.

Unbelted Teenage and Adult Passengers. Depowering could necessitate foregoing the opportunity to save a significant number of unbelted teenagers and adults. The PRE estimates that, as a result of a significant increase in chest g's associated with depowering by an average of 20 to 35 percent under the 80 g alternative, there could be a reduction of between 86 and 280 unbelted passengers who would have otherwise been saved by current air bags. This reduction reflects an assumed average increase of 11 g's in the chest g's for unbelted passengers as a result of depowering, but not optimizing air bags. This assumption was based on limited test results showing an 11 g increase in chest g's at 30 mph. Mathematical modeling predicted a slightly lower increase. With greater depowering under the generic sled test alternative, it was assumed that chest g's would increase by 22 g's, based on sled tests and mathematical modeling. That increase would result in a potential loss of savings of 115 to 336 unbelted passengers.

It should be noted, however, that AAMA does not anticipate such losses. AAMA provided an estimate of the effects of depowering, based on NASS data, a number of analytic assumptions, and sled/barrier test results. That organization estimates the potential savings of 30 to 200 small adults per year due to increased effectiveness of passenger and driver air bags for those persons and the potential loss of up to eight large adults annually. The agency seeks comment from AAMA on how it calculated those figures.

Further, to the extent that increased numbers of people use their safety belts, the potential losses in savings of unbelted passengers would not materialize. While increasing safety belt use would reduce the benefits of depowering, by reducing the size of some groups (i.e., unbelted children and drivers) vulnerable to air bag fatalities, there would be very large increases in the number of people saved by occupant restraints of one type or another. As noted above, if the safety belt use rate were 75 percent in potentially fatal crashes instead of the current level of 52.6 percent, an additional 4,000 lives would be saved annually. NHTSA plans to work vigorously with the States to increase safety belt use through public education and authorizing primary enforcement of safety belt use laws.

Safety Tradeoffs. NHTSA has carefully considered the potential tradeoffs implicit in depowering passenger air bags. Given the wide range of the above estimates concerning unbelted passengers, the agency believes that the net effect of depowering on safety could be positive. However, even if the net effect were negative, the agency believes that the opportunity to save a significant number of children who would otherwise be fatally injured by air bags justifies foregoing the opportunity to save some unbelted passengers. There are several reasons for this policy choice.

First, it is not acceptable that a safety device cause a significant number of fatalities in circumstances in which fatal or serious injuries would not otherwise occur. In making this statement, the agency draws a distinction between air bags which are fatally injuring young children in low speed crashes in which the other vehicle occupants are uninjured, and other safety devices which may on occasion unavoidably substitute one type of injury for another type that would occur in their absence (safety belts are a good example).[25] Those fatalities are particularly unacceptable in light of the agency's analysis showing that depowering air bags can significantly reduce the number of children being fatally injured by air bags.

Second, it is also particularly unacceptable that the vehicle occupants being fatally injured are young children, and that the number of those deaths is

[24] The Holden passenger cars have depowered air bags that have a ''no-fire'' threshold of 12.4 mph and an ''always-fire'' threshold of 17.4 mph. While thresholds vary for U.S. air bags, a typical one has a ''no-fire'' threshold of 9 mph and an ''always-fire'' threshold of 14 mph.

[25] In severe collisions, safety belts can seriously bruise the chest of an occupant or even cause rib fractures. However, the restraining force of the belt would also likely prevent even more serious chest or head injury from the occupant's striking the interior components of the vehicle.

steadily growing. In confronting the possibility of inevitable short-term safety tradeoffs between young children and unbelted occupants over 12 years of age, the agency believes that greater weight must be placed on protecting young children. NHTSA has always given a high priority to protecting children and accordingly has applied these different cost-benefit considerations to its rulemaking affecting children. The agency's activities related to school bus safety standards are an example of this policy.

A major reason for giving priority to protecting young children is that they are less mature than teenagers and adults and thus less able to exercise independent judgment, assess the risks and take action to improve their safety. The young children are more dependent on the judgment and actions of other persons. The oldest of the 32 children who have been fatally injured by an air bag was nine years old, and most of the children have been much younger. Nineteen were four to seven years old and nine were infants. Conversely, the unbelted teenagers and adults who might not be saved as a result of depowering can take action on their own to protect themselves by simply buckling their safety belts as required by the laws of 49 States and the District of Columbia.

Notwithstanding the justifications for making the safety tradeoffs, NHTSA is concerned about them. It is because of the possibility of disbenefits, especially for unbelted occupants, that the agency is proposing to make only a temporary change in Standard No. 208 to permit or facilitate the depowering of air bags. The agency will shortly issue a proposal to require a phase-in of smart air bags. Requiring smart air bags would not only enable the agency to make depowering a temporary measure, but would also ensure that the problem of adverse effects from air bags is fully addressed, and that air bags achieve their full safety potential for protecting a wide variety of vehicle occupants over an appropriate range of vehicle speeds.

2. Driver Air Bags

Analysis of the net effect of depowering driver air bags is more difficult and therefore less precise largely because the agency has conducted fewer tests of depowered driver air bags and because the test results for the unbelted drivers are a mixture of small increases and decreases in chest g's. Nevertheless, the agency believes that depowering driver air bags would enhance safety. As noted above, belted short drivers who move their seat as far back as their stature permits, would benefit substantially from depowering. Belted drivers, in general, should benefit as well since depowering appears to allow a better ''tuning'' of the combined safety belt-air bag system for belted occupants. Unbelted, out-of-position short drivers could receive some benefit as well. As a result, there would be some reduction in the projected figure of 25 driver fatalities per year.

Belted Drivers. Depowering alone increased the chest g's for belted drivers in NHTSA's vehicle testing. Although the tests showed a 7 g increase at 35 mpg, there appears to be no logical reason for such an increase. In the same test, chest g's decreased for the belted passenger dummy. Further, modeling suggested only a marginal increase of 2 g. The PRE assumes a 2 g increase for belted drivers under the 80 g alternative. Under the generic sled test alternative, chest g's go up or down at different speeds with the net result that there would be no change in overall fatalities for depowered, but not optimized, air bags.

As in the case of passenger air bags and belted passengers, the agency believes that the data concerning the air bags in the Australian Holden passenger car show that optimizing as well as depowering air driver bags would produce a more favorable result for belted drivers than the depowered air bags tested by NHTSA. Since most of the Holden data related to driver air bags instead of passenger air bags, the agency has good reason to be even more confident about the implications of the Holden data for belted drivers in this country. With optimization, the agency believes that, instead of an increase in chest g's under the 80 g alternative or no change under the generic sled test alternative, a decrease is likely. If depowering and optimizing U.S. driver air bags increased their effectiveness to as much as 15 percent, the savings would be 471 drivers.

Unbelted Drivers. Depowering by an average of 20 to 35 percent under the 80 g alternative appears to slightly increase the chest g's of unbelted drivers. It is believed that the energy absorbing steering column is the reason that chest g's do not increase in proportion to the amount of depowering. In vehicle tests with depowered air bags, chest g's increased by 2 g at 30 mph, but decreased by almost 3 g's at 35 mph. The results of modeling were mixed also, but consistent with the vehicle test results. Modeling predicted a slight increase at 30 mph and decrease at 35 mph. Since there was an increase at some speeds, the PRE assumes a 2 g increase under the 80 g alternative. Based on that increase, the PRE estimates a possible loss in savings of 9 to 41 unbelted drivers. Under the generic sled test alternative, the PRE assumed a 10 g increase based on modeling. That increase suggests a resulting loss of 221 to 650 unbelted drivers.

As noted above, there is reason to believe that these losses might not occur. AAMA estimates the potential savings of 30 to 200 small adults per year due to increased effectiveness of passenger and driver air bags for those persons and the potential loss of up to eight large adults annually. Further, to the extent that increased numbers of people use their safety belts, the potential losses in savings of unbelted passengers would not materialize. NHTSA plans to work vigorously with the States to increase safety belt use through public education and authorizing primary enforcement of safety belt use laws.

Arm Injuries. The agency believes that depowering would lead to a significant reduction in driver arm injuries associated with air bag deployments. Compared to MY 1994 vehicles, depowering air bags by an average of 20 to 30 percent could reduce AIS 2–3 arm injuries from 25,006 to 16,254, a reduction of about 8,800 injuries.

Safety Tradeoffs. NHTSA has carefully considered the potential tradeoffs implicit in depowering driver air bags. Despite the wide range of the above estimates concerning unbelted drivers, the agency believes that the net safety effect of depowering passenger air bags could be positive instead of negative. Even if the net effect were negative, the agency believes that the opportunity to avoid causing fatal injuries to some drivers justifies foregoing the opportunity to save more unbelted drivers. The reasons for this policy choice are similar to those for depowering passenger air bags.

First, the principle of not affirmatively causing harm when harm would not otherwise occur applies to all vehicle occupants. While it is probably unavoidable that some safety devices may on occasion substitute one type of injury for another type that would occur in their absence, it is not acceptable that safety devices cause a significant number of fatalities in circumstances in which fatal or serious injury would not otherwise occur.

Second, the drivers who might lose benefits as a result of depowering are unbelted drivers. They can protect themselves by taking the simple step of buckling their safety belts as required by the laws of 49 States and the District of Columbia.

Nevertheless, as noted above, due to the possibility of adverse safety tradeoffs, NHTSA is seeking to limit the duration of the tradeoffs by proposing to make only a temporary change in Standard No. 208 to permit or facilitate the depowering of air bags. The agency's planned proposal to require smart air bags would not only enable the agency to make depowering a temporary measure should the adverse tradeoffs actually materialize, but would also ensure that the problem of adverse effects from air bags is fully addressed, and that air bags achieve their full safety potential.

C. Alternative Proposals

The preceding sections of this notice discuss the benefits of depowering passenger and driver air bags by various amounts, and the net effects on safety. While the agency recognizes that depowering air bags may result in some adverse safety tradeoffs, primarily to unbelted teenage and adult occupants, it believes that depowering represents a desirable temporary means of addressing the problem of fatalities and injuries from air bags.

Having tentatively decided that depowering of air bags is desirable, it is necessary for the agency to determine whether a regulatory change is needed to permit this action and, if so, what the most appropriate change would be.

Manufacturers have asserted that a regulatory change is needed because if air bags were depowered to an appropriate extent, manufacturers would be unable to certify that all of their vehicles comply with Standard No. 208's unbelted test requirements.

As discussed in the PRE, the agency's testing shows that an average 20 to 35 percent depowering of passenger air bags would result in chest g's for some vehicles approaching or slightly exceeding Standard No. 208's 60 g limit for the unbelted test. This indicates that a regulatory change would be needed to permit this level of depowering for these vehicles. The agency's limited data suggest that the standard's other requirements would not preclude this level of depowering, although the 1000 HIC limit would prevent significantly higher levels of depowering.

NHTSA does not have data concerning whether a regulatory change would be needed to permit 20 to 35 percent depowering of driver air bags, but is requesting commenters to provide such data. As discussed in the PRE, when driver air bags depowered to that extent were tested by NHTSA at 30 mph, unbelted chest g's increased from 49 to 51. Ford modeling for driver air bags shows similar results, with chest g's rising by only 2 or 3 g's for belted and unbelted drivers. Available NHTSA modeling shows variable results (some chest g's going up and others down), but all were well within the standard at 30 mph. The agency believes that energy absorbing steering columns explain why the driver air bag can be depowered without significantly affecting chest g's. However, the agency conducted only limited testing and did not conduct any angle tests. The agency requests comments, including data, concerning how depowering driver air bags by various percentages would affect the manufacturers' ability to certify compliance with Standard No. 208.

The agency is proposing the adoption of either, or both of two potential changes as alternative temporary amendments to Standard No. 208: either increasing the current chest acceleration limit to 80 g's, or replacing the unbelted crash test requirement with a sled test protocol incorporating a standardized crash pulse. If the agency were to adopt both of these changes, a manufacturer could select either alternative at its option. However, a manufacturer could not mix the two options, i.e., the 80 g chest acceleration limit would not apply in the case of the generic sled test.

A discussion of each of the two alternative approaches being proposed by the agency is presented in the next two sections.

1. Approach I—Temporary Change in Unbelted Chest Acceleration Requirement

NHTSA believes that the simplest regulatory change would be to amend the requirement which appears to be the factor limiting the vehicle manufacturers' ability to depower current air bags by 20 to 35 percent. This points to reducing the stringency of the unbelted chest acceleration requirement. The agency is proposing to increase the current limit from 60 g's to 80 g's. However, the agency is requesting comments on both higher and lower values, and could select a different value for the final rule.

This alternative has other advantages in addition to its simplicity. Occupant protection would continue to be measured in full-scale vehicle tests, protection in impacts at a range of angles would be ensured, and the other injury criteria would not change. The agency notes that recent biomechanical data generated for NHTSA suggests that, with respect to potential chest injuries, the human tolerance to acceleration is higher for air bags than for belts, because the air bag delivers a more broadly distributed, uniform loading to the chest than does a safety belt. Therefore, an 80 g requirement for occupants protected by air bags appears to be at least as protective as a 60 g requirement for belted occupants.

The agency notes that amending the standard to allow chest accelerations of 80 g's does not mean that chest g measurements in crash tests would necessarily rise to that level. The agency's test data suggest that while a change to 80 g's would be sufficient to permit or facilitate 20 to 35 percent downloading, air bags with progressively higher levels of downloading (beyond 20 to 35 percent) are likely to exceed Standard No. 208's head injury criterion before they exceed the 80 g requirement.

NHTSA also notes that the PRE's estimates of safety impacts for the 80 g alternative do not assume an increase to 80 g's, or to any particular level below 80 g's. The estimates are instead based on the agency's analysis of the effects of depowering air bags by 20 to 35 percent.

The agency's analysis assumes, based on limited vehicle testing, that chest g's would rise by an average of approximately 11 g's for the unbelted 50th percentile male. Since compliance data show that chest g's for this test currently average about 43 g's, the assumed 11 g increase means that the average would increase to about 54 g's for the 50th percentile male dummy.

NHTSA intends for any regulatory change to Standard No. 208 to permit or facilitate quick depowering of air bags. In order to reduce the leadtime for depowered air bags, the agency is proposing, as part of its 80 g proposal, to establish a special two-year enforcement policy for Standard No. 208's unbelted test requirements.

The agency recognizes that, under ordinary circumstances, manufacturers making air bag design changes typically conduct extensive testing to ensure that a vehicle will continue to meet the standard's performance requirements at any particular level. They do so despite the existence of various provisions of Standard No. 208 that provide that ''a vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.'' See, e.g., S4.1.5.3.

While NHTSA generally considers some degree of testing to be necessary to satisfy this ''due care'' requirement, under the proposed two-year policy, the agency would consider engineering analyses indicating that a vehicle will pass the unbelted test requirements with a depowered air bag as sufficient during that period to establish that the vehicle's

manufacturer exercised due care to ensure that the vehicle conforms with the requirement, even in the absence of confirming crash testing. Of course, the agency would retain the right to enforce the requirements of the standard if the noncompliance was due to quality control deficiencies or other manufacturing problems. This policy would be reflected in an appendix to the standard.

2. Approach II—Temporary Replacement of Unbelted Crash Test Requirement With a Sled Test Protocol Incorporating a Standardized Crash Pulse

In August 1996, AAMA submitted a petition for rulemaking requesting, among other things, an immediate amendment to the requirements for testing the ability of air bags to protect unbelted occupants. The current requirement measures occupant protection in a full scale crash test in which a vehicle, equipped with test dummies at the outside front seating positions, is crashed into a barrier. Specified injury criteria, measured on the test dummies, must be met in barrier crashes at speeds up to 30 mph, and a range of angles up to 30 degrees off-center.

AAMA requested that this crash test requirement be replaced with a sled test protocol. Under that protocol, all of a vehicle, or a portion of the vehicle representing the interior, would be mounted on a sled. The sled would be decelerated from 30 mph according to a standard formula, called a crash pulse. There would not be an angle test, only a direct frontal test.

NHTSA notes that sled tests can be used by researchers to simulate what will happen to occupants in real world crashes. The crash pulse for a given sled test is a major determinant of the stringency of the test, and how representative the test is of how a particular vehicle will perform in particular kinds of real world crashes.

To explain further, the term ''crash pulse'' is defined as the acceleration-time history of the occupant compartment of a vehicle during a crash. This is typically represented in terms of g's of acceleration plotted against time in milliseconds (1/1000 second). Generally speaking, the occupant undergoes greater forces due to secondary collisions with the vehicle interior and restraint systems if the crash pulse g's are higher at the peak, or the duration of the crash pulse is shorter, which would lead to higher overall average g levels.

The crash pulse experienced by a particular vehicle will obviously differ substantially in different types of crashes, e.g., if the vehicle crashes into a rigid stone wall vs. a stack of hay. Similarly, vehicles with different designs typically experience substantially different crash pulses in the same kind of crash, depending on such things as the stiffness of the vehicle structure and amount of crush space. Large cars typically have relatively mild crash pulses, while small cars and utility vehicles typically have more severe crash pulses.

Under AAMA's recommended amendment, the same crash pulse would be used for all vehicles. The petitioner argued that the standard's current test protocol ''directly dictates the level of the air bag's inflator power and it is the level of inflator power that unnecessarily increases the risk of injury to vehicle occupants during air bag deployment.'' AAMA asserted that its recommended test protocol would allow for lower powered inflators to be introduced into the market as quickly as possible while maintaining air bag protection for all occupants.

In its August 1996 petition, AAMA provided the parameters for its recommended pulse along with a suggested mathematical formula, called a sine pulse. The sine pulse suggested by AAMA is described by the mathematical function: $A=15 \sin (\Pi t/143)$ Gs.

After examining the sled test protocol initially advocated by AAMA, NHTSA concluded that the standardized sled pulse suggested in the petition is representative of a very soft, or benign crash. Indeed, the agency wondered whether the pulse were so benign that a vehicle could meet the requirements for protecting an unbelted dummy without an air bag.

To answer this question, NHTSA tested a 1993 Taurus according to the sled test protocol recommended by AAMA, i.e., the 143 millisecond (msec) sled pulse (15 g peak). The vehicle did not have a passenger air bag. Although the vehicle had a driver air bag, it was deactivated so that it would not deploy. Although protected by neither safety belts nor air bags, neither of the dummies had responses that exceeded the injury criteria specified in Standard No. 208.

In its November 13, 1996 letter, AAMA suggested that the agency use a more severe crash pulse, 125 msec., which corresponds to 17.1 g. AAMA also argued that the agency should consider injury measurements for the neck in evaluating the crash pulse, rather than focusing solely on whether vehicles without air bags could pass the current Standard No. 208 injury criteria (HIC, chest and femur loads) in a test using the pulse. AAMA indicated that a vehicle could not meet appropriate neck injury assessment reference values (IARV's) in a test using the pulse without an air bag.

NHTSA notes that the revised AAMA recommended crash pulse is similar to that experienced by a large car in a Standard No. 208 test, but milder than that experienced by a typical small car, utility vehicle, or light truck. The PRE provides additional information about crash pulses.

In December 1996, NHTSA conducted several tests of a 1993 Taurus according to the revised sled test protocol recommended by AAMA, i.e., 125 msec, 17.1 g. The agency repeated the same test it had conducted with the earlier pulse, i.e., a no-air-bag test with unbelted 50th percentile male dummies. However, NHTSA also measured forces on the neck so that it could make calculations relative to IARV's. The agency also conducted tests with baseline and depowered air bags, and with fifth percentile female dummies.

NHTSA was still reviewing data calculations for this new test series as this notice was being completed. The agency expects to place the data in the docket at, or shortly after, the time this notice is published. NHTSA requests comments on what conclusions should be drawn from the data and on how the results of the tests should be factored into the agency's final decision concerning this proposal.

There are potential advantages and disadvantages to the approach of using a standardized crash pulse representative of a large car as a temporary means of addressing air bag fatalities to children. The approach provides maximum flexibility to manufacturers in addressing these fatalities. In its 1984 rulemaking establishing the automatic protection requirements that were in effect until the implementation of ISTEA, NHTSA recognized that technical problems existed in designing air bags that would not pose a danger to unrestrained small children in small cars. Because the crash pulse of small cars is much more severe than that of large cars, more aggressive air bags are needed to meet the standard's injury criteria. The agency stated:

> Manufacturers claim that little development work has been done with air bags for small (e.g., subcompact or smaller) cars and that a particular problem in these vehicles is how to protect small children, who are not properly restrained, from the more rapidly deploying air cushion in such vehicles. The Department believes that this problem can be mitigated and that technical

solutions are available, as described in the FRIA. However, the lack of experience in this area, as well as the lack of experience for some companies in any form of air bag development, make the Department reluctant to mandate across-the-board air bags. 49 Fed. Reg. 29001, July 17, 1984; See July 11, 1984 FRIA, pp. III–7 to 11.

The AAMA recommended sled test approach would essentially permit the auto manufacturers to use air bags for small cars and other vehicles with severe crash pulses (e.g., utility vehicles and trucks) that are similar to the ones they use for large cars. This would eliminate some of the problems that exist in designing air bags for these vehicles that are not aggressive to children, i.e., the risk of aggressivity would be normalized for all vehicles.

Another advantage of a sled test approach is that it reduces the time and cost of doing certification testing, since sled tests are less destructive of the vehicle. Further, many more sled tests can be conducted in the same time period, since the motor vehicle industry and its suppliers have substantially greater capacity to conduct sled tests than barrier tests.

The primary disadvantage of using a standardized crash pulse representative of a large car is that the test will be less representative of actual performance for small cars and other vehicles with severe crash pulses, i.e., the test measures only air bag performance and not total vehicle performance. The approach also eliminates the effect of angle test requirements, which ensure protection in frontal impacts that occur at a range of angles rather than purely head-on. However, given that recent NHTSA analyses indicate that current fatality reducing benefits of air bags drop off rapidly as crashes diverge from direct ''head-on'' collisions, deleting the requirement for meeting injury criteria in a 30 degree test might not substantially degrade the ''real world'' benefits of air bags in such crash configurations. (''Fatality Reduction by Air Bags, Analyses of Accident Data through early 1996,'' August 1996 NHTSA Technical Report, DOT HS 808 470) NHTSA requests comments on this issue.

As a practical matter, the AAMA recommended sled test approach appears to permit more depowering than the 80 g approach. Under the 80 g approach, Standard No. 208's HIC requirement appears to preclude depowering much beyond the 20 to 35 percent range. The agency does not know how much depowering would be permitted by the AAMA approach, but believes it could be considerably greater than 35 percent, at least for vehicles that currently experience a severe crash pulse in the current Standard No. 208 test. While this maximizes manufacturer flexibility in addressing the fatalities to children, it also raises the possibility of greater adverse safety tradeoffs, especially to unbelted teenage and adult occupants.

In the context of a temporary amendment to Standard No. 208, however, the agency believes it is important to distinguish between what the manufacturers might technically be permitted to do and the actions they would actually take in response to a regulatory change. Because of the substantial differences among current air bags, it is likely that very different levels of depowering are needed for different air bags in order to significantly reduce the risk of child fatalities. For some air bags, 10 percent depowering may be necessary; for others, 60 percent depowering may be necessary.

Because the same standards apply to all vehicles, it is possible that any regulatory change that would permit 60 percent depowering of the most aggressive air bags would permit greater than optimal depowering of other air bags. That does not mean, however, that manufacturers would depower all air bags to the maximum extent permitted by the amendment. Instead, the agency anticipates that the manufacturers would only depower particular air bags to the extent needed to address the child fatality problem, and preserve unbelted occupant protection to the maximum extent possible.

As part of proposing the AAMA recommended sled test approach, the agency is proposing to add neck injury criteria for the 50th percentile male dummy. As indicated above, AAMA argued that the agency should consider injury measurements for the neck in evaluating the crash pulse. The source of the proposed neck criteria is ''Anthropomorphic Dummies for Crash and Escape Systems,'' AGARD Conference Proceedings of NATO, July 1996, AGARD–AR–330. A copy of the relevant pages is being placed in the docket. The agency notes that GM uses the same neck criteria for its IARVs. Data provided by AAMA indicate that, in general, all of these neck criteria could not be met without an air bag.

The proposed neck injury criteria represent peak values for very short duration loading. Much lower loads can be tolerated for longer duration loading. Time dependency criteria may need to be specified. The agency solicits comments on this subject.

The agency is proposing a test procedure similar to that presented in AAMA's petition. NHTSA notes that the proposed procedure specifies that the vehicle, or ''a sufficient portion of the vehicle to be representative of the vehicle structure,'' is mounted on the sled. The agency requests comments on the practicality of conducting sled tests with whole vehicles, and on whether the quoted language can be made more objective.

NHTSA notes that AAMA included in its initial petition both a recommended crash pulse and specified corridors for that pulse. The agency believes that it is necessary to specify corridors in addition to a specific pulse, because it is generally not possible to duplicate exact pulses. Manufacturers would be required to certify that their vehicles comply with the standard's performance requirements for all tests within the specified corridors. The agency notes that AAMA has not provided corridors for its revised crash pulse, and has written to AAMA requesting it to provide a figure showing the mathematical equation for the revised pulse, a graph of the pulse and corridors for the pulse. This information will be docketed as soon as possible after it is received by the agency. While the proposed regulatory text specifies only a specific crash pulse and not the corridors for that test, the agency expects to include such corridors in the final rule.

3. Request for Additional Information

In order to help it reach a final decision, the agency is requesting additional information in several areas.

First, the agency is requesting additional information and data to help it refine its estimates of the potential benefits and net effects on safety that would be likely to result from depowering. As discussed above, the estimates presented in the PRE and summarized above are necessarily based on very limited data. The agency requests commenters to address the analyses presented in the PRE, including what conclusions should be drawn from the various test data, modeling data, Holden study, and other information presented in that evaluation, concerning the effect of depowering on fatalities and injuries. The agency also requests commenters to provide additional relevant information, including test data, real world studies, and engineering analyses.

Second, the agency recognizes that there are significant uncertainties associated with the analyses of the available data and the resulting estimates of benefits and disbenefits. If, contrary to the agency's expectation and best judgment, this rulemaking were to

result in a large net loss of life, would taking action (through the adoption of the proposed amendment) to save the children and short adult drivers being fatally injured by air bags still be the correct policy choice?

Third, the agency is seeking comment on the sled pulse test recently recommended by AAMA. The agency has written to AAMA requesting information on why AAMA selected the particular recommended pulse, the amount of depowering that would be permitted for various vehicle types, how those changes would translate into 30 mph barrier test results, and specific manufacturer plans (on a model-by-model basis, if possible) concerning the amount of depowering that would occur if that alternative is adopted in the final rule. This information will be docketed as soon as possible after it is received by the agency. The agency also requests specific estimates on the overall impacts on safety, for children, belted and unbelted passengers, and belted and unbelted drivers.

Fourth, NHTSA requests specific analysis comparing the potential benefits and net effects on safety of the two proposed alternatives. The agency notes that, in a November 13, 1996 submission, AAMA provided estimates concerning its members' ability to depower air bags under various alternative amendments to Standard No. 208. AAMA stated that, for purposes of its analysis, depowering was defined as reducing the force produced by air bags to a level which is estimated to reduce the risk of air bag related fatalities to a 5th percentile unbelted female and unbelted child as close to zero as possible, while still meeting all belted occupant injury criteria. According to AAMA, this generally corresponds to a 25 to 35 percent average reduction in total inflator output and peak mass flow. AAMA provided the following chart:

AAMA Estimates for Air Bag Depowering

The percentage of air bag systems that could be depowered noted below is based on engineering judgment of AAMA members relative to the ability to depower the current air bag design to a level needed to provide meaningful benefit.

Regulatory Action #1—Raise Chest Criterion to 80 g's

passenger cars—36%
trucks—27%
total—31%

Leadtime to implement—6 to 9 months to 4 years

Regulatory Action #2—80 g's + delete angle barrier

passenger cars—43%
trucks—41%
total—42%

Leadtime to implement—6 to 9 months to 3 years

Regulatory Action #3—80 g's + delete angle barrier + 15 msec HIC

passenger cars—48%
trucks—57%
total—53%

Leadtime to implement—6 to 9 months to 3 years

Regulatory Action #4—125 msec Generic Sled Test

100% of total fleet—leadtime to implement—6 to 9 months, complete within 2 years.

Based on compliance data and its limited testing of depowered air bags, the agency believes that an 80 g requirement would permit manufacturers to depower essentially all of their vehicles by 20 to 35 percent, while AAMA estimates that only 31 percent of vehicles could be depowered ''to a level needed to provide meaningful benefit.''

One reason for the difference in the assessment of the sufficiency of the 80 g requirement is that the manufacturers contemplate depowering more than 20–35 percent in the case of the more aggressive air bags. As discussed earlier in this notice, the agency's testing indicates that a considerably higher level of depowering might be needed for some vehicles to significantly reduce the chance of fatality to out-of-position children.

NHTSA has not conducted angle tests with depowered air bags, so another reason for the difference might be that Standard No. 208's current angle test requirement could be a limiting factor even with an 80 g requirement.

The agency requests the individual manufacturers to provide specific analysis, on a model-by-model basis, if possible, comparing the amount of depowering that would be permitted by an increase in the chest acceleration limit alone to that which would be permitted by the AAMA generic sled pulse test, and describing the reasons for any differences in these two levels of depowering. NHTSA has already requested this information from AAMA and will docket it as soon as possible after it is received by the agency.

Fifth, NHTSA is requesting additional information concerning the extent of the existing problem of driver fatalities and injuries from air bags, and the amount of depowering that would be needed for various vehicle types to address those fatalities and injuries. As discussed earlier in this notice, there are substantial differences between the passenger and driver air bag problems. While the annual number of child fatalities is very small but growing steadily, the annual number of adult fatalities does not appear to be growing. While the agency is aware of 18 children who have been fatally injured by air bags this year, it is aware of only one driver who has been fatally injured by an air bag in the United States during the same period. This apparent nearly total absence of driver fatalities has occurred despite the greater than two-to-one ratio of vehicles with driver air bags to vehicles with passenger air bags and the four-to-one ratio of drivers to front seat passengers. (As noted above, however, the agency's figures for driver fatalities are not the result of a census.) Moreover, while most child fatalities have occurred in very recent model year vehicles, the agency is aware of only one woman 5 feet 2 inches or less who has died in a post model year 1992 vehicle. Finally, the ratio of lives saved by air bags to persons fatally injured is very different for driver air bags than passenger air bags. Driver air bags are estimated to have saved 1500 lives, as compared to 19 persons fatally injured. Passenger air bags are estimated to have saved 164 lives, as compared to 32 persons fatally injured.

There are also considerable differences between the size and basic designs of driver and passenger air bags, and the mechanisms by which drivers and children are likely to become too close to the air bag. As discussed earlier in this notice, unrestrained or improperly restrained children are likely to be propelled up against the air bag before deployment as a result of pre-crash braking, and children in rear-facing infant restraints are positioned with their heads up against the air bags. Since drivers have their feet on the brake and/or accelerator pedals and/or floor and are holding the steering wheel, they are not likely to be propelled forward as a result of pre-crash braking to the extent that children are. Pre-braking and crash forces will, however, cause drivers to move toward the air bag. Drivers who sit very close to the steering wheel are at greater risk of being too close to the air bag at the time of deployment, especially if they are unrestrained.

Because driver air bags have been produced in large numbers for several years longer than passenger air bags, the vehicle manufacturers have had time in a number of instances to redesign driver air bags to incorporate a number of

countermeasures that reduce the risk to out-of-position occupants. In deciding whether to adopt its proposal to reduce the stringency of Standard No. 208 as it applies to driver air bags, the agency will therefore take care that it is assessing both current and expected air bag designs.

By way of illustration, General Motors commented in December 1995 that it has introduced a number of air bag system features that according to its test results should reduce the risk of inflation induced injury. These features include minimized inflator output and bag size, module cover tear seam geometry, low break-out force module cover, bag fold, and recessed air bag module. General Motors also stated that it was in the process of introducing air bag systems that include a number of features that can help to further reduce the inflation-induced loads to which an occupant can be subjected. These features (which repeat some of the earlier ones listed by that company) include recessed air bag modules, new bag folds, improved air bag module tear seam geometries, low break-out force air bag module covers, minimized bag volumes, low output inflators, and air bag venting technologies.

NHTSA is also aware that other companies have also redesigned driver air bags in ways that should reduce air bag aggressivity. Agency testing of several new designs shows a substantial reduction in the risk to out-of-position occupants, especially with respect to chest injury, measured as V*C. However, the agency also tested some driver air bags that showed a substantial reduction in some injury reference values and increases in others.

NHTSA requests information on the potential which current driver air bags have for creating adverse side effects. Among other things, the agency requests vehicle manufacturers to provide detailed information, on a model-by-model basis, if possible, concerning all relevant design changes they have made, or expect to make, in their vehicles that may have reduced, or will reduce, the risk of injury or fatality to drivers from air bags. This would include changes in air bag designs, including deployment threshold changes, and changes in related vehicle components. This information will help the agency assess the potential of adverse side effects associated with model year 1997 vehicles, as opposed to the potential associated with model year 1990–92 vehicles.

The agency also requests information on the number of driver air bag fatalities that have occurred to date. NHTSA does not have as much information on driver fatalities as child fatalities, because it does not have the resources to investigate every adult fatality that occurs in a vehicle with an air bag. Therefore, there may be driver fatalities that the agency is not aware of. NHTSA is especially interested in knowing about fatalities that have occurred over the past three years, especially involving late-model vehicles.

NHTSA also requests comments on the extent to which depowering of current air bags would address driver air bag fatalities, and on the extent of the associated safety tradeoffs. Finally, the agency requests comments and data concerning the extent of the need to change Standard No. 208 to permit various levels of depowering, and on the alternatives of raising the standard's chest g limit and/or adopting the AAMA recommended generic sled pulse test.

In view of the potentially substantial disbenefits associated with depowering driver air bags, the agency requests comment about the advisability of limiting the proposed amendment to passenger air bags only. The agency requests specific information about the cost and leadtime implications of excluding driver air bags from the amendment as well as the effects it would have on reducing the magnitude of the apparent disbenefits associated with depowering driver air bags. In making that request, NHTSA recognizes that considerable depowering of driver air bags is already possible under the current standard.

D. Consideration of Other Alternatives

In developing this proposal, NHTSA considered an array of regulatory and nonregulatory (e.g., education) approaches that would address the air bag safety problem.

Other regulatory approaches to facilitate depowering that have been advocated by the industry include dropping the unbelted test altogether, or requiring that the unbelted requirements be met at speeds up to 25 mph instead of 30 mph.

NHTSA is not proposing to drop the unbelted test altogether. A number of vehicle manufacturers have argued that the inclusion of unbelted test requirements in Standard No. 208 should be reconsidered in light of the fact that belt use has increased from 14 percent in 1983 to around 68 percent today. The agency recognizes that, at some point, belt use might rise to a point at which retention of the unbelted test requirements might no longer be appropriate. The agency notes that belt use in Australia is over 95 percent, and averages 93 percent in Canada. However, as noted above, the belt use among fatally injured vehicle occupants is less than 40 percent. Since smart air bags may soon be available that adjust air bag deployment levels based on belt use or nonuse, the possible need to amend the unbelted test requirements may be relatively short-lived. NHTSA will consider the issue of the unbelted test requirements in the context of its forthcoming rulemaking on smart air bags. If it appears that such smart air bags will not be available in the near term, the agency will also consider whether there might be a percentage of belt use at which the agency should examine changing the unbelted test requirements and whether any legislative amendments might be necessary for that purpose.

The agency is also not proposing to reduce the unbelted test speed to 25 mph. While this approach was advocated in the past by Ford, Ford has now reached consensus with the other members of AAMA on the approach of replacing the unbelted crash test requirement with a sled test protocol incorporating a standardized crash pulse. In addition, the agency believes that the proposed approaches are preferable to reducing the test speed because they would allow a more rapid introduction of depowered air bags.

Given the possibility that amending Standard No. 208 to permit significant depowering might lead to a reduction in the lives saved by air bags, NHTSA has assessed other available approaches to the air bag safety problem in terms of their relative timeliness, effectiveness and net effect on safety. The results of such a comparative assessment are relevant to deciding whether there is a need to reduce stringency of the standard and, if so, for how long. The agency has considered the following alternatives in addition to depowering. (There is some overlap between the alternatives; for example, smart air bags may incorporate some design features that could also be used individually.)

Behavior-Related Actions Only. One possibility would be for NHTSA to focus entirely on behavior-related actions, such as public information efforts, encouraging the States to improve and enforce their safety belt and child restraint use laws, requiring improved warning labels, and permitting or requiring passenger manual cut-off switches (a technological change which would also require behavioral changes to be effective) in all vehicles. Behavioral changes are especially relevant to the problem of child fatalities caused by air bags, since these fatalities can be prevented by behavioral means, e.g., ensuring that

children always buckle up and that they sit in the back seat whenever possible.

NHTSA is actively pursuing efforts to bring about behavioral changes. The agency's efforts include its public education campaigns, addressed at length in the August 1996 NPRM and other Federal Register notices, and the agency's final rule (issued November 22, 1996) amending Standards No. 208 and No. 213 to require improved labeling to provide better assurance that drivers and other occupants are aware of the dangers posed by air bags to children.

As discussed above, NHTSA is a part of a coalition including automobile manufacturers, air bag suppliers, insurance companies and safety organizations working to improve safety belt use by a variety of means, including education efforts, urging the States to adopt primary enforcement safety belt use laws, and improving enforcement of seat belt and child seat use laws. To the extent that these efforts are successful, belt use rates should increase.

The agency's rulemaking concerning manual cutoff switches for passenger air bags also represents a way of reducing air bag fatalities by behavioral means. The switches provide drivers, in vehicles lacking a back seat large enough to accommodate a rear-facing infant seat, with a means of ensuring that their young children, particularly infants, would not be harmed by the air bag.

However, while behavioral changes are an important part of the efforts to reduce low speed fatalities due to air bags, it is not realistic to expect that those efforts will fully solve the problem. This is illustrated by the number of drivers who continue to drive without safety belts and the number of children who remain unrestrained, despite decades of efforts to encourage people to wear safety belts and use child restraints, and the existence of laws requiring such use in most states. Accordingly, it is also necessary for the agency to pursue technological changes.

Higher Deployment Thresholds—i.e., Increasing the Vehicle Speed at Which Air Bags Deploy. NHTSA has also considered whether vehicle manufacturers should be required to increase the minimum vehicle speed at which air bags deploy, and possibly have different deployment thresholds for the unbelted and belted conditions, as a short-term solution for reducing air-bag-induced fatalities and injuries. This would lessen the number of deployments at low speed where the possibility of serious injury for occupants (even unrestrained occupants) is small.[26]

As indicated above, CFAS and Public Citizen requested in their petition that, for vehicles without dual stage inflators, a minimum ''trigger speed'' of 10 mph barrier equivalent velocity (BEV) be set beginning with the 1998 model year for passenger cars and 1999 for light trucks. The CFAS petition submitted a few days earlier had suggested a 12 mph minimum deployment threshold. Mercedes Benz suggested in its comment on the August 1996 NPRM the possibility of using thresholds as high as 18 mph regardless of belt use, as a short-term means of addressing the problem of low speed fatalities to children.[27] NTSB recommended that the agency evaluate the effect of higher deployment thresholds for passenger air bags in combination with certain recommended changes in air bag performance certification testing, and then modify the deployment thresholds based on the findings of the evaluation. The Holden air bag, in addition to being designed to deploy less aggressively, has significantly higher thresholds than typical U.S. air bags. As noted above, Holden bags have a ''no-fire'' threshold of 12.4 mph and an ''always-fire'' threshold of 17.4 mph. While thresholds vary for U.S. air bags, a representative one has a ''no-fire'' threshold of 9 mph and an ''always-fire'' threshold of 14 mph.[28]

NHTSA stated in its August 1996 NPRM that it is interested in whether increasing the minimum vehicle speed at which an air bag deploys, and possibly having different deployment thresholds for the unbelted and belted conditions, may be an effective way to reduce air bag-induced injuries. An examination of the child fatalities that have occurred to date shows why such an increase might be effective.

Of the 32 crashes in which deployment of the passenger air bag caused a child fatality, NHTSA has, to date, analyzed the severity of 24 of those crashes. The estimated change in velocity (delta V) was 20 mph or less in 23 cases, 15 mph or less in 20 cases, and 10 mph or less in eight cases. For the remaining case in the group of 23, delta V was estimated at 20–25 mph. For an additional four cases, the agency did not estimate crash severity but did a damage estimate. Damage severity was low in three cases and moderate in the fourth. The remaining four cases out of the 32 crashes are still under investigation. These data suggest that a moderate increase in threshold could make a significant contribution to reducing child fatalities due to air bags.

NHTSA recognizes that there are many highly complex issues involved in selecting thresholds, including leadtime issues and safety tradeoffs. The agency recognizes that the use of a higher threshold, in combination with the mechanical crash severity sensors used by some vehicle manufacturers, could delay the signal to inflate and thus provide less time for the air bag to deploy, and possibly necessitate even more aggressive air bag deployments. NHTSA believes this problem could be addressed by adding an additional mechanical sensor, but that would involve a hardware change and require additional leadtime. The agency believes that the leadtime to achieve universal usage of electronic sensors would be at least two years. For vehicles which already have electronic sensors, there would be a shorter leadtime for increasing thresholds.

Additional tradeoffs involve the possibility of increased non-fatal injuries. Auto manufacturers have stated that selection of thresholds is typically based on their analysis of the crash severity at which serious facial, head, and brain injuries may occur. However, the agency believes that current steering assembly designs might permit thresholds to be increased without affecting the risk of facial fractures.

NHTSA believes that manufacturers could significantly increase deployment thresholds and still comply with the current requirements of Standard No. 208, although the agency does not have specific information concerning how high. Standard No. 208 does not specify a threshold requirement but does require vehicles to pass crash test requirements at speeds up to 30 mph. The agency believes that most, and perhaps all current vehicles could

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[26] As part of a comprehensive rulemaking on automatic restraints (then called ''passive restraints''), in 1970 NHTSA proposed to require that air bags not deploy when the vehicle impacts a fixed barrier at any velocity less than 15 miles per hour, at any angle. 35 Fed. Reg. 16937, at 16938; November 3, 1970. However, after considering opposing comments from vehicle manufacturers, the agency did not adopt this requirement because it determined that it was preferable to allow manufacturers freedom in the design of their protective systems at all speeds. 36 Fed. Reg. 4600, at 4602; March 10, 1971.

[27] That company currently uses a threshold of 12 mph for unbelted occupants and 18 mph for belted occupants. If no occupant is present, the air bag does not deploy, regardless of the speed.

[28] The agency notes that regardless of what nominal design threshold is selected by a manufacturer, some deployments will occur at speeds below that nominal value, and some air bags will not deploy at speeds slightly above that value. The range of delta V's at which a particular air bag may either deploy or not deploy is dependent on a number of factors, including manufacturer efforts to fine-tune the deployment decision to reflect different crash conditions with the same delta V, and variability inherent in air bag designs.

probably pass the unbelted crash test requirements without air bags at speeds as high as 16 mph. Therefore, for manufacturers with the capability of increasing thresholds quickly, the necessity of meeting the injury criteria at speeds below the higher thresholds does not appear to be an impediment. The agency requests comments on whether this belief is correct.

NHTSA notes that mandating a minimum deployment threshold would be design-restrictive and could undermine the development of two-stage systems that could deploy ''softer'' air bags at lower speeds.

The agency requests commenters to provide analysis comparing the benefits/disbenefits and leadtime for increasing deployment thresholds versus depowering.

Dual Stage Inflators. Public Citizen and CFAS petitioned for the agency to amend Standard No. 208 to require dual stage inflation air bags beginning with the 1999 model year. The petitioners stated that dual inflation bags offer the best solution in the near future, as they neither surrender protection for adults in high-speed crashes, nor sacrifice low-speed crash protection for children. The petitioners asserted that inflator deployment and trigger speeds can be adjusted now without waiting until the 21st century for smart air bags that use infrared or sonic sensors to determine whether there is an out-of-position occupant.

NHTSA notes that the leadtime for implementing dual stage inflators is longer than for depowering. As indicated above, manufacturers can begin introducing depowered air bags in six to nine months and potentially complete their introduction of depowered air bags by a year later. Based on comments from suppliers, the earliest that dual stage inflators could begin to be implemented is for model year 1999, i.e., September 1998.

While the leadtime is longer, it appears that dual stage inflators could provide essentially all of the benefits associated with depowering, without raising the same possibility of safety tradeoffs. This is because such designs would in essence provide a ''depowered'' air bag for low to moderate speed crashes (and possibly all belted crashes), and a fully powered air bag to provide protection to unbelted occupants in higher speed crashes. The agency notes that dual stage inflators might qualify as smart air bags.

Other Air Bag-Related Changes, Not Including Smart Bags. In its November 1995 request for comments, the agency requested comments on many variables in air bag design and related vehicle design that can affect aggressivity. Variables related to air bag design include air bag volume, fold patterns, tethering, venting, mass/material, shape and size of air bag module opening, and module location and deployment path. Related vehicle design variables include such things as recessing the inflator/air bag in the steering wheel assembly or in the dash, pedal adjusters, and safety belt pretensioners. The agency notes that Holden safety belt systems use webbing clamps, which help reduce the payout and spooling of the webbing. In its August 2, 1996 comment, CFAS cited many of these variables (as well as ones discussed above in connection with its petitions) in arguing that other means of reducing air bag aggressivity should be used before manufacturers resort to decreasing the inflation rates.

NHTSA agrees that there are many variables besides inflator power which affect air bag aggressivity, including many cited by CFAS. Many of these changes already are being made. However, any currently unplanned changes relating to these other variables would generally require unanticipated hardware changes, which would take longer to implement than depowering. The agency believes that hardware changes require leadtimes of at least two years. In addition, the agency does not have information showing that these types of changes would be as effective as depowering in addressing child fatalities.

Smart Air Bags. NHTSA has similarly considered how quickly manufacturers could begin installation of smart air bags. As discussed above, the vehicle manufacturers have indicated that they plan to introduce these devices as soon as they become available. Several suppliers commenting on the August 1996 NPRM indicated that smart air bags can begin to be phased in beginning with the model year 1999 fleet, i.e., approximately September 1, 1998.

Tentative Conclusions about Alternatives. As the agency considers technological alternatives to address the adverse side effects of air bags, several things seem evident. First, for many vehicles, depowering has a shorter leadtime than any of the other alternatives. While manufacturers can begin introducing depowered air bag vehicles in six to nine months and potentially complete the depowering of the air bags in their vehicles within about a year after they begin introduction, dual level inflators and other smart air bags cannot begin to be phased in until at least September 1, 1998. The agency has less information on the leadtime for raising deployment thresholds, but it appears that it would take at least two years to switch from mechanical to electronic sensors.

Second, there are various alternatives that may be superior to depowering, i.e., alternatives that result in equal or greater benefits without raising the possibility of adverse safety tradeoffs, but whose leadtime is longer than that of depowering. Therefore, while depowering appears to be an appropriate short-term approach, there is no need for permanently changing the Standard to enable manufacturers to fully address the adverse side effects of air bags.

NHTSA also believes it is important to emphasize that a change in Standard No. 208 is not required to permit manufacturers to implement these other alternatives.[29] The agency expects to ultimately require smart air bags through rulemaking. In the meantime, the agency is not endorsing depowering over other solutions. Instead, the agency is proposing a regulatory change to add depowering to the alternatives available to the vehicle manufacturers to address this problem on a short-term basis. To the extent that manufacturers can implement superior alternatives for some vehicles, the agency would encourage them to do so.

Some commenters, including Takata, expressed concern that a reduction in Standard No. 208's performance requirements may delay the introduction of superior alternatives. NHTSA does not believe a short-term

[29] All of these various other alternatives, i.e., dual level inflators, smart air bags, higher deployment thresholds, and the replacement of mechanical sensors by electronic ones, are permitted by the existing provisions of Standard No. 208. The Standard already provides considerable design flexibility for manufacturers. The Standard's automatic protection requirements are performance requirements and do not specify the design of an air bag. Instead, vehicles must meet specified injury criteria, including criteria for the head and chest, measured on properly positioned test dummies, during a barrier crash test, at speeds up to 30 mph.

While the Standard requires air bags to provide protection for properly positioned occupants (belted and unbelted) in relatively severe crashes, and very fast air bags may be necessary to provide such protection, the standard does not require the same speed of deployment in the presence of out-of- position occupants, or even any deployment at all. Instead, the standard makes possible the use of dual or multiple level inflator systems and automatic cut-off devices for out-of-position occupants and rear-facing infant restraints. Concepts such as dual level inflator systems and devices that sense occupant position and measure occupant size or weight are not new, and were cited by the agency in its 1984 rulemaking. NHTSA also notes that Standard No. 208 does not specify a vehicle speed at which air bags must deploy, and that thresholds could be raised substantially for most current vehicles without creating a Standard No. 208 compliance problem. Therefore, regulatory changes are not needed to permit manufacturers to implement these solutions.

temporary amendment would result in such a delay. Instead, such an amendment would provide maximum flexibility to the vehicle manufacturers to address the problem, while they work on better solutions. Moreover, the agency's forthcoming proposal for smart air bags will seek to ensure that air bags reach their full fatality and injury reducing potential.

NHTSA recognizes, however, that its proposal to permit or facilitate depowering of air bags is on a faster track than the rulemaking to require smart air bags. Under the agency's rulemaking schedule, it plans to issue a final rule concerning depowering before a final rule to require smart air bags. Given that NHTSA contemplates permitting depowering until smart bags are introduced, the question arises of how the agency should limit the duration of the temporary amendment for depowering. One approach would be to specify a several year duration and revisit the issue in the context of the rulemaking on smart air bags. NHTSA requests comments on this issue.

The agency notes that Public Citizen and CFAS requested that the agency require dual stage inflators quickly rather than wait for more advanced smart air bags. The agency believes there is a consensus that smart air bags are needed to fully address the problem of child fatalities. The ''first'' stage of a dual stage inflator would be similar to depowered air bags in reducing but not eliminating the possibility of serious injury or fatality to an out-of-position child. In its August 1996 proposal, NHTSA noted that if it does decide to require smart passenger air bags, its leadtime decision would have to take into consideration the differing leadtimes for the various kinds of smart bags under development, and the fact that the longest leadtimes will be those for the more advanced smart bags potentially offering the greatest net benefits. The agency also noted that, as a practical matter, the longer the time needed to develop and implement the most advanced smart bags, the greater the need would be to implement interim designs that would protect children automatically.

These same types of considerations are relevant to the Public Citizen/CFAS request. If the ultimate result is for the vehicle manufacturers to add smart air bags to their fleets, the agency believes that the quickest and most efficient way of accomplishing this task would be to go directly to smart air bags, which may include dual stage inflators.

NHTSA requests commenters to address how the agency should consider this factor in reaching a final decision on this proposal. The agency also requests the vehicle manufacturers to provide their latest timetables for implementing measures that will enable them not only to solve the problem of the adverse side effects of air bags, but also to meet the current unbelted requirements of Standard No. 208, i.e., 60 g chest acceleration, 1000 HIC, etc.

With respect to Advocates' recommendation that the agency not predicate major regulatory changes on anything less than clear and convincing evidence that a modification will improve safety, NHTSA agrees that caution should be exercised in making a regulatory change. This is why the agency initiated its test program to evaluate various issues related to addressing the problem of low speed air bag fatalities and injuries, including the potential safety benefits and trade-offs associated with depowering air bags. NHTSA also believes, however, that it has a duty to act to address this problem, and promote the long term interests of safety, even in the presence of the possibility of short-term tradeoffs and inevitable remaining uncertainties about the various approaches and alternatives.

E. Effective Date and Comment Period

The proposed amendment might be major and thus subject to Congressional review under the provisions in Title 5 of the United States Code concerning Congressional review of agency rulemaking. If the amendment is major, the agency requests comments on whether the amendment should be make effective immediately upon publication because it addresses an urgent safety problem, most particularly the death of young children. The proposed amendment would permit or facilitate the immediate depowering of air bags, thereby helping to reduce child fatalities from air bags. The proposed amendment would not impose any new requirements, but instead would provide additional flexibility to manufacturers in addressing this problem.

Given the importance of enabling manufacturers to address this urgent safety problem quickly, NHTSA is providing a shortened comment period of 30 days.

F. Relationship to Other Actions

NHTSA invites commenters to address whether and how any of the other actions being taken by the agency to address adverse effects of air bags should affect its decision concerning this proposal.

VI. Response to AAMA and CFAS Petitions

This notice constitutes a granting of AAMA's petition for rulemaking. The agency is proposing the AAMA sled test as one of the alternative amendments in this rulemaking. The agency will consider AAMA's request for rulemaking concerning out-of-position occupants in the context of the anticipated SNPRM concerning smart air bags.

The agency is addressing the request of Public Citizen and CFAS concerning deployment thresholds in the context of this rulemaking. Accordingly, it considers them to have been granted to the extent that this notice analyzes and discusses thresholds and subjects that material to public comment.

VII. Granting of Petition for Use of 5th Percentile Female Dummy

NHTSA has decided to grant a petition submitted by Anita Glass Lindsey on September 1, 1996, to amend Standard No. 208 to specify use of the 5th percentile female test dummy in testing vehicles for compliance with the standard's air bag requirements. The purpose of the amendment would be to provide greater assurance of the safety of short-statured women. The agency notes that the existing 5th percentile female dummy may need further refinement before it is suitable as a device for measuring air bag performance. Further, the simple addition of this dummy to the standard would not likely have a significant effect on air bag design or performance. To have such an effect, the addition would have to be coupled with the adoption of neck injury criteria. Currently, there are no neck injury criteria for the 50th percentile male dummy used in air bag testing, although proposed criteria are included in this notice.

The agency contemplates initiating a new rulemaking proceeding in the future to propose the adoption of the 5th percentile female dummy and to specify injury criteria, including neck injury criteria, suitable for that dummy.

VIII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' This action has been

determined to be ''significant'' under the Department of Transportation's regulatory policies and procedures. The action is considered significant because of the degree of public interest in this subject.

The proposed amendments would not impose any new requirements or costs, but instead permit or facilitate approximately 20 to 35 percent depowering of current passenger air bags. Any cost difference between baseline and depowered air bags would be negligible.

A full discussion of costs and benefits can be found in the agency's regulatory evaluation for this rulemaking action, which is being placed in the docket.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) I hereby certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. NHTSA notes that the cost of new passenger cars or light trucks would not be affected by the proposed amendment.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. § 605(b). The proposed amendment would primarily affect passenger car and light truck manufacturers and manufacturers of air bags. The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR § 121.105(a)).

SBA's size standards are organized according to Standard Industrial Classification codes (SIC). SIC Code 3711 ''Motor Vehicles and Passenger Car Bodies'' has a small business size standard of 1,000 employees or fewer. SIC Code 3714 ''Motor Vehicle Parts and Accessories'' has a small business size standard of 750 employees or fewer. NHTSA believes air bag manufacturers would fall under SIC Code 3714.

For passenger car and light truck manufacturers, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Because each manufacturer serves a niche market, often specializing in replicas of ''classic'' cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most five hundred cars manufactured per year by U.S. small businesses.

In contrast, in 1996, there are approximately nine large manufacturers manufacturing passenger cars and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 and a half million passenger cars and light trucks per year. NHTSA does not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

For air bag manufacturers, NHTSA does not believe that there are any small manufacturers of air bags. A separate subsidiary (of a large business) set up to manufacture air bags would not be considered a small business because of SBA's affiliation rule under 13 CFR § 121.103.

C. National Environmental Policy Act

NHTSA has analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism) and Unfunded Mandates Act

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

In proposing this amendment to permit or facilitate depowering, the agency notes, for the purposes of the Unfunded Mandates Act, that is pursuing the least cost alternative. As noted above, any cost difference between current and depowered air bags is expected to be negligible. This alternative was tentatively selected by NHTSA because depowering would prevent many of the air bag related fatalities that have been occurring and can be implemented more quickly than the other alternatives. Further, depowering is the measure that industry itself has been recommending as a means for preventing those fatalities.

E. Civil Justice Reform

This proposed amendment would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

IX. Request for Comments

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the NHTSA Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received by NHTSA before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to this action will be considered as suggestions for further rulemaking action. Comments will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Alternative One

Amendments to Regulatory Text That is Currently in Effect

2. Section 571.208 would be amended by revising S6.1.3 and S6.2.3 to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

* * * * *

S6.1.3 The resultant acceleration at the center of gravity of the upper thorax shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds. However, for vehicles manufactured after [date 30 days after publication of final rule in the FEDERAL REGISTER] and before [date would be selected for final rule], the acceleration limit is 80 g's, instead of 60 g's.

* * * * *

S6.2.3 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing 78051–218, revision R incorporated by reference in part 572, subpart E of this chapter shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds. However, for vehicles manufactured after [date 30 days after publication of final rule in the FEDERAL REGISTER] and before [date would be selected for final rule], this acceleration limit is 80 g's, instead of 60 g's.

* * * * *

3. Section 571.208 would be amended by adding Appendix A at the end of the section to read as follows:

Appendix A to § 571.208, Standard No. 208

For vehicles manufactured after [date 30 days after publication of final rule in the FEDERAL REGISTER] and before [date would be selected for final rule], NHTSA will consider engineering analyses indicating that a vehicle will pass the unbelted test requirements with an air bag as sufficient to establish that the vehicle's manufacturer exercised due care to ensure that the vehicle conforms with the requirement, even in the absence of confirming crash testing.

Amendment to Regulatory Text That Would Become Effective September 1, 1997

4. Section 571.208 would be amended by revising S6.3 to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

* * * * *

S6.3 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing 78051–218, revision R incorporated by reference in part 572, subpart E of this chapter shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds. However, for vehicles manufactured after [date 30 days after publication of final rule in the FEDERAL REGISTER] and before [date would be selected for final rule], this acceleration limit is 80 g's, instead of 60 g's.

* * * * *

Alternative Two

5. Section 571.208 would be amended by revising S3 to read as follows:

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses. In addition, S9., *Pressure vessels and explosive devices,* applies to vessels designed to contain a pressurized fluid or gas, and to explosive devices, for use in the above types of motor vehicles as part of a system designed to provide protection to occupants in the event of a crash. Notwithstanding any language to the contrary, any vehicle manufactured after [date 30 days after publication of final rule in the FEDERAL REGISTER] and before [date would be selected for final rule] that is subject to a dynamic crash test requirement conducted with unbelted dummies may meet the requirements specified in S13 instead of the applicable unbelted requirement.

6. Section 571.208 would be amended by adding S13 through S13.2 to read as follows:

S13 *Alternative unbelted test for vehicles manufactured before [date would be selected for final rule].*

S13.1 *HYGE Sled—Crash Simulation Test.* Applying the appropriate conditions of S8, mount the vehicle, or a sufficient portion of the vehicle to be representative of the vehicle structure, on a dynamic test platform at the manufacturer's design attitude, so that the longitudinal center line of the vehicle is parallel to the direction of the test platform travel and so that movement between the base of the vehicle and the test platform is prevented. The test platform is instrumented with an accelerometer and data processing system having a frequency response of 60 Hz channel class as specified in SAE Recommended Practice J211 (MAR 95), ''Instrumentation for Impact Tests.'' The accelerometer sensitive axis is parallel to the direction of test platform travel. The test is conducted at any velocity change up to and including 30 mph with acceleration of the test platform shown by the curve in Figure 6. An inflatable restraint is to be activated at 25 ±2 ms after initiation of the acceleration shown in Figure 6. The test dummy specified in S8.1.8, placed in each front outboard designated seating position as specified in S11, shall meet the injury criteria of S6.1, S6.2, S6.3, S6.4 and S6.5 of this standard.

13.2 *Neck injury criteria.* A vehicle certified to this alternative test requirement shall, in addition to meeting the criteria specified in S13.1, shall meet the following injury criteria for the neck in the unbelted sled test:

(a) Flexion Bending Moment—190 Nm. SAE Class 600.

(b) Extension Bending Moment—57 Nm. SAE Class 600.

(c) Axial Tension—3300 peak N. SAE Class 1000.

(d) Axial Compression—4000 peak N. SAE Class 1000.

(e) Fore-and-Aft Shear—3100 peak N. SAE Class 1000.

7. Section 571.208 would be amended by adding Figure 6 to read as follows:

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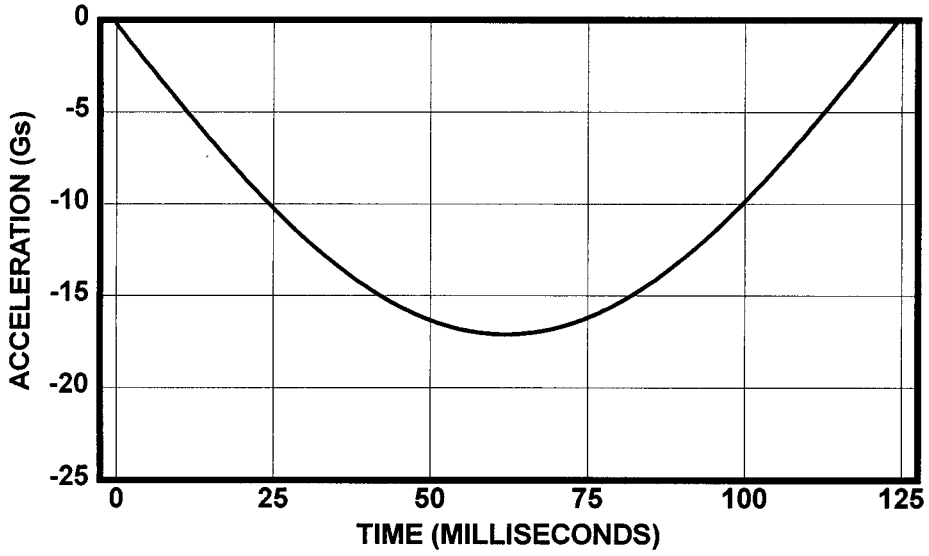

FIGURE 6. Sled test pulse.

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L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

Appendix—Past Public Comments Related to Depowering Air Bags

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

While NHTSA has not issued a specific proposal concerning depowering air bags, it did request comments on this subject in both the November 1995 request for comments and the August 1996 NPRM. This section provides a summary of comments relating to depowering (or downloading) air bags, including comments recommending alternative short-term approaches. The agency notes that the views expressed on the November 1995 request for comments may in some instances be dated, since considerable research has been conducted in this area since then.

A. November 1995 Request for Comments

A number of commenters addressed the issue of depowering air bags, primarily in the context of either a recommendation that Ford made to reduce the test speed for Standard No. 208's unbelted test from 30 mph to 25 mph, or the possibility of raising the limit on chest g's from 60 to 80. The agency specifically requested comments on the possibility of such an increase. A number of commenters, including many vehicle manufacturers (Chrysler, Ford, BMW, Volkswagen, Porsche, and Toyota), an air bag supplier (Autoliv Development AB), and IIHS, expressed support for Ford's recommendation. These commenters stated that this change would allow a reduction of approximately 30 percent in the kinetic energy required in the air bag system, and that lower kinetic energy in the air bag would lower the risk of air bag-induced injuries to vehicle occupants.

GM commented that it agreed with the theory of the Ford recommendation and said that it was ''directionally correct.'' However, GM said that it has not been shown that a reduction in the unbelted test speed to 25 mph would allow manufacturers to reduce the kinetic energy in air bag systems enough to influence the actual frequency of air bag-induced injuries to vehicle occupants. Nissan went further, saying that it would not anticipate any major changes in air bag deployment specifications because of a reduction in the unbelted test speed from 30 to 25 mph. Nissan suggested that the unbelted test speed would have to be reduced to 20 mph to reduce the risk of air bag-induced injuries in the real world.

BMW enthusiastically supported the concept of raising Standard No. 208's chest g limit, but suggested that the limit be raised to 75 g's. If this were done, BMW said it would attempt to recertify all of its vehicles with less aggressive air bags within one year.

GM said an 80 g limit would not appear likely to permit any appreciable reduction in inflator output, so GM doubted it would reduce significantly the potential for air bag-induced injuries. Ford said such a change might permit reductions in air bag aggressivity, but to a much less significant extent than under its recommendation. Chrysler stated that it could not comment on an 80 g limit because it had no data to analyze the effects of such a change.

In a presentation to the agency and supplemental comment submitted after the comment closing date, GM suggested an alternative regulatory change that it argued would be effective at reducing air bag-induced injuries. GM suggested keeping the unbelted testing speed at 30 mph, but adopting a crash pulse to ''better reflect'' the crash pulse in real world crashes and using a sled test for unbelted testing. This concept ultimately became the basis of the petition for rulemaking submitted by AAMA in August 1996.

No manufacturer argued that depowering air bags would totally solve the adverse effects associated with children. In commenting on the November 1995 request for comments, GM provided the results of a depowered air bag inflator study. Based on that study, GM concluded that depowered inflators are ''directionally correct,'' but that deactivation is needed to meet injury assessment reference values for passengers who are at or near the instrument panel. This was said to be particularly true for children, because of their lower injury tolerance.

Not all commenters believed that Standard No. 208 should be changed. Takata Corporation (Takata), an air bag manufacturer, argued that restraint

system technology that has recently become available, combined with further improvements that are scheduled to be available within the next 24 months (i.e., by approximately the beginning of 1998), will significantly reduce air bag injuries without the need for any changes to Standard No. 208. Takata stated that it is concerned that the process of developing improved technology to eliminate air bag injuries will be delayed if Standard No. 208 is changed in response to the present concerns.

Advocates opposed reducing Standard No. 208's unbelted test speed. That organization claimed that there are several flaws in the Ford recommendation. According to Advocates, altering the inflation rate of air bags may only address a portion of the problem, may not make any difference at all, or may even create other safety concerns. Advocates also stated that the Ford recommendation is based entirely on static computer modeling that is limited to a single variable, air bag inflator rise rates, and that the recommendation is modeled on only an adult driver. Advocates stated that NHTSA should be reluctant to predicate major regulatory changes on anything less than clear and convincing evidence that a modification will improve safety.

Center for Auto Safety (CFAS) submitted a comment in August 1996 expressing a variety of concerns about the Ford recommendation, and arguing that other means of reducing air bag aggressivity should be used before manufacturers resort to decreasing the inflation rates. CFAS also stated that initial analysis of the limited data available strongly suggests that if NHTSA does anything, it should set a minimum threshold speed below which an air bag should not deploy.

Mercedes Benz suggested that, as a short-term solution, the agency consider higher deployment thresholds, as well as the use of weight sensors (a type of smart air bag) for passenger air bags. Mercedes noted that it currently uses a 12 mph delta V threshold for unbelted occupants, and an 18 mph delta V threshold for belted occupants. That company indicated that it could use the 18 mph delta V threshold for all occupants. Mercedes asserted, however, that this would not currently be permitted by Standard No. 208. [1]

[1] Mercedes did not explain the basis for this assertion. The Standard does not expressly prohibit such a threshold. Further, with appropriate interior design, including energy absorbing materials, it should be possible to meet the Standard's performance criteria.

B. August 1996 NPRM

As discussed above, subsequent to the agency's publication of the August 1996 NPRM, but before the comment closing date, AAMA submitted a petition for rulemaking concerning depowering air bags. AAMA requested that NHTSA immediately announce, by means of a ''direct final rule,'' an amendment to Standard No. 208 to replace the current 30 mph unrestrained dummy barrier crash test requirement with a ''standard 30 mph unrestrained dummy sled test'' requirement. The petitioner contended that the standard's current requirement ''directly dictates the level of the air bag's inflator power and it is the level of inflator power that unnecessarily increases the risk of injury to vehicle occupants during air bag deployment.''

AAMA and each of its member companies cited the AAMA petition in their comments on the August 1996 NPRM and urged that the agency favorably respond to the petition.

The Association of International Automobile Manufacturers (AIAM) stated that until smart air bag systems are available and become widespread in the fleet, it believes that Standard No. 208 should be changed to modify or eliminate the 30 mph unbelted occupant protection requirement so that air bags could be made less aggressive. That organization stated that not only would this allow less aggressive air bags with less risk to out-of-position occupants, but also it would allow manufacturers to provide better occupant protection for belted occupants through such things as a combination of depowered air bags and other restraint system enhancements. AIAM stated that unbelted occupants would still have the benefits of air bag protection and a lowered risk of out-of-position injury in many frontal crashes.

Honda stated that it believes the passenger air bag system in its vehicles is presently one of the least aggressive relative to the air bags on other cars in North America. That company stated, however, that still lower inflator output is necessary to ensure reduction of the aggressiveness of the passenger air bag. Honda stated that if Standard No. 208 were amended to eliminate unbelted testing or to reduce the crash test speed, inflator output could be adjusted accordingly, reducing the risk of air bag induced injury to out-of position or unbelted occupants.

Takata stated again that it strongly urges NHTSA not to tamper with the 30 mph unbelted barrier test as a short-term expedient to reduce the risk of air bag injuries to children. That company stated that it does not believe this would produce a sufficient reduction in the risks to children to jeopardize the proven life saving benefits of air bags in high speed crashes.

The Insurance Institute for Highway Safety (IIHS) stated that although changes in the unbelted test requirements in Standard No. 208 alone will not eliminate all the air bag related fatalities, less aggressive inflators have the potential to reduce the risk for infants and children as well as for adults. That organization stated that as other air bag technology evolves to permit variable levels of protection based on crash severity and occupant characteristics, it will be possible to further enhance protection for unbelted occupants over a wide range of crash severities. IIHS stated that, in the meantime, the first and immediate step NHTSA could take would be to make appropriate changes to Standard No. 208 that would allow manufacturers to reduce the energy in current air bag systems.

The National Association of Independent Insurers (NAII) stated that it believes changing the unbelted test requirements in Standard No. 208 to permit less aggressive inflators should be a central part of NHTSA's efforts to encourage smart systems, and cited concerns expressed by IIHS.

[FR Doc. 96–33307 Filed 12–30–96; 11:00 am]

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49 CFR Part 595

[Docket No. 74–14; Notice 107]

RIN 2127–AG61

Air Bag Deactivation

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

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of its efforts to address the problem of the adverse effects of current air bag designs on children and certain adults, NHTSA is issuing this proposal to make it possible for vehicle owners to have their air bags deactivated by vehicle dealers and repair businesses.

Specifically, the agency is proposing to allow dealers and repair businesses, upon written authorization of a vehicle owner, to deactivate either the passenger-side air bag, the driver-side air bag, or both. Dealers and repair businesses are statutorily prohibited from making Federally required safety equipment inoperative, but NHTSA may exempt them from the prohibition in appropriate circumstances. In order to

qualify for the exemption, the dealer or repair business would be required to provide the owner with a NHTSA information sheet describing the circumstances in which deactivation may be appropriate, based upon the comparison of the risks in those circumstances of turning the air bag off versus leaving it on. The authorization would contain a statement that the owner has received and read that sheet. The agency is proposing to require that warning labels be installed as a condition of deactivation.

Deactivating an air bag would not be permitted if the vehicle were equipped with a manual cutoff switch for the air bag, or if the air bag were a ''smart'' air bag, i.e., one capable of either shutting off in appropriate circumstances or controlling its deployment so as to protect against injuring a wide range of occupants.

DATES: Comments must be received by February 5, 1997. Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (Docket Room hours are 9:30 a.m.– 4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: For information about air bags and related rulemaking: Visit the NHTSA web site at http://www.nhtsa.dot.gov and click on the icon ''AIR BAGS–Information about air bags.''

For non-legal issues: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: Ms. Rebecca MacPherson, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

While air bags are providing significant overall safety benefits, NHTSA is very concerned that current designs have adverse effects in some situations. This notice proposes one of several actions that the agency is taking to mitigate these effects.

To address those effects, the agency published in the Federal Register (61 FR 40784) a notice of proposed rulemaking (NPRM) on August 6, 1996 to amend Standard No. 208, *Occupant Crash Protection*, and Standard No. 213, *Child Restraint Systems*.

The NPRM proposed several amendments to reduce the adverse effects of air bags, especially those on children.

The agency explained that eventually, either through market forces or government regulation, it expects that ''smart'' passenger-side air bags will be installed in passenger cars and light trucks to mitigate these adverse effects. NHTSA proposed that vehicles lacking smart passenger-side air bags would be required to have new, attention-getting warning labels and be permitted to have a manual cutoff switch for the passenger-side air bag. Currently, only vehicles lacking a rear seat large enough to accommodate a rear-facing infant restraint are permitted to have such a switch. The agency also requested comments concerning whether it should require installation of smart air bags and, if so, on what date such a requirement should become effective. NHTSA also requested comments on whether it should, as an alternative, set a time limit on the provision permitting manual cutoff switches in order to assure the timely introduction of smart air bags. Finally, the agency proposed to require rear-facing child seats to bear new, enhanced warning labels.

II. Scope of Problem

A. Deaths and Injuries

Based on data available as of November 1, 1996, NHTSA estimates that driver-side air bags have saved a net of 1,481 lives (1,500 drivers saved, minus 19 driver deaths caused by air bags), with 826 of those lives saved in 1995 and 1996 alone. The dramatic increase in lives saved in the last two years is due both to the increased number of air bags in vehicles and improved technology. For persons aged 13 and older, passenger-side air bags have saved a net of 164 lives to date. The number, if any, of passengers aged less than 13 saved by air bags is unknown. What is known is the loss of 32 children. Thus, the net figure for passengers of all ages could be as low as 133.

This disparity between driver and passenger air bags in the number of lives saved is due in part to the fact that there are approximately twice as many vehicles with driver air bags as there are vehicles with passenger air bags. Passenger-side air bags have only been widely available since the 1994 model year. Further, the driver seat is occupied more frequently than the front passenger position.

As of November 30, 1996, however, 32 children have been killed as the result of air bag deployment in low speed collisions. Nine of these children were in rear-facing infant restraints. The number of deaths is steadily climbing. Ten of the 32 died in calendar year 1995 and another 18 have died so far in calendar year 1996. Additionally, eight children are known to have been seriously injured as a result of air bag deployment, five of whom were in rear-facing infant restraints. One adult passenger, a woman in her 90's, has been killed by an air bag.

Fewer drivers than passengers have been killed by air bags despite the fact that there are approximately twice as many vehicles with driver air bags as there are with both driver and passenger air bags. The agency has verified the deaths of 19 drivers as the result of air bag deployments in low to moderate speed collisions. Of these, 10 were women 5′2″ or under, five were taller women, and four were men, all of them at least 5′9″. One instance of a placental abruption, leading to stillbirth, has been reported; injuries to the pregnant woman were minor. Of the 19 adults killed by air bags, seven were age 64 or above. The agency notes that older drivers are more at risk than the average adult under most circumstances, regardless of type of restraint used. Over half the fatalities (10 out of 19) were in calendar years 1994 and 1995. Only two drivers are known to have been killed as a result of air bag deployment in 1996. Most of the driver fatalities occurred in vehicles manufactured in model years 1990 and 1991. Only four drivers have been killed in vehicles manufactured after model year 1992. The absence of any upward trend in driver fatalities contrasts sharply with the growth in the number of child fatalities.

For a more detailed discussion of the air bag deaths, and for tables that facilitate identifying the patterns associated with the occurrence of those deaths, see Appendix A of this notice.

B. Public Concerns Regarding Those Deaths and Injuries

NHTSA emphasizes that the vast majority of people, both drivers and passengers, are much safer with an air bag than without. Nevertheless, the current number of deaths and serious injuries attributed to air bag deployment in low speed crashes is disturbing.

There are particular concerns about small children, short-statured women, pregnant women, and elderly individuals. In the aggregate, this group constitutes a significant percentage of the total U.S. population.

C. Other Health Concerns

A large number of arm injuries have also been attributed to air bag deployment, both in low speed and higher speed crashes. Additionally, numerous individuals have contacted the agency regarding their concerns that a preexisting medical condition, such as a degenerative bone disease or hearing problem, could be aggravated by air bag deployment. The agency has no real-world data on how air bags aggravate preexisting medical conditions.

III. Overview of Other Agency Responses to Problem

On November 27, 1996, a separate final rule was published in the Federal Register (61 F.R. 60206) amending Standard No. 208 and Standard No. 213 to require improved labeling to better ensure that drivers and other occupants are aware of the dangers posed by air bags to children who occupy the front seat. The agency is also issuing a final rule extending, until September 1, 2000, the permission granted to manufacturers to install manual cutoff switches for the passenger-side air bag for vehicles without rear seats or with rear seats that are too small to accommodate rear-facing infant seats.

NHTSA has decided to terminate rulemaking on that part of the August 1996 NPRM that would have permitted all air bag vehicles to be equipped with manual cutoff switches. This decision to terminate is based on the agency's belief that informed deactivation is an option that is easier and quicker to implement and that would not divert manufacturing resources from smart air bag technology.

Today NHTSA is also issuing an NPRM proposing to amend Standard No. 208 to permit or facilitate depowering of air bags by 20 to 35 percent across the fleet. NHTSA expects, in the near future, to issue separate supplemental notice of proposed rulemaking (SNPRM) proposing performance requirements for smart air bags and a phase-in schedule for requiring installation of those devices.

IV. Statutory Prohibition Against Deactivating Air Bags; Statutory Authorization for Exemption From Prohibition

Manufacturers, distributors, dealers [1] and motor vehicle repair businesses [2] are prohibited by 49 U.S.C. § 30122 from knowingly making inoperative any part of a device or element of design installed on or in a motor vehicle in compliance with an applicable Federal Motor Vehicle Safety Standard. The statute, however, allows the agency to prescribe regulations to exempt a person from the ''make inoperative'' provision if such an exemption is consistent with safety concerns.

Suggestions by Public Concerning Air Bag Deactivation

In response to the August 1996 NPRM, BMW and Volvo recommended that the agency develop procedures similar to those being used in Europe for temporarily deactivating air bags. According to BMW,

> (i)n Europe, a BMW dealer is allowed to temporarily deactivate the passenger air bag for individuals who may have a special need or normally transport children after advising them of the benefits of air bags and approval forms are signed.

BMW attached to its comment copies of the approval forms and the warning label (''Front passenger airbag deactivated'') that is placed in the vehicle to indicate that the air bag has been deactivated. The ''formal obligation concerning deactivation of front passenger airbag'' form states that the owner of the vehicle is obliged

> (N)ot to modify the airbag system in any way or alter/remove the warning label,
>
> (T)o ensure that every front passenger in the above vehicle is aware that the front passenger airbag has been deactivated,
>
> (T)o have the front passenger airbag reactivated by an authorized BMW service station and
>
> (I)f selling the vehicle, to inform the new owner of the current state of the front passenger airbag and to hand over all relevant documentation.

BMW's comments may be found at Docket 74–14, Notice 100, item 40.

In its comment, Volvo stated that

> (i)n Europe, due to consumer requests, most manufacturers have developed new car retail service procedures for deactivation and reactivating of passenger side air bags. This is usually accompanied by clearly visible labels stating if any measures have been taken to change the air bag readiness status. Letters are sent to customers, at regular intervals, to remind them of the system status. Letters are also sent to new vehicle owners, when the car is sold, to inform them of this.

Volvo's comments may be found at Docket 74–14, Notice 100, item 22.

On October 28, 1996, Ms. DeeAnn DePaul of Tacoma, Washington, filed a petition for rulemaking to provide an exemption under 49 U.S.C. 30122 allowing motor vehicle dealers and repair businesses to respond to requests by vehicle owners to have their driver-side air bag deactivated. This notice grants that petition.

VI. Granting of Exemptions From State Safety Belt Use Laws for Medical and Psychological Reasons

State safety belt use laws present a fairly analogous problem of accommodating people with special problems that may make occupant restraint use inappropriate. Virtually all States have provisions in their safety belt use laws for granting medical exemptions to persons who obtain a statement from their physician certifying their patient's medical condition and stating why safety belt use by their patient is inappropriate. Some States also provide for exemptions based on psychological reasons.

VII. NHTSA's Use of Prosecutorial Discretion With Respect to Air Bag Deactivation

In 76 instances to date, the agency has exercised its prosecutorial discretion with respect to requests to deactivate an air bag. Eighteen of the cases involved children. NHTSA told vehicle owners whose vehicle lacked a back seat in which to carry an infant or who needed to monitor closely a child with a special medical condition [3] that the agency would not regard the temporary deactivation of the passenger-side air bag by a dealer or repair business as grounds for an enforcement proceeding.

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[1] Section 30102 defines ''dealer'' as ''a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.''

[2] Section 30122(a) defines ''motor vehicle repair business'' as ''a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment.'' NHTSA has interpreted this term to include businesses that service vehicles with which there is nothing wrong by adding features or components to or otherwise customizing those vehicles.

[3] The majority of medical conditions were related to apnea, although exemptions have also been granted for children in wheelchairs, and children with a tendency to spit up and choke.

The agency urged that the air bag be reactivated when the circumstances necessitating its deactivation ceased to exist. Additional requests, based on medical conditions or the absence of a rear seat, are pending.

Similarly, in the other instances, the agency told owners that if their physicians concluded that the risks associated with their medical condition and the deployment of their driver-side air bag exceeded the risks to their safety from the air bag's not deploying, NHTSA would not regard deactivation of the air bag as grounds for an enforcement proceeding.[4] There are a large number of pending requests from women of small stature and a smaller number from adults with various medical conditions.

The volume of these requests for deactivation, and the variety of concerns underlying them, necessitate a rulemaking response, as opposed to individual, case-by-case resolution.

VIII. Proposal To Permit Deactivation

NHTSA has tentatively decided to exempt dealers and motor vehicle repair businesses conditionally from the ''make inoperative'' prohibition so that they can deactivate either or both the driver- and passenger-side air bags at the request of a vehicle owner.

Passenger Air Bag Deactivation

While NHTSA expects that smart passenger-side air bags will, within several model years, offer a means for significantly reducing or eliminating the risk of adverse side effects to children from air bags, the agency believes that, in the interim, steps need to be taken to minimize the possibility that air bags will harm children. Fortunately, in the vast majority of cases, this can easily be accomplished by placing children in the back seat. This is the safest place for children, regardless of whether a vehicle has a passenger air bag.

However, some vehicles either do not have rear seats or have rear seats too small to accommodate rear-facing infant seats. In addition, NHTSA believes it is necessary to recognize that in a variety of circumstances and for a variety of reasons, parents sometimes need to place children in the front seat of vehicles that have back seats. In some cases, such as situations involving infants with a special medical condition, there may be a need for placing an infant in the front seat. The American Academy of Pediatrics indicated in its comments on the agency's August 6, 1996 NPRM (61 F.R. 40784) regarding the adverse effects of air bags that cases involving medical conditions are relatively few in number. The National Association of Pediatric Nurse Associates & Practitioners estimated that as many as 20,000 children under the age of 5, as well as 5,000 infants, require some type of medical technology assistance, but did not suggest how many of these children have conditions requiring them to be carried in the front seat. In still other cases, parents may need to transport a number of children greater than the number of rear seats in their vehicles. Parents may also permit children older than infants to ride in the front seat because the children strongly desire to do so.

NHTSA believes that, in the situations involving infants in the front seat, deactivation would provide parents a means of ensuring that their children would not be harmed by the air bag. Rear facing infant seats can never be placed in front of an activated passenger air bag without creating a risk of serious injury or death.

Deactivation is more problematical with respect to older children. Most of the children who were older than infants and were killed by air bags were not using any type of occupant restraint.[5] Most of the rest were using only a lap belt. Moreover, the agency believes that some properly positioned and restrained children will benefit from an air bag in some types of crashes. Nevertheless, the agency recognizes that not all older children are properly restrained and that particularly children not using any restraint at all or using only a lap belt are at some risk of being killed by an air bag. Further, there have been two instances in which a child using a lap and shoulder belt was killed, and three reports of serious injuries to children using lap and shoulder belts. NHTSA also realizes that parents may find it is difficult to keep their children properly positioned and restrained, e.g., some children may tend to remove their shoulder belt and/or move forward away from the vehicle seat back and sit on or near the front edge of the vehicle seat. An activated air bag would create an added safety risk in these situations.

In issuing this proposal, NHTSA does not wish to encourage parents to place children in the front seat. Regardless of whether a vehicle is equipped with a passenger air bag, the rear seat is the safest place for a child to sit. However, the agency believes it is necessary in establishing safety requirements to take into account how people behave in the real world.

NHTSA anticipates that depowering air bags will be the first step in reducing the risk of air bag injuries in future vehicles. A depowered air bag is intended to ensure the safety of restrained children in the front seat, but even a depowered air bag could present a risk to an infant in a rear-facing infant seat or to an unrestrained child who is thrown onto the dash as the result of pre-crash braking. Deactivation would thus continue to be permitted with depowered air bags.

However, the purpose of smart air bag technology is to eliminate the risks of deployment from passenger-side air bags by either preventing them from deploying at all or deploying them safely in situations in which children would otherwise be at risk. Accordingly, the agency proposes that deactivation of a passenger-side air bag would not be permitted if the air bag were equipped with a cutoff switch or met the criteria established by the agency for smart air bags.

While some adult passengers may be at risk from air bag deployment, NHTSA emphasizes that it is aware of only one adult passenger, a woman in her 90's, who has been killed by an air bag. Additionally, since most vehicles are now equipped with a bucket seat or split-bench seat for the front passenger, a passenger in that seat would not have to position the seat all the way forward, as some short-statured drivers must in order to drive, and would thus usually be able to keep the seat far away from the dashboard. This should eliminate potential risks in such vehicles and the need for deactivating the passenger-side air bag for reasons relating solely to stature. The distance of an adult passenger from the dashboard would likely be sufficient even in the case of a passenger sitting on a bench seat in a vehicle being driven by a person of short stature. To reenforce the need for a safe distance, the new warning labels stress the importance of sitting back from the air bag and wearing safety belts.

[4] Some waivers were granted, without the submission of a physician's statement, based upon either the unique characteristics of the medical condition involved or the existence of physician's statements attached to the deactivation requests of other individuals with the same medical condition.

[5] For situations in which there is no option other than to place children in the front seat (*not* including infants in rear facing infant seats who can *never* safely be put in the front seat in front of an air bag), NHTSA recommends the following: (1) The child should be properly restrained. This means, depending on the size of the child, a forward-facing child seat, a booster seat plus a lap/shoulder belt, or a lap/shoulder belt alone (for larger children); (2) The seat should be pushed all the way back, to maximize the distance between the child and the air bag; (3) The child should be sitting with his/her back against the seat back, and with any extra slack removed from the safety belt.

Driver Air Bag Deactivation

For the reasons stated in the ''Scope of problem'' section above, NHTSA sees considerably less need for deactivation of driver-side air bags and anticipates that most drivers would keep their air bags fully operable. The total number of deaths attributed to driver-side air bags is less than two percent of the total number of lives saved, i.e., 19 deaths versus 1500 lives saved. The decline in adult air bag deaths in the last several years is believed to reflect the technological improvements that have been made in driver air bags.

Nevertheless, some current driver-side air bags pose risks to some drivers, particularly if they are so short-statured that they must sit very near the steering wheel. For this reason, the agency is proposing to permit deactivation of the driver side air bag in any existing vehicle and in any future model year vehicle that is not equipped with a smart driver-side air bag. The agency will analyze future data concerning trends in driver air bag deaths and the overall effects of deactivation on driver safety and determine at a later date whether it is appropriate to limit the deactivation permission to vehicles manufactured before a specific date. As noted above, data for the last several years indicate a decline in driver air bag deaths. If, as expected, depowered air bags are found to reduce air-bag related deaths and injuries even further, NHTSA might consider limiting deactivation to vehicles that have not been depowered.

The agency acknowledges that another category of driver might also benefit from deactivation. NHTSA tentatively concludes that permitting deactivation would be the best policy for those drivers whose medical or physical condition would make them particularly vulnerable to air bag-induced injury. The proposal would enable these persons to have their air bags deactivated promptly, without having to petition the agency. By creating a general permission for deactivation, the proposal would also assure dealers and repair businesses that they would not be violating the law if they deactivated an air bag.

Specifics of proposal. The specifics of the proposal are as follows:

The proposed exemption from the ''make inoperative'' prohibition is a conditional one. A dealer or repair business would be permitted to deactivate an air bag only if the dealer or repair business:

- Provides the vehicle owner with the most recent edition of the NHTSA information sheet (copy attached as Appendix B of this notice) concerning the circumstances in which deactivation may be appropriate, based upon the comparison of risks in those circumstances of turning the air bag off versus leaving it on. NHTSA anticipates that it will conduct rulemaking to update the sheet from time to time, as additional data concerning air bag performance are received and analyzed.
- Obtains from the vehicle owner a signed, written authorization on the form attached as Appendix C of this notice, identifying the vehicle by make and model, by model year, by VIN number, and the seating position(s) of the deactivated air bag(s). Such authorization shall include an affirmation by the vehicle owner that he or she was given and has read a copy of the NHTSA information sheet prior to signing the authorization.
- For each deactivated air bag, places labels on both sides of the sun visor above the air bag.

The label visible when the sun visor is in a stowed (up) position shall state:

WARNING

Air Bag has been deactivated
See other side

The label visible when the sun visor is in a down position shall state:

WARNING: (Insert ''The passenger-side air bag,'' ''The driver-side air bag'' or ''Both air bags'') of this vehicle has(have) been deactivated. To reactivate, contact an authorized dealer or a qualified motor vehicle repair business.

both visor labels shall have the word ''WARNING'' in black lettering on a yellow background.

- For each deactivated air bag, places a permanent label on the adjacent door jamb.

The label shall state:

WARNING: (Insert ''The passenger-side air bag,'' ''The driver-side air bag'' or ''Both air bags'') of this vehicle has(have) been deactivated.

The label shall have the word ''WARNING'' in black lettering on a yellow background and shall also contain the name and address of the dealer or repair business that deactivated the air bag(s).

- Marks in the vehicle owner's or service manual (if available) the following warning:

WARNING: (Insert ''The passenger-side air bag,'' ''The driver-side air bag'' or ''Both air bags'') of this vehicle has(have) been deactivated. To reactivate, contact an authorized dealer or a qualified mechanic.

- Sends a copy of the signed, written authorization form to the manufacturer of the vehicle.

Each motor vehicle manufacturer shall retain for a period of not less than five years a copy or other record of each authorization form received pursuant to this regulation.

NHTSA requests comments about the appropriateness of these requirements. Among the specific issues are the following:

—In the rulemaking on cutoff switches, the agency estimated that there would be more benefits than losses if the misuse rate were less than 7 percent. Since a seat with a deactivated air bag may sometimes be occupied by a person who would benefit from the air bag, is there a percentage of such occupancy that would result in the losses from deactivation outweighing the benefits?

—Should deactivation of air bags be allowed at the owner's option in all cases or should deactivation be limited to situations in which death or serious injury might be reasonably expected to occur? For example, should deactivation of passenger-side air bags be allowed only in cases in which the vehicle owner needs to carry young children in the front seat? Should deactivation of driver-side air bags be allowed only in cases in which the vehicle owner or other driver of the vehicle has an acute medical condition, is of short stature, or is elderly? Would the administrative details involved in establishing and implementing these limitations overly complicate the availability of deactivation?

—If it becomes permissible to deactivate air bags, with the result an air bag could be turned off permanently, should the agency permit lesser measures as well, such as a cutoff switch that the vehicle owner could have installed to turn off air bags temporarily? In a final rule issued in today's Federal Register, the agency has decided that cutoff switches should not be permitted in new vehicles other than in those that do not have a rear seat large enough to carry a rear-facing infant seat. Would permitting a retrofit cutoff switch in all vehicles conflict with the decision not to allow cutoff switches in new vehicles generally? (NHTSA is not aware that any retrofit cutoff switches have been produced.) Should there be any limitations on the methods of deactivating air bags? For example, should there be a requirement that the deactivation be performed in a manner that facilitates reactivation?

—The agency solicits comments on the information contained in Appendix A. Is the information consistent with information available to manufacturers, insurance companies,

and others with knowledge about air bag safety?

—The agency requests comments about the information sheet presented in Appendix B. The purpose of the sheet is to give vehicle owners a concise description of the benefits and risks associated with air bags, to guide them in deciding whether they should disconnect their air bags. Is the information presented in a useful way? Should more information be provided, such as information from Appendix A, to help place the risk in context? Should there be a more explicit focus on particular practices, such as the carpooling of young children? What distance should be specified for a driver to sit back from the air bag? Should any information be omitted?

—The agency solicits comments on the contents of the authorization form attached as Appendix C. Use of the form would be required for the dealer or repair business that deactivates the air bag. The form will be published and sent to new and used vehicle dealers through their trade associations. Trade associations, trade publications and the Internet will be used to make the form available to others, but it may be difficult to ensure that the forms are available when needed. What additional measures should be taken to ensure the availability of the forms? Should the form state, as proposed, that the vehicle owner is willing to allow labels to be installed? Should the form provide an express statement that the person signing it owns the vehicle and is not a lessee? Alternatively, should a lessee be allowed to sign for an owner? Should the form require signature by all co-owners? Would the form protect the dealer or repair business from liability if the absence of an air bag is subsequently alleged to be the cause of an occupant's injuries? Should a more explicit release of liability be added? If so, how should it be worded?

—In a vehicle in which only the passenger-side air bag is deactivated, should labels be placed on the driver's sun visor as well as the passenger's sun visor? Such additional labels might be helpful to a driver who is unfamiliar with the vehicle or to a subsequent purchaser of the vehicle.

—While NHTSA has not proposed the size of the message area or the lettering height, it requests comments on whether it should specify the message area or lettering height and, if so, what sizes would be appropriate. Should the message area on the visor label equal the area of the new air bag warning label required by the final rule published on November 27, 1996? Should it be required to be affixed over the labels required by that final rule? Should a different area be specified for labels to be placed on vehicles manufactured with the smaller air bag warning labels formerly required?

—Should the vehicle manufacturers be required to follow the practice, described by Volvo, of sending periodic reminders to vehicle owners that one or both of their air bags are deactivated and notifying new owners after title to the affected vehicles changes? Is the proposed 5-year period for record retention the appropriate period?

—Should dealers and repair businesses be required to retain a copy or other record of the vehicle owner's signed authorization statement? If so, for what period of time?

Additional considerations. NHTSA recognizes that there are potential safety tradeoffs associated with air bag deactivation. The agency emphasizes that only in limited instances would air bag deactivation be, on balance, in the best interests of a driver or passenger. Given the number of air bag deaths to date, the chance of a teenager or adult being killed by an air bag is significantly less than the chance of being involved in a crash in which an air bag would reduce such a person's injuries, whether the individual is belted or unbelted. Moreover, while a fully restrained, forward-facing child can be killed by an air bag, the deaths of only two fully restrained, forward-facing children have been confirmed as having been caused by an air bag.

Regardless of the manner of deactivation, deactivation will cause the air bag readiness indicator (most vehicles use a single indicator for both air bags) to come on, indicating that one air bag or the other is not operational. If the passenger air bag is deactivated and the driver-side air bag subsequently malfunctioned, the indicator would not provide any separate indication of that malfunction. The agency invites comments on whether the readiness indicator should be required to remain functional.

NHTSA also notes that it may be difficult in some vehicles to deactivate one air bag without deactivating the other air bag as well. This could occur if one fuse or wire controls both bags. Under these circumstances, deactivation of one bag might unnecessarily cause the deactivation of the other bag even when the owner might prefer to keep one bag operational. Comments are requested as to the prevalence of designs that would result in the deactivation of both air bags.

However, as discussed above, the agency is dealing with an extraordinary situation. While air bags are providing significant overall benefits, they are also causing an unacceptable risk in limited circumstances. NHTSA believes it is appropriate to propose a solution that addresses that risk.

As noted above, NHTSA anticipates that the proposed exemption from the make inoperative prohibition would affect the vehicles produced in only the model years before smart air bags are available. Driver-side air bag deactivation would be permitted only for existing vehicles and vehicles that do not meet the criteria for smart air bags. The agency may consider further restricting the permission to deactivate driver-side air bags by excluding vehicles with depowered air bags. Deactivation of a passenger-side air bag would be permitted in any vehicle whose passenger-side air bag was neither equipped with a cutoff switch nor met the criteria for smart air bags. This would allow vehicle owners who either face potential risk from deployment themselves or who regularly transport other increased-risk individuals to deactivate one or both air bags.

NHTSA strongly recommends that air bag deactivation be undertaken only in instances in which the vehicle owner believes that the air bag poses an unreasonable and significant risk given that individual's particular circumstances. However, given the administrative complexity and time that would be associated with reviewing individual applications, the agency is proposing to allow any person to choose to deactivate, without having to demonstrate any particular need.

Since deactivation totally disables the air bag, thereby eliminating any safety benefit for vehicle occupants not at risk of serious injury due to air bag deployment, deactivation should be sought only if no other option is available. The agency urges all owners who choose to deactivate their air bag to reactivate the air bag once the perceived need for deactivation has abated.

IX. Effective Date

The agency tentatively concludes that there is good cause to make the proposed regulation effective immediately upon publication of a final rule. In view of the need expressed by vehicle owners for deactivation, it appears that there is a need for immediate relief. Further, the regulation

would be voluntary, since it would permit deactivations, not require them. The agency requests comment as to the appropriateness of an immediate effective date.

X. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''significant'' under the Department of Transportation's regulatory policies and procedures, because of the degree of public interest in this subject.

This action would not be economically significant. It would not require a motor vehicle manufacturer, dealer or repair business to take any action or bear any costs except in instances in which a dealer or repair business agreed to deactivate an air bag. In such an instance, there would be costs associated with such an action *per se* as well as labeling. The agency estimates that deactivation would typically require less than one-half hour of shop time, at the prevailing local rates of between $30 and $50 per hour. Similar costs would be incurred upon reactivation of an air bag. There is no reliable way to estimate the total number of deactivations that may be performed as the result of the proposed regulation, but the agency expects that it would be more than a thousand. The agency requests comments on this estimate, as well as any estimates of the potential safety tradeoffs of deactivating the air bag for a seating position that may be occupied by a person who would have benefited from the air bag.

Based on the Final Regulatory Evaluation for the agency's final rule requiring new, enhanced warning labels relating to air bags, the labels proposed by this notice would cost between 15 and 25 cents per vehicle. In addition, motor vehicle manufacturers would have some minor recordkeeping expenses.

In view of the preceding analysis and the analysis in the regulatory evaluation on labels, the agency regards the costs associated with deactivation to be so minimal that a full regulatory evaluation for this notice is not warranted. The agency requests comments about the anticipated costs associated with this proposal. If the agency decides to adopt the proposal as a final rule, it would discuss the costs in a Final Regulatory Evaluation for this rulemaking.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this proposed rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. While some dealers and repair businesses would be considered small entities, the proposed requirements would not impose any mandatory significant economic impact.

C. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act and determined that a final rule adopting this proposal would not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

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

E. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

This notice contains information collections that are subject to review by the Office of management and Budget under the Paperwork Reduction Act of 1995 (P.L. 104–13). The title, description, and respondent description of the information collections are shown below with an estimate of the annual burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Authorization to deactivate an air bag.

OMB Number:

Need for Information: The authorization would be required before a motor vehicle dealer or repair business could deactivate an air bag.

Proposed Use of Information: The authorization would establish that a vehicle owner was fully informed of the consequences of disconnecting an air bag and would protect the motor vehicle or repair business from liability for any injuries occurring as the result of deactivation. The label on the vehicle would serve to inform subsequent owners that an air bag had been deactivated. The motor vehicle manufacturers would retain the authorization forms to help identify vehicles with deactivated air bags.

Frequency: As often as a motor vehicle owner requests to have an air bag deactivated.

Burden Estimate: Deactivation would affect motor vehicle owners, dealers, repair businesses, and manufacturers, but it is wholly voluntary. It is difficult to estimate the number of deactivations that will be performed or the resulting burden. As of December 1996, the agency has received approximately 1,000 explicit requests for deactivation. As an initial number, the agency is estimating that dealers will receive more than 1,000 completed authorization forms annually under this procedure.

Respondents: It is not known how many vehicle owners would be expected to request air bag deactivation, but the agency is estimating that more than 1,000 would request and execute the form annually. There are approximately 20 thousand new motor vehicle dealers, approximately 30 thousand used car dealers and several hundred thousand motor vehicle repair businesses. Any of these businesses would be required to obtain an authorization from a vehicle owner before deactivating an air bag. Assuming that some businesses would be called on to deactivate air bags by more than one vehicle owner, the number of businesses that would be called upon to deactivate would be somewhat smaller than the number of owners.

Form(s): A label and authorization form are described in this notice.

Average burden hours per respondent: NHTSA estimates that the average time required to read the information about air bag safety and to read and execute the authorization form would be

approximately 30 minutes. The time required for the dealers to affix the labels, file the authorization forms, and send a copy to the manufacture would be minimal, as would the time required for the manufacturers to receive and file the forms.

Individuals and organizations may submit comments on the information collection requirements by [insert date 30 days after publication in the Federal Register] and should direct them to the docket for this proceeding and the Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, Attention: Desk Officer for DOT/OST. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

XI. Comments

NHTSA is providing an abbreviated comment period of 30 days, given the significant public attention given to the adverse effects of air bags. Moreover, while it is addressing improved labeling, extension of time for manual cutoff switches, and depowering of air bags in separate notices, they are related actions addressing the same problem. The anticipated SNPRM on smart bags is also related. Only the actions on labeling and the extension of time for manual cutoff switches have reached the final rule stage; the others are still at the proposal stage. Commenters are invited to address the relationships between these actions, e.g., the extent to which one action affects the need for, the potential benefits of or cost effectiveness of, another action.

Commenters are also invited to address alternatives not addressed by these actions. The agency requests that commenters favoring other alternatives specifically provide a comparison of costs, benefits and leadtime.

As indicated above, the agency anticipates publishing in the near future a separate SNPRM to propose performance requirements for smart air bags and to propose a phase-in schedule for requiring these devices. Since that rulemaking action may not be completed until after this action on deactivation, NHTSA requests comments on how to address the definition of smart air bag in the final rule for deactivation.

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the NHTSA Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received by NHTSA before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rulemaking docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 595

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend chapter V of Title 49 CFR of the Code of Federal Regulations as follows:

1. Part 595 would be added to read as follows:

PART 595—AIR BAG DEACTIVATION

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

§ 595.1 Scope.

This part establishes conditions under which air bags may be deactivated and associated recordkeeping requirements.

§ 595.2 Purpose.

The purpose of this part is to provide an exemption from the ''make inoperable'' provision of 49 U.S.C. 30122 and permit motor vehicle dealers and motor vehicle repair businesses to respond to consumer requests to deactivate driver and passenger air bags.

§ 595.3 Applicability.

This part applies to motor vehicle manufacturers, dealers and motor vehicle repair businesses.

§ 595.4 Definitions.

Statutory terms. The term motor vehicle repair business is defined in 49 U.S.C. 30122(a) as ''a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment.'' This term includes businesses that service vehicles without malfunctioning or broken parts or systems by adding features or components to or otherwise customizing those vehicles. The terms manufacturer and dealer, defined in 49 U.S.C. 30102(a), are used in accordance with their statutory meaning.

§ 595.5 Requirements.

(a) A dealer or motor vehicle repair business may deactivate a passenger-side air bag if that air bag:

(1) Does not have a manual cutoff switch, or

(2) Does not meet the criteria in S4.5.5 of § 571.208 of this chapter for a smart air bag.

(b) A dealer or motor vehicle repair business may deactivate a driver-side air bag if that air bag does not meet the criteria in S4.5.5 of § 571.208 of this chapter for a smart air bag.

(c) A dealer or motor vehicle repair business that deactivates an air bag pursuant to paragraph (a) or (b) of this section shall meet all of the conditions specified in paragraph (d) of this section.

(d) A dealer or motor vehicle repair business may deactivate a driver-side or passenger-side air bag subject to the condition that the dealer or repair business:

(1) Shall provide the vehicle owner with the most current NHTSA information sheet concerning the circumstances in which deactivation may be appropriate, based upon the comparison of risks in those circumstances of turning the air bag off versus leaving it on.

(2) Shall obtain from the vehicle owner a signed, written authorization

identifying the vehicle by make and model, by model year, by VIN number, and the seating position(s) of the deactivated air bag(s). Such authorization shall include an affirmation by the owner that he or she was given and has read a copy of the NHTSA information sheet prior to signing the authorization.

(3) Shall, for each deactivated air bag, place labels on both sides of the sun visor above that air bag.

(i) The label visible when the sun visor is in a stowed (up) position shall state:

WARNING
Air Bag has been deactivated
See other side

(ii) The label visible when the sun visor is in a down position shall state:

WARNING: (Insert ''The passenger-side air bag,'' ''The driver-side air bag'' or ''Both air bags'') of this vehicle has(have) been deactivated. To reactivate, contact an authorized dealer or a qualified motor vehicle repair business.

(iii) Both visor labels shall have the word ''WARNING'' in black lettering on a yellow background.

(4) Shall, for each deactivated air bag, place a permanent label on the adjacent door jamb. The label shall state:

WARNING: (Insert ''The passenger-side air bag,'' ''The driver-side air bag'' or ''Both air bags'') of this vehicle has (have) been deactivated.

The label shall have the word ''WARNING'' in black lettering on a yellow background and shall also contain the name and address of the dealer or repair business that deactivated the air bag(s).

(5) Shall mark in the vehicle owner's or service manual (if available) the following warning:

WARNING: (Insert ''The passenger-side air bag,'' ''The driver-side air bag'' or ''Both air bags'') of this vehicle has (have) been deactivated. To reactivate, contact an authorized dealer or a qualified motor vehicle repair business.

(6) Shall send a copy of the signed, written authorization form to the manufacturer of the vehicle.

(e) Each motor vehicle manufacturer shall retain, for a period of not less than five years, a copy of each authorization form received pursuant to this section.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

Note: These appendices will not appear in the code of Federal Regulations.

Appendix A—The Safety Problem: Frontal Impacts, Air Bag Saves and Air Bag Fatalities

Frontal impacts. Frontal impacts are the number one fatality and injury causing mode of crash, resulting in 64 percent of all driver and right-front passenger fatalities and 65 percent of all driver and right-front passenger AIS 2–5 injuries. (AIS 2–5 stands for Abbreviated Injury Scale levels of moderate to critical injuries.) The estimated fatality and injury totals for 1994 are shown below: The injuries are those for National Accident Sampling System-Crashworthiness Data System (NASS–CDS) toaway accidents only.

1994 FATALITIES AND MODERATE TO SERIOUS INJURIES IN FRONTAL IMPACTS

[Passenger Cars and Light Trucks]

	Drivers	Right front passengers	Total
Fatalities	13,437	3,814	17,251
Injuries	124,484	30,299	154,783
Total	137,921	34,113	172,034

B. Air Bag Saves and Fatalities

As the agency has confronted the problem of low speed fatalities and injuries from air bags, it has faced a serious dilemma. On the one hand, air bags have proven to be highly effective in reducing fatalities, and are resulting in substantial net benefits in terms of lives saved. The agency estimates that, to date, air bags have saved driver and passenger 1,664 lives (1,500 drivers and 164 passengers).[1]

At the same time, air bags are actually causing fatalities in some situations, especially to children. As of November 15, 1996, NHTSA's Special Crash Investigation program has identified 31 crashes in which the deployment of the passenger-side air bag resulted in fatal injuries to a child. One adult passenger and 19 drivers have also been fatally injured.

AIR BAG SAVES AND FATALITIES 1986—PRESENT

[Passenger Cars and Light Trucks]

	Drivers	Right front passengers	Total
Air Bag Saves	1,500	164	1,664
Air Bag Fatalities	19	32	52

Passenger Fatalities. The fatalities involving children have occurred in 1993 and later calendar years. Nine of the fatalities involved infants in rear-facing child seats. Of the other children, 18 were unrestrained, two more were wearing only the lap belt with the shoulder belt behind them, and two were wearing a lap and shoulder belt at the time of the crash. Most children were either infants or between the ages of 4–7. See the tables below.

[1] This estimate of gross savings is cumulative, through November 1, 1996. The net savings would be 1,614.

INFANT PASSENGER-SIDE AIR BAG RELATED FATALITIES (IN REAR FACING INFANT SEATS)

[By MY of Vehicle and CY of Death]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total No. of infant passenger-side air bag fatalities	No. of vehicles w/passenger-side air bags
MY 89	.....	.....	.....	.....	.....	.....	.....	.....	.....	78,000
MY 90	.....	.....	.....	.....	.....	.....	.....	.....	.....	149,00
MY 91	.....	.....	.....	.....	.....	.....	.....	.....	.....	44,000
MY 92	.....	.....	.....	.....	.....	.....	.....	.....	.....	421,000
MY 93	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,352,000
MY 94	.....	.....	.....	.....	.....	.....	1	1	2	5,547,000
MY 95	.....	.....	.....	.....	.....	.....	2	4	6	8,936,000
MY 96	.....	.....	.....	.....	.....	.....	.....	1	1	10,750,000
Total	.....	.....	.....	.....	.....	.....	3	6	9	27,277,000

CHILD (NON-INFANT) PASSENGER-SIDE AIR BAG RELATED FATALITIES

[By MY of Vehicle and CY of Death]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total No. of child (non-infant) passenger-side air bag fatalities	No. of vehicles w/passenger-side air bags
MY 89	.....	.....	.....	.....	.....	.....	.....	.....	.....	78,000
MY 90	.....	.....	.....	.....	.....	.....	.....	.....	.....	149,000
MY 91	.....	.....	.....	.....	.....	.....	.....	.....	.....	44,000
MY 92	.....	.....	.....	.....	.....	.....	.....	.....	.....	421,000
MY 93	.....	.....	.....	.....	1	1	1	.....	3	1,352,000
MY 94	.....	.....	.....	.....	.....	3	1	1	5	5,547,000
MY 95	.....	.....	.....	.....	.....	1	3	7	11	8,936,000
MY 96	.....	.....	.....	.....	.....	.....	.....	3	3	10,750,000
Total	.....	.....	.....	.....	1	5	5	11	22	27,277,000

AGE OF CHILDREN FATALLY INJURED IN AIR BAG DEPLOYMENTS

<1	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
9	.....	.....	1	5	7	4	3	.....	2	.....	.....	.....	.....	31

TYPE OF RESTRAINT USED BY CHILDREN FATALLY INJURED BY AIR BAGS

Type of restraint used	No. of children
None	18
Lap belt only	2
Lap and shoulder belt	2
Unknown	
Rear-facing infant restraint	9
Forward-facing child restraint	
Booster seat	
Total	31

These cases involved pre-impact braking, and were relatively low speed crashes. The nonuse, or improper use of safety belts in conjunction with pre-impact braking resulted in the forward movement of the children such that they were close to the instrument panel and the air bag system at the time of the air bag deployment. Because of this proximity, the children appear to have sustained fatal head or neck injuries from the deploying passenger-side air bag. The agency has examined all air bag cases with child fatalities in its Fatal Accident Reporting System (FARS) and believes it has identified all cases involving fatalities.

In addition to the 31 children who have been fatally injured during passenger-side air bag deployments, one adult, a 98 year old woman, sustained a fatal injury under similar air bag deployment circumstances.

Driver Fatalities. As of November 15, 1996, NHTSA's Special Crash Investigation program had identified 19 minor to moderate severity crashes in which fatal injuries to the driver were associated with the deployment of the driver-side air bag. The data suggest that unrestrained small statured and/or older drivers are more at risk than other drivers from a driver air bag. (See tables below.) The agency notes that older drivers are more at risk than younger drivers under a wide range of crash circumstances, regardless of type of restraint used.

NHTSA notes that these driver fatalities are very rare in comparison to the number of vehicles equipped with driver air bags and to the number of drivers saved by air bags. Further, NHTSA notes that the last reported death of a female driver 5 feet 2 inches or less that was due to an air bag was

in November 1995, 12 months ago. Proper belt use is important. Ten of the 19 drivers appear to have been unrestrained at the time of the crash. In addition, two appeared to be out-of-position (slumped over the wheel). (See tables below.)

DRIVER AIR BAGS: FATALITIES AND LIVES SAVED

[Fatalities Shown by MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Driver air bag fatalities	Drivers saved by air bag	No. of vehicles produced w/ driver air bags
MY 89							1		1		500,000
MY 90		1	1		1	2	1		6		2,500,000
MY 91			2	2	1		1		6		2,867,000
MY 92					1	1			2		5,084,000
MY 93											7,595,000
MY 94						2	1		3		9,890,000
MY 95								1	1		13,690,000
MY 96									0		14,321,000
Total	0	1	3	2	3	5	4	1	19	1,500	56,447,000

DRIVER AIR BAG FATALITIES—WOMEN (5′2″ or Less)

[By MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total # of driver air bag fatalities (women 5′2″ or less)	# of vehicles produced w/ driver air bags
MY 89							1		1	500,000
MY 90		1			1		1		3	2,500,000
MY 91			1	1			1		3	2,867,000
MY 92					1	1			2	5,084,000
MY 93										7,595,000
MY 94							1		1	9,890,000
MY 95										13,690,000
MY 96										14,321,000
Total		1	1	1	2	1	4		10	56,447,000

DRIVER AIR BAG FATALITIES—OTHER ADULTS

[By MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total # of driver air bag fatalities (other adults)	# of vehicles produced w/ driver air bags
MY 89										5,00,000
MY 90			1			2			3	2,500,000
MY 91			1	1	1				3	2,867,000
MY 92										5,084,000
MY 93										7,595,000
MY 94						2			2	9,890,000
MY 95								1	1	13,690,000
MY 96										14,321,000
Total			2	1	1	4		1	9	56,447,000

AGE OF DRIVERS FATALLY INJURED IN AIR BAG DEPLOYMENTS

<20	20–29	30–39	40–49	50–59	60–69	70–79	>80	Total
1	1	4	4	2	1	6		19

TYPE OF RESTRAINT USED BY DRIVERS FATALLY INJURED IN AIR BAG DEPLOYMENTS

Type of restraint used	No. of drivers
None	10
Belts misused	1
Lap and shoulder belt (Driver blacked out and slumped forward at time of crash due to medical condition.)	2
Lap and shoulder belt	4
Unknown	2
Total	19

Comparison of passenger and driver air bag fatalities. Several comparisons between the data for child fatalities and driver fatalities need to be drawn. The annual number of child fatalities is very small, but growing steadily. The number of adult fatalities is not growing. Most child fatalities have occurred in very recent model year vehicles, model year 1994 and 1995 vehicles. In contrast, only one woman 5 feet 2 inches or less has died in post model year 1992 vehicles. Most fatalities of those women occurred in model year 1990–1992 vehicles. (See tables below.)

DRIVER AIR BAG FATALITIES BY CALENDAR YEAR OF DEATH

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total
Women (5′2″ or less)	.....	1	1	1	2	1	4	.....	10
Other adults	.....	.....	2	1	1	4	.....	1	9
Total	.....	1	3	2	3	5	4	1	15

CHILD AIR BAG FATALITIES BY CALENDAR YEAR OF DEATH

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total
Children (non-infant)	.....	.....	.....	.....	1	5	5	11	22
Infants	.....	.....	.....	.....	.....	.....	3	6	9
Total	.....	.....	.....	.....	1	5	8	17	31

DRIVERS AIR BAG FATALITIES BY MODEL YEAR OF VEHICLE

	MY 89	MY 90	MY 91	MY 92	MY 93	MY 94	MY 95	MY 96	Total
Women (5′2″ or less)	1	3	3	2	.....	1	.....	.....	10
Other adults	.....	3	3	.....	.....	2	1	.....	9
Total	1	6	6	2	.....	3	1	.....	19

CHILDREN AIR BAG FATALITIES BY MODEL YEAR OF VEHICLE

	MY 89	MY 90	MY 91	MY 92	MY 93	MY 94	MY 95	MY 96	Total
Children (noninfant)	.....	.....	.....	.....	3	5	11	3	22
Infants	.....	.....	.....	.....	.....	2	6	1	9
Total	.....	.....	.....	.....	3	7	17	4	31

Potential Number of Persons Saved or Fatally Injured by Current Air Bags. The dilemma faced by NHTSA, and ultimately the public, is how to address the problem of low speed fatalities from air bags while preserving their substantial life-saving benefits. Based on analyses of real world data, NHTSA estimates that if all passenger cars and light trucks on the road today had current air bags, there would be more than 3,000 lives saved each year, as compared to a no-air-bag fleet (assuming current belt use rates). On the driver side, 616 belted drivers and 1,686 unbelted drivers would be saved, for a total of 2,302 lives saved. This is a *net* figure, i.e., it accounts for the possibility of some drivers being fatally injured by the air bag.

The potential number of lives saved by passenger-side air bags is much smaller than driver-side air bags primarily because the passenger seat is occupied much less frequently than the driver's seat, and because children ride there. If all passenger cars and light trucks had current passenger-side air bags, the agency estimates that 223 belted and 491 unbelted passengers aged 13 and above would be saved annually, for a total of 714 lives saved.

However, this 714 figure would be partially offset by fatalities caused by the air bag to children 12 and under. If current rates of child fatalities were experienced in an all-airbag fleet, 128 children would be fatally injured by air bags annually, again assuming no technological improvements, changes to air bags, or behavioral changes by vehicle operators (e.g., ensuring that any

children placed in the front seat properly use occupant restraints or, preferably, placing children in the rear seat). The figure of 128 includes 90 forward-facing children, most of whom would be unbelted, and 38 infants in rear-facing child restraints.

NHTSA emphasizes that this and the other rulemaking proceedings and related educational efforts are intended to ensure that risks of adverse effects of air bags are reduced so that the theoretically projected air bag fatalities never materialize, while the potential benefits of air bags are retained, to the maximum extent possible.

Appendix B—Information Concerning Air Bag Deactivation

This information sheet contains basic information about air bag benefits and risks. It is up to date as of November 30, 1996. If you need more information you may call the Auto Safety Hotline at (800) 424–9393 or visit the vehicle safety home page at www.nhtsa.dot.gov.

Air Bags—What They Are and What They Do

An air bag is a fabric bag that is stored within the hub of the steering wheel or in the dashboard on the passenger's side of a vehicle. It is attached to a metal housing that contains the inflator for the air bag. When crash sensors in the front of the vehicle detect a crash, they trigger the inflator, rapidly inflating the air bag.

The bag must inflate very quickly, in the blink of an eye, if it is to inflate in time to protect a vehicle occupant from striking the steering wheel, dashboard, or windshield. If it inflates fully before the occupant moves into it, it enables the occupant to stop gradually. Gradual stops are safer than sudden stops. Since the air bag also spreads the crash forces over a large area of the body, it is very effective in reducing deaths and injuries in frontal crashes.

The Requirement for Air Bags

By law, driver and passenger air bags must be installed in 95 percent of passenger cars in model year 1997 and 100 percent in model year 1998. They must be installed in 80 percent of light trucks in model year 1998 and in all light trucks in model year 1999. The manufacturers are already installing them in virtually 100 percent of passenger cars and most light trucks.

By November 1996, approximately 53 million passenger cars and light trucks were equipped with air bags. Of these vehicles, about 24 million had both driver and passenger air bags.

The Benefits

As of November 1996, the government estimates that more than 1500 drivers and 164 passengers have been saved by air bags. This number is rapidly increasing as more vehicles equipped with air bags enter the fleet. Taking all crashes together, the air bag is reducing fatal injuries by 11 percent for drivers and 13 percent for adult passengers.

The greatest protection comes from using safety belts with air bags. The safety belt keeps an occupant's hips in place during a crash and limits the forward movement of the occupant's head and upper body. The air bag prevents the occupant's head and upper body from striking the windshield or dashboard. The latest studies indicate that occupants protected by safety belts and air bags are 50 percent less likely than unrestrained occupants to suffer fatal or serious injury in a crash.

The Risks

The air bag's speed is also the source of its risk. The air bag is not a soft, pillowy cushion. If an occupant is too close to the air bag when it begins to inflate, the bag can impact the chest or head of the occupant with great force. If the occupant is extremely close to the air bag when it inflates, the injuries can be serious or fatal. As of November 1996, the government has verified reports of 19 drivers and 33 passengers, 32 of them children under 10 years old, who have been killed by air bags.

The Driver Air Bag

Of the 19 drivers fatally injured since 1990, only five were wearing their safety belts and two of these had lost consciousness before the crash and were slumped over the wheel when the air bag deployed. Ten were short women (5'2'' or less), 9 of whom were driving vehicles made in 1992 or earlier model years. Most of the women drivers were 64 or older. During this same period, in contrast, air bags saved hundreds of short women from serious or fatal injuries.

The risk appears greater for unbelted drivers and for smaller and older drivers, particularly those who must be very close to the steering wheel in order to reach the pedals. The risk can be significantly reduced by wearing the safety belt, sitting as far back as access to the pedals permits, and including the seat back away from the steering wheel.

Considereing Whether To Disconnect the Driver Air Bag

For most drivers, reasonable measures (moving the seat rearward, inclining the seat back, adjusting a telescoping steering wheel toward the dashboard) can provide an adequate distance between the driver and the steering wheel. The government has not evaluated devices such as pedal blocks or extenders that enable short drivers to move back from the steering wheel. Before considering such a device as an alternative to deactivating an air bag, a driver should carefully evaluate the device's ease of use and safety. Information about them can be obtained form the National Mobility Dealers Association at 1–800–833–0427.

If a driver takes all reasonable measures but cannot get further than about [ ] inches from the air bag when wearing his or her safety belt, it is possible that pre-crash braking or the forces of a crash could move the driver too close to the inflating bag. In that case, the driver might want to consider disconnecting the air bag.

Other factors that bear on disconnection include the driver's age and physical condition. Older drivers are at greater risk of injury in a crash, with or without an air bag, and may want to consider this fact if they are also unable to sit more than [ ] inches from the air bag. Some persons with medical disabilities that require assistive appliances such as tracheotomy tubes also need to pay particular attention to their distance from the air bag. If you are uncertain whether a medical condition poses a risk, you should consult your doctor.

The Passenger Air Bag

Most of the air bag related deaths have occurred in the last three years, as passenger air bags began to enter the fleet in large numbers. Of the children killed, 9 were riding in rear-facing infant seats and 18 were riding unrestrained in the front seat. Two children were restrained by a lap belt only and two (one a small four-year-old) were restrained by a lap and shoulder belt.

In addition to the children, the death of one adult passenger, a women in her 90's, has been verified as air bag related.

Considering Whether To Disconnect the Passenger Air Bag

If the vehicle is to be used to carry adults only, there is no reason to consider disconnecting the air bag. The air bags are proving to be effective for adult passengers. With the exception of a woman in her 90's, no adult passenger is known to have been killed by an air bag. In all but the rarest circumstances, an adult passenger would be able to position the seat far enough away from the dash to obtain the benefit of the air bag without the risks. Even in the case of vehicles with bench seats operated by small drivers, the passenger seat would be far enough from the air bag to give a belted passenger adequate distance from the air bag.

If the vehicle is used to transport children under twelve, the government's recommendation is that they should ride in the rear seat wherever possible. Placing children in the rear seat will completely eliminate any risk from the air bag and make deactivation unnecessary. If for any reason you must carry a child (other than an infant) in the front seat, make sure that the child is securely buckled in a restraint appropriate for the child's size and age, move the seat back as far as possible, and make sure that the child sits back against the seat.[1] Although there are no verified reports of fatal injuries to belted children who were sitting back in the seat at the moment of impact, parents should be aware that there may still be a risk to a restrained child, since children tend to move around (adjusting the radio, reaching for a soda, etc.) even when they are restrained. Parents should decide whether to deactivate the air bag in the light of this information.

Under NO circumstances should an infant be carried on the front seat in a rear-facing infant seat unless the air bag is deactivated. In a rear-facing seat, an infant's head would

[1] Depending on the size and age of the child, the appropriate restraint could be a forward-facing child safety seat (for children from approximately one to four years, or 20 to 40 pounds), a booster seat plus a lap/shoulder belt (for children older than four or more than 40 pounds), or a lap/shoulder belt alone (for children who are large enough to wear the shoulder belt comfortably across the shoulder and to secure the lap belt across their pelvis, and who have legs long enough to dangle over the front of the seat when their backs are on the seat back).

be very close to the inflating air bag. The risk of serious or fatal injury is very high. If it is not feasible to carry an infant in the rear seat, either because the vehicle lacks a rear seat or because of a medical condition that requires constant attention, the air bag should be deactivated. Do not attempt to turn a rear-facing infant seat around or carry an infant under 20 pounds in any forward-facing seat.

How To Disconnect an Air Bag

Deactivating an air bag can be dangerous. It should not be attempted by anyone but a qualified mechanic. Although Federal regulations now permit dealers and motor vehicle repair businesses to disconnect air bags, NHTSA strongly discourages disabling except in special circumstances, since air bags use with safety belts almost always provide better protection than safety belts alone.

Appendix Authorization To Deactivate an Air Bag

fl I, _____,

(Vehicle Owner's Name)
the owner of the following vehicle:

_____
(Make (e.g., Chevrolet)

_____
(Model (e.g., Lumina))

_____
(Model year)

_____
(Vehicle Identification Number)

_____
(State in which vehicle is registered)

_____
(Registration #)

fl I authorize _____

_____
(Name of motor vehicle dealer or repair business)

(Address of dealer or repair business)

to modify the vehicle identified above in the following way:
In the appropriate box(es) below, initial which air bag or bags you want deactivated.
☐ Deactivate my driver air bag
☐ Deactivate my passenger air bag
fl I make this authorization with the following acknowledgments and understandings:

Owner must initial *each* box below	Owner acknowledgments and understandings
	Information sheet. I acknowledge that the dealer or repair business identified above has given me a copy of an air bag information sheet prepared by the National Highway Traffic Safety Administration and that I have read the sheet.
	Loss of protection. I understand that a deactivated air bag will not deploy and thus will not provide protection in the event of motor vehicle collision.
	Attaching of labels. I understand that the dealer or repair business identified above is required by law to install labels on the sun visor and door jamb for each air bag that is deactivated pursuant to this authorization. I understand that the labels are intended to alert present and future owners and users that one or both air bags are deactivated.
	I will allow the dealer or repair business to attach the labels and ensure that they remain in place as long as the air bag(s) remain(s) deactivated.
	Waiver of claims. I acknowledge that, by authorizing the deactivation of an air bag in my vehicle, I waive any claim or cause of action that I may have against the dealer or repair business because the air bag has been deactivated.

_____ _____
(Signature of vehicle owner) (date)

[FR Doc. 96–33305 Filed 12–30–96; 11:00 am]

BILLING CODE 4910–59–P

Federal Register

Monday
January 6, 1997

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Circular, Public Debt Series No. 1–93); Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1–93)

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (''Department'' or ''Treasury'') is publishing in final form an amendment to 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). This amendment makes changes necessary to accommodate the public offering of new Treasury inflation-indexed securities by the Department. In addition, the amendment makes certain technical clarifications and conforming changes. The proposed rule was published for public comment on September 27, 1996.

EFFECTIVE DATE: January 6, 1997.

ADDRESS: This rule has been made available for downloading from the Bureau of the Public Debt web site at the following address: www.publicdebt.treas.gov.

FOR FURTHER INFORMATION CONTACT: Ken Papaj (Director), Lee Grandy, Chuck Andreatta or Kurt Eidemiller (Government Securities Specialists), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 219–3632.

SUPPLEMENTARY INFORMATION:

I. Background

31 CFR Part 356, also referred to as the uniform offering circular, sets out the terms and conditions for the sale and issuance by the Department of the Treasury to the public of marketable Treasury bills, notes, and bonds. The uniform offering circular, in conjunction with offering announcements, represents a comprehensive statement of those terms and conditions.[1]

The Department has decided to offer a new type of security, referred to as a Treasury inflation-indexed security,[2] whose principal value will be adjusted for inflation as measured by the United States Government. The Department believes the issuance of these new inflation-indexed securities will reduce interest costs to the Treasury over the long term and will broaden the types of debt instruments available to investors in U.S. financial markets.

As explained in more detail below, after considering the comments provided, Treasury has determined that the structure of the inflation-indexed securities will remain unchanged from its description in the proposed rule. The securities will be based, with some modifications, on the model of the Real Return Bonds currently issued by the Government of Canada. The principal of the security will be adjusted for changes in the level of inflation. Semiannual interest payments will be made based on a constant rate of interest determined at auction. The index for measuring the inflation rate for these securities will be the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers (''CPI'' or ''CPI–U'') published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor.

Further, the Department has announced its intention to begin auctioning inflation-indexed securities in January 1997 and quarterly thereafter. The first auction will be of 10-year inflation-indexed notes. Specific terms and conditions of each issue, including the auction date, issue date, and public offering amount, will be announced prior to each auction. Over time, the Department expects to offer additional maturities of inflation-indexed securities, such as 30-year bonds or shorter-term notes. The Department expects to offer the first additional maturity later in 1997.

The inflation-adjusted principal value of the securities can be obtained for any date by multiplying the stated value at issuance, or par amount, by the index ratio applicable to that date. The index ratio is the reference CPI applicable to a particular valuation date divided by the reference CPI applicable to the original issue date. The inflation adjustment to the principal will not be payable until maturity, when the securities will be redeemed at the greater of their inflation-adjusted principal amount or par amount. The securities will be issued with a stated rate of interest that remains constant until maturity. Interest payments for a particular security will be determined by multiplying the inflation-adjusted principal by one-half of the stated rate of interest on each semiannual interest payment date.

Inflation-indexed notes will be issued with maturities of at least one year but not more than ten years. Inflation-indexed bonds, when offered, will be issued with maturities of more than ten years. The inflation-indexed securities will be sold at discount, par, or premium and will pay interest semiannually. The auctions for inflation-indexed securities will be conducted as single-price auctions in which competitive bidders will bid in terms of a desired real yield (yield prior to inflation adjustment), expressed as a percentage with three decimals, e.g., 3.230%. The interest rate established as a result of the auction will generally be set at one-eighth of one percent increments that produce the price closest to, but not above, par when evaluated at the highest real yield at which bids were accepted. The offering announcement issued by the Department for each new inflation-indexed security will contain the specific details for that offering.

The inflation-indexed securities will be eligible for the STRIPS program (Separate Trading of Registered Interest and Principal of Securities) immediately upon their issuance by the Treasury.

The securities will also be eligible to serve as collateral for Treasury programs (e.g., Treasury Tax and Loan accounts). Anyone interested in the use of inflation-indexed securities for such collateral purposes should contact the Department's Office of the Fiscal Assistant Secretary for more information. The Department also intends to make components stripped from these securities eligible for collateral at a later date. The Department will notify the public of their eligibility when the valuation of the stripped components for collateral purposes has been determined.

II. Comments Received in Response to the Proposed Rule

The Department published for public comment a proposed amendment to the uniform offering circular on September 27, 1996,[3] which laid out the proposed structure, design, terms, and conditions of the new inflation-indexed security. The closing date for comments was October 28, 1996. A few minor typographical and technical errors in the proposed rule text and formulas were subsequently corrected and

[1] The uniform offering circular was published as a final rule on January 5, 1993 (58 FR 412). Amendments to the circular were published on June 3, 1994 (59 FR 28773), March 15, 1995 (60 FR 13906), July 16, 1996 (61 FR 37007), August 23, 1996 (61 FR 43626), and October 22, 1996 (61 FR 54908).

[2] This Part is being revised to accommodate offerings of both inflation-indexed notes and inflation-indexed bonds in order to give the Department the flexibility to issue both types of securities in the future. However, the Department initially plans to offer only one maturity, a 10-year note. Inflation-indexed securities were referred to as inflation-protection securities in the proposed rule.

[3] 61 FR 50924 (September 27, 1996).

changed in a correction notice published on October 4, 1996.[4]

In developing the proposed rule, the Department took into consideration the numerous comments, suggestions, and recommendations that were received in response to two Advance Notices of Proposed Rulemakings;[5] at more than 30 meetings attended by more than 800 investors, dealers and interested parties in nine cities world-wide; and at a public symposium sponsored by the Department. The Department believes that this extensive discussion with, and participation by, market participants in the design of the inflation-indexed security was extremely useful in developing a new investment product that will have wide acceptance and broad market appeal.

The Department received eight letters from seven commenters in response to the proposed rule.[6] The letters, listed chronologically in order of date received, were submitted by Apex Investment Associates, Inc.; Reed Smith Shaw & McClay; Wrightson Associates; L. Napoleon Cooper (two letters); Robert L. Elgin; HSBC Securities, Inc.; and PSA The Bond Market Trade Association.[7]

Two commenters proposed an entirely different security structure. One of these commenters submitted a proposal that would allow for a new series of federal debt, and would result in a substantially different structure. The other commenter proposed a structure for, and suggested features to be incorporated in, a non-marketable, floating rate, inflation-indexed savings bond. A third commenter expressed support for the process of involving market participants in the design and implementation of these securities, and stated, ''as far as the securities themselves are concerned, there is little or nothing we would care to ask be changed.'' It was this commenter's view, however, that the stripped securities as designed would not provide for a very liquid market because of the lack of fungibility of the inflation-indexed stripped components. The commenter proposed and described an inflation-indexed ''strip that would be entirely fungible with other inflation-protection strips.'' Under the commenter's proposal, the inflation-indexed securities would be stripped into pieces of equal ''real'' value. The commenter indicated that its approach to creating fungible STRIPS would require that Treasury relax its requirement that STRIPS be sold in $1,000 increments.

Two of the remaining commenters confined their comments to taxation issues. One of these commenters expressed its belief that inflation-indexed securities would be a great success, but that the inflation adjustment to the principal should be treated as a capital gain or as taxable income at either redemption or sale by the investor. The other commenter recommended that, before inflation-indexed securities are offered to the public, Treasury should ask Congress to provide statutory authority to exclude the inflation adjustment from taxation. The commenter said that, without such an exclusion, taxable investors would receive less than full inflation protection.

One commenter specifically addressed the subject of reopenings of the security as stated in the proposed rule. In its letter, the commenter stated its belief that it is extremely important to reopen inflation-indexed securities to consolidate issues, especially since stripped coupons from different inflation-indexed securities will not be interchangeable. The commenter indicated that rules in the tax code restrict reopenings of conventional bonds that might otherwise be desirable, and stated that this may also be true for inflation-indexed securities. The commenter offered two alternatives to resolve this ''original-issue-discount'' or ''OID'' problem. One alternative would be to relax the OID restrictions for inflation-indexed securities. A second alternative would be to make an adjustment to the current single-price auction procedures so that the coupon rate would be rounded up instead of down. As a result, the initial price would always be at or above par, causing the new security to be issued further above the OID limit and thus making it easier to reopen.

Another letter, submitted by an industry trade association, had the following comments. While expressing support for particular design details of the security (e.g., modelling the securities on Canada's Real Return Bonds, selecting the CPI–U as the inflation index, adopting a current auction technique and making the securities eligible for stripping), the commenter stressed its concern and belief ''that there are a number of market practice, regulatory, operational and technical issues which must be resolved in order to foster a smooth and orderly auction and efficient secondary market for the new securities in January.'' To this end, ''firms will have to make significant changes to their internal trading, trade processing, settlement, risk management, accounting, regulatory and tax reporting systems, among others, leaving market participants little time to build, test, and implement such internal systems changes before trading in the new securities commences in January.'' The commenter indicated that it previously advised Treasury that its members would need approximately six months from publication of the final rules to prepare for trading, clearance and settlement of the new securities.

The letter highlighted the commenter's specific concerns, which included: (1) The timing of the planned first issue; (2) a preference to have more time to program systems based on the final rules and more time to study the Boskin Commission's Report (methodology for calculating the CPI which was released on December 4); (3) the lack of fungibility of stripped interest components and its potential affect on liquidity, and the need to devise a viable method to create fungible strips; and (4) the need for a market convention for the appropriate factor or formula, preferably to be provided by Treasury, for valuing stripped interest components.

The letter recommended that Treasury should: (1) Provide a monthly publication of reference CPI numbers for at least the preceding three months as well as a monthly publication of daily index ratios; (2) maintain a permanent and public record of all reference CPI numbers ever used to provide for a single reference source; (3) clarify in the final rules that, in the event of any discrepancies between CPI numbers published by the Bureau of Labor Statistics of the U.S. Department of Labor and the Treasury, those published by Treasury will take precedence; (4) clarify in the final rules the payment of the minimum guarantee; (5) add to the final rules hypothetical examples and sample calculations; and (6) with other regulators, provide formal guidance as to how the securities are required to be valued, recorded and reported under different regulatory regimes.

[4] 61 FR 51851 (October 4, 1996).

[5] 61 FR 25164 (May 20, 1996) and 61 FR 38127 (July 23, 1996).

[6] The comment letters are available to the public for inspection and downloading on the Internet, at the address provided earlier in this rule, and for inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC. 20220.

[7] See letters from Alexander A. Lothan, President, Apex Investment Associates, Inc. (September 26, 1996); William Morris, Reed Smith Shaw & McClay (September 27, 1996); Louis Crandall, Wrightson Associates (October 21, 1996); L. Napoleon Cooper (October 23 and November 12, 1996); Robert L. Elgin (October 25, 1996); Robert D. Sbarra, Chief Operating Officer-Fixed Income, HSBC Securities, Inc. (October 25, 1996); Edwin F. Payne, Chairman, PSA Government and Federal Agency Division, PSA The Bond Market Trade Association (November 6, 1996).

III. Changes from the Proposed Rule

A. General

After taking into consideration the comments received, the Department is adopting as a final rule this amendment to the uniform offering circular setting out the terms, conditions and features of Treasury inflation-indexed securities. The final rule adopts the proposed rule without significant changes. A summary of the main features of the final rule that remain unchanged from the proposed rule are: (1) The inflation-indexed securities will be structured similarly to the Real Return Bonds issued by the Government of Canada; (2) the interest rate, which is set at auction, will remain fixed throughout the life of the security while the principal amount of the security will be adjusted for inflation, and interest payments will be based on the inflation-adjusted principal at the time the interest is paid; (3) the non-seasonally adjusted CPI–U will be the inflation index; (4) the auction process will use a single-price auction method that is the same as that currently used for two-year and five-year Treasury notes; and (5) inflation-indexed securities will be eligible immediately for stripping into their principal and interest components.

The proposed changes in §§ 356.2; 356.3; 356.5; 356.10; 356.12; 356.13; 356.20; 356.32; Appendix B, Section I, Paragraphs A and C; Appendix B, Section II; Appendices C and D; and Exhibit A, Section IV are being adopted as originally proposed. Readers should refer to the preamble of the proposed rule[8] for a description of the above provisions being adopted in this final rule.

B. Section 356.17 Responsibility for Payment

The proposed rule, in paragraphs 356.17 (a) and (b), contained minor conforming clarifications to reflect that bidders submitting payment with their tender may have to include, in addition to announced accrued interest, an inflation-adjustment amount with their payment. The wording in paragraphs (a) and (b) has been modified from the proposed rule to reflect a recent amendment to the offering circular, which added payment by authorized electronic means as a payment option.[9]

C. Section 356.25 Payment for Awarded Securities

In the proposed rule, a conforming change was made to paragraph 356.25(a)(2) to state that additional amounts due at settlement may include inflation adjustments. The proposed rule also added a new paragraph (c) to provide that the payment amount for awarded securities will be the settlement amount, as that term is defined in § 356.2. The substance of these two provisions remains unchanged in the final rule. However, in the final rule, new paragraph (c) has been redesignated as paragraph (d) to reflect a recent amendment to the uniform offering circular authorizing payment by electronic means,[10] which was effective after publication of the proposed rule.

D. Section 356.30 Payment of Principal and Interest on Notes and Bonds

Proposed paragraph 356.30(b) has been modified in accordance with one commenter's suggestion that the Department make clear in this section its obligation to pay at maturity the greater of the inflation-adjusted principal amount or par amount.

E. Section 356.31 STRIPS

No substantive changes have been made in this section from the proposed rule, which permits inflation-indexed securities to be stripped into separate principal and interest components. Unlike the conventional STRIPS program in which interest components having the same payment/maturity date are fungible (i.e., have the same CUSIP number), interest components stripped from different inflation-indexed securities will not be fungible even if they have the same payment/maturity date.

Some commenters have maintained that the creation of fungible stripped interest components is essential to provide sufficient liquidity in the market for these components. One commenter provided an alternative method that would achieve fungibility for inflation-indexed interest components. This method was supported by a second commenter. The Department understands these concerns and strongly supports the development of an active, liquid market for inflation-indexed securities, including their stripped components. Making the securities attractive to a broad investor base and ensuring the development of a liquid market have been two of Treasury's primary objectives throughout the securities' design and development. The Department is evaluating alternative methodologies, including the recommendation mentioned above, for creating fungible stripped interest components from inflation-indexed securities. However, we are not yet in a position to adopt a methodology that would permit fungibility. We have decided to proceed with the STRIPS program as described in the proposed rule and will continue to work on making interest components fungible in a manner that is operationally feasible. We believe that this approach is preferable to not having the securities strippable at the time they are first offered.

F. Section 356.32 Taxation

No change has been made to this section from the proposed rule. However, readers should note that they are directed in paragraph (b) to the relevant Internal Revenue Service (IRS) regulations for further information about the tax treatment, and reporting, of inflation-indexed securities. The IRS rules are expected to be publicly available and published in the Federal Register at the same time as this final rule is published, or shortly thereafter. The IRS regulations will be issued under §§ 1275(d) and 1286 of the Internal Revenue Code.

In the meantime, prospective investors are advised to refer to IRS Notice 96–51 published in the Internal Revenue Bulletin 1996–42 (October 15, 1996) for information regarding taxation of inflation-indexed securities and the stripped components of such securities. Additionally, in September, Treasury issued a statement providing an explanation of the federal income tax treatment for these securities and their stripped components. Readers interested in receiving a copy of this statement should call the Department's Office of Public Affairs automated facsimile system at 202–622–2040 and request Document No. 1290.

The Department also wishes to respond to the concern expressed by one of the commenters regarding rules in the tax code that could limit Treasury's ability to reopen issues of inflation-indexed securities. We note that the IRS regulations will permit reopenings of inflation-indexed securities without regard to the OID rules, provided that the reopenings occur not more than one year after the original securities were first issued to the public.

G. Appendix B, Section I, Paragraph B

In the proposed rule, Treasury stated that it did not intend to publish the index ratio for use by market participants. However, in the preamble, the Department specifically asked for comments on whether a monthly publication of the daily index ratios or

[8] See *supra* note 3.

[9] 61 FR 54908 (October 22, 1996).

[10] *Id.*

reference CPIs would be useful to market participants. One of the commenters strongly urged that Treasury publish both the reference CPI numbers for at least the three preceding months and the daily index ratios on a month-to-month basis. Treasury will support this request. Although Appendix B has been revised by deleting the language from the proposed rule and is now silent with respect to publication of the daily index ratios, Treasury intends to provide monthly the daily reference CPI numbers and the daily index ratios on a pilot basis for one year. This information will be available through such means as a monthly press release, the Internet, and automated facsimile systems.

After a year, the Department will determine whether there is still a need for this information to be provided by Treasury. It is our understanding that most market participants will incorporate the formulas for calculating the reference CPIs and index ratios into their trading or other automated systems. Additionally, it is reasonable to expect that the major electronic financial service providers (e.g., Bloomberg, Telerate, Reuters) will provide this information, or substantially similar information, to their subscribers. Further, Treasury will maintain an archival record of the reference CPIs and the daily index ratios throughout the life of each inflation-indexed security. This information will be readily available to market participants.

In addition to the publication of reference CPIs and index ratios, the Treasury will provide monthly the non-seasonally adjusted CPI for each of the prior three months.

Changes have been made to the paragraph that addresses index contingencies. Language has been revised to clarify Treasury's course of action if the CPI is: Discontinued, or in the judgment of the Secretary, either fundamentally altered in a manner materially adverse to the interests of an investor in the security or altered by legislation or Executive Order in a manner materially adverse to the interests of an investor in the security.

A change to the CPI would be considered fundamental if it affected the character of the CPI. Technical changes made by the Bureau of Labor Statistics (BLS) to the CPI to improve its accuracy as a measure of the cost of living would not be considered fundamental changes. Technical changes include, but are not limited to, changes in: (1) The specific items (e.g., apples or major appliances) to be priced for the index; (2) the way individual price quotations are aggregated to construct component price indices for these items (aggregation of item sub-strata); (3) the method for combining these component price indices to obtain the comprehensive, all-items CPI (aggregation of item strata); and (4) the procedures for incorporating new goods into the index and making adjustments for quality changes in existing goods.

Technical changes to the CPI previously made or announced by BLS include introducing probability sampling to select the precise items for which prices are collected and the stores in which collection takes place, and changing the way in which price movements of major components, such as shelter costs for homeowners in the early 1980s and medical care costs beginning in 1997, are measured.

The Advisory Commission to Study the Consumer Price Index (the Boskin Commission) made a number of recommendations to improve the calculation of changes in the cost of living. Some of these recommendations were directed to BLS and were designed to improve the calculation of the monthly CPI. These recommendations, if and to the extent implemented by BLS, would constitute technical changes rather than fundamental changes.

The Boskin Commission also recommended construction of an annual measure of the cost of living as a supplement to the monthly CPI. Development and use of such a supplement, by itself, would not change the monthly CPI itself. While the Boskin Commission did not suggest that such a measure replace the CPI, a decision by BLS to *replace*, rather than *supplement*, the current monthly CPI with an annual measure of consumer prices, would constitute a fundamental change.

In addition, if the Secretary determines that the CPI is altered by legislation or Executive Order in a manner that is materially adverse to the interests of an investor in the security, the Secretary would propose an alternative index.

A minor, technical change has also been made to clarify Treasury's intention in the situation where the CPI for a particular month is not reported by the last day of the following month. In such a situation, the last CPI that has been reported (including any revision of a previously reported CPI number) will be used to calculate CPI numbers for months for which the CPI has not been reported by such day.

H. Appendix B, Section III

Minor, technical changes have been made to certain formulas and examples by adding a definition of one variable, and by elaborating on the definitions of two other variables.

I. Other Issues

One commenter raised a number of issues pertaining to the regulatory treatment of inflation-indexed securities, which are outside the scope of the uniform offering circular regulations. Specifically, the commenter questioned how these securities are to be valued, recorded and reported under various regulatory regimes for purposes such as large position reporting, determining regulatory capital and margin amounts, and broker-dealer reporting. The Treasury has given informal, general guidance on some of these issues as they pertain to the Government Securities Act (GSA) regulations, 17 CFR Chapter IV, (e.g., large position reporting, capital and haircut treatment, recordkeeping and financial reporting), and will respond to additional questions as they arise. The Treasury is also considering issuing an interpretation of the GSA regulations to provide formal clarification and guidance on regulatory issues within the scope of its authority. Additionally, Treasury has been coordinating and consulting with other regulators, such as staff of the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, and the Federal Reserve Bank of New York, to address the various regulatory issues raised by the commenter and to foster consistent regulatory treatment where possible and appropriate.

The commenter also raised concerns that a number of questions remain unanswered regarding market practice, trading, accounting and operational issues related to the new securities. While these issues are also outside the scope of both the uniform offering circular rules and Treasury's authority under the GSA, Treasury appreciates the need for consistent and widely accepted trading practices and industry conventions for quoting, pricing, and valuing inflation-indexed securities. Treasury strongly supports and encourages industry efforts, including the formation of the PSA Inflation Bond Trading Practices Task Force, to develop trading and market practice conventions. We are confident the industry will be successful in this effort and we will continue to provide guidance as needed.

IV. Procedural Requirements

This final rule does not meet the criteria for a ''significant regulatory action'' pursuant to Executive Order 12866.

Although this rule was issued in proposed form to secure the benefit of public comment, the notice and public comment procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There is no new collection of information contained in this rule, and, therefore, the Paperwork Reduction Act does not apply. The collections of information of 31 CFR Part 356 have been previously approved by the Office of Management and Budget under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 1535–0112. Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

Dated: December 30, 1996.

Donald V. Hammond,

Deputy Fiscal Assistant Secretary.

For the reasons set forth in the preamble, 31 CFR Chapter II, Subchapter B, Part 356, is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

2. Section 356.2 is amended by revising the definitions of ''Accrued interest,'' ''Book-entry security,'' ''Customer,'' ''Interest rate,'' ''Multiple-price auction,'' ''Par amount,'' ''Settlement amount,'' ''STRIPS,'' and ''Yield;'' and adding in alphabetical order the definitions of ''Business day,'' ''Consumer Price Index,'' ''Daily interest decimal,'' ''Index,'' ''Index ratio,'' ''Inflation-adjusted principal,'' ''Real yield,'' and ''Reference CPI'' to read as follows:

§ 356.2 Definitions.

* * * * *

Accrued interest means an amount payable to the Department for such part of the next semiannual interest payment that represents interest income attributed to the period prior to the date of issue. (See Appendix B, Section I, Paragraph C.)

* * * * *

Book-entry security means a security the issuance and maintenance of which are represented by an accounting entry or electronic record and not by a certificate. Treasury book-entry securities may generally be held in either TRADES or in TREASURY DIRECT. (See § 356.3.)

Business day means any day other than a Saturday, Sunday, or other day on which the Federal Reserve Banks are not open for business.

* * * * *

Consumer Price Index (CPI) means the monthly non-seasonally adjusted *U.S. City Average All Items Consumer Price Index for All Urban Consumers,* published by the Bureau of Labor Statistics of the Department of Labor. (See Appendix D.)

* * * * *

Customer means a bidder on whose behalf a depository institution or dealer has been directed to submit or forward a competitive or noncompetitive bid for a specified amount of securities in a specific auction. Only depository institutions and dealers may submit or forward bids for customers, whether directly to a Federal Reserve Bank or the Bureau of the Public Debt, or through an intermediary depository institution or dealer.

Daily interest decimal means, for a fixed-principal security, the interest factor attributable to one day of an interest payment period per $1,000 par amount.

* * * * *

Index means the Consumer Price Index, which is used as the basis for making adjustments to principal amounts of inflation-indexed securities. (See Appendix D.)

Index ratio means, for any particular date and any particular inflation-indexed security, the Reference CPI applicable to such date divided by the Reference CPI applicable to the original issue date (or dated date, when the dated date is different from the original issue date). (See Appendix B, Section I, Paragraph B.)

Inflation-adjusted principal means, for an inflation-indexed security, the value of the security derived by multiplying the par amount by the applicable index ratio as described in Appendix B, Section I, Paragraph B.

Interest rate means the annual percentage rate of interest paid on the par amount or the inflation-adjusted principal of a specific issue of notes or bonds. (See Appendix B for methods and examples of interest calculations on notes and bonds.)

* * * * *

Multiple-price auction means an auction in which each successful competitive bidder pays the price equivalent to the yield or rate that it bid.

* * * * *

Par amount means the stated value of a security at original issuance.

* * * * *

Real yield means, for an inflation-indexed security, the yield based on the payment stream in constant dollars, i.e., before adjustment by the index ratio.

Reference CPI (Ref CPI) means, for an inflation-indexed security, the index number applicable to a given date. (See Appendix B, Section I, Paragraph B.)

* * * * *

Settlement amount means the par amount of securities awarded less any discount amount and plus any premium amount and/or any accrued interest. For inflation-indexed securities, the settlement amount also includes any inflation adjustment when such securities are reopened or when the dated date is different from the issue date.

* * * * *

STRIPS (Separate Trading of Registered Interest and Principal of Securities) means the Department's program under which eligible securities are authorized to be separated into principal and interest components, and transferred separately. These components are maintained in book-entry accounts, and transferred, in TRADES.

* * * * *

Yield, also referred to as ''yield to maturity,'' means the annualized rate of return to maturity on a fixed-principal security expressed as a percentage. For an inflation-indexed security, yield means the real yield. (See Appendix B.)

3. Section 356.3 is amended by revising the introductory paragraph and the heading of paragraph (a) and removing footnote 1; adding three sentences at the end of paragraph (a); and adding a second sentence at the end of paragraph (b), to read as follows:

§ 356.3 Book-entry securities and systems.

Securities issued subject to this Part shall be held and transferred in either of the two book-entry securities systems—TRADES or TREASURY DIRECT—described in this section. Securities are maintained and transferred, to the extent authorized in 31 CFR part 357, in these two book-entry systems at their par amount, e.g., for inflation-indexed

securities, adjustments for inflation will not be included in this amount. Securities may be transferred from one system to the other in accordance with Treasury regulations governing book-entry Treasury bills, notes, and bonds. See Department of the Treasury Circular, Public Debt Series No. 2–86, as amended (31 CFR Part 357).

(a) *Treasury/Reserve Automated Debt Entry System (TRADES).* * * * For accounts maintained in TRADES, Treasury discharges its payment obligations when payment is credited to the applicable account maintained at a Federal Reserve Bank or payment is made in accordance with the instructions of the person or entity maintaining such account. Further, neither Treasury nor the Federal Reserve Banks have any obligations to, nor will they recognize any claims of, any person or entity that does not have an account at a Federal Reserve Bank. In addition, neither Treasury nor the Federal Reserve Banks will recognize the claims of any person or entity with respect to any accounts not maintained at a Federal Reserve Bank.

(b) * * * In TREASURY DIRECT, Treasury discharges its payment obligations when payment is made to a depository institution for credit to the account specified by the owner of the security, or when payment is made in accordance with the instructions of the owner of the security.

* * * * *

4. Section 356.5 is amended by revising the introductory text and paragraphs (b) and (c) to read as follows:

§ 356.5 Description of securities.

Securities offered pursuant to this Part are offered exclusively in book-entry form and are direct obligations of the United States, issued under Chapter 31 of Title 31 of the United States Code. The securities are subject to the terms and conditions set forth in this Part, including the appendices, as well as the regulations governing book-entry Treasury bills, notes, and bonds (31 CFR Part 357), and the offering announcements, all to the extent applicable. When the Department issues additional securities with the same CUSIP number as outstanding securities, all securities with the same CUSIP number are considered the same security.

* * * * *

(b) *Treasury notes.*

(1) *Treasury fixed-principal*[1] *notes.* Treasury fixed-principal notes are issued with a stated rate of interest to be applied to the par amount, have interest payable semiannually, and are redeemed at their par amount at maturity. They are sold at discount, par, or premium, depending upon the auction results. They have maturities of at least one year, but not more than ten years.

(2) *Treasury inflation-indexed notes.* Treasury inflation-indexed notes are issued with a stated rate of interest to be applied to the inflation-adjusted principal on each interest payment date, have interest payable semiannually, and are redeemed at maturity at their inflation-adjusted principal, or at their par amount, whichever is greater. They are sold at discount, par, or premium, depending upon the auction results. They have maturities of at least one year, but not more than ten years. (See Appendix B for price and interest payment calculations and Appendix C for Investment Considerations.)

(c) *Treasury bonds.*

(1) *Treasury fixed-principal bonds.* Treasury fixed-principal bonds are issued with a stated rate of interest to be applied to the par amount, have interest payable semiannually, and are redeemed at their par amount at maturity. They are sold at discount, par, or premium, depending upon the auction results. They typically have maturities of more than ten years.

(2) *Treasury inflation-indexed bonds.* Treasury inflation-indexed bonds are issued with a stated rate of interest to be applied to the inflation-adjusted principal on each interest payment date, have interest payable semiannually, and are redeemed at maturity at their inflation-adjusted principal, or at their par amount, whichever is greater. They are sold at discount, par, or premium, depending upon the auction results. They typically have maturities of more than ten years. (See Appendix B for price and interest payment calculations and Appendix C for Investment Considerations.)

5. Section 356.10 is amended by adding a sentence at the end of the paragraph, before the parenthetical last sentence, to read as follows:

§ 356.10 Offering announcement.

* * * Accordingly, bidders should read the applicable offering announcement in conjunction with this Part. * * *

6. Section 356.12 is amended by revising the first sentence of paragraph (a); revising paragraphs (b)(2), (c)(1)(i) and (ii); and adding new paragraph (c)(1)(iii) to read as follows:

§ 356.12 Noncompetitive and competitive bidding.

(a) *General.* All bids, including bids for reopenings, must state the par amount of securities bid for and must equal or exceed the minimum bid amount stated in the offering announcement. * * *

(b) * * *

(2) *Additional restrictions.* A bidder may not bid noncompetitively for its own account if, in the security being auctioned, it holds or has held a position in when-issued trading or in futures or forward contracts at any time between the date of the offering announcement and the designated closing time for the receipt of competitive tenders. * * *

(c) * * *

(1) * * *

(i) *Treasury bills.* A competitive bid must show the discount rate bid, expressed with two decimals, e.g., 3.10. Fractions may not be used.

(ii) *Treasury fixed-principal securities.* A competitive bid must show the yield bid, expressed with three decimals, e.g., 4.170. Fractions may not be used.

(iii) *Treasury inflation-indexed securities.* A competitive bid must show the real yield bid, expressed with three decimals, e.g., 3.070. Fractions may not be used.

* * * * *

7. Section 356.13 is amended by revising paragraph (a) to read as follows:

§ 356.13 Net long position.

(a) *Reporting net long positions.* When bidding competitively, a bidder must report the amount of its net long position when the total of all of its bids in an auction plus the bidder's net long position in the security being auctioned equals or exceeds the net long position reporting threshold amount. The threshold amount for any particular security will be as stated in the offering announcement for that security. (See § 356.10.) That amount will be $2 billion for bills, notes, and bonds unless otherwise stated in the offering announcement. For example, the net long position reporting threshold amount may be less than $2 billion for smaller security offerings, e.g., certain inflation-indexed securities or cash management bills. If the bidder either has no position or has a net short position and the total of all of its bids equals or exceeds the threshold amount, e.g., $2 billion, a net long position of zero must be reported. * * *

* * * * *

[1] The term ''fixed-principal'' is used in this Part to distinguish such securities from ''inflation-indexed'' securities. Fixed-principal notes and fixed-principal bonds are referred to as ''notes'' and ''bonds'' in official Treasury publications, such as offering announcements and auction results press releases, as well as in auction systems.

8. Section 356.17 is amended by revising the last sentence in the introductory paragraph and the introductory text of paragraphs (a) and (b) to read as follows:

§ 356.17 Responsibility for payment.

* * * The specific requirements, outlined in this section, depend on whether awarded securities will be delivered in TREASURY DIRECT or TRADES.

(a) *TREASURY DIRECT.* For securities to be held in TREASURY DIRECT, payment of the par amount and announced accrued interest and/or inflation adjustment, if any, must be submitted with the tender unless other provisions have been made, such as payment by an authorized electronic means providing for immediately available funds or by charge to the funds account of a depository institution.

* * * * *

(b) *TRADES.* For securities to be held in TRADES, payment of the par amount and announced accrued interest and/or inflation adjustment, if any, must be submitted with the tender unless other provisions have been made, such as payment by an authorized electronic means providing for immediately available funds or by charge to the funds account of a depository institution.

* * * * *

9. Section 356.20 is amended by revising the introductory text of paragraph (c) and adding a sentence to the end of paragraph (c)(2) to read as follows:

§ 356.20 Determination of auction awards.

* * * * *

(c) *Determining purchase prices for awarded securities.* Price calculations will be rounded to three decimal places on the basis of price per hundred, e.g., 99.954. (See Appendix B.)

* * * * *

(2) * * * For inflation-indexed securities, the price of such securities will be the price equivalent to the highest real yield at which bids were accepted.

10. Section 356.25 is amended by revising the last sentence in paragraph (a)(2), and adding paragraph (d) to read as follows:

§ 356.25 Payment for awarded securities.

* * * * *

(a) * * *

(2) * * * Such additional amount may be due if the auction calculations result in a premium or if accrued interest and/or inflation adjustment is due.

* * * * *

(d) *Amount of payment for awarded securities.* The payment amount for awarded securities will be the settlement amount as defined in § 356.2. (See formulas in Appendix B.)

11. Section 356.30 is amended by redesignating the text of the current section as (a), adding a heading of ''General'' and revising the last sentence in newly redesignated paragraph (a), and adding paragraph (b) to read as follows:

§ 356.30 Payment of principal and interest on notes and bonds.

(a) *General.* * * * In the event any principal or interest payment date is not a business day, the amount is payable (without additional interest) on the next business day.

(b) *Treasury inflation-indexed securities.* At maturity, the inflation-adjusted principal will be paid, unless the inflation-adjusted principal is less than the par amount of the security, in which case an additional amount will be paid at maturity so that the additional amount plus the inflation-adjusted principal equals the par amount. If a security has been stripped, any such additional amount will be paid at maturity to holders of principal components only. Regardless of whether or not an additional amount is paid, the final interest payment will be based on the inflation-adjusted principal at maturity.

12. Section 356.31 is amended by revising paragraph (a) and the first sentence of paragraph (b), redesignating paragraphs (c) and (d) as paragraphs (g) and (h) respectively, adding new paragraphs (c) through (f), adding a third and fourth sentence to newly redesignated paragraph (g) and revising newly redesignated paragraph (h) to read as follows:

§ 356.31 STRIPS.

(a) *General.* A note or bond may be designated in the offering announcement as eligible for the STRIPS program. At the option of the holder, and generally at any time from its issue date until its call or maturity, any such security may be ''stripped,'' i.e., divided into separate principal and interest components. A short or long first interest payment and all interest payments within a callable period are not eligible to be stripped from the principal component. The CUSIP numbers and payment dates for the principal and interest components are provided in the offering announcement if not previously announced.

(b) *Minimum par amounts required for STRIPS.* For a note or bond to be stripped into the components described above, the par amount of the note or bond must be in an amount that, based on its interest rate, would produce a semiannual interest payment, before adjustment for inflation, in a multiple of $1,000. * * *

(c) *Principal components stripped from fixed-principal securities.* Principal components stripped from fixed-principal securities are maintained in accounts, and transferred, in TRADES at their par amount. The principal components have a CUSIP number that is different from the CUSIP number of the fully-constituted (unstripped) security.

(d) *Interest components stripped from fixed-principal securities.* Interest components stripped from fixed-principal securities are maintained in accounts, and transferred, in TRADES at their original payment value, which is derived by applying the semiannual interest rate to the par amount. When an interest component is created, the interest payment date becomes the maturity date for the component. All such components with the same maturity date have the same CUSIP number, regardless of the underlying security from which the interest payments were stripped. All interest components have CUSIP numbers that are different from the CUSIP number of any fully-constituted security and any principal component.

(e) *Principal components stripped from inflation-indexed securities.* Principal components stripped from inflation-indexed securities are maintained in accounts, and transferred, in TRADES at their par amount. At maturity, the holder will receive the inflation-adjusted principal value or the par amount, whichever is greater. (See § 356.30.) Principal components have a CUSIP number that is different from the CUSIP number of the fully-constituted security.

(f) *Interest components stripped from inflation-indexed securities.* Interest components stripped from inflation-indexed securities are maintained in accounts, and transferred, in TRADES at their original payment value, which is derived by applying the semiannual interest rate to the par amount. When an interest component is created, the interest payment date becomes the maturity date for the component. Each such component has a unique CUSIP number that is different from the CUSIP number of any interest components stripped from different securities, even if the components have the same maturity date. All interest components have CUSIP numbers that are different from the CUSIP number of any fully-constituted security and any principal

component. At maturity, the payment to the holder will be derived by applying the semiannual interest rate to the inflation-adjusted principal of the underlying security.

(g) *Reconstituting a security.* * * * Interest components stripped from inflation-indexed securities are different from interest components stripped from fixed-principal securities and, accordingly, are not interchangeable for reconstitution purposes. Interest components stripped from one inflation-indexed security are not interchangeable for reconstitution purposes with interest components stripped from another inflation-indexed security.

(h) *Applicable regulations.* Unless otherwise provided in this Part, notes and bonds stripped into their STRIPS components are governed by Subparts A, B and D of Part 357 of this title.

13. Section 356.32 is revised to read as follows:

§ 356.32 Taxation.

(a) *General.* Securities issued under this Part are subject to all applicable taxes imposed under the Internal Revenue Code of 1986, or successor. Under section 3124 of Title 31, United States Code, the securities are exempt from taxation by a State or political subdivision of a State, except for State estate or inheritance taxes and other exceptions as provided in that section.

(b) *Treasury inflation-indexed securities.* Special federal income tax rules for inflation-indexed securities, and principal and interest components stripped from such securities, are set forth in Internal Revenue Service regulations.

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14. Appendix B to Part 356 is amended by revising the list of section titles, and adding two new paragraphs following the list to read as follows:

APPENDIX B TO PART 356--FORMULAS AND TABLES

I. Computation of Interest on Treasury Bonds and Notes.

II. Formulas for Conversion of Fixed-Principal Security Yields to Equivalent Prices.

III. Formulas for Conversion of Inflation-Indexed Security Yields to Equivalent Prices.

IV. Computation of Purchase Price, Discount Rate, and Investment Rate (Coupon-Equivalent Yield) for Treasury Bills.

The numbers in this appendix are examples given for illustrative purposes only and are in no way a prediction of interest rates on any bills, notes, or bonds issued under this Part.

In some of the following examples, intermediate rounding is used to allow the reader to follow the calculations. In actual practice, the Department generally does not round prior to determining the final result.

15. Appendix B, Section I is amended as follows: by redesignating paragraphs A through D and their corresponding Examples as paragraphs A.1. through A.4. respectively, and adding a new title for paragraph A, revising newly redesignated paragraph A.1., revising the first sentence in newly redesignated paragraphs A.2., A.3. and its Example, and A.4. and its Example; by adding a new paragraph B; and by redesignating paragraph E as paragraph C, revising the second paragraph, adding a third paragraph prior to the Examples in newly redesignated paragraph C., redesignating the headings for Examples C.(1) and (2) as C.(1)(i) and C.(1)(ii) respectively, and adding a new heading for Example C.(1).

I. COMPUTATION OF INTEREST ON TREASURY BONDS AND NOTES

A. Treasury Fixed-Principal Securities

1. Regular Half-Year Payment Period

Interest on marketable fixed-principal securities is payable on a semiannual basis. The regular interest payment period is a full half-year of six calendar months. Examples of half-year periods are: (1) February 15 to August 15, (2) May 31 to November 30, and (3) February 29 to August 31 (in a leap year). Calculation of an interest payment for a fixed-principal security with a par amount of $1,000 and an interest rate of 8% is made in this manner: ($1,000 x .08)/2 = $40. Specifically, a semiannual interest

payment represents one-half of one year's interest, and is computed on this basis regardless of the actual number of days in the half-year.

2. Daily Interest Decimal

In cases where an interest payment period for a fixed-principal security is shorter or longer than six months or where accrued interest is payable by an investor, a daily interest decimal, based on the actual number of days in the half-year or half-years involved, must be computed. *** *****

3. Short First Payment Period

In cases where the first interest payment period for a fixed-principal security covers less than a full half-year period (a "short coupon"), the daily interest decimal is multiplied by the number of days from, but not including, the issue date to, and including, the first interest payment date, resulting in the amount of the interest payable per $1,000 par amount. ***

EXAMPLE. A 2-year fixed-principal note paying 8-3/8% interest was issued on July 2, 1990, with the first interest payment on December 31, 1990. ***

4. Long First Payment Period

In cases where the first interest payment period for a

fixed-principal security covers more than a full half-year period (a "long coupon"), the daily interest decimal is multiplied by the number of days from, but not including, the issue date to, and including, the last day of the fractional period that ends one full half-year before the interest payment date. ***

EXAMPLE. A 5-year 2-month fixed-principal note paying 7-7/8% interest was issued on December 3, 1990, with the first interest payment due on August 15, 1991. ***

B. Treasury Inflation-Indexed Securities

1. Indexing Process

Interest on marketable Treasury inflation-indexed securities is payable on a semiannual basis. The inflation-indexed securities are issued with a stated rate of interest which remains constant for the term of the particular security. Interest payments are based on the security's inflation-adjusted principal at the time interest is paid. This adjustment is made by multiplying the par amount of the security by the applicable Index Ratio.

2. Index Ratio

The numerator of the Index Ratio, the Ref CPI_{Date}, is the index number applicable for a specific day, and the denominator of the Index Ratio is the Ref CPI applicable for the original issue date. However, when the dated date is

different from the original issue date, the denominator is the Ref CPI applicable for the dated date. The formula for calculating the Index Ratio is:

$$\text{Index Ratio}_{\text{Date}} = \frac{\text{Ref CPI}_{\text{Date}}}{\text{Ref CPI}_{\text{Issue Date}}}$$

Where Date = valuation date

3. Reference CPI

The Ref CPI for the first day of any calendar month is the CPI for the third preceding calendar month. For example, the Ref CPI applicable to April 1 in any year is the CPI for January, which is reported in February. The Ref CPI for any other day of a month is determined by a linear interpolation between the Ref CPI applicable to the first day of the month in which such day falls (in the example, January) and the Ref CPI applicable to the first day of the next month (in the example, February). For purposes of interpolation, calculations with regard to the Ref CPI and the Index Ratio for a specific date will be truncated to six decimal places and rounded to five decimal places such that the Ref CPI and the Index Ratio for that date will be expressed to five decimal places. The formula for the Ref CPI for a specific date is:

$$\text{Ref CPI}_{\text{Date}} = \text{Ref CPI}_{M} + \frac{t - 1}{D} [\text{Ref CPI}_{M+1} - \text{Ref CPI}_{M}]$$

Where Date = valuation date

D = the number of days in the month in which Date falls

t = the calendar day corresponding to Date

CPI_M = CPI reported for the calendar month M by the Bureau of Labor Statistics

Ref CPI_M = Ref CPI for the first day of the calendar month in which Date falls, e.g., Ref $CPI_{April\ 1}$ is the $CPI_{January}$

Ref CPI_{M+1} = Ref CPI for the first day of the calendar month immediately following Date

For example, the Ref CPI for April 15, 1996 is calculated as follows:

$$\text{Ref } CPI_{April\ 15,\ 1996} = \text{Ref } CPI_{April\ 1,\ 1996} + \frac{14}{30}\left[\text{Ref } CPI_{May\ 1,\ 1996} - \text{Ref } CPI_{April\ 1,\ 1996}\right]$$

where D = 30, t = 15

Ref $CPI_{April\ 1,\ 1996}$ = 154.40, the non-seasonally adjusted CPI-U for January 1996.

Ref $CPI_{May\ 1,\ 1996}$ = 154.90, the non-seasonally adjusted CPI-U for February 1996.

Putting these values in the equation above:

$$\text{Ref CPI}_{\text{April 15, 1996}} = 154.40 + \frac{14}{30}\,[154.90 - 154.40]$$

$$\text{Ref CPI}_{\text{April 15, 1996}} = 154.633333333$$

This value truncated to six decimals is 154.633333; rounded to five decimals it is 154.63333.

To calculate the Index Ratio for April 16, 1996, for an inflation-indexed security issued on April 15, 1996, the Ref $CPI_{\text{April 16, 1996}}$ must first be calculated. Using the same values in the equation above except that t=16, the Ref $CPI_{\text{April 16, 1996}}$ is 154.65000.

The Index Ratio for April 16, 1996 is:

$\text{Index Ratio}_{\text{April 16, 1996}} = 154.65000/154.63333 = 1.000107803.$

This value truncated to six decimals is 1.000107; rounded to five decimals it is 1.00011.

4. Index Contingencies

If a previously reported CPI is revised, Treasury will continue to use the previously reported CPI in calculating the principal value and interest payments.

If the CPI is rebased to a different year, Treasury will continue to use the CPI based on the base reference period in effect when the security was first issued, as long as that CPI continues to be published.

If, while an inflation-indexed security is outstanding, the applicable CPI is: (1) discontinued, (2) in the

judgment of the Secretary, fundamentally altered in a manner materially adverse to the interests of an investor in the security, or (3) in the judgment of the Secretary, altered by legislation or Executive Order in a manner materially adverse to the interests of an investor in the security, Treasury, after consulting with the Bureau of Labor Statistics, or any successor agency, will substitute an appropriate alternative index. Treasury will then notify the public of the substitute index and how it will be applied. Determinations of the Secretary in this regard will be final.

If the CPI for a particular month is not reported by the last day of the following month, the Treasury will announce an index number based on the last twelve-month change in the CPI available. Any calculations of the Treasury's payment obligations on the inflation-indexed security that rely on that month's CPI will be based on the index number that the Treasury has announced. For example, if the CPI for month M is not reported timely, the formula for calculating the index number to be used is:

$$CPI_M = CPI_{M-1} \times \left[\frac{CPI_{M-1}}{CPI_{M-13}} \right]^{\frac{1}{12}}$$

Generalizing for the last reported CPI issued N months prior to month M:

$$CPI_M = CPI_{M-N} \times \left[\frac{CPI_{M-N}}{CPI_{M-N-12}} \right]^{\frac{N}{12}}$$

If it is necessary to use these formulas to calculate an index number, it will be used for all subsequent calculations that rely on that month's index number and will not be replaced by the actual CPI when it is reported, except for use in the above formulas. When it becomes necessary to use the above formulas to derive an index number, the last CPI that has been reported will be used to calculate CPI numbers for months for which the CPI has not been reported timely.

5. Computation of Interest for a Regular Half-Year Payment Period

Interest on marketable Treasury inflation-indexed securities is payable on a semiannual basis. The regular interest payment period is a full half-year or six calendar months. Examples of half-year periods are January 15 to July 15, and April 15 to October 15. An interest payment will be a fixed percentage of the value of the inflation-adjusted principal, in current dollars, for the date on which it is paid. Interest payments will be calculated by multiplying one-half of the specified annual interest rate for the inflation-indexed securities by the inflation-adjusted principal for the interest payment date.

Specifically, a semiannual interest payment is computed on the basis of one-half of one year's interest regardless of the actual number of days in the half-year.

Example. A 10-year inflation-indexed note paying 3% interest was issued on July 15, 1996, with the first interest payment on January 15, 1997. The Ref CPI on July 15, 1996 (Ref $CPI_{Issue\ Date}$) was 120, and the Ref CPI on January 15, 1997 (Ref CPI_{Date}) was 132. For a par amount of $100,000, the inflation-adjusted principal on January 15, 1997, was (132/120) x $100,000, or $110,000. This amount was then multiplied by .03/2, or .015, resulting in a payment of $1,650.00.

C. Accrued Interest

*****

For a fixed-principal security, if accrued interest covers a fractional portion of a full half-year period, the number of days in the full half-year period and the stated interest rate will determine the daily interest decimal to be used in computing the accrued interest. The decimal is multiplied by the number of days for which interest has accrued. If a reopened fixed-principal security has a long first interest payment period (a "long coupon"), and the dated date for the reopened issue is less than six full months before the first interest payment, the accrued interest will fall into two separate half-year periods, and

a separate daily interest decimal must be multiplied by the respective number of days in each half-year period during which interest has accrued. All accrued interest computations are rounded to five decimal places for a $1,000 inflation-adjusted principal, using normal rounding procedures. Accrued interest for a par amount of securities greater than $1,000 is calculated by applying the appropriate multiple to accrued interest payable for $1,000 par amount, rounded to five decimal places.

For an inflation-indexed security, accrued interest will be calculated as shown in Section III, Paragraphs A and B of this Appendix.

EXAMPLES. (1) Fixed-Principal Securities

(i) Involving One Half-Year: ***

(ii) Involving Two Half-Years: ***

16. Appendix B, Section II is amended by removing footnote 1, revising the Section heading, revising the definition of "C=", and revising the headings of paragraphs A through G to read as follows:

II. FORMULAS FOR CONVERSION OF FIXED-PRINCIPAL SECURITY YIELDS TO EQUIVALENT PRICES

Definitions

*****

C = the regular annual interest per $100, payable semiannually, e.g., 10.125 (the dollar equivalent of a 10-1/8% interest rate)

*****

A. For fixed-principal securities with a regular first interest payment period:

*****

B. For fixed-principal securities with a short first interest payment period:

*****

C. For fixed-principal securities with a long first interest payment period:

*****

D. (1) For fixed-principal securities reopened during a regular interest period where the purchase price includes predetermined accrued interest.

(2) For new fixed-principal securities accruing interest from the coupon frequency date immediately preceding the issue date, with the interest rate established in the auction being used to determine the accrued interest payable on the issue date.

*****

E. For fixed-principal securities reopened during the regular portion of a long first payment period:

*****

F. For fixed-principal securities reopened during a short first payment period:

*****

G. For fixed-principal securities reopened during the fractional portion (initial short period) of a long first payment period:

*****

17. Appendix B is amended by redesignating Section III as Section IV and adding a new Section III to read as follows:

III. FORMULAS FOR CONVERSION OF INFLATION-INDEXED SECURITY YIELDS TO EQUIVALENT PRICES

Definitions

P = unadjusted or real price per 100 (dollars)

P_{adj} = inflation adjusted price; P x Index $Ratio_{Date}$

A = unadjusted accrued interest per $100 original principal

A_{adj} = inflation adjusted accrued interest; A x Index $Ratio_{Date}$

SA = settlement amount including accrued interest in current dollars per $100 original principal; $P_{adj} + A_{adj}$

r = days from settlement date to next coupon date

s = days in current semiannual period

i = real yield, expressed in decimals (e.g., 0.0325)

C = real annual coupon, payable semiannually, in terms of real dollars paid on $100 initial, or real, principal of the security

n = number of full semiannual periods from issue date to maturity date, except that, if the issue date is a coupon frequency date, n will be one less than the number of full semiannual periods remaining until maturity. Coupon frequency dates are the two semiannual dates based on the maturity date of each note or bond issue. For example, a security maturing on July 15, 2026 would have coupon frequency dates of January 15 and July 15.

$v^n = 1/(1 + i/2)^n$ = present value of 1 due at the end of n periods

$a_{n\neg} = (1 - v^n)/(i/2) = v + v^2 + v^3 + \ldots + v^n$

= present value of 1 per period for n periods

Date = valuation date

D = the number of days in the month in which Date falls

t = calendar day corresponding to Date

CPI = Consumer Price Index number

CPI_M = CPI reported for the calendar month M by the Bureau of Labor Statistics

Ref CPI_M = reference CPI for the first day of the calendar month in which Date falls, e.g., Ref $CPI_{April\ 1}$ is the $CPI_{January}$

Ref CPI_{M+1} = reference CPI for the first day of the calendar

month immediately following Date

$$\text{Ref CPI}_{\text{Date}} = \text{Ref CPI}_{M} + [(t - 1)/D][\text{Ref CPI}_{M+1} - \text{Ref CPI}_{M}]$$

$$\text{Index Ratio}_{\text{Date}} = \text{Ref CPI}_{\text{Date}}/\text{Ref CPI}_{\text{Issue Date}}$$

A. For inflation-indexed securities with a regular first interest payment period:

Formulas:

$$P = \frac{(C/2) + (C/2)a_{\overline{n}|} + 100v^{n}}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$$P_{adj} = P \times \text{Index Ratio}_{\text{Date}}$$

$$A = [(s - r)/s] \times (C/2)$$

$$A_{adj} = A \times \text{Index Ratio}_{\text{Date}}$$

$$SA = P_{adj} + A_{adj}$$

$$\text{Index Ratio}_{\text{Date}} = \text{Ref CPI}_{\text{Date}}/\text{Ref CPI}_{\text{Issue Date}}$$

Example. The Treasury issues a 10-year inflation-indexed note on July 15, 1996. The note is issued at a discount to yield 3.1% (real). The note bears a 3% real coupon, payable on January 15 and July 15 of each year. The base CPI index applicable to this note is 120.[1] Calculate the settlement amount.

[1] This number is normally derived using the interpolative process described in Appendix B, Section I, Paragraph B.

Definitions:

C = 3.00

i = 0.0310

n = 19 (There are 20 full semiannual periods but n is reduced by 1 because the issue date is a coupon frequency date.)

r = 184 (July 15, 1996 to January 15, 1997)

s = 184 (July 15, 1996 to January 15, 1997)

Ref CPI_{Date} = 120

Ref $CPI_{Issue\ Date}$ = 120

Resolution:

Index $Ratio_{Date}$ = Ref CPI_{Date}/Ref $CPI_{Issue\ Date}$ = 120/120 = 1

A = [(184 - 184)/184] x 3/2 = 0

A_{adj} = 0 x 1 = 0

$v^n = 1/(1 + i/2)^n = 1/(1 + .031/2)^{19} = 0.74658863$

$a_{n\rceil} = (1 - v^n)/(i/2) = (1 - 0.74658863)/(.031/2)$

= 16.34912065

$$P = \frac{(C/2) + (C/2)a_{n\rceil} + 100v^n}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$$P = \frac{(3/2) + (3/2)(16.34912065) + 100(0.74658863)}{1 + (184/184)(0.031/2)} - [(184 - 184)/184](3/2)$$

$$P = \frac{1.5 + 24.52368098 + 74.658863}{1.01550000} - 0$$

$$P = \frac{100.68254398}{1.01550000}$$

$P = 99.145784$

$P = 99.146$

$P_{adj} = P \times \text{Index Ratio}_{Date}$

$P_{adj} = 99.146 \times 1 = 99.146$

$SA = P_{adj} + A_{adj}$

$SA = 99.146 + 0 = 99.146$

B. For inflation-indexed securities reopened during a regular interest period where the purchase price includes predetermined accrued interest:

Bidding:

The dollar amount of each bid is in terms of the par amount. For example, if the Ref CPI applicable to the issue date of the note is 120, and the reference CPI applicable to the reopening issue date is 132, a bid of $10,000 will in effect be a bid of $10,000 x (132/120), or $11,000.

Formulas:

$$P = \frac{(C/2) + (C/2)a_{\overline{n}|} + 100v^n}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$P_{adj} = P \times \text{Index Ratio}_{Date}$

$A = [(s - r)/s] \times (C/2)$

$A_{adj} = A \times \text{Index Ratio}_{Date}$

$SA = P_{adj} + A_{adj}$

$\text{Index Ratio}_{Date} = \text{Ref CPI}_{Date}/\text{Ref CPI}_{Issue\ Date}$

Example. A 3% 10-year inflation-indexed note was issued July 15, 1996, due July 15, 2006, with interest payments on January 15 and July 15. For a reopening on April 15, 1997, with inflation compensation accruing from July 15, 1996 to April 15, 1997, and accrued interest accruing from January 15, 1997 to April 15, 1997 (90 days), solve for the price per 100 (P) at a real yield, as determined in the reopening auction, of 3.40%. The base index applicable to the issue date of this note is 120 and the reference CPI applicable to April 15, 1997, is 132.

Definitions:

C = 3.00

i = 0.0340

n = 18

r = 91 (April 15, 1997 to July 15, 1997)

s = 181 (January 15, 1997 to July 15, 1997)

$\text{Ref CPI}_{Date} = 132$

$\text{Ref CPI}_{Issue\ Date} = 120$

Resolution:

$\text{Index Ratio}_{Date} = \text{Ref CPI}_{Date}/\text{Ref CPI}_{Issue\ Date} = 132/120 = 1.100$

$$v^n = 1/(1 + i/2)^n = 1/(1 + .0340/2)^{18} = 0.73828296$$

$$a_{n\rceil} = (1 - v^n)/(i/2) = (1 - 0.73828296)/(.0340/2)$$

$$= 15.39512000$$

$$P = \frac{(C/2) + (C/2)a_{n\rceil} + 100v^n}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$$P = \frac{(3/2) + (3/2)(15.39512000) + 100(0.73828296)}{1 + (91/181)(0.0340/2)} - [(181 - 91)/181](3/2)$$

$$P = \frac{1.5 + 23.09268 + 73.828296}{1.00854696} - (90/181)(1.5)$$

$$P = \frac{98.420976}{1.00854696} - 0.745856$$

$$P = 97.586905 - 0.745856$$

$$P = 96.841049$$

$$P = 96.841$$

$$P_{adj} = P \times \text{Index Ratio}_{Date}$$

$$P_{adj} = 96.841 \times 1.100 = 106.5251$$

$$P_{adj} = 106.525$$

$$A = [(181 - 91)/181] \times 3/2 = 0.745856$$

$$A_{adj} = A \times \text{Index Ratio}_{Date}$$

$$A_{adj} = 0.745856 \times 1.100 = 0.820442$$

$$SA = P_{adj} + A_{adj} = 106.525 + 0.820442$$

$$SA = 107.345442$$

*****

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18. Part 356 is amended by adding new Appendixes C and D to read as follows:

Appendix C To Part 356—Investment Considerations

I. Inflation-Indexed Securities

A. Principal and Interest Variability

An investment in securities with principal or interest determined by reference to an inflation index involves factors not associated with an investment in a fixed-principal security. Such factors may include, without limitation, the possibility that the inflation index may be subject to significant changes, that changes in the index may or may not correlate to changes in interest rates generally or with changes in other indices, that the resulting interest may be greater or less than that payable on other securities of similar maturities, and that, in the event of sustained deflation, the amount of the semiannual interest payments, the inflation-adjusted principal of the security, and the value of stripped components, will decrease. However, if at maturity the inflation-adjusted principal is less than a security's par amount, an additional amount will be paid at maturity so that the additional amount plus the inflation-adjusted principal equals the par amount. Regardless of whether or not such an additional amount is paid, interest payments will always be based on the inflation-adjusted principal as of the interest payment date. If a security has been stripped, any such additional amount will be paid at maturity to holders of principal components only. (See § 356.30.)

B. Trading in the Secondary Market

The Treasury securities market is the largest and most liquid securities market in the world. While Treasury expects that there will be an active secondary market for inflation-indexed securities, that market initially may not be as active or liquid as the secondary market for Treasury fixed-principal securities. In addition, as a new product, inflation-indexed securities may not be as widely traded or as well understood as Treasury fixed-principal securities. Lesser liquidity and fewer market participants may result in larger spreads between bid and asked prices for inflation-indexed securities than the bid-asked spreads for fixed-principal securities with the same time to maturity. Larger bid-asked spreads normally result in higher transaction costs and/or lower overall returns. The liquidity of an inflation-indexed security may be enhanced over time as Treasury issues additional amounts or more entities participate in the market.

C. Tax Considerations

Treasury inflation-indexed securities and the stripped interest and principal components of these securities are subject to specific tax rules provided by Treasury regulations issued under sections 1275(d) and 1286 of the Internal Revenue Code of 1986, as amended.

D. Indexing Issues

While the CPI measures changes in prices for goods and services, movements in the CPI that have occurred in the past are not necessarily indicative of changes that may occur in the future.

The calculation of the index ratio incorporates an approximate three-month lag, which may have an impact on the trading price of the securities, particularly during periods of significant, rapid changes in the index.

The CPI is reported by the Bureau of Labor Statistics, a bureau within the Department of Labor. The Bureau of Labor Statistics operates independently of the Treasury and, therefore, Treasury has no control over the determination, calculation, or publication of the index. For a discussion of how the CPI will be applied in various situations, see Appendix B, Section I, Paragraph B. In addition, for a discussion of actions that Treasury would take in the event the CPI is: discontinued; in the judgment of the Secretary, fundamentally altered in a manner materially adverse to the interests of an investor in the security; or, in the judgment of the Secretary, altered by legislation or Executive Order in a manner materially adverse to the interests of an investor in the security, see Appendix B, Section I, Paragraph B.4.

Appendix D to Part 356—Description of the Consumer Price Index

The Consumer Price Index (''CPI'') for purposes of inflation-indexed securities is the non-seasonally adjusted *U.S. City Average All Items Consumer Price Index for All Urban Consumers*, published monthly by the Bureau of Labor Statistics of the Department of Labor. The CPI is a measure of the average change in consumer prices over time in a fixed market basket of goods and services, including food, clothing, shelter, fuels, transportation, charges for doctors' and dentists' services, and drugs.

In calculating the index, price changes for the various items are averaged together with weights that represent their importance in the spending of urban households in the United States. The contents of the market basket of goods and services and the weights assigned to the various items are updated periodically to take into account changes in consumer expenditure patterns.

The CPI is expressed in relative terms in relation to a time base reference period for which the level is set at 100. For example, if the CPI for the 1982–84 reference period is 100.0, an increase of 16.5 percent from that period would be shown as 116.5. The CPI for a particular month is released and published during the following month. From time to time, the CPI is rebased to a more recent base reference period. The base reference period for a particular inflation-indexed security will be provided on the offering announcement for that security.

Further details about the CPI may be obtained by contacting the Bureau of Labor Statistics.

19. Exhibit A to Part 356 is amended by adding a new Section IV to the list of section titles and to the text of Exhibit A to read as follows:

Exhibit A to Part 356—Sample Announcements of Treasury Offerings to the Public

* * * * *

IV. Treasury Inflation-Indexed Note Announcement

* * * * *

IV. TREASURY INFLATION-INDEXED NOTE ANNOUNCEMENT

Embargoed Until 2:30 P.M., October 2, 20XX
CONTACT: Office of Financing, 202/219–3350

Treasury to Auction $5,500 Million of 10-Year Inflation-Indexed Notes

The Treasury will auction $5,500 million of 10-year inflation-indexed notes to raise cash. In addition, there is $7,906 million of publicly-held securities maturing October 15, 20XX.

In addition to the public holdings, Federal Reserve Banks hold $327 million of the maturing securities for their own accounts, which may be exchanged for additional amounts of the new securities.

The maturing securities held by the public include $584 million held by Federal Reserve Banks as agents for foreign and international monetary authorities. Amounts bid for these accounts by Federal Reserve Banks will be added to the offering.

The auction will be conducted in the single-price auction format. All competitive and noncompetitive awards will be at the highest yield of accepted competitive tenders.

Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. This offering of Treasury securities is governed by the terms and conditions set forth in the Uniform Offering Circular (31 CFR Part 356) for the sale and issue by the Treasury to the public of marketable Treasury bills, notes, and bonds.

Details about the new security are given in the attached offering highlights.

Highlights of Treasury Offering to the Public of 10-Year Inflation-Indexed Notes to be Issued October 15, 20XX

October 2, 20XX
Offering Amount: $5,500 million.
Description of Offering:

Term and type of security: 10-year inflation-indexed notes
Series—D–20XX
CUSIP number—912XXX XX X
Auction date—October 9, 20XX
Issue date—October 15, 20XX
Dated date—October 15, 20XX
Maturity date—October 15, 20XX
Interest Rate—Determined based on the highest accepted bid
Real yield—Determined at auction

Interest payment dates: April 15 and October 15.

Minimum bid amount—$1,000
Multiples—$1,000

Accrued interest payable by investor: None.

Premium or discount: Determined at auction.

STRIPS Information:

Minimum amount required—Determined at auction

Corpus CUSIP number—912XXX XX X

STRIPS Information:

Due dates and CUSIP numbers for additional TINTs: 912XXX.

April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X

Submission of Bids:

Noncompetitive bids:—Will be accepted in full up to $5,000,000 at the highest accepted yield.

Competitive bids:

(1) Must be expressed as a real yield with three decimals, e.g., 3.120%.

(2) Net long position for each bidder must be reported when the sum of the total bid amount, at all yields, and the net long position is $_____ billion or greater.

(3) Net long position must be determined as of one half-hour prior to the closing time for receipt of competitive tenders.

Maximum Recognized Bid at a Single Yield—35% of public offering.

Maximum Award—35% of public offering.

Receipt of Tenders:

Noncompetitive tenders: Prior to 12:00 noon Eastern Daylight Saving time on auction day.

Competitive tenders: Prior to 1:00 p.m. Eastern Daylight Saving time on auction day.

Payment Terms: Full payment with tender or by charge to a funds account at a Federal Reserve Bank on issue date.

Indexing Information:

CPI Base Reference Period:—19XX–XX

Ref CPI 10/15/20XX:—XXX.XXXXX

[FR Doc. 96–33396 Filed 12–31–96; 10:08 am]

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Federal Register

Monday
January 6, 1997

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Potato Research; Request for Proposals; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Special Research Grants Program, Potato Research

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice.

SUMMARY: The Cooperative State Research, Education, and Extension Service announces the availability of grant funds and requests proposals for the Special Research Grants Program, Potato Research. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1997 (Public Law 104–180) appropriated funds for special grants for agricultural research (7 U.S.C. 450i(c)). The Special Research Grants Program intends to use $1,134,612 of this appropriation to support potato research that focuses on varietal development/testing.

This notice sets out the objectives for these projects, the eligibility criteria for projects and applicants, the application procedures, and the set of instructions needed to apply for a Potato Research Project grant. To obtain application forms, please contact the Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; USDA/CSREES at (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting forms for the Special Research Grants Program, Potato Research.

DATES: Applications must be received on or before February 7, 1997. Proposals received after February 7, 1997, will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: Dr. James Parochetti, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2220, Washington, D.C. 20250–2220; telephone (202) 401–4354; Internet: jparochetti@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Part I—General Information

A. Legislative Authority

The authority for this program is contained in section 2(c)(1)(B) of the Act of August 4, 1965, Pub. L. No. 89–106, as amended (7 U.S.C. 405i(c)(1)(B)).

B. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable:

(1) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved may be delegated.

(2) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) *Authorized organizational representative* means the president, chief executive officer or functional equivalent of the applicant organization or the official, designated by the president, chief executive officer or functional equivalent of the applicant organization, who has the authority to commit the resources of the organization.

(4) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) *Department or USDA* means the United States Department of Agriculture.

(6) *Grantee* means the entity designated in the grant award document as the responsible legal entity to which a grant is awarded.

(7) *Peer review panel* means a group of experts qualified by training and experience in particular fields to give expert advice on the scientific and technical merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

(8) *Principal Investigator* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project. Note that a proposal may have multiple secondary co-principal investigators but only one principal investigator.

(9) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (2) above.

(10) *Project* means the particular activity within the scope of the program supported by a grant award.

(11) *Project period* means the total length of time that is approved by the Administrator for conducting the research project, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(12) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

C. Eligibility

Proposals may be submitted by State agricultural experiment stations, land-grant colleges and universities, research foundations established by land-grant colleges and universities, colleges and universities receiving funds under the Act of October 10, 1962 (16 U.S.C. 582a et seq.), and accredited schools or colleges of veterinary medicine. The proposals must be directly related to potato varietal development/testing. Although an applicant and a proposal may be considered eligible based on the eligibility requirements, there are factors which may exclude an applicant or a proposal from receiving Federal financial and nonfinancial assistance and benefits under this program (e.g., debarred or suspended individual, it is determined that an applicant is not responsible based on submitted organizational management information).

Part II—Program Description

A. Purpose of the Program

Proposals are invited for competitive grant awards under the Special Research Grants Program, Potato Research for Fiscal Year 1997. The purpose of this grant program is to support potato research that focuses on varietal development/testing. As used herein, varietal development/testing is research using traditional and biotechnological genetics to develop improved potato variety(s). Aspects of evaluation, screening and testing must support or compliment the development of improved varieties. This program is administered by the Cooperative State Research, Education, and Extension Service (CSREES) of USDA.

B. Available Funds and Award Limitations

Funds will be awarded on a competitive basis to support regional research projects that are composed of potato research that focuses on varietal development/testing. The total amount of funds available in Fiscal Year 1997 for support of this program is approximately $41,134,612. Each proposal submitted in Fiscal Year 1997 shall request funding for a period not to exceed a period of one year. Funding for additional years will depend upon the availability of funds and progress toward objectives. Fiscal Year 1997 awardees would need to recompete in future years for additional funding.

Under this program, and subject to the availability of funds, the Secretary may make grant awards available for up to five years, for the support of research projects to further the program.

In addition, pursuant to Section 716(b) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, Pub. L. No. 104–180, in the case of any equipment or products that may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Part III—How to Obtain Application Materials

Copies of this solicitation and the Application Kit may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; Washington DC 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the Special Research Grants Program, Potato Research.

These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov which states that you want a copy of the application materials for the Fiscal Year 1997 Special Research Grants Program, Potato Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Part IV—Content of a Proposal

All applications should be typed on 8½″x11″ white paper, single-spaced, and on one side of the page only. It would be helpful if the name of the submitting institution were typed at the top of each page for easy identification in the event the proposal becomes disassembled while being reviewed. All proposals must contain the following forms and narrative information to assist CSREES personnel during the review and award processes:

A. ''Application for Funding'' (Form CSREES–661)

Each copy of each grant proposal must contain an ''Application for Funding.'' One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing principal investigator(s)/project director(s) and the endorsement of the authorized organizational representative who possesses the necessary authority to commit the organization's time and other relevant resources to the project. Any proposed principal investigator or co-principal investigator whose signature does not appear on Form CSREES–661 will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the ''Application for Funding'' form.

Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately. The following items are highlighted as having a high potential for errors or misinterpretations:

1. *Title of Project (Block 6).* The title of the project must be brief (80-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as ''investigation of '' or ''research on'' should not be used.

2. *Program to Which You Are Applying (Block 7).* ''Special Research Grants Program, Potato Research'' should be inserted in this block. You may ignore the reference to a Federal Register announcement.

3. *Program Area and Number (Block 8).* The name of the program area, ''Potato Research,'' should be inserted in this block. You should ignore references to the program number and the Federal Register announcement.

4. *Type of Award Request (Block 13).* If the project being proposed is a renewal of a grant that has been supported under the same program during the previous five fiscal years, it is important that you show the latest grant number assigned to the project by CSREES.

5. *Principal Investigator(s) (Block 15).* The designation of excessive numbers of co-principal investigators creates problems during final review and award processes. Listing multiple co-principal investigators, beyond those required for genuine collaboration, is therefore discouraged.

6. *Type of Performing Organization (Block 18).* A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 Land-Grant institution but the work will be performed in a department, laboratory, or other organizational unit of an agricultural experiment station, box ''03'' should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI/PD #1 in Block 15.a.

7. *Other Possible Sponsors (Block 22).* List the names or acronyms of all other public or private sponsors including other agencies within USDA and other programs funded by CSREES to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program manager as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided.

B. Table of Contents

For consistency and ease of locating information, each proposal submitted should contain a Table of Contents.

C. Objectives

Clear, concise, complete, and logically arranged statement(s) of the specific aims of the proposed effort must be included in all proposals. For renewal applications, a restatement of the objectives outlined in the active grant also should be provided.

D. Progress Report

If the proposal is a renewal of an existing project supported under the same program, include a clearly identified summary progress report describing the results to date. The progress report should contain the following information:

1. A comparison of actual accomplishments with the goals established for the active grant;
2. The reasons for slippage if established goals were not met;
3. Other pertinent information, including, when appropriate, cost analysis and explanation of cost overruns or unexpectedly high unit costs.

E. Procedures

The procedures or methodology to be applied to the proposed effort should be explicitly stated. This section should include but not necessarily be limited to:

1. A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;
2. Techniques to be employed, including their feasibility;
3. Kinds of results expected;
4. Means by which data will be analyzed or interpreted;
5. Pitfalls which might be encountered; and
6. Limitations to proposed procedures.

F. Justification

This section should include in-depth information on the following, when applicable:

1. Estimates of the magnitude of the problem and its relevance to ongoing State-Federal food and agricultural research programs;
2. Importance of starting the work during the current fiscal year, and
3. Reasons for having the work performed by the proposing institution.

G. Cooperation and Institutional Units Involved

Cooperative and multi-state applications are encouraged. Identify each institutional unit contributing to the project. Identify each state in a multiple-state proposal and designate the lead state. When appropriate, the project should be coordinated with the efforts of other state and/or national programs. Clearly define the roles and responsibilities of each institutional unit of the project team, if applicable.

H. Literature Review

A summary of pertinent publications with emphasis on their relationship to the effort being proposed should be provided and should include all important and recent publications from other institutions, as well as those from the applicant institution. The citations themselves should be accurate, complete, and written in an acceptable journal format.

I. Current Work

Current unpublished institutional activities to date in the program area under which the proposal is being submitted should be described.

J. Facilities and Equipment

All facilities which are available for use or assignment to the project during the requested period of support should be reported and described briefly. Any potentially hazardous materials, procedures, situations, or activities, whether or not directly related to a particular phase of the effort, must be explained fully, along with an outline of precautions to be exercised. Examples include work with toxic chemicals and experiments that may put human subjects or animals at risk.

All items of major instrumentation available for use or assignment to the proposed project also should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the project to a successful conclusion should be listed, including dollar amounts and, if funds are requested for their acquisition, justified.

K. Project Timetable

The proposal should outline all important phases as a function of time, year by year, for the entire project, including periods beyond the grant funding period.

L. Personnel Support

All senior personnel who are expected to be involved in the effort must be clearly identified. For each person, the following should be included:

1. An estimate of the time commitment involved;
2. Vitae of the principal investigator(s), senior associate(s), and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. The vitae should be limited to two (2) pages each in length, excluding publications listings; and
3. A chronological listing of the most representative publications during the past five years. This listing must be provided for each professional project member for whom a vita appears. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

M. Collaborative and/or Subcontractual Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with other individuals or organizations such arrangements should be fully explained and justified. In addition, evidence should be provided that the collaborators involved have agreed to render these services. A letter of intent from the individual or organization will satisfy this requirement. For purposes of proposal development, informal day-to-day contacts between key project personnel and outside experts are not considered to be collaborative arrangements and thus do not need to be detailed.

All anticipated subcontractual arrangements also should be explained and justified in this section. A proposed statement of work and a budget for each arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (e.g., requests for outside laboratory analyses) are excluded from this requirement.

If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR Part 3019, USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR Part 3015.205, USDA Uniform Federal Assistance Regulations, flow down to subrecipients. In addition, required clauses from 7 CFR Part 3019 Sections 40–48 (''Procurement Standards'') and Appendix A (''Contract Provisions'') should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension. This latter requirement is explained further under subsection ''Q'' of these guidelines.

N. ''Budget'' (Form CSREES–55)

Each proposal must contain a detailed budget for up to 12 months of support. Funds may be requested under any of the categories listed on the budget form, provided that the item or service for which support is sought is allowable under the enabling legislation and the applicable Federal cost principles and can be identified as necessary and reasonable for the successful conduct of the project.

The following guidelines should be used in developing your proposal budget(s):

1. *Salaries and Wages.* Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution and with OMB Circular No. A–21, Cost Principles for Educational Institutions. Administrative and Clerical salaries are normally classified as indirect costs. (See Item 9. below.) However, if requested under A.2.e., they must be fully justified.

Note: In accordance with Section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (91 Stat. 981), as amended, tuition remission is not an allowable cost under Section 2(c)(1)(B) projects, and no funds will be approved for this purpose.

2. *Fringe Benefits.* Funds may be requested for fringe benefit costs if the usual accounting practices of your institution provide that institutional contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project. See OMB Circular No. A–21, Cost Principles for Educational Institutions, for further guidance in this area.

3. *Nonexpendable Equipment.* Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost. This applies to revised budgets, as the equipment item(s) and amount(s) may change.

Note: No funds will be awarded for the purchase or installation of fixed equipment.

In addition, pursuant to Section 716(b) of Pub. L. No. 104–180 (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997), in the case of any equipment or product that may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Note: For projects awarded under the authority of Sec. 2(c)(1(B) of Pub. L. No. 89–106, no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

4. *Materials and Supplies.* The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs.

5. *Travel.* The type and extent of travel and its relationship to project objectives should be described briefly and justified. If foreign travel is proposed, the country to be visited, the specific purpose of the travel, a brief itinerary, inclusive dates of travel, and estimated cost must be provided for each trip. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR Part 3015.205(b)(4) for further guidance.

6. *Publication Costs/Page Charges.* Anticipated costs of preparing and publishing results of the research being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the grant.

7. *Computer (ADPE) Costs.* Reimbursement for the costs of using specialized facilities (such as a university- or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

8. *All Other Direct Costs.* Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified on a separate sheet of paper attached to Form CSREES–55. This applies to revised budgets, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, charges for consulting services, and fees for necessary laboratory analyses. You are encouraged to consult the ''Instructions for Completing Form CSREES–55, Budget,'' of the Application Kit for detailed guidance relating to this budget category.

9. *Indirect Costs.* Pursuant to Section 1473 of the National Agriculture Research, Extension, and Teaching Policy Act of 1977 (91 Stat. 981), indirect costs are not allowable costs under Section 2(c)(1)(B) projects, and no funds will be approved for this purpose. Further, costs that are a part of an institution's indirect cost pool (e.g., administrative or clerical salaries) may not be reclassified as direct costs for the purpose of making them allowable.

10. *Cost-sharing.* Cost-sharing is encouraged; however, cost-sharing is not required nor will it be a direct factor in the awarding of any grant.

O. ''Current and Pending Support'' (Form CSREES–663)

All proposals must contain Form CSREES–663 listing this proposal and any other current or pending support to which keep project personnel have committed or are expected to commit portions of their time, whether or not salary support for the person(s) involved is included in the budget. This proposal should be identified in the pending section of this form.

P. ''Assurance Statement(s)'' (Form CSREES–662)

A number of situations encountered in the conduct of projects require special assurance, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will include the following:

1. *Recombinant DNA or RNA Research.* As stated in 7 CFR Part 3015.205(b)(3), all key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. If your project proposes to use recombinant DNA or RNA techniques, the application must so indicate by checking the ''yes'' box in Block 19 of Form CSREES–661 (''Application for Funding'') and by completing Section A of Form CSREES–662. For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

2. *Animal Care.* Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1996, as amended (7 U.S.C. 2131 et seq.) and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals or activities, you must check the ''yes'' box in Block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

3. *Protection of Human Subjects.* Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations established by the Department under 7 CFR Part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the ''yes'' box in Block 21 of Form CSREES–661 and

complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

Q. Certifications

Note that by signing the Application for Funding form the applicant is providing the required certifications set forth in 7 CFR Part 3017, as amended by 61 FR 250, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in this application package for informational purposes only. These forms should not be submitted with your proposal since by signing the Form CSREES–661 your organization is providing the required certifications.

If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a Form AD–1048 to the grantee organization for retention in their records. This form should not be submitted to USDA.

R. Compliance With the National Environmental Policy Act

As outlined in 7 CFR Part 3407 (CSREE's implementing regulations of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.)), environmental data or documentation for the proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA, which includes determining whether the project requires an Environmental Assessment or an Environmental Impact Statement or whether it can be excluded from this requirement on the basis of several categorical exclusions. To assist CSREES in this determination, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one of the exclusions.

Form CSREES–1234, ''NEPA Exclusions Form'' (copy in Application Kit), indicating the applicant's opinion of whether or not the project falls within one or more categorical exclusions, along with supporting documentation, must be included in the proposal. The information submitted in association with NEPA compliance should be identified in the Table of Contents as ''NEPA Considerations'' and Form CSREES–1234 and supporting documentation should be placed after the Form CSREES–661, ''Application for Funding,'' in the proposal.

The following Categorical Exclusions apply:

(1) USDA Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSREES Categorical Exclusions (7 CFR 3407.6(a)(2))

Based on previous experience, the following categories of CSREES actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

Even though the applicant considers that a proposed project may fall within a categorical exclusion, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

S. Additions to Project Description

Each project description is expected to be complete in itself. However, in those instances in which the inclusion of additional information is necessary, the number of copies submitted should match the number of copies of the application requested in Part V(A) below. Each set of such materials must be identified with the title of the project and the name(s) of the principal investigator(s)/project director(s) as they appear on the ''Application for Funding.'' Examples of additional materials include photographs that do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the body of the proposal.

T. CRIS Forms AD–416 and AD–417

In order to document research projects in the Current Research Information System's (CRIS) data base, CSREES requires the submission of the CRIS Forms AD–416 and AD–417 prior to the release of grant funds. One completed copy of each form must be submitted with the original pen-and-ink copy of the proposal. Fields 1, 19, 20, 21, 28, 29, 30 and ''Duration'' should be left blank, as these will be completed by CSREES upon award. Appropriate institutional signatures on Form AD–416 should be obtained prior to submission to CSREES. CSREES will not release funds for the proposed award until the completed CRIS forms are received; therefore, prompt action on this requirement is essential for the initiation of the project.

Part V—Submission of a Proposal

A. What to Submit

An original and three copies of each grant proposal must be submitted. Proposals should contain all requested information when submitted. Each proposal should be typed on 8½″x11″ white paper, single-spaced, and on one side of the page only. Please note that the text of the proposal should be prepared using no type smaller than 12 point font size and one-inch margins. Staple each copy of the proposal in the upper left-hand corner. Please do not bind copies of the proposal.

B. Where and When To Submit

Proposals must be received on or before February 7, 1997, and submitted to the following mailing address: Proposal Services Unit, Grants

Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, Washington, D.C. 20250–2245, Telephone (202) 401–5048.

Note: Hand-delivered proposals or those delivered by overnight express service should be brought to the following address: Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; CSREES/USDA; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. The telephone number is (202) 401–5048.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this acknowledgment will contain a proposal identification number. Once your proposal has been assigned an identification number, please cite that number in future correspondence.

Part VI—Selection Process and Evaluation Criteria

A. Selection Process

Applicants should submit fully developed proposals that meet all the requirements set forth in this request for proposals.

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure that it meets the requirements as set forth in this request for proposals. Second, proposals that meet these requirements will be technically evaluated by a review panel.

The individual panel members will be selected from among those persons recognized as specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of the proposals being reviewed. The individual views of the panel members will be used to determine which proposals should be recommended to the Administrator (or his designee) for final funding decisions.

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Care will be taken to avoid actual and potential conflicts of interest among reviewers. Evaluations will be confidential to USDA staff members, peer reviewers, and the proposed principal investigator(s), to the extent permitted by law.

B. Evaluation Criteria

1. Overall scientific and technical quality of the proposal—10 points.

2. Scientific and technical quality of the approach—10 points.

3. Revelance and importance of proposed research to solution of specific areas of inquiry—30 points.

4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment; the cooperation and involvement of multiple institutions or states—50 points.

Part VII—Supplementary Information

A. Access to Peer Review Information

After final decisions have been announced, CSREES will, upon request, inform the principal investigator of the reasons for its decision on a proposal.

B. Grant Awards

1. General: Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program area and procedures set forth in this request for proposals. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds granted by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (Parts 3015, 3018, and 3019 of 7 CFR).

2. Organizational Management Information: Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant if such information has not been provided previously under this or another program for which the sponsoring agency, CSREES, is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the sponsoring agency as part of the pre-award process.

3. Grant Award Document and Notice of Grant Award: The grant award document shall include at a minimum the following:

a. Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under this program;

b. Title of Project;

c. Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

d. Grant identification number assigned by the Department;

e. Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

f. Total amount of Departmental financial assistance approved by the Administrator during the project period;

g. Legal authority(ies) under which the grant is awarded;

h. Approved budget plan for categorizing project funds to accomplish the stated purpose of the grant award; and

i. Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

4. Notice of Grant Award: The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

5. CSREES will award standard grants to carry out this program. A standard grant is a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without any guarantee of additional support at a future date.

C. Use of Funds; Changes

Unless otherwise stipulated in the terms and conditions of the grant award, the following provisions apply:

1. Delegation of Fiscal Responsibility: The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

2. Changes in Project Plans:

a. The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer for a final determination.

b. Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Authorized Departmental Officer prior

to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

c. Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

d. Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Authorized Departmental Officer prior to effecting such transfers.

e. Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the Authorized Departmental Officer determines may be necessary to complete or fulfill the purposes of an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the Authorized Departmental Officer, unless prescribed otherwise in the terms and conditions of a grant.

f. Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal costs principles, Departmental regulations, or in the grant award.

D. Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR 1.1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017, as amended by 61 FR 250—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3051—USDA implementation of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., this 30th day of December 1996.

Colien Hefferan,

Associate Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–157 Filed 1–3–97; 8:45 am]

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January 6, 1997

Part V

Department of Agriculture

Special Research Grants Program, Pest Management Alternatives Research; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Pest Management Alternatives Research; Fiscal Year 1997; Solicitation of Proposals

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice

PURPOSE: Proposals of regional research significance are invited for competitive grant awards under the Special Research Grants Program-Pest Management Alternatives Research (the program) for fiscal year (FY) 1997. This program implements the Memorandum of Understanding (MOU) between the U.S. Department of Agriculture (USDA) and the U.S. Environmental Protection Agency (USEPA) signed August 15, 1994, and amended April 18, 1996, which establishes a coordinated framework for collaborative efforts to develop and implement activities that will make alternative pest management materials available to agricultural producers when regulatory action by the USEPA or voluntary cancellation by the registrant results in the unavailability of certain agricultural pesticides or pesticide uses. In this MOU, the USDA and USEPA agreed to: (1) cooperate in providing for agricultural pest management that is conducted in the most environmentally-sound manner possible, with sufficient pest management alternatives to reduce risks to human health and the environment, to reduce the incidence of pest resistance to pesticides and to ensure economical agricultural production, and (2) cooperate in establishing a process to conduct the research, technology transfer and registration activities necessary to ensure adequate pest management alternatives are available to meet important agricultural needs for situations in which regulatory action would result in pest management problems. The goal of this program is to develop alternatives for critical needs to insure that farmers, foresters, ranchers, and urban pest management specialists and other users have reliable methods of managing pest problems. Emphasis is placed on current and potential loss of select pesticides due to increased worker and food safety and environmental concerns leading to regulatory review and actions, and the loss of pest management practices due to performance failures such as those caused by genetic changes in pests.

Authority

The program is administered by the USDA Cooperative State Research, Education, and Extension Service (CSREES). The authority is contained in section 2(c)(1)(A) of the Act of August 4, 1995, Pub. L. No. 89–106, as amended (7 U.S.C. 450i(c)(1)(A)). Under this program, subject to the availability of funds, the Secretary may make grants, for periods not to exceed five years, to State Agricultural Experiment Stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals for the purpose of conducting research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States.

Proposals from scientists affiliated with non-United States organizations are not eligible for funding nor are scientists who are directly or indirectly engaged in the registration of pesticides for profit; however, their collaboration with funded projects is encouraged.

Available Funding

Subject to the availability of funds, the amount available for support of this program in FY 1997 is $1,516,865. Proposals should be for no more than a two-year period.

Puruant to Section 712 of Pub. L. No. 104–180, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997 (''1997 Appropriations Act''), CSREES may not use funds available in FY 1997 to pay indirect cost on research grants awarded competitively that exceed 14 percent of the total Federal funds provided under each award.

In addition, pursuant to Section 716(b) of the 1997 Appropriations Act, in the case of any equipment or product that may be authorized to be purchased with grant funds provided under this program, entities are encouraged to use such funds to purchase only American-made equipment or products.

Applicable Regulations

This Program is subject to the administrative provisions for the Special Research Grants Program found in 7 CFR Part 3400 (56 FR 58147, November 15, 1991), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. Several other Federal statutes and regulations apply to grant proposals considered for review or to grants awarded under this Program. These include, but are not limited to:

7 CFR Part 3019—USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations implementing OMB Circular A–110; and

7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions.

This competitive grants program addresses the need for development of pest management alternatives to provide for production of abundant and affordable food supplies, to increase the availability of biological and cultural methods as pest management options, and to meet the policy goals set forth in sections 1439 and 1484 of the Food, Agriculture, Conservation and Trade Act of 1990, Pub. L. No. 101–624. These activities pertain to pesticides identified for possible regulatory action under section 102 of the Food Quality Protection Act of 1996, Pub. L. 104–170, that amends the Federal Insecticide, Fungicide and Rodenticide Act.

Funding Categories for Fiscal Year 1997

The following priority areas have been identified by the USDA and USEPA through interaction with State Agricultural Experiment Station research and extension faculty via the National Agricultural Pesticide Impact Assessment Program and state and regional Integrated Pest Management (IPM) program. In addition, commodity groups and producers of affected crops were involved in the identification of project areas. Needs were identified to address replacement technologies for pesticides under current and potential regulatory review or where pesticides are unavailable due to voluntary cancellation by the registrant and for which producers and other users do not have effective alternatives or where regulatory actions trigger pest resistance problems that limit IPM options. Replacements for methyl bromide are not addressed by this request for proposals. The identified priority areas for FY 1997 projects are:

Note: Projects dealing with other crop and pest combinations will not be considered. However, proposals may address the development of an IPM system that will result in economic management of the targeted crop/pest combination.

Commodity	Pests
Alfalfa	Aphids.
Apples	Mites.
Apricots	Mites.

Commodity	Pests
Artichokes	Aphids.
Blackberry/raspberry	Pear psylla.
	Rhizopus.
	Rust
Cabbage	Thrips.
	Mites.
Carrot	Dodder.
	Mites.
	Fungal leaf diseases.
Cole crops	Aphids.
Collards	Alternaria.
	Anthracnose.
	Cercospora.
Cranberry	Mites.
Cruciferous greens	Alternaria.
	White rust.
Grape	Grape phlloxera.
	Black vine weevil.
Leafy greens	Aphids.
Leek/shallot	Alternaria.
	Botrytis.
	Downy mildew.
Lemon/tangerine	Pale color.
Lettuce	Aphids.
Millet	Annual grasses.
Peaches	Mites.
Pecans	Yellow pecan aphid.
Peppermint/spearmint	Weeds.
Plums/prunes	Mites.
	Brown rot.
Pumpkin	Pigweed.
	Nightshade.
Radicchio	Aphids.
Rice	Rice water weevil.
Sorghum	Chinch bug.
	Broadleaf weeds.
Spinach	Fungal leaf diseases.
Sugar cane	Weeds.
	Aphids.
Sweet potato	Weeds.

The proposal should address:

(1) Identification of the pest management problem, estimation of economic impact, and documentation of the pest management problem and losses associated with the pest(s).

(2) Analysis of the availability of options and their applicability as possible solutions including their compatibility with integrated management systems.

(3) Explicit documentation is needed to qualify the project emphasizing environmental issues, human safety, or resistance management concerns which make the present management options impractical.

(4) A summary of past research or extension activities that demonstrate the practicability of the proposed alternative(s).

(5) A detailed plan for the research, education and technology transfer to achieve the alternative development and field implementation with identified milestones.

(6) An analysis of the durability of the proposed option and the technologic and economic feasibility of the proposed solution.

(7) Demonstrated growers' involvement in the identification of potential approaches to solutions and the opportunity for public/private partnerships and matching resources from grower or commodity groups.

(8) An overview of the availability of natural controls (biological, cultural, and host resistance) as solutions or partial solutions to the pest management problem and compatibility with IPM or crop management systems. This Program will not support basic plant breeding or other tactics where significant progress toward implementation cannot be accomplished within two years. However, this program will support research on the incorporation of pest resistant cultivars into a production system.

(9) Where registrations of new management options by state and Federal agencies are required, the proposal should describe the collaborative actions being taken with regulators which lead toward registration and use of Good Laboratory Practices (GLP).

(10) Demonstrate appropriate budget and collaborative funding to accomplish the proposed project.

All projects that involve a new registration of a product or expanded labelling must be done in compliance with GLP Standards (40 CFR Part 160). IR–4 coordinators are available in every state to advise or assist with GLP and registration requirements. Projects involving collaborative registration and funding are encouraged.

Proposal Evaluation

Proposals will be evaluated by the Administrator of CSREES assisted by a peer panel with IPM expertise. CSREES seeks proposals which address the following issues: (1) A significant reduction of risk of human health or the environment that would result; (2) no current viable alternatives and documented significant potential losses; (3) significant producer involvement; (4) natural controls as partial or effective solutions to pest management problems; and (5) solutions capable of being rapidly brought to bear on critical problems. Registration considerations must be addressed when they are required for solution implementation.

1. Executive Summary—10 points

(An evaluation of how well the proposal summary can be understood by a diverse audience of university personnel, producers, various public and private groups, budget staff and the general public.)

2. Appropriateness of the Budget—5 points

(An evaluation of appropriate and detailed budget request and collaborative funding to accomplish the proposed project; collaborative arrangements clearly documented.)

3. Problem Statement, Background and Rationale—15 points

(Includes the evaluation of significant reduction of risk to human health or the environment; no viable alternatives presently exist; and significant potential losses would occur without the alternative(s) being developed under this proposal.)

4. Research, Education & Technology Transfer Plan—40 points

(In addition to the evaluation of a detailed plan for research, education, and technology transfer and summary of past research or extension activities that demonstrate the practicability of the proposed alternative(s), includes the evaluation of whether the proposed solutions could rapidly be brought to bear on critical problems and registration consideration are addressed where they are required for solution implementation.)

5. Producer Involvement—15 points

(Evaluation includes growers' involvement in the identification of potential approaches to solutions and the opportunity for public/private partnerships and matching resources from grower or commodity groups.)

6. Professional Competence of the Project Team—5 points

7. Integration of Natural Control Solutions—10 points

(Includes the evaluation of natural controls as partial or effective solutions to the pest management problems being addressed and an analysis of the durability of the proposed option and the technologic and economic feasibility of the proposed solution.)

Programmatic Contact

For additional information on the Program, please contact; Dr. Michael Fitzner, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2220, Washington, D.C. 20250–2220; Telephone: (202) 401–4939; Fax Number: (202) 401–4888; E-mail address: mfitzner@reeusda.gov.

How to Obtain Application Materials

Copies of this solicitation, the administrative provisions for the Program (7 CFR Part 3400), and the

Application Kit, which contains required forms, certifications, and instructions for preparing and submitting applications for funding, may be obtained by contacting: Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, Washington, D.C. 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the Special Research Grants Program, Pest Management Alternatives Research.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psh@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 1997 Special Research Grants Program, Pest Management Alternatives Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Proposal Format

Members of review committees and the staff expect each project description to be complete in itself. The administrative provisions governing the Special Research Grants Program, 7 CFR Part 3400, set forth instructions for the preparation of grant proposals. The following requirements deviate from those contained in section 3400.4(c). The following provisions of this solicitation shall apply.

Proposals submitted to the Program should address the described criteria. Each proposal should provide a detailed plan for the research, education and technology transfer required to implement the alternative solution in the field. Involvement of growers or other users in the project is essential and should be clearly identified.

Proposals should adhere to the following format: items 3 through 6 should not exceed 12 single spaced/single-sided pages altogether, using no type less than 12 point (10 cpi) font size with one-inch margins. The pages should be numbered.

(1) *Application for Funding (Form CSREES–661).* All full proposals submitted by eligible applicants should contain an Application for Funding, Form CSREES–661, which must be signed by the proposed principal investigator(s) and endorsed by the cognizant Authorized Organizational Representative who possesses the necessary authority to commit the applicant's time and other relevant resources. Principal investigators who do not sign the full proposal cover sheet will not be listed on the grant document in the event an award is made. The title of the proposal must be brief (80-character maximum), yet represent the major emphasis of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible. In addition, phrases such as ''investigation of'' or ''research on'' should not be used.

(2) *Executive Summary.* Describe the project in terms that can be understood by a diverse audience of university personnel, producers, various public and private groups, budget staff, and the general public. This should be on a separate page, no more than one page in length and have the following format: Name(s) of principal investigator(s) and institutional affiliation, project title, key words and project summary. A computer disc indicating the word processing program used and the file name for the Executive Summary should be submitted with the original copy of the proposal.

(3) *Problem Statement.* Identify the pest management problem addressed, its significance and options for solution. Define the production area addressed by the proposed solution and the potential applicability to other production regions.

(4) *Rationale and Significance.* Provide information on the basis and rationale for the proposed project. Compatibility with current IPM and crop production practices, technologic economic feasibility and potential durability should be addressed. Explicit documentation is needed to qualify the project emphasizing environmental issues, human safety, or resistance management concerns that make present management options impractical.

(5) *Research, Education and Technology Transfer Plan.* Provide a detailed plan with milestones identified.

(6) *Producer Involvement.* Provide information on producer or other user involvement in identification of the proposed solution and involvement in implementing the proposed solution.

(7) *Facilities and Equipment.* All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully conclude the proposed project should be listed with the amount for each item.

(8) *Collaborative Arrangements.* If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Evidence (i.e., letters of intent) should be provided to assure peer reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

(9) *Personnel Support.* To assist peer reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be clearly identified. For each principal investigator involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Curriculum vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, e.g., educational, employment and professional history, and honors and awards. Unless pertinent to the project, to personal status, or to the status of the organization, meetings attended, seminars given, or personal data such as birth date, martial status, or community activities should not be included. Each vitae shall be no more than two pages in length, excluding the publication lists. USDA reserves the option of not forwarding for further consideration a proposal in which each vitae exceeds the two-page limit; and

(iii) Publication List(s). A chronological list of all publications in referred journals during the past five years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

(10) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, Form CSREES–55, along with instructions for completion, is included in the Application Kit and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested may be identified as

necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute. However, the recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14 percent of total Federal funds awarded. This limitation also applies to the recovery of indirect costs by any subawardee or subcontractor, and should be reflected in the subrecipient budget.

Note: For projects awarded under the authority of Sec. 2(c)(1)(A) of Pub. L. No. 89–106, no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

(11) *Research Involving Special Considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If any such situation is anticipated, the proposal must so indicate. It is expected that a significant number of proposals will involve the following:

(i) *Recombinant DNA and RNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines established by the National Institutes of Health entitled, ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. The Application Kit contains a form which is suitable for such certification of compliance (Form CSREES–662).

(ii) *Experimental vertebrate animal care.* The responsibility for the humane care and treatment of any experimental vertebrate animal, which has the meaning as ''animal'' in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any project supported with grant funds rests with the performing organization. In this regard, all key personnel associated with any supported project and all endorsing officials of the proposed performing entity are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 et seq.) and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR Parts 1, 2, 3, and 4.

The applicant must submit a statement certifying that the proposed project is in compliance with the aforementioned regulations, and that the proposed project is either under review by or has been reviewed and approved by an Institutional Animal Care and Use Committee. The Application Kit contains a form which is suitable for such certification (Form CSREES–662).

(iii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any proposed project supported with grant funds provided by USDA rests with the performing entity. Regulations have been issued by USDA under 7 CFR Part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the project plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Application Kit contains a form which is suitable for such certification (Form CSREES–662).

(12) *Current and Pending Support.* All proposals must list any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for the person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the Administrator of CSREES for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The Application Kit contains a form which is suitable for listing current and pending support (Form CSREES–663).

Note: This proposal should be listed in the pending section of the form.

(13) *Additions to Project Description.* The Administrator of CSREES, the members of peer review groups, and the relevant program staff expect each project description to be complete while meeting the page limit established in this section (Proposal Format). However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are deemed to be unsuitable for inclusion in the text of the proposal), then 14 copies of the materials should be submitted. Each set of such materials must be identified with the name of the submitting organization, and the name(s) of the principal investigator(s). Information may not be appended to a proposal to circumvent page limitations prescribed for the project description. Extraneous materials will not be used during the peer review process.

(14) *Organizational Management Information.* Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant for this Program if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. USDA will contact an applicant to request organizational management information once a proposal has been recommended for funding.

Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR Part 3407 (the CSREES regulations implementing NEPA), the environmental data or documentation for any proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. In some cases, however, the preparation of environmental data or documentation may not be required. Certain categories of actions are excluded from the requirements of NEPA. The USDA and CSREES exclusions are listed in 7 CFR 1b.3 and 7 CFR 3407.6, respectively.

In order for CSREES to determine whether any further action is needed with respect to NEPA (e.g., preparation of an environmental assessment (EA) or environmental impact statement (EIS)), pertinent information regarding the possible environmental impacts of a proposed project is necessary; therefore, the National Environmental Policy Act Exclusions Form (Form CSREES–1234) provided in the Application Kit must be included in the proposal indicating whether the applicant is of the opinion that the project falls within one or more of the categorical exclusions. Form CSREES–1234 should follow Form CSREES–661, Application for Funding, in the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an EA or an EIS is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

Proposal Submission

What To Submit

An original and 14 copies of a proposal must be submitted. Each copy of each proposal must be stapled securely in the upper left-hand corner (DO NOT BIND). All copies of the proposal must be submitted in one package.

Where and When To Submit

Proposals must be received on or before February 26, 1997. Proposals sent by First Class mail must be sent to the following address: Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, Washington, D.C. 20250–2245, Telephone: (202) 401–5048.

Proposals that are delivered by Express mail, a courier service, or by hand must be submitted to the following address (note that the zip code differs from that shown above): Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street, SW, Washington, D.C. 20024; Telephone: (202) 401–5048.

Supplementary Information

For reasons set forth in the final rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Action of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., on this 30th day of December 1996.

Colien Hefferan,

Associate Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–159 Filed 1–3–97; 8:45 am]

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FEDERAL REGISTER PAGES AND DATES, JANUARY

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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§§ 1.170–1.300	(869–028–00087–8)	24.00	Apr. 1, 1996
§§ 1.301–1.400	(869–028–00088–6)	17.00	Apr. 1, 1996
§§ 1.401–1.440	(869–028–00089–4)	31.00	Apr. 1, 1996
§§ 1.441-1.500	(869-028-00090-8)	22.00	Apr. 1, 1996
§§ 1.501–1.640	(869–028–00091–6)	21.00	Apr. 1, 1996
§§ 1.641–1.850	(869–028–00092–4)	25.00	Apr. 1, 1996
§§ 1.851–1.907	(869–028–00093–2)	26.00	Apr. 1, 1996
§§ 1.908–1.1000	(869–028–00094–1)	26.00	Apr. 1, 1996
§§ 1.1001–1.1400	(869–028–00095–9)	26.00	Apr. 1, 1996
§§ 1.1401–End	(869–028–00096–7)	35.00	Apr. 1, 1996

Title	Stock Number	Price	Revision Date
2–29	(869–028–00097–5)	28.00	Apr. 1, 1996
30–39	(869–028–00098–3)	20.00	Apr. 1, 1996
40–49	(869–028–00099–1)	13.00	Apr. 1, 1996
50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
300–499	(869–028–00101–7)	25.00	Apr. 1, 1996
500–599	(869–028–00102–5)	6.00	[4] Apr. 1, 1990
600–End	(869–028–00103–3)	8.00	Apr. 1, 1996
27 Parts:			
1–199	(869–028–00104–1)	44.00	Apr. 1, 1996
200–End	(869–028–00105–0)	13.00	Apr. 1, 1996
28 Parts:			
1-42	(869–028–00106–8)	35.00	July 1, 1996
43-end	(869-028-00107-6)	30.00	July 1, 1996
29 Parts:			
0–99	(869–028–00108–4)	26.00	July 1, 1996
100–499	(869–028–00109–2)	12.00	July 1, 1996
500–899	(869–028–00110–6)	48.00	July 1, 1996
900–1899	(869–028–00111–4)	20.00	July 1, 1996
1900–1910 (§§ 1900 to 1910.999)	(869–028–00112–2)	43.00	July 1, 1996
1910 (§§ 1910.1000 to end)	(869–028–00113–1)	27.00	July 1, 1996
1911–1925	(869–028–00114–9)	19.00	July 1, 1996
1926	(869–028–00115–7)	30.00	July 1, 1996
1927–End	(869–028–00116–5)	38.00	July 1, 1996
30 Parts:			
1–199	(869–028–00117–3)	33.00	July 1, 1996
200–699	(869–028–00118–1)	26.00	July 1, 1996
700–End	(869–028–00119–0)	38.00	July 1, 1996
31 Parts:			
0–199	(869–028–00120–3)	20.00	July 1, 1996
200–End	(869–028–00121–1)	33.00	July 1, 1996
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–028–00122–0)	42.00	July 1, 1996
191–399	(869–028–00123–8)	50.00	July 1, 1996
400–629	(869–028–00124–6)	34.00	July 1, 1996
630–699	(869–028–00125–4)	14.00	[5] July 1, 1991
700–799	(869–028–00126–2)	28.00	July 1, 1996
800–End	(869–028–00127–1)	28.00	July 1, 1996
33 Parts:			
1–124	(869–028–00128–9)	26.00	July 1, 1996
125–199	(869–028–00129–7)	35.00	July 1, 1996
200–End	(869–028–00130–1)	32.00	July 1, 1996
34 Parts:			
1–299	(869–028–00131–9)	27.00	July 1, 1996
300–399	(869–028–00132–7)	27.00	July 1, 1996
400–End	(869–028–00133–5)	46.00	July 1, 1996
35	(869–028–00134–3)	15.00	July 1, 1996
36 Parts			
1–199	(869–028–00135–1)	20.00	July 1, 1996
200–End	(869–028–00136–0)	48.00	July 1, 1996
37	(869–028–00137–8)	24.00	July 1, 1996
38 Parts:			
0–17	(869–028–00138–6)	34.00	July 1, 1996
18–End	(869–028–00139–4)	38.00	July 1, 1996
39	(869–028–00140–8)	23.00	July 1, 1996
40 Parts:			
●1–51	(869–028–00141–6)	50.00	July 1, 1996
●52	(869–028–00142–4)	51.00	July 1, 1996
●53–59	(869–028–00143–2)	14.00	July 1, 1996
60	(869-028-00144-1)	47.00	July 1, 1996
●61–71	(869–028–00145–9)	47.00	July 1, 1996
●72–80	(869–028–00146–7)	34.00	July 1, 1996
●81–85	(869–028–00147–5)	31.00	July 1, 1996
*86	(869–028–00148–3)	46.00	July 1, 1996
●87-135	(869–028–00149–1)	35.00	July 1, 1996
●136–149	(869–028–00150–5)	35.00	July 1, 1996
●150–189	(869–028–00151–3)	33.00	July 1, 1996
●190–259	(869–028–00152–1)	22.00	July 1, 1996
●260–299	(869–028–00153–0)	53.00	July 1, 1996
●300–399	(869–028–00154–8)	28.00	July 1, 1996
●400–424	(869–028–00155–6)	33.00	July 1, 1996
●425–699	(869–028–00156–4)	38.00	July 1, 1996
●700–789	(869–028–00157–2)	33.00	July 1, 1996
●790–End	(869–028–00158–7)	19.00	July 1, 1996
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–028–00159–9)	12.00	July 1, 1996
101	(869–028–00160–2)	36.00	July 1, 1996
102–200	(869–028–00161–1)	17.00	July 1, 1996
201–End	(869–028–00162–9)	17.00	July 1, 1996
42 Parts:			
●1–399	(869–026–00163–4)	26.00	Oct. 1, 1995
●400–429	(869–028–00164–5)	34.00	Oct. 1, 1996
430–End	(869–026–00165–1)	39.00	Oct. 1, 1995
43 Parts:			
●1–999	(869–028–00166–1)	30.00	Oct. 1, 1996
1000–3999	(869–026–00167–7)	31.00	Oct. 1, 1995
4000–End	(869–026–00168–5)	15.00	Oct. 1, 1995
●44	(869–026–00169–3)	24.00	Oct. 1, 1995
45 Parts:			
●1–199	(869–028–00169–6)	28.00	Oct. 1, 1996
200–499	(869–028–00170–0)	14.00	[6] Oct. 1, 1995
●500–1199	(869–028–00171–8)	30.00	Oct. 1, 1996
1200–End	(869–026–00173–1)	26.00	Oct. 1, 1995
46 Parts:			
●1–40	(869–026–00174–0)	21.00	Oct. 1, 1995
41–69	(869–026–00175–8)	17.00	Oct. 1, 1995
●70–89	(869–026–00176–6)	8.50	Oct. 1, 1995
●90–139	(869–026–00177–4)	15.00	Oct. 1, 1995
140–155	(869–026–00178–2)	12.00	Oct. 1, 1995
156–165	(869–026–00179–1)	17.00	Oct. 1, 1995
●166–199	(869–026–00180–4)	17.00	Oct. 1, 1995
●200–499	(869–028–00180–7)	21.00	Oct. 1, 1996
500–End	(869–026–00182–1)	13.00	Oct. 1, 1995
47 Parts:			
0–19	(869–026–00183–9)	25.00	Oct. 1, 1995
20–39	(869–026–00184–7)	21.00	Oct. 1, 1995
40–69	(869–026–00185–5)	14.00	Oct. 1, 1995
70–79	(869–026–00186–3)	24.00	Oct. 1, 1995
80–End	(869–026–00187–1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1–51)	(869–026–00188–0)	39.00	Oct. 1, 1995
1 (Parts 52–99)	(869–026–00189–8)	24.00	Oct. 1, 1995
2 (Parts 201–251)	(869–026–00190–1)	17.00	Oct. 1, 1995
2 (Parts 252–299)	(869–026–00191–0)	13.00	Oct. 1, 1995
3–6	(869–026–00192–8)	23.00	Oct. 1, 1995
7–14	(869–026–00193–6)	28.00	Oct. 1, 1995
15–28	(869–028–00193–9)	38.00	Oct. 1, 1996
29–End	(869–026–00195–2)	19.00	Oct. 1, 1995
49 Parts:			
1–99	(869–026–00196–1)	25.00	Oct. 1, 1995
100–177	(869–026–00197–9)	34.00	Oct. 1, 1995
178–199	(869–026–00198–7)	22.00	Oct. 1, 1995
200–399	(869–026–00199–5)	30.00	Oct. 1, 1995
400–999	(869–026–00200–2)	40.00	Oct. 1, 1995
1000–1199	(869–026–00201–1)	18.00	Oct. 1, 1995

Title	Stock Number	Price	Revision Date
●1200–End	(869–028–00201–3)	15.00	Oct. 1, 1996
50 Parts:			
1–199	(869–026–00203–7)	26.00	Oct. 1, 1995
200–599	(869–026–00204–5)	22.00	Oct. 1, 1995
600–End	(869–026–00205–3)	27.00	Oct. 1, 1995
CFR Index and Findings Aids	(869–028–00051–7)	35.00	Jan. 1, 1996
Complete 1996 CFR set		883.00	1996
Microfiche CFR Edition:			
Subscription (mailed as issued)		264.00	1996
Individual copies		1.00	1996
Complete set (one-time mailing)		264.00	1995
Complete set (one-time mailing)		244.00	1994

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.