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Contents

Federal Register

Vol. 62, No. 139

Monday, July 21, 1997

Agricultural Marketing Service
RULES
Sheep promotion, research, and information program; CFR part removed, 38897–38898

Agriculture Department
See Agricultural Marketing Service
See Cooperative State Research, Education, and Extension Service
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service
See Rural Utilities Service

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Hospital health care workers; national surveillance system refinement, 38996–39000

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 39000–39001
Submission for OMB review; comment request, 39001

Coast Guard
RULES
Drawbridge operations:
Maryland, 38908–38909

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 38981–38982

Comptroller of the Currency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 39052–39055

Consumer Product Safety Commission
PROPOSED RULES
Poison prevention packaging:
Household products containing petroleum distillates and other hydrocarbons, 38948

Cooperative State Research, Education, and Extension Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Special research programs—
Pest management alternatives research; correction, 38970
Intergovernmental review of agency programs and activities; program exclusions, 38970–38971

Defense Department
See Navy Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 38982

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Alaska Native programs, 38984–38985

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Florida, 38918–38919
Indiana, 38919–38922
Pennsylvania, 38915–38917
Tennessee, 38909–38912
Virginia, 38912–38915, 38922–38932
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Florida, 38951
Pennsylvania, 38950–38951
Tennessee, 38949–38950
Virginia, 38950
NOTICES
Confidential business information and data transfer, 38989–38990
Environmental statements; availability, etc.:
Antarctica; nongovernmental activities, 38990
Reporting and recordkeeping requirements, 38990–38991
Superfund; response and remedial actions, proposed settlements, etc.:
Harco Property Site, CT, 38991

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Raytheon, 38898–38901
PROPOSED RULES
Airworthiness standards:
Special conditions—
Boeing model 767-27C airplanes, 38945–38948
NOTICES
Exemption petitions; summary and disposition, 39047–39048
Meetings:
National Parks Overflights Working Group, 39048
RTCA, Inc., 39048
Passenger facility charges; applications, etc.:
Abilene Regional Airport, TX, 39048–39049
Flathead Municipal Airport Authority, MT, et al., 39049–39050

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Commercial mobile services—
Wireless services compatibility with enhanced 911 calling, 38951–38952

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 39052–39055

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Nevada Power Co. et al., 38986–38989
Environmental statements; notice of intent:
Commonwealth Power Co., 38989
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp., 38985
KN Wattenberg Transmission Ltd. Liability Co.; correction, 39056
Montaup Electric Co., 38985
Williams Natural Gas Co., 38985–38986

Federal Financial Institutions Examination Council
NOTICES
Securities lending; policy statement, 38991–38994

Federal Reserve System
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 39052–39055
Banks and bank holding companies:
Change in bank control, 38994–38995
Formations, acquisitions, and mergers, 38995–38996
Permissible nonbanking activities, 38996

Federal Trade Commission
NOTICES
Meetings; Sunshine Act, 38996

Fish and Wildlife Service
RULES
Endangered and threatened species:
Whooping crane; Rocky Mountains population, 38932–38939
PROPOSED RULES
Endangered and threatened species:
California freshwater shrimp, 38958–38959
Newcomb's snail, 38953–38958
Hunting and fishing:
Refuge-specific regulations, 38959–38969

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Diethylcarbamazine citrate syrup, etc., 38905–38906
Enrofloxacin solution, 38907
Enrofloxacin tablets, 38906–38907
Ivermectin, 38907–38908
NOTICES
Animal drugs, feeds, and related products:
New drug applications—
Babineaux's Veterinary Products, Inc., et al.; approval withdrawn, 39001–39002
Biological products:
Patent extension; regulatory review period determinations—
ProstaScint, 39002
Food additive petitions:
Ube Industries (America), Inc., 39003
GRAS or prior-sanctioned ingredients:
Yandilla Mustard Oil Enterprise Pty. Ltd.; withdrawn, 39003
Human drugs:
New drug applications—
Merck & Co., Inc., et al.; approval withdrawn; correction, 39003

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California
Cirrus Logic, Inc.; integrated circuit distribution facility, 38972
Florida
CITGO Petroleum Corp.; petroleum product storage facility, 38972–38973

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 38982

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency designation actions:
Kansas, 38971

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Community development block grant program—
Indian tribes and Alaska Native villages, 39006–39007
Portfolio reengineering demonstration program; correction, 39056

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
PROPOSED RULES
Uruguay Round Agreements Act (URAA):
Antidumping and countervailing duties; conformance and Federal regulatory review, 38948–38949
NOTICES
Antidumping:
Large newspaper printing presses and components from—
Germany et al., 38975–38976
Stainless steel wire rod from—
India, 38976–38980

Antidumping and countervailing duties:
Administrative review requests, 38973–38975
Grants and cooperative agreements; availability, etc.:
Market development cooperator program, 38980
North American Free Trade Agreement (NAFTA); binational panel reviews:
Porcelain-on-steel cookware from—
Mexico, 38980

Justice Department
NOTICES
Megan's Law and Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act; implementation guidelines, 39009–39020
Pollution control; consent judgments:
Hawaiian Western Steel et al., 39020
Stafford, Gordon, et al., 39020–39021

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Arizona, 39007–39008
Arizona; correction, 39056
New Mexico, 39008
Survey plat filings:
California, 39008

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 38982
Inventions, Government-owned; availability for licensing, 39031
Patent licenses; non-exclusive, exclusive, or partially exclusive:
New Century Pharmaceuticals, Inc., 39031

National Institutes of Health
NOTICES
Meetings:
National Institute of Child Health and Human Development, 39004,
National Institute of Environmental Health Sciences, 39004–39005
Research Grants Division special emphasis panels, 39005

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Fishing trip definition; correction, 38944
Offshore pelagic shelf rockfish, 38943–38944
Pelagic shelf rockfish, 38943
Atlantic shark, 38942
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish, 38942
National Weather Service:
Modernization criteria, 38901–38905
Tuna, Atlantic bluefin fisheries, 38939–38941
NOTICES
Meetings:
Cultured and wild shrimp populations in Gulf of Mexico and southeastern U.S. Atlantic coastal waters; potential virus impacts evaluation, 38981

National Science Foundation
NOTICES
Meetings:
Cross Disciplinary Activities Special Emphasis Panel, 39031
Design, Manufacture, and Industrial Innovation Special Emphasis Panel, 39031–39032

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
Oklahoma, 38971

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Long Beach Naval Station and Naval Shipyard, CA, 38982–38984

Nuclear Regulatory Commission
RULES
Radiation protection standards:
NRC-licensed facilities; radiological criteria for decommissioning (license termination)—
Lands and structures, 39058–39092
PROPOSED RULES
Radiation protection standards:
NRC-licensed facilities; radiological criteria for decommissioning (license termination)—
Uranium recovery facilities, 39093–39095
NOTICES
Applications, hearings, determinations, etc.:
GPU Nuclear Corp., 39032–39034
Pacific Gas & Electric Co., 39034

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Bear, Stearns & Co. Inc. et al., 39021–39026
Bricklayers and Allied Crafts Local No. 74 of DuPage County et al., 39027–39031

Presidential Documents
EXECUTIVE ORDERS
Government agencies and employees:
International Exchanges and Training Programs, Government; coordination (EO 13055), 39099

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
NOTICES
Inventions, Government-owned; availability for licensing, 39009

Rural Utilities Service
NOTICES
Environmental statements; availability, etc.:
Mid-Carolina Electric Cooperative, 38971–38972

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 39040

Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 39040–39042
Chicago Board Options Exchange, Inc.; correction, 39056
National Association of Securities Dealers, Inc.; correction, 39056
New York Stock Exchange, Inc., 39043–39045
Pacific Stock Exchange, Inc.; correction, 39056
Applications, hearings, determinations, etc.:
Hotchkis and Wiley Variable Trust et al., 39034–39040

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Center for Substance Abuse Prevention and Center for Substance Abuse Treatment; application receipt date; cancellation, 39005–39006
Meetings:
SAMHSA National Advisory Council, 39006
SAMHSA special emphasis panels, 39006

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 39009

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Roaring Fork Railroad Holding Authority, 39050

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Surface Transportation Board
PROPOSED RULES
Disadvantaged business enterprise participation in DOT financial assistance programs, 38952–38953
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 39046
Aviation proceedings:
Agreements filed; weekly receipts, 39046–39047

Treasury Department
See Comptroller of the Currency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 39050–39051

Separate Parts In This Issue

Part II
Nuclear Regulatory Commission, 39058–39095

Part III
The President, 39099–39100

Reader Aids
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.

Electronic Bulletin Board
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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.

3 CFR
Executive Orders:
13055.....39099

7 CFR
1280.....38897

10 CFR
20.....39058
30.....39058
40.....39058
50.....39058
51.....39058
70.....39058
72.....39058
Proposed Rules:
20.....39093
40.....39093

14 CFR
39.....38898
Proposed Rules:
25.....38945

15 CFR
946.....38901

16 CFR
Proposed Rules:
1700.....38948

19 CFR
Proposed Rules:
351.....38948

21 CFR
510.....38905
520 (2 documents) 38905, 38906
522 (2 documents) 38905, 38907
524.....38907

33 CFR
117.....38908

40 CFR
52 (6 documents) 38909, 38912, 38915, 38918, 38919, 38922
Proposed Rules:
52 (4 documents) 38949, 38950, 3951

47 CFR
Proposed Rules:
20.....38951

49 CFR
Proposed Rules:
23.....38952
26.....38952

50 CFR
17.....38932
285.....38939
660.....38942
678.....38942
679 (3 documents) 38943, 38944
Proposed Rules:
17 (2 documents) 38953, 38958
25.....38959
32.....38959

Rules and Regulations

Federal Register
Vol. 62, No. 139
Monday, July 21, 1997

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1280

[No. LS–97–002]

Sheep Promotion, Research, and Information

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document removes the Sheep and Wool Promotion, Research, Education, and Information Order (Order) and all previously published regulations authorized under the Sheep Promotion, Research, and Information Act of 1994 (Act) from the Code of Federal Regulations (CFR). Some of the implementing sections were suspended and some were postponed when the Department of Agriculture (Department) invalidated the results of the nationwide sheep referendum and announced that a second referendum would be conducted. In October 1996, producers, feeders, and importers voted again and did not approve the Order in a nationwide referendum; thus, the Order and previously published regulations associated with the program are removed.

EFFECTIVE DATE: July 22, 1997.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2606–S; Livestock and Seed Division, AMS, USDA; P.O. Box 96456, Washington, D.C. 20090–6456. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION:

Prior Documents

Notice—Invitation to submit proposals published January 4, 1995 (60 FR 381); Proposed Rule—Sheep and Wool Promotion, Research, Education, and Information Order published June 2, 1995 (60 FR 28747); Proposed Rule—Procedures for Conduct of Referendum published August 8, 1995 (60 FR 40313); Notice—Certification of Organizations for Eligibility to Make Nominations to the proposed Board published August 8, 1995 (60 FR 40343); Proposed Rule—Rules and Regulations published October 3, 1995 (60 FR 51737); Proposed Rule—Sheep and Wool Promotion, Research, Education, and Information Order published December 5, 1995 (60 FR 62298); Final Rule—Referendum Order—Procedures for the Conduct of Referendum published December 15, 1995 (60 FR 64297); Final Rule—Sheep and Wool Promotion, Research, Education, and Information Order published May 2, 1996 (61 FR 19514); Final Rule—Rules and Regulations published May 9, 1996 (61 FR 21053); Final Rule—Certification and Nomination Procedures published May 9, 1996 (61 FR 21049); and Final Rule—Suspension and Postponement of Sheep and Wool Promotion, Research, Education, and Information Order published June 28, 1996 (61 FR 33644).

Executive Orders 12866 and 12988 and the Regulatory Flexibility Act and the Paperwork Reduction Act

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

This final rule was reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act (7 U.S.C. 7101–7111) provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and requesting a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner would have the opportunity for a hearing on the petition. Thereafter the Secretary would issue a decision on the petition. The Act provides that the district court of the United States in the district in which the petitioner resides or carries on business has jurisdiction to review the Secretary's decision, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the decision. The petitioner must exhaust his or her administrative remedies before filing such a complaint in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this final action on small entities.

The purpose of RFA is to fit regulatory actions to the scale of the businesses that are subject to such actions so that small businesses would not be unduly or disproportionately burdened.

According to the January 27, 1995, issue of ''Sheep and Goats,'' published by the Department's National Agricultural Statistics Service, there are approximately 87,350 sheep operations in the United States, nearly all of which would be classified as small businesses under the criteria established by the Small Business Administration (13 CFR § 121.601). Additionally, there are approximately 9,000 importers of sheep and sheep products, nearly all of which would be classified as small businesses.

This action terminates all provisions of 7 CFR Part 1280.

In a final rule published on June 28, 1996, (61 FR 33644), the Department suspended indefinitely the provisions of the Order and the Certification and Nomination Regulations and postponed indefinitely the effective date for assessment collection in the Rules and Regulations and the assessment portions of the Order. That final rule was effective on June 29, 1996. Since that time, a second nationwide referendum was conducted on October 1, 1996, in which producers, feeders, and importers voted. The Order was not approved in referendum. Except for the referendum rules, the requirements of the Order and implementing rules and regulations have not been implemented. Since the Act provides for and requires approval of an Order by referendum before it can become effective, this action terminates and removes from the CFR all of the provisions of Part 1280. Accordingly, AMS has determined that this action will not have a significant economic

impact on a substantial number of small entities.

Background

AMS published the final Order (61 FR 19514) on May 2, 1996, to implement a national sheep and wool, promotion, research, education, and information program. The effective date of the Order was May 3, 1996, except that the collection and remittance sections of the Order—§ 1280.224–§ 1280.228—were scheduled to become effective on July 1, 1996. The final Rules and Regulations (61 FR 21053; effective May 10, 1996), which set forth the collection and remittance procedures to be used beginning July 1, 1996, and the Certification and Nomination procedures (61 FR 21049; effective May 10, 1996), which set forth the eligibility criteria and the nomination process to be used to obtain nominations for appointment to the Board, were both published in the **Federal Register** on May 9, 1996. However, after the February 6, 1996, referendum was held, the Department received voter complaints about alleged inconsistencies in the application of the referendum rules in conducting the referendum. The Department conducted a review of these allegations. Based on findings in the review, which revealed that the referendum rules were not applied consistently, on June 28, 1996, the Department suspended indefinitely provisions of the Order and the Certification and Nomination Regulations, and postponed indefinitely the announced effective date of July 1, 1996, for assessment collection in the Rules and Regulations, and the assessment provisions of the Order. Subsequently, a second referendum was held on October 1, 1996.

Before the Order can become effective, the Act requires that it be approved either by a majority of producers, feeders, and importers voting in the referendum, or by voters who account for at least two-thirds of the production represented by persons voting in the referendum. Of the 11,880 valid ballots cast in the October 1, 1996, referendum, 5,603 (47 percent) favored implementation of the Order and 6,277 (53 percent) opposed implementation of the Order. Of those persons voting in the referendum who cast a valid ballot, those favored the Order accounted for 33 percent of the total production voted and those who opposed it accounted for 67 percent of the production voted.

It is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this action into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**, because: (1) In a second referendum conducted on October 1, 1996, eligible sheep producers, sheep feeders, and importers voting did not approve the Order; (2) previously suspended and postponed provisions of 7 CFR 1280 must now be terminated; and (3) no useful purpose would be served in delaying the effective date of the termination Order.

It is therefore ordered that 7 CFR 1280 is hereby terminated effective on July 22, 1997. This termination includes all previously published regulations authorized under the Act.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

PART 1280—[REMOVED]

For the reasons set forth in the preamble and under the authority of 7 U.S.C. 7101–7111, 7 CFR part 1280 is removed.

Dated: July 15, 1997.

Barry L. Carpenter,

Director, Livestock and Seed Division, Agricultural Marketing Service.

[FR Doc. 97–19024 Filed 7–18–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–34–AD; Amendment 39–10073; AD 97–14–15]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company (Formerly Known as Beech Aircraft Corporation) Models E33, F33, G33, E33A, F33A, E33C, F33C, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, V35TC, V35ATC, V35BTC, 36, A36, A36TC, B36TC, 50, B50, C50, 95–55, 95A55, 95B55, 95C55, D55, E55, 56TC, A56TC, 58, 58TC, 95, B95, B95A, D95A, and E95 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Models E33, F33, G33, E33A, F33A, E33C, F33C, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, V35TC, V35ATC, V35BTC, 36, A36, A36TC, B36TC, 50, B50, C50, 95–55, 95A55, 95B55, 95C55, D55, E55, 56TC, A56TC, 58, 58TC, 95, B95, B95A, D95A, and E95 airplanes. This action requires checking the cabin side door handle and the utility door handle from the interior of the airplane for proper locking. If the door handles do not lock, the proposed AD would require reinstalling the door handles correctly for the lock to engage. Nine reports of the utility and cabin door handle opening from the interior of the airplane without depressing the lock release button prompted this action. The actions specified by this AD are intended to prevent unintentional opening of the cabin side door and the utility door from the interior of the airplane, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Effective September 2, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 2, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–34–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: Larry Engler, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Rd., Rm. 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Raytheon Aircraft Company (Raytheon) (formerly known as Beech Aircraft Corporation) Models E33, F33, G33, E33A, F33A, E33C, F33C, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, V35TC, V35ATC, V35BTC, 36, A36, A36TC, B36TC, 50, B50, C50, 95–55,

95A55, 95B55, 95C55, D55, E55, 56TC, A56TC, 58, 58TC, 95, B95, B95A, D95A, and E95 airplanes was published in the **Federal Register** on December 23, 1996 (61 FR 67505). The action proposed to require checking the cabin side door and the utility door handle from the interior of the airplane for proper locking. If the handles do not lock, this action proposed to require procedures for re-installing the door handles correctly for the lock to engage. Accomplishment of the proposed action would be in accordance with Raytheon Aircraft Mandatory Service Bulletin No. 2693, *Issued:* May, 1996.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to comments received from three different commenters.

Comment 1: No Need for AD Action

The first commenter states that the use of the words ''may result'' or ''could occur'' in the section titled ''Events Leading to the Proposed Action'' of the preamble indicates that there have been no actual incidents or accidents because of the improperly installed door handle and there is no need for the AD action.

The FAA does not concur that there is no need for AD action. The FAA uses the phrases ''may result'' and ''could occur'' to emphasize the possibility of another incident or accident occurring based on the history and reports of incidents and accidents that have already occurred. The AD preamble is used to describe what the FAA knows has already happened and to justify the possible consequences if the affected airplane operators do not comply with the AD action. The notice of proposed rulemaking (NPRM) did not specify the number of occurrences reported on these cabin door handles. There have been nine reports of these door handles not locking properly.

No changes have been made to the final rule as a result of this comment.

Comment 2: No Incidents, Only Reports

The same commenter also states that the phrase ''incidents described above'' in the section titled ''Explanation of the Provisions of the Proposed Action'' makes reference to incidents described in the preamble and there are no incidents described, but only reports of improperly installed door handles.

The FAA concurs and will change all incident references in the final rule to reports.

Comment 3: Cost Impact

A commenter states that the cost of repetitive inspections and the owners/operators time for the burdensome paperwork that is required to comply with an AD is not figured into the cost of the proposed AD.

The FAA concurs, but states that the cost of the repetitive inspections is not figured into the cost impact per airplane or for the entire U.S. fleet because there are no repetitive inspections proposed in the NPRM. Likewise, the FAA does not estimate the time for paperwork to comply with the proposed AD because the FAA has no reasonable means of obtaining this information.

No changes have been made to the final rule as a result of this comment.

Comment 4: Include Subsequent Service Bulletin Revisions in AD

A commenter states that the AD compliance should not only specify that the proposed action be accomplished in accordance with Raytheon Service Bulletin (SB) No. 2693, dated May, 1996, but also include any subsequent revisions to the referenced service bulletin.

The FAA does not concur. The FAA cannot approve data that does not exist. Approval of this nature could adversely affect aviation safety if modifications were included in the subsequent service bulletins that did not carry normal FAA review.

No changes have been made to the final rule as a result of this comment.

Comment 5: Improper Installation Is Not Justification for an AD

One commenter explains that AD's normally do not address a potential problem based on an improperly installed part. The commenter states that if AD's were issued on this basis alone, why doesn't the FAA issue AD's to cover the installation of all aircraft parts?

FAA does not concur with this commenter's statement. The NPRM is written because the information provided in the maintenance manual does not cover the re-installation of the door handle, once removed. The NPRM provides the information needed to assure that the door handles are re-installed correctly. The FAA will add a Note in the AD recommending that reference be made to the service bulletin in the maintenance manual.

Comment 6: No Interior Cabin or Utility Doors

A commenter states that a revision is needed in the ''Summary'' to correctly identify the area to be inspected. As written, the phrase ''* * *interior cabin side door handle and interior utility door handle* * *'' leads the reader to believe there are interior doors on the airplane. There are no interior cabin side doors or interior utility doors.

The FAA concurs and has re-written the ''Summary'' to correctly describe the doors as ''* * *cabin side door handle and utility door handle from the interior of the airplane * * *'' for better clarification.

Comment 7: Unsafe Condition Not Defined Correctly

One commenter states that the phrase ''* * * while in flight * * * could result in injury to passengers * * *'' is misleading. The commenter states that the airloads on the door after rotation of the airplane should prevent the door from opening, and the only potential for injury is during taxi operations.

The FAA concurs with this statement. After further review of the reports made, the FAA has determined that no injuries have occurred from the door coming ajar. As a result, the FAA has changed the statements referring to passenger injury during flight or during taxi operations. Instead, the statement has been changed to ''* * * could result in loss of control of the airplane.'' The reason for this change is that loss of control of the airplane could result from either a startled passenger grabbing an airplane control should the door come ajar because the door handle lock didn't lock, or the pilot having to lean over and shut the door because a passenger inadvertently leaned on the door handle causing it to come ajar.

Comment 8: Doors Were Installed Correctly at Factory

A commenter states that this problem was discovered in the field as a result of removing the door handle and re-installing the handle incorrectly, and the door handles were not installed at the factory incorrectly.

The FAA concurs and has made an effort to clarify the cause of the problem, so as not to imply that the manufacturer is at fault.

No changes were made as a result of this comment.

Comment 9: Change in Compliance Time

Another commenter states that a change should be made to the compliance time of the AD. The commenter wants to eliminate the phrase ''* * * whichever occurs first,* * *'' because this implies that the door handle only needs to be checked and corrected one time. The commenter states that repetitive checks are needed to the door handle when removed in the future, and incorrectly re-installed.

The FAA does not concur that the phrase ''* * * whichever occurs first,* * *'' is unnecessary. The purpose for this phrase is to make sure the door handles are checked at the first possible opportunity. This means the operator has 50 hours time-in-service (TIS) to check the door handles, but if the door handles are removed prior to the expiration of that time, the operators must check the door handles and verify that they are locking correctly and does not have to check the door handles at the expiration of 50 hours TIS after the effective date of the AD.

The FAA is not requiring a repetitive check because the purpose of this AD is to have the entire fleet check the door handles to make sure they are locking correctly. If the door handles are not locking, then the operator should have the door handles re-installed to lock correctly. After the initial check to assure every affected airplane has locking door handles, the FAA is relying on regular maintenance to catch this problem. The FAA will add a Note recommending that reference be made to the service bulletin in the maintenance manual.

Comment 10: Certified/Licensed Versus Certificated

All three commenters state that airframe mechanics and pilots are not ''licensed'' or ''certified'', but are ''certificated.'' The FAA concurs and has changed all references to ''licensed airframe mechanics'' or ''certified pilots'' in the preamble and the AD to read ''certificated airframe mechanics'' or ''certificated pilots.''

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except editorial corrections mentioned above. The FAA has determined that these corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 19,000 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required initial check and there is no labor cost because the check may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.11 of the Federal Aviation Regulations (14 CFR 43.11). Based on these figures, there is no initial cost impact of this AD on U.S. operators. This figure is based upon the assumption that no affected airplane owner/operator has accomplished this check. The FAA has no way of determining the number of owners/operators who may have already accomplished this action.

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.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

97–14–15 Raytheon Aircraft Company: Amendment 39–10073; Docket No. 96–CE–34–AD.

Applicability: Models E33, F33, G33, E33A, F33A, E33C, F33C, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, V35TC, V35ATC, V35BTC, 36, A36, A36TC, B36TC, 50, B50, C50, 95–55, 95A55, 95B55, 95C55, D55, E55, 56TC, A56TC, 58, 58TC, 95, B95, B95A, D95A, and E95 airplanes (all serial numbers), certificated in any category.

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

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD or at the next door handle removal after the effective date of this AD, whichever occurs first, unless already accomplished.

To prevent unintentional opening of the cabin side door and the utility door from the interior of the airplane, which if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Check the cabin side door handle and the utility door handle from the interior of the airplane for proper locking (rotating the door handle clockwise without depressing the lock release button) in accordance with the **ACCOMPLISHMENT INSTRUCTIONS** section of Raytheon Service Bulletin (SB) No. 2693, Issued May, 1996.

(1) If the door handle opens the door when rotated, without depressing the handle's lock release button, prior to further flight, correct the door handle lock by removing the door handle, and re-installing the door handle so that the lock release button locks the door in accordance with the **ACCOMPLISHMENT INSTRUCTIONS** section in Raytheon SB No. 2693, Issued May, 1996.

(2) If the door handle is locked and will only unlock by depressing the handle door lock release button, then no further action is necessary.

Note 2: The FAA strongly recommends entering a reference to Raytheon SB No. 2693, Issued May, 1996 into the applicable airplane maintenance manual.

(b) The check required in paragraph (a) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR

43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Rd., Rm. 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 Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) The check and re-installation required by this AD shall be done in accordance with Raytheon Aircraft Mandatory Service Bulletin No. 2693, Issued: May, 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 Raytheon Aircraft Company, P. O. Box 85, Wichita, Kansas 67201–0085. 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.

(f) This amendment (39–10073) becomes effective on September 2, 1997.

Issued in Kansas City, Missouri, on July 2, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–18138 Filed 7–18–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 946

[Docket No. 960418114–7140–05]

RIN 0648–AF72

Weather Service Modernization Criteria

AGENCY: National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the Weather Service Modernization Act, 15 U.S.C. 313n. (the Act), the National Weather Service (NWS) is publishing an amendment to its criteria for modernization actions requiring certification. This amendment adds criteria unique to automating a field office at service level D airports to ensure that automation actions will not result in any degradation of service. Automating a field office occurs after automated surface observing system (ASOS) equipment is installed and commissioned at a field office and the NWS employees that were performing surface observations at that office are removed or reassigned.

EFFECTIVE DATES: October 1, 1997.

ADDRESSES: Requests for copies of documents described in this notice as being available upon request should be sent to Julie Scanlon, NOAA/NWS, SSMC2, Room 18366, 1325 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Nicholas Scheller, 301–713–0454.

SUPPLEMENTARY INFORMATION: On May 2, 1996, the NWS published, for comment, proposed modernization criteria unique to automating a field office (*see* 61 FR 19594). In significant part, the proposed criteria embodied the levels of service set forth in the Federal Aviation Administration's (FAA) Weather Observation Service Standards for level A, B, C and D airports (*see* 61 FR 32887). After consideration of the public comments that were received and, after consultations with the National Research Council's (NRC) NWS Modernization Committee and the Modernization Transition Committee (MTC) in June 1996, the NWS established final modernization criteria for automating a field office at service levels A, B and C airports (*see* 61 FR 39862). However, in light of the concerns expressed in the public comments specifically on the automation criteria proposed for service level D airports, establishment of final modernization criteria for automating a field office at a service level D airport was deferred pending further study and reconsultation with the MTC. Many of these public comments expressed concern about either the representativeness of an unaugmented ASOS observation and/or the adequacy of a stand-alone ASOS. A list of persons submitting comments, the specific comments, and the NWS's response were provided in the July 31, 1996 notice that established final automation criteria for service levels A, B and C airports (*see* 61 FR 39862).

Between June and September 1996, NWS, in cooperation with the FAA and the Airline Owners and Pilots Association's Air Safety Foundation (ASF), reassessed the automation criteria proposed for service level D airports. A description of this reassessment, the proposal that emerged as a result thereof and the rationale behind it is described below.

With regard to concerns raised by commentors on the representativeness of the unaugmented ASOS observation, NWS, FAA and ASF reviewed the results of the recently completed ASOS Aviation Demonstration. This demonstration was carried out jointly by the NWS, the FAA, and the aviation industry, from February 15, 1995 through August 15, 1995. During this demonstration, NWS observers were asked to record those cases when ASOS observations did not represent the true meteorological situation. Based on reports supplied by NWS observers, ASOS was found to report the correct individual weather parameters up to 98% of the time under all conditions combined. NWS also reexamined each of the service level D ASOS sites to determine if there were any remaining representativeness issues resulting from poor sensor siting or the need for meteorological discontinuity sensors. The need for sensor resiting and second ceiling and/or visibility sensors at several of these sites had already been identified and corrective actions were already in progress.

With regard to concerns raised by commentors on the adequacy of a stand-alone ASOS, the NWS, FAA and ASF focused their attention on the 6 parameters of the observations that distinguish service level C from service level D as described in the Summary Chart of the FAA's Weather Observation Service Standards. These are: Thunderstorm occurrence, tornadic activity, hail, virga, volcanic ash, and tower visibility. Since all service level D airports for which NWS must complete an automation certification do not have an FAA tower, tower visibility cannot be provided and, consequently, is not applicable. Of the remaining 5 parameters, 4 of them (tornadic activity, hail, virga and volcanic ash) occur very infrequently. Furthermore, the reporting of the occurrence of these 4 parameters is available to users through other means such as supplementary observations and complementary data sources. On December 13, 1995, NWS published a notice setting forth its Supplementary Data Program (*see* 60 FR 64020). Although information about thunderstorm occurrence is available through other sources, NWS, FAA and ASF concluded that providing thunderstorm occurrence as part of the

ASOS observation was critical. Consequently, NWS is in the process of adding single-site lightning sensors (capable of reporting thunderstorm occurrence) to the ASOS sensor suite at the service level D sites subject to automation certification, with the exception of Homer, Alaska. Upon examination of climatological data for the frequency of thunderstorm occurrence, the occurrence at Homer, Alaska was so low (0.015%) that a lightning sensor is not warranted at this site. Software modifications to ASOS, required to interface with the lightning sensor, are being implemented.

In addition, as a result of the reassessment, NWS reiterated its commitment to deploy freezing rain sensors prior to automation certification at all NWS sponsored ASOS sites that experience this phenomenon, regardless of the assigned service level. Some sites in the United States do not experience freezing rain, and consequently, are not scheduled to receive freezing rain sensors. Among the service level D sites subject to automatic certification, Ely, Nevada and Lander, Wyoming will not receive freezing rain sensors.

Besides the additional automation criteria described above resulting from the reassessment, NWS, FAA and ASF agreed that more education for pilots on automated observations, as well as pilot feedback on the utility of such observations was needed. Accordingly, the ASF has undertaken a significant pilot education and outreach effort. This effort will be completed prior to any automation certifications of service level D airports. The goals of this activity are to: (1) Educated pilots as to the differences between human and automated observations and how to use automated observations in conjunction with other weather information to make safe pre-flight and in-flight decisions; (2) notify a representative sample of the approximately 70,000 pilots who regularly use these service level D airports that ASOS is in place and give them an opportunity to comment; (3) measure understanding and acceptance of automated observing systems; and (4) identify and correct any systemic or site specific problems with the automated observations. The ASF assessment of pilot understanding and acceptance of ASOS observations is being conducted during a portion of the 1997 severe weather season (May through July), with 10 of the service level D sites having lightning sensors installed and operational. The ASF is responsible for preparing and disseminating the educational materials; collecting and statistically analyzing any pilot feedback; and sharing the results with both the NWS and FAA for additional evaluation. The results of this activity will be reported to the MTC at its September 1997 meeting.

The NRC's NWS Modernization Committee was advised of the additional automation criteria being contemplated by NWS on September 9, 1996. In addition, during its consultation with the MTC on September 19, 1996, the NWS proposed to supplement the service level D automation criteria as discussed above and briefed the MTC on the ASF pilot education and outreach effort at service level D airports. In response, the MTC endorsed the NWS proposal concluding that the additional criteria, when applied in conjunction with previously proposed automation criteria, and after completion of the pilot education and outreach effort would provide an adequate basis for certifying no degradation in the required level of services. The MTC further recognized the importance of the integration of the new observational data in order to avoid a degradation of service and recommended that both the NWS and FAA develop and implement product improvement programs to correct deficiencies as they occur and to implement new technology to improve observations.

To implement the proposal endorsed by the MTC, NWS has modified the automation criteria for service level D airports as follows. Criterion D.4.c. has been added to Appendix A to require that a lightning sensor be operational as a prerequisite for automation certification at service level D airports, except as noted. Criterion D.4.d. has been added to Appendix A to require that a freezing rain sensor be operational as a prerequisite for automation certification, except as noted. Criterion D.4.b. has also been modified to indicate that completion of the transition checklist is applicable to service level A, B and C airports only, since transfer of augmentation/back-up responsibility from NWS to FAA does not occur at service level D airports. An additional Criterion 5. has been added for service level D airports which requires completion of the above pilot education and outreach effort and that the MTC has had an opportunity to review the results.

The May 2, 1996 publication of proposed modernization criteria unique to automating a field office (*see* 61 FR 19594) included a total of 27 airports in the service level D category. In April 1997, NWS completed a reexamination of these 27 service level D airports and ascertained that 2 of them had FAA Automated Flight Service Stations (AFSS). Because an AFSS constitutes a qualified Federal presence, FAA reclassified these two airports (i.e., Elkins, WV and Huron, SD) from service level D to service level C. In both cases, the AFSS will provide augmentation and back-up of the ASOS. Consequently, Appendix B is amended to reflect this reclassification and add the remaining 25 service level D airports for which NWS must complete an automation certification.

A. Classification Under Executive Order 12866

These regulations have been determined not to be significant for purposes of E.O. 12866.

B. Regulatory Flexibility Act Analysis

These regulations set forth the criteria for certifying that certain modernization actions will not result in a degradation of service to the affected area. 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 when these criteria were proposed, that if adopted, they would not have a significant economic impact on a substantial number of small entities. Comments on the proposed regulations were received and based on those comments these final regulations have been adjusted accordingly and have been determined that they do not effect small economic entities. While the final regulations are changed as discussed above, these criteria are intended for internal agency use, and the impact on small business entities will be negligible. The final criteria do not directly affect ''small government jurisdictions'' as defined by Public Law 96–354, the Regulatory Flexibility Act. Accordingly, the basis for the certification has not changed and no final regulatory flexibility analysis was prepared.

C. Paperwork Reduction Act of 1980

These regulations will impose no information collection requirements subject to the Paperwork Reduction Act.

D. E.O. 12612

This rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

E. National Environmental Policy Act

NOAA has concluded that issuance of this rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 946

Administrative practice and procedure, Certification, Commissioning, Decommissioning, National Weather Service, Weather service modernization.

Dated: July 14, 1997.

Robert S. Winokur,

Acting Assistant Administrator for Weather Services.

For the reasons set out in the preamble, 15 CFR part 946 is amended as follows:

PART 946—[AMENDED]

1. The authority citation for part 946 continues to read as follows:

Authority: Title VII of Pub. L. 102–567, 106 Stat 4303 (15 U.S.C. 313n.).

Appendix A to Part 946—[Amended]

2. Appendix A to part 946 is amended by revising Subsection (D) under Section II. Criteria for Modernization Actions Requiring Certification, to read as follows:

(D) Modernization Criteria Unique to Automation Certifications

1. Compliance with flight aviation rules (applies on airports only): Consultation with the Federal Aviation Administration (FAA) has verified that the weather services provided after the commissioning of the relevant ASOS unit(s) will be in full compliance with applicable Federal Aviation Regulations promulgated by the FAA.

2. ASOS Commissioning: The relevant ASOS unit(s) have been successfully commissioned in accordance with the criteria set forth in section I.A.1 of Appendix A to the Weather Service Modernization Regulations, 15 CFR part 946.

3. User Confirmation of Services: Any valid user complaints related to actual system performance received since commissioning of the ASOS have been satisfactorily resolved and the issues addressed in the MIC's recommendation for certification.

4. Aviation Observation Requirement: At sites subject to automation certification, all surface observations and reports required for aviation services can be generated by an ASOS augmented as necessary by non-NWS personnel.

a. The ASOS observation will be augmented/backed-up to the level specified in Appendix B as described in the Summary Chart of the FAA's Weather Observation Service Standards.

b. The transition checklist has been signed by the appropriate Region Systems Operations Division Chief (applies to service level A, B and C airports only).

c. Thunderstorm occurrence is reported in the ASOS observation through the use of a lightning sensor (applies to service level D airports only, excluding Homer, Alaska).

d. Freezing rain occurrence is reported in the ASOS observation through the use of a freezing rain sensor. Among service level D airports, this criterion is not applicable to Ely, Nevada and Lander, Wyoming.

5. Pilot Education and Outreach Completed: The Air Safety Foundation has conducted a pilot education and outreach effort to educate pilots on the use of automated observations and measure their understanding and acceptance of automated observing systems, and the MTC has had an opportunity to review the results of this effort (applies to service level D airports only).

6. General Surface Observation Requirement: The total observations available are adequate to support the required inventory of services to users in the affected area. All necessary hydrometeorological data and information are available through ASOS as augmented in accordance with this section, through those elements reported as supplementary data by the relevant Weather Forecast Office(s), or through other complementary sources. The adequacy of the total surface observation is addressed in the MTC's recommendation for certification.

BILLING CODE 3510–12–M

Summary of FAA's Weather Observation Service Standards

"D" Level Service
Stand-Alone ASOS

v

"C" Level Service Add-Ons
- Backup basic service
- Augmentation of:
  - Thunderstorm occurrence
  - Tornadic activity
  - Hail
  - Virga
  - Volcanic ash
  - Tower visibility

v

"B" Level Service Augmentation Add-Ons
- Long-line Runway Visual Range (RVR) at designated sites (may be instantaneous readout)
- Freezing drizzle
- Ice pellets
- Snow depth on ground
- Snow increasing rapidly remark
- Thunderstorm/lightning location remark
- Observed significant weather not at station

v

"A" Level Service Augmentation Add-Ons
- Either 10-minute long-line RVR or visibility increments down to 1/8, 1/16, and 0 miles
- Sector visibility
- Variable sky
- Cloud types
- Cloud layers above 12,000 feet
- Widespread dust, sand, and smoke obstructions
- Volcanic eruptions

BILLING CODE 3510–12–C

Appendix B to Part B—[Revised]

Appendix B to Part 946 is revised to read as follows:

APPENDIX B TO PART 946—AIRPORT TABLES

"A" Level Service Airports:	
*Akron, OH	CAK
*Albany, NY	ALB
*Atlanta, GA	ATL
*Baltimore, MD	BWI
*Boston, MA	BOS
Charlotte, NC	CLT
*Chicago-O'Hare (AV), IL	ORD
Cincinnati, OH	CVG
Columbus, OH	CMH
*Dayton, OH	DAY
*Des Moines, IA	DSM
*Detroit, MI	DTW
*Fairbanks, AK	FAI
*Fresno, CA	FAT
*Greensboro, NC	GSO
*Hartford, CT	BDL
Indianapolis, IN	IND
*Kansas City, MO	MCI
*Lansing, MI	LAN
Las Vegas, NV	LAS
Los Angeles (AV), CA	LAX
*Louisville, KY	SDF
*Milwaukee, WI	MKE
*Minneapolis, MN	MSP
*Newark, NJ	EWR
*Oklahoma City, OK	OKC
Phoenix, AZ	PHX
*Portland, OR	PDX
*Providence, RI	PVD
*Raleigh, NC	RDU
*Richmoind, VA	RIC
*Rochester, NY	ROC
*Rockford, IL	RFD
*San Antonio, TX	SAT
San Diego, CA	SAN
*San Francisco, CA	SFO
*Spokane, WA	GEG
*Syracuse, NY	SYR
Tallahassee, FL	TUL
Tulsa, OK	TUL
"B" Level Service Airports:	
*Baton Rouge, LA	BTR
*Billings, MT	BIL
*Charleston, WV	CRW
*Chattanooga, TN	CHA
Colorado Springs, CO	COS
Daytona Beach, FL	DAB
El Paso, TX	ELP
Flint, MI	FNT
Fort Wayne, IN	FWA
Honolulu, HI	HNL
*Huntsville, AL	HSV
*Knoxville, TN	TYS
*Lincoln, NE	LNK
Lubbock, TX	LBB
*Madison, WI	MSN
*Moline, IL	MLI
*Montgomery, AL	MGM
*Muskegon, MI	MKG
*Norfolk, VA	ORF
Peoria, IL	PIA
*Savannah, GA	SAV
*South Bend, IN	SBN
Tucson, AZ	TUS
*West Palm Beach, FL	PBI
*Youngstown, OH	YNG
"C" Level Service Airports:	

APPENDIX B TO PART 946—AIRPORT TABLES—Continued

Abilene, TX	ABI
Allentown, PA	ABE
Asheville, NC	AVL
Athens, GA	AHN
Atlantic City, NJ	ACY
Augusta, GA	AGS
Austin, TX	AUS
Bakersfield, CA	BFL
Bridgeport, CT	BDR
Bristol, TN	TRI
Casper, WY	CPR
Columbia, MO	COU
Columbus, GA	CSG
Dubuque, IA	DBQ
Elkins, WV	EKN
Erie, PA	ERI
Eugene, OR	EUG
Evansville, IN	EVV
Fargo, ND	FAR
Fort Smith, AR	FSM
Grand Island, NE	GRI
Helena, MT	HLN
Huntington, WV	HTS
Huron, SD	HON
Kahului, HI	OGG
Key West, FL	EYW
Lewiston, ID	LWS
Lexington, KY	LEX
Lynchburg, VA	LYH
Macon, GA	MCN
Mansfield, OH	MFD
Meridian, MS	MEI
Olympia, WA	OLM
Port Arthur, TX	BPT
Portland, ME	PWM
Rapid City, SD	RAP
Redding, CA	RDD
Reno, NV	RNO
Roanoke, VA	ROA
Rochester, MN	RST
Salem, OR	SLE
Santa Maria, CA	SMX
Sioux City, IA	SUX
Springfield, IL	SPI
Stockton, CA	SCK
Toledo, OH	TOL
Waco, TX	ACT
Waterloo, IA	ALO
Wilkes-Barre, PA	AVP
Williamsport, PA	IPT
Wilmington, DE	ILG
Worcester, MA	ORH
Yakima, WA	YKM
"D" Level Service Airports:	
Alamosa, CO	ALS
Alpena, MI	APN
Astoria, OR	AST
Beckley, WV	BKW
Caribou, ME	CAR
Concordia, KS	CNK
Concord, NH	CON
Ely, NV	ELY
Havre, MT	HVR
Homer, AK	HOM
Houghton Lake, MI	HTL
International Falls, MN	INL
Kalispell, MT	FCA
Lander, WY	LND
Norfolk, NE	OFK
Sault Ste. Marie, MI	SSM
Scottsbluff, NE	BFF
Sheridan, WY	SHR
St. Cloud, MN	STC

APPENDIX B TO PART 946—AIRPORT TABLES—Continued

Tupelo, MS	TUP
Valentine, NE	VTN
Victoria, TX	VCT
Wichita, Falls, TX	SPS
Williston, ND	ISN
Winnemucca, NV	WMC

*Long-line RVR designated site.

[FR Doc. 97–18913 Filed 7–18–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, and 522

Animal Drugs, Feeds, and Related Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of one new animal drug application (NADA) held by Babineaux's Veterinary Products for diethylcarbamazine citrate syrup, and two NADA's held by Schein Pharmaceutical/Steris Laboratories for phenylbutazone injection and oxytocin injection. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of these NADA's as requested by their sponsors.

EFFECTIVE DATE: July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: Babineaux's Veterinary Products, Inc., 6425 Airline Hwy., Metairie, LA 70003, is the sponsor of NADA 46–147 for Dirocide (diethylcarbamazine citrate) Syrup. Schein Pharmaceutical, Inc./Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043–4705, is the sponsor of NADA 48–391 for phenylbutazone injection, and NADA 49–183 for oxytocin injection.

The sponsors requested withdrawal of approval of the NADA's under 21 CFR 514.115(d) because the products are no longer being marketed.

The regulations are amended in 21 CFR 520.622b(a)(2), 522.1680(b), and 522.1720(b)(2) to remove those portions which reflect approval of these NADA's.

Also, with the withdrawal of approval of NADA 46–147, Babineaux's Veterinary Products is no longer the sponsor of any approved NADA's. Therefore, 21 CFR 510.600(c)(1) and (2) are amended to remove entries for this firm.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry for ''Babineaux's Veterinary Products, Inc.'' and in paragraph (c)(2) by removing the entry for ''021188''.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.622b [Amended]

4. Section 520.622b *Diethylcarbamazine citrate syrup* is amended in paragraph (a)(2) by removing the phrase ''Nos. 021188 and'' and adding in its place ''No.''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

5. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.1680 [Amended]

6. Section 522.1680 *Oxytocin injection* is amended in paragraph (b) by removing the number ''000402''.

§ 522.1720 [Amended]

7. Section 522.1720 *Phenylbutazone injection* is amended in paragraph (b)(2) by removing the number ''000402''.

Dated: July 17, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–19066 Filed 7–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Enrofloxacin Tablets

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 a supplemental new animal drug application (NADA) filed by Bayer Corp., Agriculture Division, Animal Health. The supplemental NADA provides for revised conditions for use (dose, indications, and limitations) of enrofloxacin tablets in dogs and cats for the management of diseases associated with bacteria susceptible to enrofloxacin.

EFFECTIVE DATE: July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Linda M. Wilmot, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201, filed supplemental NADA 140–441 Baytril® Tablets (5.7, 22.7, or 68.0 milligrams (mg) enrofloxacin). The supplemental NADA provides for revised conditions for use of enrofloxacin in dogs and cats for management of diseases associated with bacteria susceptible to enrofloxacin by administering the tablets orally at a rate of 5 to 20 mg per kilogram (2.27 to 9.07 mg/pounds) of body weight as a single daily dose or divided and given in 2 equal daily doses at 12 hour intervals for at least 2 to 3 days beyond cessation of clinical signs, to a maximum of 30 days. The supplemental NADA is approved as of June 19, 1997, and the regulations are amended in § 520.812 (21 CFR 520.812) by redesignating paragraph (c) as paragraph (d) and by reserving new paragraph (c) to provide for more uniform regulations and future expansion. Newly redesignated § 520.812(d) is revised 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 carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

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 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

2. Section 520.812 is amended by redesignating existing paragraph (c) as paragraph (d), by reserving paragraph (c), and by revising newly redesignated paragraph (d) to read as follows:

§ 520.812 Enrofloxacin tablets.

* * * * *

(c) [Reserved]

(d) *Conditions of use.* (1) *Amount.* 5 to 20 milligrams per kilogram (2.27 to 9.07 milligrams per pound) of body weight.

(2) *Indications for use.* Dogs and cats for management of diseases associated with bacteria susceptible to enrofloxacin.

(3) *Limitations.* Administer orally as a single dose or divided into 2 equal doses at 12 hour intervals, daily. Administer for at least 2 to 3 days beyond cessation of clinical symptoms, for a maximum of 30 days. Safety in breeding or pregnant cats has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: July 9, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–19125 Filed 7–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Enrofloxacin 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 a supplemental new animal drug application (NADA) filed by Bayer Corp., Agriculture Div., Animal Health. The supplemental NADA provides for revised indications for use of enrofloxacin injectable solution in dogs for the management of diseases associated with bacteria susceptible to enrofloxacin.

EFFECTIVE DATE: July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Linda M. Wilmot, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Bayer Corp., Agriculture Div., Animal Health, P.O. Box 390, Shawnee Mission, KS 66201, filed supplemental NADA 140–913 Baytril Injectable Solution (22.7 milligrams enrofloxacin per milliliter) to provide for revised indications for use of enrofloxacin for dogs for management of diseases associated with bacteria susceptible to enrofloxacin. The supplemental NADA is approved as of June 19, 1997. The basis of approval is discussed in the freedom of information summary.

The regulations are amended in § 522.812 (21 CFR 522.812) by redesignating paragraph (c) as paragraph (d) and by reserving paragraph (c) to provide for more uniform regulations and future expansion. Newly redesignated § 522.812(d)(2) is revised to reflect the approval.

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 carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

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 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

2. Section 522.812 is amended by redesignating existing paragraph (c) as paragraph (d), by reserving paragraph (c), and by revising newly redesignated paragraph (d)(2) to read as follows:

§ 522.812 Enrofloxacin solution.

* * * * *

(c) [Reserved]

(d) * * *

(2) *Indications for use.* Dogs for management of diseases associated with bacteria susceptible to enrofloxacin.

* * * * *

Dated: July 9, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–19126 Filed 7–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Ivermectin

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 a supplemental new animal drug application (NADA) filed by Merck Research Laboratories, Division of Merck & Co., Inc. The supplemental NADA provides for topical use of ivermectin for control of infections of gastrointestinal roundworms for 14 days following use on cattle.

EFFECTIVE DATE: July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Merck Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, filed supplemental NADA 140–841 that provides for the use of Ivomec® pour-on (5 milligrams of ivermectin per milliliter) for cattle to control infections of gastrointestinal roundworms *Ostertagia ostertagi*, *Oesophagostomum radiatum*, *Haemonchus placei*, *Trichostrongylus axei*, *Cooperia punctata*, and *C. oncophora* for 14 days after treatment. The supplemental NADA is approved as of June 5, 1997, and the regulations are amended in 21 CFR 524.1193(d)(2) to reflect the approval. The basis of 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.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning June 5, 1997, because the supplement

contains substantial evidence of effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplement and conducted or sponsored by the applicant. Exclusivity applies only to the additional indications.

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 524

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 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

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

§ 524.1193 [Amended]

2. Section 524.1193 *Ivermectin pour-on* is amended by adding to the end of paragraph (d)(2) the sentence ''It is also used to control infections of gastrointestinal roundworms *O. ostertagi*, *O. radiatum*, *H. placei*, *T. axei*, *Cooperia punctata*, and *C. oncophora* for 14 days after treatment.''

Dated: July 8, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–19124 Filed 7–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–013]

RIN 2115–AE47

Drawbridge Operation Regulations; Isle of Wight Bay, Ocean City, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Maryland Department of Transportation (MDOT), the Coast Guard is changing the regulations that govern the operation of the Route 50 drawbridge across Isle of Wight Bay, mile 0.5, located in Ocean City, Maryland, by requiring restricted drawbridge openings for all vessels each Saturday between May 25 through September 15, between the hours of 1 p.m. to 5 p.m. During these times, the bridge need open only on the hour, and must remain in the open position until all waiting vessels pass. All other provisions of the existing regulation for the Route 50 bridge remain the same. This final rule will help reduce motor vehicle traffic delays and congestion related to summer traffic entering and exiting the town of Ocean City, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective on July 18, 1997.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection and copying at the Office of the Commander (Aowb), USCG Atlantic Area, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, USCG Atlantic Area, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 21, 1997, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Isle of Wright Bay, Ocean City, Maryland in the **Federal Register** (62 FR 19245). The comment period ended June 20, 1997. The Coast Guard received no comments on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The drawbridge across Isle of Wight Bay, mile 0.5 Ocean City, Maryland, is currently required to open on signal, except that, from October 1 through April 30 from 6 p.m. to 6 a.m., the draw shall open if at least three hours notice is given and, from may 25 through September 15 from 9:25 a.m. to 9:55 p.m. the draw shall open at 25 minutes and 55 minutes after the hour for a maximum of 5 minutes to permit accumulated vessels to pass.

The Maryland Department of Transportation's (MDOT) original request to change the existing regulation was based on a large number of vacationers traveling to and from Ocean City on Saturday afternoons during the tourist season (summer months). Vacationers check in and out of hotels on Ocean City Island every Saturday afternoon of the season. This creates a traffic surge of vehicles entering and exiting the island with only two highway bridges (Route 50 and Route 90) available for access. The Route 90 bridge is a fixed-span structure, and the Route 50 bridge is a drawbridge. Over 350 charter boats regularly pass through the Route 50 drawbridge. This produces a dilemma to both waterway users and vehicular traffic trying to access the same drawbridge. MDOT requested hourly openings on Saturday afternoons as opposed to the current half-hourly openings, in order to help reduce vehicular traffic congestion on U.S. 50 and thereby improve highway safety. MDOT requested a change in the operating schedule to reduce the number of times the bridge must open on signal. The new schedule would restrict drawbridge openings for all vessels every Saturday between May 25 through September 15, between the hours of 1 p.m. to 5 p.m. During these times, the bridge need open only on the hour, and must remain in the open position until all waiting vessels pass. The Coast Guard tested this change through a temporary deviation, which modified the opening schedule from July 13 through August 31, 1996. The test was intended to determine whether the Coast Guard should change the regulation to better balance the needs of both waterway users and vehicular traffic. Following the test, no comments were received. The Coast Guard contacted MDOT, the local Police Department and the US 50 bridge tenders. Based on their information the test did not create any undue hardships for waterway users, yet the hourly closures substantially improved highway conditions.

Discussion of Comments and Changes

The Coast Guard received no comments on the proposed rulemaking. Therefore, the proposed rule is being implemented without change.

Good Cause Statement

This final rule is effective in less than 30 days because it is contrary to the public interest to delay the effective date. Immediate action is required to alleviate the overwhelming traffic congestion caused by tourists who are prevented from entering and exiting Ocean City, Maryland while the Route 50 drawbridge is in the open position.

Because Ocean City is in the height of the tourist season and because no comments were received about the bridge schedule change, good cause exists to make the final rule effective upon publication.

Regulatory Evaluation

This regulation is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)3 of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the U.S. Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' included independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this final rule to be minimal on the maritime industry, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended by 59 FR 38654, 29 July 1994), this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues as follows

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.559 is revised to read as follows:

§ 117.559 Isle of Wight Bay

The draw of the US50 bridge, mile 0.5, at Ocean City, shall open on signal; except that, from October 1 through April 30 from 6 p.m. to 6 a.m., the draw shall open if at least three hours notice is given and from May 25 through September 15 from 9:25 a.m. to 9:55 p.m. the draw shall open at 25 minutes after and 55 minutes after the hour for a maximum of five minutes to let accumulated vessels pass, except that, on Saturdays from 1 p.m. to 5 p.m., the draw shall open on the hour for all waiting vessels and shall remain in the open position until all waiting vessels pass.

Dated: July 14, 1997.

Roger T. Rufe, Jr.,

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

[FR Doc. 97–19224 Filed 7–18–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN159–1–9704(b); TN174–1–9726(b); TN175–1–9725(b); FRL–5859–5]

Approval of Source Specific Revisions to the Tennessee SIP Regarding Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document, EPA is taking action on three source specific revisions to the Tennessee State Implementation Plan (SIP) which establish reasonably available control technology requirements (RACT) for the control of volatile organic compound (VOC) emissions from certain operations at Brunswick Marine Corporation, Outboard Marine Corporation, and Essex Group Incorporated. EPA is approving the operating permits for these sources into the SIP with the exception of the portion of one permit which allows the Tennessee Technical Secretary to determine RACT which is being disapproved. These permits were issued consistent with the alternate control plans which established RACT requirements in accordance with the provisions of the Tennessee SIP for developing VOC emission control requirements for major sources for which there is no regulation or guidance for determining RACT.

DATES: This action is effective September 19, 1997, unless adverse or critical comments are received by August 20, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to William Denman at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference files TN159–01–9704, TN174–01–9726, and TN175–01–9726. The Region 4 office may have additional background documents not available at the other locations.

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

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. William Denman, 404/562–9030.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: William Denman at 404/562–9030.

SUPPLEMENTARY INFORMATION: On December 20, 1995, Tennessee submitted a permit for Brunswick

Marine Corporation (permit number 743652P), and on June 3, 1996, Tennessee submitted permits for Outboard Marine Corporation (permit number 039845P & 044881P), and Essex Group Incorporated (permits numbers 045011P, 045012P, & 045013P). These operating permits were submitted to EPA for the purpose of establishing RACT requirements for certain VOC emitting operations at these facilities. These permits contain source specific RACT requirements which were established in accordance with Tennessee rule 1200–3–18–.79 ''Other Facilities that Emit Volatile Organic Compounds (VOC's) of One Hundred Tons Per Year.'' This rule contains presumptive RACT requirements for major sources not subject to an EPA control technique guideline (CTG). These requirements include meeting presumptive RACT emission limits for certain operations, installation and operation of an emission capture system which achieves 90 percent capture, certification of compliance, maintenance of records, and self reporting of exceedances. However, if the implementation of the presumptive RACT measures listed in the rule are determined to be either technically or economically infeasible this rule provides for the development of an alternate control plan. This alternative control plan must be approved into the SIP. For an alternate control plan to be approved into the SIP, the State must provide a demonstration that the presumptive RACT measures contained in rule 1200–3–18–.79 are either technically or economically infeasible for their application. The State provided to EPA a comprehensive demonstration that it was either technically or economically infeasible to implement the presumptive RACT requirements contained in rule 1200–3–18–.79 for certain sources at these three facilities. These demonstrations are part of the RACT determinations and are contained in the technical support document developed for this action. The demonstrations contain a comparison of control measures used at similar facilities and other potential RACT measures. Some alternatives investigated were technically infeasible and some were determined to be economically infeasible. For the fiberglass boat manufacturers the RACT determination is equivalent to the South Coast Air Quality Management District of California's production rule 1162. VOC reductions will be obtained through a combination of process modifications and material substitutions. For the lubricant application operation at the Essex Group facility, RACT was determined to be good housekeeping practices to reduce fugitive emissions, use of non-VOC dri-lubes as permitted by customers, and application of dri-lube through a proprietary wick process. EPA has determined that these demonstrations adequately proved that other RACT measures are infeasible and that the RACT measures established for these operations meet the Agency's requirements for alternative RACT. The specific RACT measures which were developed for certain sources at these three facilities are described below.

I. Brunswick Marine Corporation Source Specific RACT Requirements

On April 13, 1994, the Tennessee Air Pollution Control Board approved an alternate control plan which established RACT requirements for certain VOC emitting operations at the Brunswick Marine Corporation facility located in Murfreesboro, Tennessee. On February 21, 1996, Tennessee issued operating permit number 743652P to Brunswick Marine containing the RACT requirements discussed above. EPA is approving this permit into the SIP with the exception of the phrase ''unless alternative factors can be established empirically and are approved by the Technical Secretary'' contained in permit condition #18(1)(f) which is being disapproved. The following RACT requirements were established in the operating permit for certain VOC emitting operations at Brunswick Marine facility.

1. *Decks and Hulls Production:*

a. In the laminating process of the decks only non-atomizing techniques shall be used. These techniques include the use of airless or air-assisted airless spray guns, which include wet out and ''chopper'' guns, and techniques such as use of pressure fed rollers.

b. Airless or air-assisted airless spraying equipment shall be utilized where possible during the gelcoat application. This equipment was installed and utilized for pigmented and clear gelcoats by January 1, 1995. However, during the application of polyflake gelcoats, air-atomized techniques may be used.

c. In the laminating process of hulls, the dry glass reinforcement shall be placed into the molds by hand and catalyzed resin shall be applied to the dry glass using non-atomizing techniques such as pressure fed rollers, wet out and ''chopper'' guns or bucket and brush techniques.

d. Mix gelcoats contain VOC's including styrene, MEKP and MMA. The MEKP content of gelcoat shall not exceed 2 percent by weight under normal operating conditions. A maximum of 2.5 percent MEKP may be used when necessary due to cold weather conditions.

e. The styrene content of lamination resins shall not exceed 37 percent by weight. The styrene content of gelcoat shall not exceed 48 percent by weight. The methyl methacrylate (MMA) content of gelcoat shall not exceed 10 percent by weight.

f. Emissions of styrene may be determined quantitatively by using the factors 18 percent by weight for spray operations and 10 percent weight for hand lay up operations.

g. The styrene content of the gelcoat used for tooling purposes shall not exceed 50 percent by weight, and shall be utilized only during the construction and repair of molds.

2. *Carpet Adhesive Application:* Adhesives containing solvents which are ozone depleting chemicals are being phased out of this operation because of the adverse environmental effect of release of these chemicals to the atmosphere. Adhesives containing volatile organic compounds (VOC) are currently the only known technically feasible materials, other than adhesives containing ozone depleting chemicals as solvents, that can be used for this operation. Therefore, adhesives containing VOC may be used in this operation. The allowable VOC content of adhesives used in this operation shall be 4.4 lbs VOC/gallon with a maximum usage rate of 313 gallons/month.

3. *Miscellaneous:* Total volatile organic compound (VOC) emissions from other VOC emitting operations which are subject to Rule 1200–3–18–.79 shall not be in excess of 3 percent of the total VOC emitted from all operations subject to this rule. Compliance with this requirement shall be on a calendar month basis.

II. Outboard Marine Corporation Source Specific RACT Requirements

On April 13, 1994, the Tennessee Air Pollution Control Board approved an alternate control plan which established RACT requirements for certain VOC emitting operations at the Outboard Marine Corporation's boat manufacturing facility located in Murfreesboro, Tennessee. On July 27, 1995, and May 31, 1996, Tennessee issued two operating permits (permit number 039845P & 044881P) to Outboard Marine containing the RACT requirements for certain sources. EPA is approving these operating permits into the SIP for the purpose of establishing federally enforceable RACT measures. The RACT requirements contained in

the operating permit which were established for certain VOC emitting operations at Brunswick Marine are as follows.

1. *Decks and Hulls Production:*

a. In the laminating process of decks larger than 21 feet in length, only non-atomizing resin application techniques such as a flow coater or pressure feed roller shall be used to apply the catalyzed resin to wet the glass fibers and mold surfaces. In the laminating process of decks smaller than 21 feet in length, techniques such as airless or air-assisted airless spray guns, which include wet out and ''chopper'' guns, and pressure fed rollers and flow coaters shall be used.

b. Only airless or air-assisted airless spraying equipment shall be used for pigmented gelcoat application.

c. In the laminating process of hulls, the dry glass reinforcement shall be placed into the molds by hand and catalyzed resin shall be applied to the dry glass using non-atomizing resin application techniques such as a flow coater or pressure fed roller.

d. Mixed gelcoat may contain the VOC's styrene, methyl methacrylate (MMA) and MEKP. The MEKP content of gelcoat shall not exceed 2 percent by weight under normal operating conditions. A maximum of 2.5 percent MEKP may be used when necessary due to cold weather conditions.

e. The styrene content of lamination resins shall not exceed 35 percent by weight. The combined styrene and MMA content of pigmented gelcoat shall not exceed 47 percent by weight and of the metal flake clear gelcoat 53 percent by weight.

f. Emissions of styrene shall be calculated based on 18 percent by weight for atomized spray operations and 10 percent weight for hand lay up operations.

g. For tooling purposes only the styrene content of gelcoat and resin shall not exceed 50 percent by weight, and shall be used only for the purpose of building and repairing molds.

h. Tooling gelcoat shall be used only for the purpose of building and repairing molds.

2. *Carpet Adhesive Application:* The VOC's emitted from this source shall not exceed 1.2 pounds per gallon of glue applied. Glue usage at this source shall not exceed 240 gallons per day.

3. *Miscellaneous:* Total VOC emissions from other VOC emitting operations which are subject to Rule 1200–3–18–.79 shall not be in excess of 3 percent of the total VOC emitted from all operations subject to this rule. Compliance with this requirement shall be on a calendar month basis.

III. Essex Group Inc. Source Specific RACT Requirements

On April 13, 1994, the Tennessee Air Pollution Control Board approved an alternate control plan which established RACT requirements for VOC emission control on the lubricant application to enameled wire at Essex Group, Incorporated's Franklin, Tennessee, Magnet Wire coating facility. On May 31, 1996, Tennessee issued three operating permits (permit number 045011P, 045012P & 045013P) to Essex Group containing the RACT requirements for its magnet wire coating processes. In addition to providing for RACT requirements pursuant to the Tennessee regulation for the coating of magnet wire, the permits also contain source specific RACT requirements for the lubrication application process. EPA is approving these operating permits into the SIP for the purpose of establishing federally enforceable RACT measures for the lubrication application process. The specific RACT requirements contained in the operating permit to control VOC emissions from the lubrication application process are as follows.

1. Lubricant shall be applied by wick applicator only.

2. The VOC content of the lubricant shall not exceed 5.87 pounds per gallon, as applied and excluding water and exempt compounds.

3. In addition to satisfying the requirements of paragraphs 1200–3–18–.03 (1) and (3) of the Tennessee Air Pollution Control Regulations, records shall be maintained of the quantity of lubricant used per calendar month. Each record shall be kept for at least 3 years after the date the record is created, and shall be made available to the Technical Secretary upon request.

4. By March 31 of each year, a report shall be submitted to the Technical Secretary of results of research and development in reducing VOC emissions from the lubricant application operation (such as by reformulation of the lubricant, improvement in application efficiency, process changes to reduce or eliminate the need for lubricant application, and installation of emission control systems), and of reductions achieved by implementation of new emission reduction methods.

Final Action

The EPA is approving these revisions to the Tennessee SIP with the exception of the phrase ''unless alternative factors can be established empirically and are approved by the Technical Secretary'' contained in condition number 18 of permit number 743652P which is being disapproved as discussed in the supplementary section of this document. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 19, 1997 unless, by August 20, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 19, 1997.

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

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) 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. 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 CAA, 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) and 7410(k)(3).

The portion disapproved only affects one source, Brunswick Marine Corporation. Therefore, it does not have a significant impact on a substantial number of small entities. Furthermore, as explained in this document, the portion of the request disapproved does not meet the requirements of the CAA and EPA cannot approve the request. Therefore, EPA has no option but to disapprove this portion of the submittal.

C. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new 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. 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 September 19, 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, Ozone, Reporting and recordkeeping requirements.

Dated: July 3, 1997.

Michael V. Peyton,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220, is amended by adding paragraph (c)(156) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(156) Addition of six operating permits containing source specific VOC RACT requirements for certain VOC sources at Brunswick Marine Corporation, Outboard Marine Corporation, and Essex Group Incorporated submitted by the Tennessee Department of Environment and Conservation on December 20, 1995 and June 3, 1996.

(i) Incorporation by reference.

(A) Marine Group Brunswick Corporation operating permit number 743652P issued February 21, 1996, (conditions number 2, 3, and 18).

(B) Stratos Boat Incorporated, D.B.A. Javelin Boats operating permit number 039845P issued on July 27, 1995, (conditions number 2 and 3), and permit number 044881P issued on May 31, 1996, (conditions number 2, 9, and 10).

(C) Essex Group Incorporated operating permit numbers 045011P, (conditions 5, 10, 13, and 15), 045012P, (conditions 5, 10, 13, and 15) and 045013P, (conditions 5 and 16) issued on May 31, 1996.

(ii) Other material. None.

[FR Doc. 97–19084 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA040–5017 & VA009–5017; FRL–5846–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: Approval of Group III SIP and Coke Oven Rules for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. Approval of Virginia's Group III SIP establishes an ambient air quality standard for particulate matter smaller than 10 micrometers in diameter (PM–10); provides regulatory definitions for ''particulate matter,'' ''particulate matter emissions,'' ''PM10,'' ''PM10 emissions,'' and ''total suspended particulate matter'' (TSP); and modifies rules regarding air pollution episodes to include PM–10 as well as TSP action levels. Approval of the coke oven provisions provides for limits on mass emissions, opacity, and fugitive dust from nonrecovery coke works. This action is a result of existing particulate matter planning requirements and is not related to current EPA rulemaking regarding proposed revisions to National Ambient Air Quality Standards (NAAQS) for particulate matter. There are no PM–10 nonattainment areas in the Commonwealth of Virginia. This action is being taken under section 110 of the Clean Air Act.

DATES: This action is effective September 19, 1997 unless within August 20, 1997, adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical

Assessment Section, Mailcode 3AT22, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Thomas A. Casey, (215) 566–2194, at the EPA Region III address above (Mailcode 3AT22) or via e-mail at casey.thomas@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Group III PM–10 Provisions

On July 1, 1987, EPA promulgated National Ambient Air Quality Standards (NAAQS) for PM–10 (52 FR 24634). These standards replaced those promulgated for total suspended particulate (TSP) in 1971. On that day, EPA also promulgated, in 40 CFR parts 51 and 52, and elsewhere, policies and regulations by which it would implement the PM–10 NAAQS.

Recognizing that it would be unreasonable to require full attainment demonstrations in all areas, EPA classified areas of the country in groups based on the probability that each area would maintain the new PM–10 standard. State planning requirements were different for each group classification, but all states were required to fulfill the Group III requirements, which included: the adoption of ambient air quality standards for PM–10; the adoption of the definition for PM–10 emissions; the adoption of the reference method for the measurement of PM–10 in ambient air; the inclusion of PM–10 values in the episode plan; and the revision of PSD permitting rules to include PM–10 in the definitions of major source or facility, major modification, and significant air quality impact.

On June 15, 1989, the Commonwealth of Virginia submitted to EPA a SIP to satisfy the Group III PM–10 requirements described above. Although the submittal pre-dates the current 40 CFR part 51 Appendix V criteria for submittal completeness, the submittal was consistent with the Act's procedural requirements for developing implementation plans and plan revisions for submission to EPA.

The plan revisions include ambient air quality standards (§ 120–03–06); regulatory definitions for ''particulate matter,'' ''particulate matter emissions,'' ''PM10,'' ''PM10 emissions,'' and ''total suspended particulate matter'' (§ 120–01–02); revisions to rules regarding air pollution episodes to include PM–10 as well as TSP (§ 120–07–04); and revisions to permitting rules to provide for the review of applications with respect to PM–10 (§ 120–08–02). Virginia's rules do not include a monitoring method for PM–10 because rules they directly reference the EPA method. Similarly, Virginia submitted PSD-related provisions for informational purposes only. Virginia has been delegated the authority to implement the federal, Part 51 PSD program.[1] Therefore, there is no need for Virginia to revise its SIP to meet any PSD-related requirement.[2]

II. Coke Oven Provisions

On September 6, 1979, the Commonwealth of Virginia submitted to EPA, among other things, revisions to Rule 4–9, ''Emission Standards for Coke Ovens.'' These revisions to Rule 4–9 described this rule's applicability to horizontal slot and slot-flue non-recovery coke ovens (4.90); defined charging, coking, pushing, and quenching (4.91); and provided mass emissions limits for coking, charging, and pushing; established unit-wide visible emission limits, and a ''state-of-the-art engineering design'' requirement for quench towers at affected slot-flue (4.92) and slot (4.93) non-recovery ovens, including the following:

(a) A limit of 0.15 lb (particulate)/hour/ton of coal (as charged) for horizontal slot, sole flue, nonrecovery ovens from coking, charging, and pushing;

(B) A limit of 0.13 lb (particulate)/hour/ton of coal (as charged) for horizontal slot, nonrecovery ovens from coking, charging, and pushing;

(c) The application of Virginia's generic visible emissions (VE) requirement at coke works, which prohibit emissions with opacity greater than 20 per cent, except during one six minute period per hour, which are limited to 60 per cent;

(d) A limit of an average of 20 per cent VE from the coke side enclosure averaged during each push; and

(e) An average of 20 per cent VE during charging.

EPA approved the applicability and definitions portions of this rule on January 19, 1982, but took no action on Rule 4.92 or Rule 4.93, except to approve the quench tower provisions. In the **Federal Register** notice for that final action (47 FR 2768), EPA indicated that it would take final action on these measures when Virginia submitted approvable methods for determining compliance. Virginia submitted test methods on December 27, 1982, which EPA approved on March 15, 1983 (48 FR 10833). In an administrative oversight, EPA neglected to take final action on the remaining provisions of Rule 4.92 and 4.93 at that time, as it indicated it would in the January 19, 1982 notice. EPA is taking action on Rule 4.92 and 4.93 today.

Virginia Rule 120–04–0910A states that ''Compliance with particulate standards . . . shall be determined by three or more emissions tests conducted at different times during the operation of the facility.'' EPA interprets this to mean that each test shall be performed during a different part in the coking cycle. The Commonwealth has concurred with this interpretation.

III. Final Action

EPA is approving these SIP revisions without prior proposal because the Agency views them as noncontroversial and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve these SIP revisions should adverse or critical comments be filed. This action will be effective September 19, 1997 unless, by August 20, 1997, adverse or critical comments are received.

If EPA receives such comments on either action, the action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on either action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 19, 1997.

The Agency has reviewed this request for revision of the federally-approved

[1] The delegation is codified at 40 CFR 52.2451.

[2] In 1992 and 1993, Virginia submitted a complete PSD program to EPA for incorporation into the SIP. (EPA proposed conditional approval of this submittal on January 24, 1996. See 61 FR 1880.) Final action on these submittals is expected in 1997.

State Implementation Plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

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

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

EPA has determined that the promulgated approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new 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. 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 September 19, 1997. Filing a petition for reconsideration by the Administrator of these rules does not affect the finality of these rules 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. EPA's action to approve these Group III and coke oven PM–10 requirements into the Virginia SIP may not be challenged later in proceedings to enforce these requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: June 16, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraphs (c)(115) and (c)(116) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(115) Revisions to Virginia's regulations to fulfill Group III PM–10 requirements, submitted on June 15, 1989, by the Virginia Department of Environmental Quality:

(i) Incorporation by reference.

(A) Letter of June 15, 1989 from the Virginia Department of Environmental Quality transmitting Virginia's Group III PM–10 SIP revisions to EPA.

(B) ''Group III'' PM–10 plan revisions (effective July 1, 1988).

(*1*) Virginia rule 120–01–02, which provides regulatory definitions for ''particulate matter,'' particulate matter emissions,'' ''PM10,'' ''PM10 emissions,'' and ''total suspended particulate matter'';

(*2*) Virginia rule 120–03–06, which provides an ambient air quality standard for PM–10;

(*3*) Virginia rule 120–07–04, which revises rules regarding air pollution episodes to include PM–10 as well as TSP; and

(*4*) Virginia rule 120–0802, which revise permitting rules to provide for the review of proposed permits with respect to PM–10.

(ii) Additional material.

(A) Remainder of Virginia's June 15, 1989 submittal.

(116) Revisions to Virginia's coke oven regulations submitted September 6, 1979 as revised February 14, 1985.

(i) Incorporation by reference.

(A) Letters of September 6, 1979 and February 14, 1985 from the Virginia

Department of Environmental Quality transmitting regulations limiting particulate matter emissions from coke oven batteries.

(B) Revisions to Virginia Department of Environmental Quality Rule 4–9 limiting particulate emissions from coke oven batteries (effective March 3, 1979; January 1, 1985):

(*1*) Virginia rules 120–04–0903A and 120–04–0903B, which provide mass emission limits from coking, charging, and pushing operations;

(*2*) Virginia rule 120–04–0905, which provides a standard for visible emissions;

(*3*) Virginia rule 120–04–0906, which provides a standard for fugitive dust and other fugitive emissions;

(*4*) Virginia rule 120–04–0910A, which specifies the timing in the coking cycle of multiple tests pursuant 120–04–0903; and

(*5*) Virginia rule 120–04–0910B.2 which specifies the certification and testing methods for Virginia Rule 120–04–0905.

(ii) Additional material.

(A) Remainder of Virginia's September 6, 1979 submittal related emission limits for coke oven batteries.

* * * * *

[FR Doc. 97–19098 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA078–4042; FRL–5858–8]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Approval of Source-Specific RACT for R.R. Donnelley & Sons Company—East Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires reasonably available control technology (RACT) for R. R. Donnelley & Sons Company—East Plant, and approves a 1990 baseyear VOC emissions change for the facility. The intended effect of this action is to approve a source-specific determination made by the Commonwealth which establishes and imposes RACT requirements in accordance with the Clean Air Act (CAA). This action is being taken under section 110 of the CAA.

DATES: This final rule is effective September 19, 1997 unless by August 20, 1997, adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Boylan, (215) 566–2094, at the EPA Region III office or via e-mail at boylan.jeffrey@ epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION:

I. Background

On September 20, 1995, August 15, 1996, and September 13, 1996, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). The SIP revision that is the subject of this rulemaking consists of a RACT determination, and a 1990 baseyear VOC emission inventory change for R. R. Donnelley & Sons Company located in Lancaster County Pennsylvania. This rulemaking addresses one operating permit pertaining to the Company's East Plant. In addition, on April 16, 1997, the Commonwealth of Pennsylvania submitted a letter amending the September 20, 1995 submittal pertaining to R. R. Donnelley & Sons Company (East Plant).

Pursuant to section 182(b)(2) and (182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO_X sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements (including RACT as specified in section 182(b)(2) and 182(f)) apply throughout the OTR. Pennsylvania is included in within the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The September 20, 1995 (amended April 16, 1997), August 15, 1996, and September 13, 1996 Pennsylvania submittals that are the subject of this notice, consist of an operating permit which was issued to satisfy the RACT requirements for R. R. Donnelley & Sons Company—East Plant in Lancaster County Pennsylvania.

II. Summary of SIP Revision

The details of the RACT requirements for the source-specific operating permit can be found in the docket and accompanying Technical Support Document (TSD), prepared by EPA on this rulemaking. Briefly, EPA is approving the Commonwealth's RACT determination for R. R. Donnelley & Sons Company—East Plant as a revision to the Pennsylvania SIP, and a 1990 baseyear VOC emissions inventory change for the same facility. The operating permit contains conditions irrelevant to the determination of VOC RACT. Consequently, these provisions are not being included in this approval for VOC RACT nor are they being made part of the SIP.

RACT Determination for R.R. Donnelley & Sons Company (East Plant)

EPA is approving the operating permit (OP#36–2027) for R. R. Donnelley & Sons Company (East Plant) located in Lancaster County. R. R. Donnelley & Sons Company (East Plant) is a printing facility and is considered to be a major source of VOC emissions. Although once considered to be a major source of NO_X emissions, the Pennsylvania Department of Environmental Protection (PADEP) submitted a letter on April 16, 1997, withdrawing the NO_X RACT determination portion of OP #36–2027 from its SIP revision request of September 20, 1995. R. R. Donnelley & Sons Company (East Plant) has been issued a permit with conditions that limit facility wide NO_X emissions to 99 TPY. Since R. R. Donnelley & Sons Company (East Plant) has never had

actual NO_X emissions in excess of 100 TPY (from 1990 and beyond), and has accepted an enforceable NO_X emission cap of less than 100 TPY, the facility is no longer determined to be a major source of NO_X. Pennsylvania issued the permit to R. R. Donnelley & Sons Company (East Plant) with an enforceable emissions cap required by a permit issued under Pennsylvania's approved Federally Enforceable State Operating Permit (FESOP) program.

The six (6) rotogravure presses, and two (2) proof press dryers are covered by 25 PA Code Section 129.67—Graphics Arts System and 40 CFR, Part 60, Subpart QQ—Standards of Performance for the Graphics Arts Industry: Publication Rotogravure Printing.

The six (6) heatset web offset lithographic printing presses ink and dampening solutions on the webs are dried by evaporation in high air velocity natural gas fired dryers, with VOC emissions from the dryers controlled by one (1) regenerative thermal oxidizer (RTO). Operating Permit, OP #36–2027, will require, among other things, that destruction removal efficiency (DRE) of the RTO be at least 90% for VOC's and combustion chamber temperature be maintained at least at 1400°F. Although the permit specifies capture efficiency (CE) parameters in the permit, no actual site testing has been done nor has a protocol been established to substantiate the CE figures in condition #16 (See the discussion of condition #9 below). VOC content of all heatset inks and fountain solutions are not to exceed 45% and 3% by weight respectively.

During periods of maintenance to the RTO, a catalytic afterburner or thermal afterburner are put into operation and the company can only operate the presses that are associated with these bypass controls. Conditions in the permit require the bypass controls to be operationally checked out at least once a year then submitting a report of overall operating condition to the Lancaster District Supervisor within thirty days of operational check. Additionally the permit requires the thermal afterburner to be up to its rated capacity of 10,000 CFM and maintain a chamber temperature of at least 1375°F.

Permit conditions will require cleaning solutions to have a composite partial vapor pressure not to exceed 10 mm Hg at 20°C or VOC content not to exceed 30% by weight. The company will limit the use of higher vapor pressure cleaning solvents to less than 5% by weight of the total manual cleaning solvents used. In addition, the company must keep all solvent laden rags in closed containers when not in use and keep all containers containing VOC's tightly closed when not in use.

Condition #9 requires the facility to keep applicable records and reports in accordance with 25 PA Code, Section 129.95 such that compliance with RACT requirements can be determined. Therefore, while no CE testing is specifically required by the permit, such testing may be required in order to determine compliance with the applicable RACT requirements.

1990 Baseyear VOC Emission Inventory Correction

In addition to approving the RACT determination for these sources at R. R. Donnelley & Sons Company (East Plant), EPA is approving Pennsylvania's request that the 1990 emissions inventory for the facility's VOCs be corrected to accurately reflect the 1990 emissions. The 1990 baseyear VOC emissions inventory will be corrected to 864 tons. Justification for the change in VOC emissions is described as follows:

—For rotogravure operations, R. R. Donnelley & Sons Company (East Plant) initially assumed a 5% retention of solvent in the web, and then revised their assumption to 2% based on the amount of solvent actually being recovered by the six bed carbon adsorption system. Based on VOC emissions data submitted to PADEP for the year 1990, the actual VOC emissions from rotogravure operations was 794.51 tons. The figures were taken from data submitted to PADEP from the facility dated May 6, 1996 (subsequently submitted to EPA from PADEP via letter dated December 13, 1996).

—For heatset web offset lithographic operations, boilers, and associated solvent cleaning equipment, R. R. Donnelley & Sons Company provided data calculating estimates for actual 1990 VOC emissions of 69.83 tons. The figures were taken from the facility's RACT proposal submitted to PADEP dated March 29, 1995.

The source-specific RACT emission limitations that are being approved into the Pennsylvania SIP are those that were submitted on September 20, 1995 (amended April 16, 1997), August 15, 1996, and September 13, 1996, and are the subject of this rulemaking notice. These emission limitations will remain unless and until they are replaced pursuant to 40 CFR Part 51 and approved by the EPA.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 19, 1997 unless, by August 20, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 19, 1997.

Final Action

EPA is approving a source-specific RACT determination for R. R. Donnelley & Sons Company—East Plant submitted by PADEP, and a 1990 baseyear VOC emission inventory correction for the same facility. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

This action has been delegated to the Regional Administrator for decision-making and signature. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

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

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

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, pertaining to the RACT approval for R. R. Donnelley & Sons—East Plant, must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: July 1, 1997.

Thomas Voltaggio,

Acting, Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(125) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(125) Revisions to the Pennsylvania Regulations Chapter 129.91 through 129.95 pertaining to VOC and NO_X RACT, submitted on September 20, 1995 (amended April 16, 1997), August 15, 1996, and September 13, 1996 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Three letters dated September 20, 1995, August 15, 1996, and September 13, 1996 from the Pennsylvania Department of Environmental Protection transmitting one source-specific RACT determination and 1990 baseyear VOC emissions inventory change for R.R. Donnelley & Sons Company (East Plant). One letter dated April 16, 1997 amending the September 20, 1995 submittal. The source is R.R. Donnelley & Sons Company, East Plant (Lancaster County)—printing facility.

(B) Operating Permits (OP):

(1) R.R. Donnelley & Sons Company, East Plant—OP #36–2027, effective July 14, 1995, except for the expiration date of the operating permit, all conditions pertaining to NO_X RACT determination, and the parts of conditions 8, 12b & 23 pertaining to Hazardous Air Pollutants (HAP's).

(ii) *Additional Material.* Remainder of September 20, 1995, August 15, 1996, and September 13, 1996 State submittals pertaining to R.R. Donnelley & Sons—East Plant.

3. Section 52.2036 is amended by adding paragraph (j) to read as follows:

§ 52.2036 1990 baseyear emission inventory.

* * * * *

(j) EPA is approving Pennsylvania's request that the 1990 emissions inventory for VOCs from R.R. Donnelley & Sons—East Plant be corrected to accurately reflect the 1990 emissions. The 1990 baseyear VOC emissions inventory will be corrected to 864 tons. Justification for the change in VOC emissions is described as follows:

(1) For rotogravure operations, R.R. Donnelley & Sons Company (East Plant) initially assumed a 5% retention of solvent in the web, and then revised their assumption to 2% based on the amount of solvent actually being recovered by the six bed carbon adsorption system. Based on VOC emissions data submitted to PADEP for the year 1990, the actual VOC emissions from rotogravure operations was 794.51 tons. The figures were taken from data submitted to PADEP from the facility dated May 6, 1996 (subsequently submitted to EPA from PADEP via letter dated December 13, 1996).

(2) For heatset web offset lithographic operations, boilers, and associated solvent cleaning equipment, R.R. Donnelley & Sons Company provided data calculating estimates for actual 1990 VOC emissions of 69.83 tons. The figures were taken from the facility's RACT proposal submitted to PADEP dated March 29, 1995.

[FR Doc. 97–19095 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–72–1–9720a: FRL–5858–2]

Approval and Promulgation of State Implementation Plan, Florida: Approval of Revisions to the Florida SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On September 25, 1996, the Florida Department of Environmental Protection (FDEP) submitted revisions to the Environmental Protection Agency (EPA) to: revise the gasoline tanker truck leak testing procedures by adopting by reference federal test methods; change the requirements to submit test results to the FDEP rather than the Florida Department of Agriculture and Consumer Services; and update the gasoline tanker truck leak test form. EPA is approving these revisions as part of the State Implementation Plan (SIP).

DATES: This final rule is effective September 19, 1997, unless adverse or critical comments are received by August 20, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Gregory O. Crawford at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

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

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303.

Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Gregory O. Crawford, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4, Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia, 30303. The telephone number is (404) 562–9042.

SUPPLEMENTARY INFORMATION: EPA is approving revisions to the Florida SIP submitted by the State of Florida through the FDEP on September 25, 1996. These revisions amend the gasoline tanker truck leak testing procedures, change the requirements to submit test results and update the gasoline tanker truck leak test form. The following is a description of the revisions. The regulations are more fully discussed in the official SIP submittal that is available at the Region 4 office listed under the **ADDRESSES** section of this document.

62–252.500 Gasoline Tanker Trucks

This section was revised to delete the reference to EPA document number 450/2 78 051 which describes EPA Test Method 27, and adopt by reference the actual test method. This section was also revised to change the requirements to submit test results to FDEP instead of the Florida Department of Agriculture and Consumer Services.

62–252.900 Forms

Minor word changes were made in this section for grammatical clarity. This section was also revised to update the gasoline tanker truck leak test form.

EPA has evaluated these SIP revisions and find that they meet all applicable requirements. Therefore, the Agency is approving the SIP revisions into the Florida SIP.

Final Action

EPA is approving the above referenced revisions to the SIP submitted by the State of Florida because they meet the Agency's and the Clean Air Act (CAA) requirements. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 19, 1997, unless, by August 20, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 19, 1997.

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

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

I. 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 Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) 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. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 1976; 42 U.S.C. 7410(a)(2) and 7410 (k)(3).

C. Unfunded Mandates

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

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

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 September 19, 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 the proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 25, 1997.

A. Stanely Meiburg,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520, is amended by adding paragraph (c)(98) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(98) Revisions to the Florida SIP to amend the gasoline tanker truck leak testing procedures, change the requirements to submit test results and update the gasoline tanker truck leak test form which were submitted on September 25, 1996.

(i) Incorporation by reference. 62–252.500(3) and 62–252.900, effective September 10, 1996.

(ii) Other material. None.

[FR Doc. 97–19093 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN68–3; FRL–5852–7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 25, 1994 and April 29, 1997, the Indiana Department of Environmental Management (IDEM) submitted proposed revisions to its State Implementation Plan (SIP). The submission contains revisions to the Indiana SIP's general provisions (326 IAC 1–1; 326 IAC 1–2), the applicability criteria of the rule for malfunctions (326 IAC 1–6), and the applicability criteria for state construction and operating permit requirements (326 IAC 2–1). The submission also revises Indiana's construction permit program (326 IAC 2–1) and its ''Permit no defense'' regulation (326 IAC 2–1). With this rule, EPA is approving this SIP submission because it is consistent with the Clean Air Act and applicable regulations. EPA has proposed approval and solicited comment on this direct final action through the proposed rule previously published in the **Federal Register** at (62 FR 7193); if adverse comments are received, EPA will withdraw the direct final rule and address the comments received in a new final rule. Unless this direct final rule is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: This action will be effective September 19, 1997 unless adverse or critical comments are received by August 20, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Alvin Choi, EPA (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3507.

SUPPLEMENTARY INFORMATION:

I. Background

IDEM submitted its proposed revisions to the Indiana SIP on October 25, 1994. The submission included changes to the State's permit review rules and federally enforceable state operating permits program (326 IAC 2–8), source specific operating agreements (326 IAC 2–9), and enhanced new source review (NSR) rules (326 IAC 2–1–3.2). The October 25, 1994 submission also contained provisions pertaining to Hazardous Air Pollutants (HAPs), pursuant to Section 112(g) of the Clean Air Act. EPA made a finding

of completeness in a letter dated November 25, 1994.

On August 18, 1995, EPA approved the federally enforceable state operating permit and enhanced new source review regulations (60 FR 43008). On April 12, 1996, EPA approved the source specific operating agreement rule (61 FR 14487).

On February 18, 1997 (62 FR 7157), EPA approved the remainder of Indiana's October 25, 1994 submission as a ''direct final action.'' On that date, EPA also proposed to approve the submission and solicited comments on the direct final action (62 FR 7193). In response to the proposal, EPA received comments from two Indiana companies and IDEM requesting that EPA withhold approval of those subsections relating to HAPs and Section 112(g) of the Act. These requests were based upon: (1) The fact that Federal provisions had been promulgated subsequent to Indiana's rulemaking which obviated the need for the HAP provisions contained in the Indiana rules, and (2) the contention that HAP-related provisions should not be addressed as part of a SIP action under Section 110 of the Act. As a result of the adverse comments, EPA withdrew the direct final rule on April 9, 1997 (62 FR 17095).

By letter on April 29, 1997, Indiana requested that EPA withdraw from consideration the following portions of the permitting rules: 326 IAC 2–1–1(b)(1)(G), 326 IAC 2–1–1(b)(1)(H) and 326 IAC 2–1–1(b)(3)(B)(iii). In addition, Indiana noted that 326 IAC 2–1–1(b)(3)(B)(v) includes a reference to subsections (b)(1)(G) and (b)(1)(H). IDEM requested that EPA note in its action that those citations, which are due to be either modified or eliminated in current State rulemaking, were not being approved as part of EPA's action. In light of the above, EPA is approving the following revisions to Title 326 of the Indiana Administrative Code (326 IAC)—Article One: General Provisions, Rule One: Sections 2 and 3; Rule Two: Sections 2, 4, 12, 33.1, 33.2, 33.5; Rule Six: Section 1. The EPA is also approving revisions to 326 IAC—Article Two: Permit Review Rules, Rule One: Sections 1, 3, and 10. EPA is taking no action on the portions of the rule which Indiana has withdrawn, as identified above. The purpose of this revision is to update and revise the SIP to reflect statutorily-mandated changes to the permit programs. The rationale for EPA's approval is summarized in this rule. A more detailed analysis is set forth in a technical support document which is available for inspection at the Region 5 Office listed above.

II. Summary of State Submittal

The following sections of Article One, Rule One have been revised to include recent amendments to the Act and the CFR.

326 IAC 1–1–2 References to Federal Act: This section was revised specifically to reference the Clean Air Act Amendments of 1990 because the SIP incorporated changes required by the 1990 Amendments.

326 IAC 1–1–3 References to the Code of Federal Regulations (CFR): This section updates the reference to the CFR from the 1989 edition to the 1992 edition and specifically references the July 21, 1992 **Federal Register** with regard to 40 CFR Part 70.

The following sections of Article One have been revised to include new definitions and revisions to existing regulations.

326 IAC 1–2–2 ''Allowable emissions'' definition: The previous definition calculated an allowable emission rate by combining the most stringent of three listed criteria with the maximum rated capacity of the facility (unless the facility was subject to a limit on the operating rate or hours of operation, or both). This definition has been expanded to include potential emissions and daily emission rates for noncontinuous batch manufacturing operations.

326 IAC 1–2–4 ''Applicable state and federal regulations'' definition: This section has been revised to clarify that this definition includes rules adopted under 326 IAC by the Air Pollution Control Board, all regulations included in the CFR by EPA, and specific requirements established by the Act.

326 IAC 1–2–12 ''Clean Air Act'' definition: This section was updated to include a reference to the Clean Air Act Amendments of 1990. The previous definition made only a general reference to the Act.

326 IAC 1–2–33.1 ''Grain elevator'' definition: This new section was added to define the term used in 326 IAC 2–9–2 (Source specific restrictions and conditions). A ''Grain elevator'' is defined as ''an installation at which grains are weighed, cleaned, dried, loaded, unloaded, and placed in storage.''

326 IAC 1–2–33.2 ''Grain terminal elevator'' definition: This new section was added to define the term used in 326 IAC 2–1–7.1 (Fees for registration, construction permits, and operating permits). A ''Grain terminal elevator'' is defined as any grain elevator which has a capacity greater than 2,500,000 U.S. bushels certified storage or 10,000,000 U.S. bushels annual grain throughput, which is the total amount of grain received or shipped by the grain elevator over the course of a calendar year.

326 IAC 1–6–1 ''Applicability of rule'': The owner or operator of any facility with the potential to emit at a specified emission rate, and the owner or operator of a facility with malfunctioning emission control equipment, either of whose facilities could cause emissions in excess of stated emission rates, were formerly subject to the malfunction rule. The revised section revokes the previous applicability criteria and subjects the owner or operator of any facility which is required to obtain a permit under 326 IAC 2–1–2 (Registration) or 326 IAC 2–1–4 (State Operating permits) to the malfunction rule.

The following Sections of Article 2 revise the existing regulations.

326 IAC 2–1–1 ''Applicability of rule'': This section determines the applicability of permit and fee requirements for, among other things, persons proposing to construct or modify sources, including sources in Lake and Porter Counties. One of the principle revisions to 326 IAC 2–1–1 is the universal replacement of the term ''potential emissions'' by ''allowable emissions.'' This modification will presumably ease the State's burden in administering its air permit program by removing certain smaller sources from required review.

EPA approves this revision to encourage the state's effective administration of its permit program. EPA notes that Indiana's regulations regarding Prevention of Significant Deterioration (PSD) and NSR employ the term ''potential emissions'' in determining the applicability of those programs, and thus these revisions do not affect the applicability of those programs to any sources. Correspondence with the state confirms these conclusions.

A revision to this rule provides that the state operating permit program (326 IAC 2–1–4) does not apply if the source has an enforceable operating permit under 326 IAC 2–9. Also, an additional revision subjects to this rule any person planning to construct or operate grain terminal elevators.

The revised rules have added a criterion for determining applicability of SIP provisions. This criterion regulates any modification which will increase emissions of particulate matter with an aerodynamic diameter less than or equal to 10 micrometers by 15 tons per year.

Exemptions to the applicability regulations have been adopted. The first category of excluded sources includes

existing sources or sources proposed to be operated, constructed, or modified, which have emissions of less than the emission limits specified in the provisions regarding either: (1) Applicability of registration requirements found at 326 IAC 2–1–1(b)(2) or (2) applicability of requirements governing the construction permits, enhanced NSR, operating permits, and fees. The second category exempts existing sources who seek only changes in a method of operation, a reconfiguration of existing equipment or other minor physical changes, or a combination of the above which does not increase emissions in excess of: (1) Significance levels in PSD limitations and emissions offsets; (2) specific threshold levels adopted for Lake and Porter Counties; (3) levels specified in provisions governing the applicability of regulations for construction permits, enhanced NSR, operating permits, and fees (not including the general 25 tons per year criteria); and (4) levels specified for the volatile organic compound rules. The third category exempts temporary operations and experimental trials which involve construction, reconstruction, or modification which meet specific criteria.

326 IAC 2–1–3 Construction permits: This revision eliminates the need for the submission of plans and specifications to be prepared by a professional engineer registered to practice in Indiana, with an application for a construction permit. The applicant, however, is now required to place a copy of the permit application for public review at a library in the county where construction is proposed. Finally, the revision requires any applicant who proposes to construct upon land which is underdeveloped or for which a valid existing permit has not been issued, to make a reasonable effort to provide notice to all owners or occupants of land adjoining the proposed construction site.

326 IAC 2–1–10 Permit no defense: This section states that a permit which is obtained by a source shall not be used as a defense against a violation of any regulation. An exception has been added for alleged violations of applicable requirements for which a permit shield has been granted according to 326 IAC 2–1–3.2 (Enhanced NSR) and 326 IAC 2–7–15 (Part 70 permit program; Permit shield).

The EPA is approving the revisions to the sections in 326 IAC Article 1 and 2. These revisions add definitions which reflect new regulations added to the title and revise existing regulations which have been found to be in accordance with the CFR and the Act.

III. Rulemaking Action

Many of the revisions to the General Provisions updated definitions with respect to the 1990 Clean Air Act Amendments. Revisions were also in response to the recent addition of the Source Specific Operating Agreement program. The changes to the Permit Review Rules are presumably intended to alleviate the permitting burden on IDEM. By using the ''allowable'' definition and adding exemption regulations in 326 IAC 2–1–1, IDEM will be able to concentrate its resources on relatively more significant sources. For the reasons stated above, the EPA approves the plan revisions submitted on October 25, 1994 and April 29, 1997, to incorporate changes to existing regulations and to accommodate recent revisions to the SIP by adding and updating regulations.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in a previous **Federal Register** publication, the EPA has proposed to approve the SIP revision should adverse or critical comments be filed. This action will be effective on September 19, 1997 unless, by August 20, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 19, 1997.

Nothing in this action should be construed as permitting, 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 12866

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

B. Regulatory Flexibility

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

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (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 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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 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, Lead, Particulate matter, Sulfur dioxide, Volatile organic compounds.

Dated: June 18, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(109) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(109) On October 25, 1994, and April 29, 1997, the Indiana Department of Environmental Management requested a revision to the Indiana State Implementation Plan in the form of revisions to the General Provisions and Permit Review Rules intended to update and add regulations which have been effected by recent SIP revisions, and to change regulations for streamlining purposes. This revision took the form of an amendment to Title 326: Air Pollution Control Board of the Indiana Administrative Code (326 IAC) 1–1 Provisions Applicable Throughout Title 326, 1–2 Definitions, 1–6 Malfunctions, 2–1 Construction and Operating Permit Requirements.

(i) Incorporation by reference. 326 IAC 1–1–2 and 1–1–3. 326 IAC 1–2–2, 1–2–4, 1–2–12, 1–2–33.1, and 1–2–33.2. 326 IAC 1–6–1. 326 IAC 2–1–1, 2–1–3, and 2–1–10. Adopted by the Indiana Air Pollution Control Board March 10, 1994. Filed with the Secretary of State May 25, 1994. Effective June 24, 1994. Published at Indiana Register, Volume 17, Number 10, July 1, 1994.

* * * * *

[FR Doc. 97–19092 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX No.VA062–5019; FRL–5861–2]

Approval and Promulgation of Air Quality Implementation Plans; Richmond, Virginia—NO_X Exemption Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is issuing final approval of a petition from the Commonwealth of Virginia requesting that the Richmond moderate ozone nonattainment area be exempt from applicable nitrogen oxides (NO_X) reasonably available control technology (RACT) control requirements of section 182(f) of the Clean Air Act (Act). This exemption request, submitted by the Virginia Department of Environmental Quality, is based upon three years of ambient air monitoring data which demonstrate that the National Ambient Air Quality Standard (NAAQS) for ozone has been attained in the Richmond area without additional reductions of NO_X. The effect of this action is to remove the requirement for NO_X RACT contingent upon continued monitoring of attainment in the Richmond area. The action will also stop application of the offset sanction imposed on January 8, 1996 and defer application of future sanctions as of the effective date of the exemption approval. This action is being taken under section 182(f) of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on August 20, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Christopher H. Cripps, (215) 566–2179, at the EPA Region III address above (or via e-mail at cripps.christopher@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: On December 18, 1995, the Commonwealth of Virginia's Department of Environmental Quality submitted a NO_X exemption petition that would exempt the Richmond ozone nonattainment area from the NO_X RACT requirement under section 182(f) of the Act. The exemption request was based upon ambient air monitoring data for 1993, 1994, and 1995, which demonstrated that the NAAQS for ozone has been attained in the area without additional reductions of NO_X. Subsequent to the original request for an exemption, additional ambient data for 1996 became available. The EPA has reviewed the ambient air monitoring data for 1994, 1995, and 1996 and concludes that the area is still attaining the ozone standard.

The current design value for the Richmond nonattainment area, computed using ozone monitoring data for 1994 through 1996, is 116 parts per billion (ppb). The average annual number of expected exceedances is 0.7 for that same time period. For the 1993 to 1995 time period, the average annual number of expected exceedances was 1.0, and the corresponding design value was 124 ppb. An area is considered in attainment of the standard if the average annual number of expected exceedances is less than or equal to 1.0.

On July 26, 1996, the Commonwealth of Virginia submitted a redesignation request and complete maintenance plan for the Richmond ozone nonattainment area based on the 1993 to 1995 air quality monitoring data. The EPA will be acting on this submittal in a separate rulemaking document.

On March 19, 1996, the EPA proposed approval of the NO_X exemption petition for the Richmond ozone nonattainment area (61 FR 11170). Also, in a March 19, 1996 interim final rule, EPA made a determination that the Commonwealth, contingent on continued monitored attainment of the ozone NAAQS, had corrected the deficiency of failing to submit NO_X RACT rules (61 FR 11162). This interim final rule did not stop the sanction clock that started under section 179 for this area on July 8, 1994. However, this interim final rule did stay the application of the offset sanction and has deferred the application of the highway sanction. The EPA provided

the public with an opportunity to comment on the proposed action and on the interim final rule.

Response to Public Comment

Adverse comments to the proposed exemption and the interim final rule were received from six commenters. In addition, three environmental groups submitted joint adverse comments on the proposed approvals of NO_X exemptions for the Ohio and Michigan ozone nonattainment areas in August of 1994. These comments addressed the EPA's general policy regarding NO_X exemptions. The commenters requested that these comments be addressed in all EPA rulemakings dealing with section 182(f) exemptions. Even though some of these August 1994 comments are not pertinent to the proposed action, EPA has addressed them for completeness.

In addition to commenters who fully opposed the exemption, two letters were received that either conditionally supported the exemption or that fully supported the exemption but commented adversely on supplemental information in the preamble of the notice of proposed rulemaking. One of these two comment letters supported the proposed exemption only if no further controls on volatile organic compounds (VOC) would be required in lieu of NO_X RACT. The second of these two comment letters fully supported the exemption and provided urban airshed modeling results to show further reduction of NO_X would not contribute to attainment although EPA's action to grant the exemption is based upon ambient air quality data indicating that the Richmond area has attained the ozone NAAQS and not upon a modeled demonstration. The following discussion summarizes the comments received regarding the Commonwealth's petition and EPA's proposed rulemaking and presents the EPA's responses to these comments.

Comment #1 Certain commenters argued that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of a state implementation plan (SIP) revision. These commenters argued that NO_X exemptions are provided for in two separate parts of the Act, section 182(b)(1) and section 182(f). Because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place ''when [EPA] approves a plan or plan revision,'' these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable SIP revision such as attainment demonstrations or maintenance plans, unless the area has been redesignated as attainment. Several commenters stated NO_X exemptions should only be considered in conjunction with attainment or maintenance plans whereas one commenter stated NO_X exemptions should only be considered in conjunction with any implementation plans containing control measures.

Response #1 Section 182(f) contains very few details regarding the administrative procedures for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves the EPA with discretion to establish reasonable procedures consistent with the requirements of the Administrative Procedures Act (APA).

The EPA disagrees with the commenters regarding the process for considering NO_X exemption requests under section 182(f) and instead, believes that sections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in section 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or a plan revision, does not appear in section 182(f)(3). While section 182(f)(3) references section 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) (and by extension, paragraph (2)), not the procedural requirement that the EPA act on exemptions only when acting on SIP revisions. Additionally, section 182(f)(3) provides that ''a person'' (which section 302(e) of the Act defines to include a State) may petition for NO_X exemptions ''at any time,'' and requires the EPA to make its determination within 6 months of the petition's submission. These key differences lead the EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

With respect to major stationary sources, section 182(f) requires marginal areas to adopt new source review (NSR) rules, unless exempted. These rules were generally due to be submitted to the EPA by November 15, 1992. Thus, in order to avoid the Act's sanctions, areas seeking a NO_X exemption would have needed to submit this exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the Act specifies that the attainment demonstrations were not due until November 1993 or 1994 (and the EPA may take up to 12 months to approve or disapprove the demonstrations). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstrations are called for in the Act. For areas seeking redesignation to attainment of the ozone NAAQS, the Act does not specify a deadline for submittal of maintenance demonstrations (in reality, the EPA would generally consider redesignation requests without accompanying maintenance plans to be unacceptable). Clearly, the Act envisions the submittal of an EPA action on NO_X exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

Comment #2 Commenters argued that for various reasons three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment and that EPA's policy erroneously equates the absence of a violation for one three-year period with ''attainment''. Two commenters argued that three years of violation-free data could be reflecting an economic downturn that resulted in temporarily lower than normal emissions.

Several of these commenters argued that three years of data without a violation might be only the result of favorable weather conditions. One commenter argued that the weather in 1995 was in fact abnormal in that the Richmond area experienced high-altitude winds which prevented stagnation.

Response #2 The EPA does not agree with the comment that three years of air quality monitoring data is an insufficient basis to grant an exemption under section 182(f). In cases where a nonattainment area outside an ozone transport region is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, the EPA believes that the section 182(f) test is met since ''additional reductions of [NO_X] would not contribute to attainment'' of the NAAQS in that area. In all cases, in the absence of approved maintenance and contingency plans and an approved redesignation request, EPA's approval of the exemption is granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

The EPA has separate criteria for determining if an area should be officially redesignated to attainment under section 107(d)(3)(E) of the Act. The section 107 criteria are more

comprehensive than the Act requires with respect to NO_X exemptions under section 182(f). If all the criteria, other than that related to air quality data, for redesignation are met, EPA would act to redesignate an area to attainment of the ozone NAAQS based upon only (and at least) three years of violation-free data.

In addition to air quality monitoring data showing attainment, under section 107, EPA can only redesignate an area to attainment if EPA has fully approved a maintenance plan. One of EPA's criteria for an approvable maintenance plan is that the plan demonstrate maintenance with the standard for a period of twelve years after the submission of the maintenance plan. One method of demonstrating maintenance is a showing that future year emissions of each of the ozone precursors including NO_X will remain stable or decline over the twelve-year period. In the absence of such redesignation with an approved maintenance plan, EPA's approval of the exemption is granted on a contingent basis.

EPA must, as a legal matter, use the ambient air quality monitoring data and related evaluation methodologies to determine if an area is attaining or violating the ozone NAAQS and base its action on the particular facts of each exemption petition. Therefore, the EPA cannot require that states seeking exemption from NO_X provisions based on monitoring data estimate what emissions might have been under different economic conditions. The EPA cannot require that states seeking exemptions from NO_X provisions based on monitoring data estimate what ozone concentrations might have been under different meteorological conditions. Furthermore, the determination of compliance with the ozone NAAQS uses air quality monitoring data over a three year period and therefore accounts for fluctuations in meteorology.

Comment #3 One commenter stated that because the Virginia petition did not take into account meteorological fluctuations any perceived trends in ambient ozone monitoring data are a poor basis for an exemption, and cited the conclusions in the report of the National Academy of Sciences (NAS) ''*Rethinking the Ozone Problem in Urban and Regional Air Pollution*'' [National Academy Press, Wash., DC, 1991] by the National Research Council that year-to-year variability in ozone concentrations are attributable to meteorological fluctuations. This commenter also cited the conclusion in this NAS report that the current use of the second-highest daily maximum 1-hour concentration in a given year as the principal measure to assess ozone trends is not a reliable measure of progress in reducing ozone and that more statistically robust methods should be used. This commenter noted that there were seven ozone nonattainment areas (Kansas City, San Francisco, Memphis, Detroit, Cincinnati, Pittsburgh and Muskegon) which violated the ozone NAAQS in 1995 that had been redesignated to attainment since 1990 or had redesignation requests pending. The commenter also argued that a conclusion based solely upon three years of ''clean'' data fails to demonstrate that NO_X reductions would not contribute to attainment because in the absence of reliable methods for monitoring reductions in precursor emissions EPA cannot conclude that real progress in reducing ozone has been made.

Response #3 EPA does not agree with the comment. As noted in the response to an earlier comment, EPA must, as a legal matter, use the current ozone standard and related evaluation methodologies to determine if an area is attaining or violating the ozone NAAQS and base its action on the particular facts of each exemption petition. The cited NAS report and EPA's companion report both support the conclusion that, as a general matter for ozone nonattainment areas across the country, NO_X reductions in addition to VOC reductions will be needed to achieve attainment. However, as stated in the response to an earlier comment, EPA believes that an area outside an ozone transport region qualifies for an exemption under section 182(f) when the area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions. For the Richmond area the issue is whether the additional reductions from the requirements of section 182(f) would contribute to attainment of the ozone NAAQS in the Richmond area. The reductions required under section 182(f) are ''additional'' in the sense that these reductions will occur in addition to other requirements of the Act. For example, the Clean Air Act mandated a number of new control measures such as those required under Title II concerning national standards for new motor vehicles which will reduce both NO_X and VOC emissions as cars built prior to these standards are replaced by those required to meet these standards. For the reasons stated in the previous response, EPA believes there is a basis for granting a NO_X exemption for the Richmond area on a contingent basis (in the absence of approved maintenance and contingency plans and an approved redesignation request).

Comment #4 One of these commenters provided newspaper articles which reported that the Richmond area was slated for construction of one major new manufacturing facility and was one of a few areas under consideration for location of another major new manufacturing facility. This commenter noted that future ozone precursor emissions growth is likely.

Response #4 The EPA's decisions on whether or not to grant a NOX waiver are not dependent on estimates of what emissions may be in future years. As explained in the response to a previous comment, EPA must, as a legal matter, use the ambient air quality monitoring data and related evaluation methodologies to determine if an area is attaining or violating the ozone NAAQS and base its action on the particular facts of each exemption petition. As also explained in the response to a previous comment, a determination that an area is in ''attainment'' based on three years of clean data does not result in official redesignation to attainment until the other requirements of section 107(d)(3)(E) of the Act are met. These other requirements include a demonstration of continued maintenance for twelve years after submittal of the redesignation request and maintenance plan. Such a demonstration may be based upon a showing that emissions of ozone precursors will remain stable or decline relative to the emissions in the attainment year inventory or be based upon photochemical modeling that a future year mix of ozone precursor emissions will not result in violation of the ozone NAAQS. Either method for a demonstration of maintenance sets emission budgets for ozone precursors. In all cases, in the absence of approved maintenance and contingency plans and an approved redesignation request, EPA's approval of the exemption is granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

Comment #5 Many commenters opposed the exemption based on 3 years of clean data where there is evidence that shows the exemption interferes with attainment or maintenance in downwind areas. Several commenters noted that either one or both of EPA's December 1993 guidance and May 27, 1994 policy prohibits granting a section 182(f) exemption based on 3 years of clean data if evidence exists showing that the exemption would interfere with attainment or maintenance in

downwind areas. Such conditions should also apply to exemption requests based on modeling.

One commenter provided evidence that shows NO_X reductions in the Richmond area provide ozone benefits in large areas of the ozone transport region. Several commenters referenced results of regional oxidant modeling (ROM) performed by the EPA and mentioned in the notice of proposed rulemaking for this action that show regional NO_X control is needed in combination with localized VOC control in order to attain the ozone NAAQS throughout the Ozone Transport Region (OTR); thus, control of NO_X emissions throughout the eastern United States will contribute to significant reductions in peak ozone levels within the OTR. Several commenters asked EPA to re-evaluate the February 8, 1995 memorandum from John S. Seitz, Director, Office of Air Quality and Standards, entitled ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria'' to require that exemptions only be granted to areas that do not interfere with attainment or maintenance in downwind areas. Three of these commenters contend that EPA cannot segregate action under section 182(f) from the requirements of section 110(a)(2)(D).

One of these commenters also opposed the interim final rule to stay sanctions because it ignores the detrimental effects on air quality on areas downwind.

Response #5 As a result of comments on previous NO_X exemptions, the EPA reevaluated its position on this issue and has revised previously-issued guidance. See the Memorandum, ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria,'' dated February 8, 1995, from John Seitz. As described in this memorandum, the EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that the NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State or in another nonattainment area within the same State. This action would be independent of any action taken by the EPA on a NO_X exemption request under section 182(f). That is, the EPA's action to grant or deny a NO_X exemption request under section 182(f) for any area would not shield that State's need in response to a call by EPA for revisions to state implementation plans (SIP call), for example, area from the EPA's action to require additional NO_X emission reductions from sources in that area, if necessary, under section 110.

Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO_X emissions upwind of the nonattainment areas. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. At the same time, States have requested exemptions from NO_X requirements under section 182(f) for certain nonattainment areas in the modeling domains. Some of these nonattainment areas may impact downwind nonattainment areas. The EPA intends to address the transport issue under section 110(a)(2)(D), based on a regional modeling analysis.

Under section 182(f)(1)(A) of the Act, an exemption from NO_X requirements may be granted for nonattainment areas outside of an ozone transport region if the EPA determines that ''additional reductions of (NO_X) would not contribute to attainment of the national ambient air quality standard for ozone in the area.'' There are three NO_X exemption tests specified in section 182(f). Of these, two are applicable for areas outside of an ozone transport region: the ''contribute to attainment'' test described above, and the ''net air quality benefits'' test. The EPA must determine, under the latter test, that the net benefits to air quality in an area ''are greater in the absence of NO_X reductions'' from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption. Consequently, as stated in section 1.4 of the December 16, 1993, EPA guidance,

> [w]here any one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

As described in section 4.3 of the December 13, 1993, EPA guidance document, ''Guideline for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f),'' the EPA encourages, but does not require, States/petitioners to consider the impacts on the entire modeling domain since the effects of an attainment strategy may extend beyond a designated nonattainment area. Specifically, the guidance encourages States to consider imposition of the NO_X requirements if needed to avoid adverse impacts in downwind areas, either intra- or interstate. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State. *See* section 110(a)(2)(D)(i)(I) of the Act.

In contrast, section 4.4 of the December 16, 1993, guidance states that the section 182(f) demonstration would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO_X exemption would interfere with attainment or maintenance in downwind areas. The guidance further explains that section 110(a)(2)(D) [not section 182(f)] prohibits such impacts. Consistent with section 4.3 of the guidance, the EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently, and hence, has revised section 4.4 of the December 16, 1993, guidance document. Thus, if there is evidence that NO_X emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that problem should be separately addressed by the State(s) or, if necessary, by the EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by the EPA.

The Commonwealth of Virginia is being included in modeling analyses being conducted by the EPA, States, and other agencies as part of the Ozone Transport Assessment Group (OTAG). The OTAG process is a consultative process among the eastern States and the EPA. The OTAG assessment process will evaluate regional and national emission control strategies using improved regional modeling analyses. The goal of the OTAG process is to reach consensus on additional regional and national emission reductions that are needed to support efforts to attain the ozone standard in the eastern United States.

On January 10, 1997 (62 FR 1420) EPA issued a notice of intent to issue a SIP call to reduce regional transport of ozone. In this notice, in accordance with section 110(k)(5) and 110(a)(2)(D) of the Clean Air Act (Act), the EPA announced its plans to require States to submit SIP measures to ensure that emission reductions are achieved as needed to allow current nonattainment areas to prepare attainment demonstrations for the current NAAQS. This action will reflect the technical work done by OTAG and other pertinent regional and urban scale analyses of ozone transport.

Furthermore, this exemption in no way insulates or alleviates the Commonwealth of Virginia from any future obligations to secure additional NO_X reductions, perhaps even from among sources in the Richmond area, should technical evidence, including but not limited to that which may result from the OTAG process, indicate that such reductions are required because NO_X emissions generated in Virginia interfere with the ability of another state or legally responsible jurisdiction to attain and maintain the NAAQS for ozone, and EPA makes such a finding.

Comment #6 One commenter asked EPA to require NO_X RACT immediately under section 110(a)(2)(D) if the Commonwealth's petition for an exemption from NO_X RACT is approved.

Response #6 The EPA does not agree with this comment for two reasons. First, EPA noted in the Technical Support Document for this action that the level of reductions required under section 110 may be greater or less than that required by RACT, depending upon the circumstances. The EPA established general policy for NO_X RACT in the ''NO_X Supplement to the General Preamble for Implementation of Title I'' (57 FR 55620, November 25, 1992) and established NO_X RACT presumptive emission limits for four categories of utility boilers. These limits require reductions on the order of 25 to 50 percent from emission rates prior to control. The ozone transport assessment process described previously has evaluated regional and national emission control strategies for NO_X that considered levels of reductions well in excess of 50 percent. Therefore RACT alone may not be a significant level of control. Secondly, the geographic scope of the January 10, 1997 notice of intent to issue SIP calls for areas throughout the OTAG domain that are contributing significantly to ozone pollution in downwind areas includes Virginia. The SIP call process will therefore address the transport of ozone from all areas influencing the various ozone nonattainment areas in the eastern half of the United States. As noted in the response to an earlier comment, EPA's position is that an action to grant or deny a NO_X exemption request under section 182(f) for any area would not shield that area if additional NO_X emission reductions are determined to be necessary to meet the requirements of section 110(a)(2)(D).

Comment #7 One commenter stated it was inappropriate to issue the NO_X exemption and interim final rule prior to final action on the request that EPA exercise its authority under section 110(a)(2)(D) made by the State of New York in the November 1994 SIP revision for an attainment demonstration for the New York City metropolitan area.

Response #7 The EPA does not agree with this comment for the reasons discussed in the previous two responses. The EPA continues to believe that actions under section 110(a)(2)(D) are independent of any action taken by the EPA on a NO_X exemption request under section 182(f). However, the EPA's action to grant or deny a NO_X exemption request under section 182(f) for any area would not shield that area if additional NO_X emission reductions are determined to be necessary to meet the requirements of section 110(a)(2)(D). In the January 10, 1997 notice of intent, the EPA announced its plans to require certain States to submit additional SIP measures to ensure that emission reductions are achieved as needed to allow current nonattainment areas to prepare attainment demonstrations for the current NAAQS. This action will reflect the technical work done by OTAG and other pertinent regional and urban scale analyses of ozone transport.

Comment #8 One commenter asserted that exemptions should be granted considering transport issues under section 110(2)(2)(D) and referenced a ''limited exemption'' granted for the State of Maine. The limited exemption was ''based upon a demonstration that NO_X emissions in the Northern Maine area are not impacting Maine's moderate ozone nonattainment areas or any other area in the Ozone Transport Region during the time periods when elevated ozone levels are monitored in these areas.''

Response #8 As noted in the response to an earlier comment, EPA does not agree that exemptions granted under section 182(f) for areas outside an ozone transport region must consider transport under section 110(a)(2)(D). The EPA believes, as described in the EPA's December 1993 guidance, that section 182(f)(1) of the Act provides that the new NO_X requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that any one of the following tests is met:

(1) In any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) In nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) In nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Only the first and third tests are applicable for areas inside an ozone transport region; the ''net air quality benefits test'' and the ''net ozone air quality benefit'' test. The EPA must determine, under the first test, that the net benefits to air quality in an area ''are greater in the absence of NO_X reductions'' from relevant sources. Under the third test, EPA must determine ''that additional NO_X reductions would not produce net ozone benefits in the transport region.'' The exemption for Northern Maine was granted under the third test (60 FR 66749, December 26, 1995). Therefore, the exemption petition for Northern Maine had to consider net ozone benefits in areas within the transport region that are downwind of that State.

Comment #9 In addition to stating that perceived trends are a poor basis for a conclusion and three years of data fail to consider meteorological fluctuations, one commenter said that sections 110(a)(2), 161 and 162 of the Act, obligate EPA to protect the public health by ensuring that the air quality standards are attained and then maintained, not simply to respond after a violation has occurred. (EPA's response to the interplay of section 182(f) and section 110(a)(2) of the Act is also noted in the response to previous comments.)

Response #9 The EPA does not agree with this comment since it ignores the Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, the EPA has sought an approach that reasonably accords with that intent. In addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for sources of VOC, section 182(f) also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, the EPA determines that, in certain areas, NO_X reductions would generally not be beneficial towards attainment of the ozone standard.

Sections 161 and 162 deal with requirements for areas designated ''attainment'' of the ozone (and any other) NAAQS. Section 182(f) authorizes when a nonattainment area may be exempted from the NO_X RACT requirement for purposes of attaining the ozone NAAQS; however, the exemption does not preclude future NO_X controls needed for maintenance of

the ozone NAAQS that may be required once the area has been redesignated to attainment. The EPA has not interpreted the ''contribute to attainment'' language in the section 182(f)(1)(A) test to mean ''contribute to attainment and maintenance.'' (Refer to the May 27, 1994, John S. Seitz, Director, Office of Air Quality Planning and Standards, memorandum entitled ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria''.)

In section 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B of the Act. Because of the possibility that reducing NO_X in an area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f), but throughout Title I of the Act, to avoid requiring NO_X reductions where such reductions would not be necessary. In describing these various ozone provisions, including section 182(f), the House Conference Committee Report states in the pertinent part:

> [T]he Committee included a separate NO_X/VOC (volatile organic compound) study provision in section (185B) to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area. See H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990).

Therefore, EPA has concluded that the determination of the benefits of NO_X reductions required under section 182(f)(1)(A) is limited to a determination of whether such reductions would contribute only to ''attainment'' of the ozone NAAQS and need not consider the benefits for maintenance in areas that have been redesignated to attainment of the ozone NAAQS.

Comment #10 Several commenters stated that the exemption should not be granted because the Act does not authorize any exemption of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

Response #10 The EPA does not agree with this comment since it ignores the Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, the EPA has sought an approach that reasonably accords with that intent. In addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for sources of VOC, section 182(f) also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, the EPA determines that, in certain areas, NO_X reductions would generally not be beneficial towards attainment of the ozone standard. In section 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B of the Act. Because of the possibility that reducing NO_X in an area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f), but throughout Title I of the Act, to avoid requiring NO_X reductions where such reductions would not be beneficial or would be counterproductive. In describing these various ozone provisions, including section 182(f), the House Conference Committee Report states in the pertinent part:

> [T]he Committee included a separate NO_X/VOC [volatile organic compound] study provision in section (185B) to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area. See H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990).

As noted in the response to an earlier comment, the command in section 182(f)(1) that the EPA ''shall consider'' the section 185B report taken together with the time period the Act provides for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for the EPA to act on NO_X exemption requests, even in the absence of the additional information that would be included in affected areas' attainment or maintenance demonstrations. While there is no specific requirement in the Act that EPA actions granting NO_X exemption requests must await ''conclusive evidence,'' as the commenters argue, there is also nothing in the Act to prevent the EPA from revisiting an approved NO_X exemption if warranted by additional, current information.

In addition, the EPA believes, as described in the EPA's December 1993 guidance, that section 182(f)(1) of the Act provides that the new NO_X requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that any one of the following tests is met:

(1) In any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) In nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) In nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), the EPA believes that each test provides an independent basis for a full or limited NO_X exemption.

Only the first test listed above is based on a showing that NO_X reductions are ''counterproductive.'' If any one of the tests is met, the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

Comment #11 Many commenters opposed the exemption because it ignored the other benefits of NO_X reductions. Other benefits noted were reduction of nitrogen loading to waterways, bays and estuaries, especially noted was the Chesapeake Bay, reduction of other (non-ozone) secondary pollution, such as fine particulate matter, formed from NO_X-VOC mixtures, and reduction of acid deposition. One of these commenters wondered if EPA can relieve an ozone nonattainment area of the NO_X RACT requirement where the Commonwealth is not meeting alternative requirements for nitrogen controls in water discharges.

Response #11 The EPA does not agree nor does the Act require that decisions regarding granting of a NO_X exemption be made contingent on addressing other environmental benefits such as those raised by the commenters. As noted in the responses to the two previous comments, based upon the plain language of section 182(f) and relevant legislative history, the EPA believes that each of the three tests discussed in section 182(f) provides an independent basis for a full or limited NO_X exemption. Only the ''net air quality test'' is based on a showing that NO_X reductions provide environmental benefits beyond attainment of the ozone NAAQS. In addition, based upon the language, not just in section 182(f), but throughout Title I of the Act regarding NO_X reductions and upon the relevant

legislative history, EPA has concluded that the determination of the benefits of NO_X reductions required under the ''contribute to attainment'' test is limited to a determination of whether such reductions would contribute only to ''attainment'' of the ozone NAAQS and need not consider the benefits in relation to other environmental media. Moreover, some of the pollution problems to which NO_X emissions contribute are addressed by separate Titles of the Clean Air Act or other environmental statutes.

Comment #12 One commenter contended that the air quality monitoring data alone does not support this exemption proposal. The commenter stated the actual measured ozone concentrations reflect the Richmond nonattainment area's failure to consistently attain the federal standard. The air quality levels are below EPA's definition of an exceedance of the ozone NAAQS at 0.125 parts per million (ppm), but are greater than the ozone NAAQS of 0.12 ppm. The commenter protested rounding of ozone concentration measurements less than or equal to 124 ppb down to 120 ppb. The commenter stated that had the EPA adhered to a ''brightline'' 120 ppb standard the Richmond area would be in violation of the ozone NAAQS. The commenter stated that more control of NO_X should be required in the Richmond area because the ozone concentrations are routinely at or above the current ozone NAAQS. The commenter contended that the ozone readings for 1995 were more than ''twice'' the current standard.

Response #12 For the reasons provided below, EPA does not agree with the commenter's conclusions. As stated in 40 CFR 50.9, the ozone ''standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 ug/m^3) is equal to or less than 1, as determined by Appendix H. Appendix H references EPA's ''Guideline for Interpretation of Ozone Air Quality Standards'' (EPA–450/4–79–003, January 1979), which notes that the stated level of the standard is taken as defining the number of significant figures to be used in comparison with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up to 0.01). Thus, 0.125 ppm is the smallest concentration value in excess of the level of the ozone standard. Likewise, the calculated expected exceedances are rounded to zero decimal places. Thus, the smallest sum of expected exceedances for any one monitor that cause the 3-year average to exceeds 1 would be 3.2. Before proposing the exemption, EPA had analyzed the 1993 to 1995 air quality monitoring data in accordance with Appendix H and had determined that the expected number of days per calendar year maximum hourly average concentrations above 0.12 parts per million (235 ug/m^3) did not exceed 1. Because the largest sum of expected exceedances for the 1993 to 1995 data at any one monitor was 3.1, the standard was not exceeded. The largest recorded one-hour, maximum ozone concentration recorded in the 1993 to 1995 period was 0.154 ppm which is well less than twice the standard of 0.12 ppm. It is true that during 1995 three monitoring locations in the Richmond area each recorded one valid monitored exceedance of the 0.12 ppm standard during 1995. However, the form of the ozone NAAQS requires the use of a 3-year period to determine the average number of exceedances per year. The determination of expected number of exceedances is performed on a monitor by monitor basis. An area with more than one monitor would violate the standard if the expected number of days per calendar year maximum hourly average concentrations above 0.12 parts per million exceeds 1 at any one monitor. The EPA has determined that the Richmond area did not violate the ozone NAAQS based upon monitoring data for 1993 to 1995 and has continued without violation through 1996.

Comment #13 One commenter said that NO_X reductions would benefit the Richmond area as demonstrated by the Urban Airshed Modeling performed by the Virginia Department of Environmental Quality for the May 15, 1995, Virginia Attainment Demonstration SIP submittal for Richmond.

Response #13 The EPA does not agree with this comment. The EPA considered the Attainment Demonstration submittal for Richmond in the Technical Support Document (TSD) for the notice of proposed rulemaking. The EPA's evaluation weighed the air quality monitoring more heavily than the attainment demonstration. The reason for doing so was discussed in the TSD and is summarized and clarified below.

In section 4.3 of the December 1993 EPA applicability guidance, the ''contribute to attainment'' test is described for the case where an exemption request is submitted with a redesignation request with violation-free monitoring data for the most recent three years. This policy was amended in the May 27, 1994 Seitz memo to allow a petition for a section 182(f) exemption to be submitted prior to a redesignation request. The same section of the guidance (since amended as discussed above under transport) requires EPA to deny the petition if creditable modeling shows that NO_X reduction in the area seeking the section 182(f) is necessary for a downwind area to attain or maintain the ozone NAAQS. The guidance is silent on the case where modeling and monitoring results in the area are at odds.

Under the policy set forth in a May 10, 1995 memorandum from John S. Seitz, Director, OAQPS, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'', EPA concluded that the requirements for reasonable further progress towards attainment, the attainment demonstration itself, and certain attainment-related requirements are moot when an area is monitoring attainment of the NAAQS. The determination that these requirements are waived would remain effective as long as the area remains free of violations of the ozone NAAQS. In a recent **Federal Register** notice EPA has acted to waive these requirements for the Richmond area based upon air quality monitoring data for 1993 to 1996. *See* 62 FR 32204 (June 13, 1997). The reasonable further progress, attainment demonstration and related requirements become permanently moot if and when the area is redesignated to attainment. To redesignate an area to attainment, EPA must determine that, among other things, the area is free of violations of the ozone NAAQS, that attainment was the result of real, permanent, quantifiable reductions in precursor emissions and that maintenance of the standard is demonstrated. The EPA does not require the maintenance demonstration to be air quality modeling based where a demonstration is made that the future year emission inventories will remain at or below the inventory of the attainment year.

The December 1993 guidance is silent on situations where EPA must consider an exemption petition based upon air quality monitoring data that is not consistent with air quality modeling. The EPA has determined nonattainment areas can be exempted from certain other nonattainment requirements contingent upon continued monitoring of attainment. The EPA therefore has granted greater weight to the air quality monitoring data than the air quality modeling data when considering this exemption petition.

Comment #14 Several commenters argued that the monitoring network in Richmond does not adequately cover this large airshed. All argued that the four monitors cannot reflect all areas where an exceedance of the ozone NAAQS may occur. One stated that according to the Virginia Department of Environmental Quality the four monitors are not placed in high-activity areas in order to more ''accurately reflect consistent ambient concentrations,'' that is, the monitors are placed to measure ''background'' or ''diluted'' concentrations. One commenter argued that to address the inadequacies of the monitoring networks the Act establishes several prerequisites before an area can be redesignated to attainment and that three-years of data do not address any potential increases in NO_X emissions.

Response #14 The EPA does not agree with these comments because the current monitoring network meets EPA-specified regulatory requirements (see 40 CFR part 58), and adequately reflects air quality in the nonattainment area.

Comment #15 Comments were received regarding the process by which the reapplication of the NO_X RACT requirement and sanctions in the event a violation is monitored. One commenter stated the notice of proposed rulemaking and the interim final rule contained conflicting statements regarding staying and deferring imposition of sanctions. The commenter noted that the interim final rule mentions that the stay and deferment of sanctions will occur while the EPA completes the rulemaking process on the Commonwealth's petition. In contrast the commenter noted that the notice of proposed rulemaking stated the 2:1 offset sanction cannot be lifted until either a NO_X RACT SIP is deemed complete by the EPA or the exemption under section 182(f) is granted. Another commenter asked EPA to clarify what steps will be taken regarding reapplication of NO_X RACT in the event a violation of the ozone NAAQS occurs in the future.

Response #15 The purpose of the interim final rule was to stay, for the duration of EPA's rulemaking process on the exemption petition, further application of the 2:1 offset sanction which went into effect in the Richmond ozone nonattainment area as of January 8, 1996 as a result of the July 8, 1994 finding of failure to submit. On July 8, 1994, EPA sent a letter to the Governor of Virginia stating that, under section 179 of the Act, EPA made a finding that Virginia failed to submit a SIP revision for NO_X RACT. This finding commenced the sanctions process outlined by section 179. The two to one (2:1) offset sanction went into effect 18 months later.

The interim final rule also established the procedure by which sanctions would be reapplied if, based upon comments to the proposed and/or interim final rules, EPA determined that the petition was not approvable. The basis for staying and deferring sanctions in the interim final rule was that EPA had concluded that the Commonwealth was eligible for an exemption from the NO_X RACT requirement, under section 182(f) and, therefore, was no longer subject to the requirement for which the July 8, 1994 finding of failure to submit was issued. If, based upon comment, EPA determined that the exemption petition was in fact unapprovable then the basis for the interim final rule would no longer exist. Therefore, the interim final rule provided that sanctions would be applied at the time of a final action disapproving the NO_X exemption petition (or, if action is re-proposed, at the time of the proposed disapproval).

The notice of proposed rulemaking also had to address how sanctions would be affected if EPA approved the exemption. Basically, the notice of proposed rulemaking proposed, on the effective date of the exemption approval, to stop application of the 2:1 offset sanction and to defer application of the highway sanction which was to take effect July 8, 1996. In essence, final approval (contingent upon continued monitoring of attainment) of the exemption petition would continue the stay and deferment of sanctions initiated by the interim final rule. However, the stay would be lifted, should a monitored violation of the ozone NAAQS be recorded under the conditions set forth in the notice of proposed rulemaking. These conditions were:

> ''If there is a violation of the ozone NAAQS in any portion of the Richmond ozone nonattainment area while this area is designated nonattainment for ozone, the exemption will no longer be applicable as of the date of any such determination. Should this occur, EPA will provide notice both of the exemption revocation and of the date sanctions will re-apply in the **Federal Register**. A determination that the NO_X exemption no longer applies would mean that the NO_X requirements become once more applicable to the affected area, that the sanctions would be reinstated, and that deferred sanctions would be imposed on the date originally due or the effective date of the notice, whichever is later.'' See 61 FR 11172.

The contingent nature of the exemption lasts only as long as the Richmond area is designated nonattainment. If prior to redesignation to attainment, a violation of the ozone NAAQS is monitored in the Richmond area and recorded in AIRS, then the section 182(f) exemption would no longer apply. In the rulemaking action which removes the exempt status, the EPA would provide specific information regarding the reapplication of the NO_X RACT requirement and sanctions. Because NO_X RACT is a nonattainment area requirement, once the area is redesignated to attainment, NO_X RACT is no longer required for purposes of attainment. Once the Richmond area is redesignated to attainment, then the response to a violation of the ozone NAAQS would be addressed in the manner prescribed by the approved maintenance plan. NO_X RACT would be implemented to the extent as required under the approved maintenance plan.

Because the sanctions were applied pursuant to a finding that the Commonwealth of Virginia failed to submit a state implementation plan (SIP) revision for NO_X RACT, both the notice of proposed rulemaking and interim final rules noted that, even if the exemption were granted, a NO_X RACT SIP for the Richmond ozone nonattainment area that meets the completeness criteria of section 110(k) would permanently correct the July 8, 1994 finding of failure to submit and would permanently lift sanctions. If prior to redesignation to attainment, a violation of the ozone NAAQS is monitored in the Richmond area and recorded in AIRS, then the section 182(f) exemption would no longer apply, and the only way to lift sanctions would be through submittal of a complete NO_X RACT SIP for the Richmond area.

EPA acknowledges that the precise terminology regarding reapplication of sanctions after an approval of the exemption petition differed slightly in the interim final rule and the proposed rule. The EPA intended the description of the reapplication of sanctions after an exemption approval in the interim final rule to summarize the detailed proposal language contained in the notice of proposed rulemaking. In response to this comment, the final rule clarifies the process for reapplication of sanctions after an exemption approval in the event of a monitored violation as set forth in the notice of proposed rulemaking and defines the role of a complete NO_X RACT SIP revision submittal in terminating sanctions.

Comment #16 One commenter supported the exemption but expressed concerns that the exemption will result in stricter regulation on emissions of other pollutants, specifically on VOC. The commenter encouraged EPA not to approve any additional VOC control

regulations adopted by the Commonwealth that are needed in lieu of an exemption from NO_X RACT. The commenter asked that any final approval address further VOC regulation and asked EPA to clarify that NO_X RACT will be required before any additional VOC control.

Response #16 The EPA does not agree with this comment. As explained in the response to previous comments (refer to responses to comments numbers 9 and 10) in section 182(f)(1), Congress included attenuating language, not just in section 182(f), but throughout Title I of the Act, to avoid requiring NO_X reductions where such reductions would not provide net benefits or contribute to attainment. No such similar language is found concerning VOC reductions in section 182(f) or elsewhere in Title I of the Act. Because today's action is taken under section 182(f) EPA has no basis for conditioning the exemption on future VOC regulation.

Comment #17 One commenter fully supported the proposed action, but commented negatively on the portion of the preamble dealing with other possible benefits of NO_X reductions in the Richmond area. One commenter stated that the proposal alleges several other environmental effects of additional NO_X reductions. If such benefits exist, they should be addressed in the context of regulations dealing with those specific environmental effects, not in context of regulations dealing with attainment of the ozone NAAQS. The commenter said any conclusion regarding benefits on transport of ozone from reducing NO_X emissions are premature pending the outcome of the studies underway by OTAG. The commenter also noted that the compensation for future growth in NO_X emissions is an issue to be addressed in a maintenance plan.

Response #17 The EPA included discussion of the potential other environmental effects of NO_X reductions to inform the public that the action proposed could affect air quality in ways not related to attainment of the ozone NAAQS. Nowhere in the proposal did EPA state that the EPA's proposed action was based upon other than a determination that the NO_X reductions required under section 182(f) would not contribute to attainment. As explained in the response to previous comments, EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence showing that the NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State, and this action would be independent of any action taken by the EPA on a NO_X exemption request under section 182(f). As noted in that earlier response, EPA began that process in a January, 10, 1997 **Federal Register** notice. Further in an earlier response, EPA noted it has not interpreted ''contribute to attainment'' in section 182(f)(1)(A) to mean ''contribute to attainment and maintenance.'' Therefore, the demonstration that an area qualifies for an exemption under section 182(f)(1)(A) is limited to the effects of the section 182(f) requirements on attainment.

Comment #18 Some commenters stated that the modeling required by EPA is insufficient to establish that NO_X reductions would not contribute to attainment since only one level of NO_X control, i.e., ''substantial'' reductions, is required to be analyzed. They further explained that an area must submit an approvable attainment plan before EPA can know whether NO_X reductions will aid or undermine attainment.

Response #18 As discussed in the Notice of Proposed rulemaking and in the responses to previous comments, the basis for granting this exemption on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment) is ambient air monitoring data.

Therefore this comment is not pertinent to the granting of the exemption for the Richmond area. But EPA has included this comment because it was one of the ''standing'' comments as discussed previously in the introduction to the ''Response to Public Comment'' portion of this notice.

Comment #19 Commenters contended that section 182(b)(1) is the appropriate authority for granting interim period transportation conformity NO_X exemptions.

Response #19 The EPA agreed with the commenters and published an interim final rule that changed the transportation conformity rule to reference section 182(b)(1) as the correct authority under the Act for waiving the NO_X ''build/no-build'' and ''less-than-1990 emissions'' tests for certain areas. See 60 FR 44762, (August 29, 1995). A related proposed rule (60 FR 44790), published on the same day, invited public comment on how the Agency plans to implement section 182(b)(1) transportation conformity NO_X exemptions. The final rule for that proposal has since been promulgated. See 60 FR 57179 (November 14, 1995). In that final rule, the EPA noted that section 182(b)(1), by its terms, only applies to moderate and above ozone nonattainment areas. Consequently, the EPA believes that the interim reduction requirements of section 176(c)(3)(A)(iii), and the authority provided in section 182(b)(1) to grant relief from those interim reduction requirements, apply only to those areas subject to section 182(b)(1). The EPA, however, is not granting a NO_X exemption from the interim period transportation conformity requirements by today's action because the Commonwealth submitted its NO_X petition pursuant to section 182(f).

Comment #20 Comments were received regarding the scope of exemption of areas from the NO_X requirements of the conformity rules. The commenters argued that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions during the period before submission of conformity SIPs, not the requirement that conformity SIP revisions contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules, and similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admitted that, in prior guidance, the EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but have wanted the EPA, in actions on NO_X exemptions, to explicitly affirm this obligation and to also avoid granting exemptions until a budget controlling future NO_X increases is in place.

Response #20 The EPA's transportation conformity rule originally provided a NO_X transportation conformity exemption if an area received a section 182(f) exemption. See 58 FR 62188 (November 24, 1993). As indicated in a previous response, the EPA has changed the reference from section 182(f) to section 182(b)(1) in the transportation conformity rule since that section is specifically referenced by the transportation conformity provisions of the Act. See 60 FR 44762 (August 29, 1995). The EPA has also consistently held the view that, in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and the Transportation Improvement Program are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X exemption has been granted. Due to a drafting error, that view was not reflected in the transportation conformity rule. The EPA

has amended the rule to correct this error. See 60 FR 57179 (November 14, 1995).

Final Action

EPA approves the 182(f) NO_X exemption petition submitted by the Commonwealth of Virginia for the Richmond ozone nonattainment area. Approval of the exemption waives the Federal requirements for NO_X RACT applicable to the Richmond ozone nonattainment area. The EPA believes that all section 182(f) exemptions that are approved should be approved only on a contingent basis. As described in the EPA's NO_X Supplement to the General Preamble (57 FR 55628, November 25, 1992), the EPA would rescind a NO_X exemption in cases where NO_X reductions were later found to be beneficial for attainment of the ozone NAAQS in an area's attainment plan. That is, if an area that received an exemption based on clean air quality data which shows that the area is attaining the ozone standard experiences a violation prior to redesignation of the area to attainment, the exemption would no longer be applicable.

If, prior to redesignation of the area to attainment, a violation of the ozone NAAQS is monitored in Richmond (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), the section 182(f) exemption would no longer apply, as of the date EPA makes a determination that a violation has occurred. The EPA would notify the area that the exemption no longer applies, and would also provide notice to the public in the **Federal Register**.

If the exemption is revoked, the area must comply with any applicable NO_X requirements set forth in the Act. The NO_X RACT requirements would also be applicable, with a reasonable time provided as necessary to allow major stationary sources subject to the RACT requirements to purchase, install and operate the required controls. The EPA believes that the Commonwealth may provide sources a reasonable time period after the EPA determination to actually meet the RACT emission limits. The EPA expects such time period to be as expeditious as practicable, but in no case longer than 24 months.

This action stops application of the offset sanction imposed on January 8, 1996 and defers application of future sanctions on the effective date of the exemption approval. Sanctions would then remain stopped or deferred contingent upon continued monitoring that demonstrates continued attainment of the ozone NAAQS in the entire Richmond ozone nonattainment area. If there is a violation of the ozone NAAQS in any portion of the Richmond ozone nonattainment area while this area is designated nonattainment for ozone, the exemption will no longer be applicable as of the date of any such determination. Should this occur, EPA will provide notice both of the exemption revocation and of the date sanctions will re-apply in the **Federal Register**. A determination that the NO_X exemption no longer applies would mean that the NO_X requirements become once more applicable to the affected area, that the sanctions would be reinstated, and that deferred sanctions would be imposed on the date originally due or the date specified in the notice, whichever is later.

The sanctions were applied pursuant to a finding that the Commonwealth of Virginia failed to submit a state implementation plan (SIP) revision for NO_X RACT. Therefore, if prior to redesignation to attainment, the sanctions have been reapplied, they then can only be permanently lifted by submittal of a NO_X RACT SIP for the Richmond ozone nonattainment area that meets the completeness criteria of section 110(k).

If Richmond is redesignated to attainment of the ozone NAAQS, NO_X RACT is to be implemented as provided for as contingency measures in the maintenance plan.

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

Administrative Requirements

A. Executive Order 12866

This action is not a SIP revision and is not subject to the requirements of section 110 of the Act. The authority to approve or disapprove exemptions from NO_X requirements under section 182 of the Act was delegated to the Regional Administrator from the Administrator in a memo dated July 6, 1994, from Jonathan Cannon, Assistant Administrator, to the Administrator, titled, ''Proposed Delegation of Authority: 'Exemptions from Nitrogen Oxide Requirements Under Clean Air Act section 182(f) and Related Provisions of the Transportation and General Conformity Rules'—Decision Memorandum.'' The Office of Management and Budget (OMB) 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. 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. Today's determination does not create any new requirements, but suspends the indicated requirements. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to 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 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 does not create any new requirements, but suspends the indicated 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 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 the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by section 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 September 19, 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, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 8, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52, subpart VV of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2428 is amended by redesignating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.2428 Control Strategy: Carbon monoxide and ozone.

(a) * * *

(b) EPA is approving an exemption request submitted by the Virginia Department of Environmental Quality on December 18, 1995 for the Richmond ozone nonattainment area, which consists of the counties of Charles City, Chesterfield, Hanover and Henrico, and of the cities of Richmond, Colonial Heights and Hopewell, from the oxides of nitrogen (NO_X) requirements for reasonably available control technology (RACT). This approval exempts the Richmond ozone nonattainment area from implementing the NO_X RACT requirements contained in section 182(f) of the Clean Air Act. The exemption is based on ambient air monitoring data. The exemption is applicable during the period prior to redesignation of the Richmond area to attainment of the National Ambient Air Quality Standard for ozone only as long as ambient air quality monitoring data for the Richmond ozone nonattainment area continue to demonstrate attainment without NO_X reductions from major stationary sources of NO_X.

[FR Doc. 97–19090 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD45

Endangered and Threatened Wildlife and Plants; Final Rule to Designate the Whooping Cranes of the Rocky Mountains as Experimental Nonessential and to Remove Whooping Crane Critical Habitat Designations From Four Locations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines that it will designate the whooping crane (*Grus americana*) population of the Rocky Mountains as an experimental nonessential population and will remove whooping crane critical habitat designations from four National Wildlife Refuges; Bosque del Apache in New Mexico, Monte Vista and Alamosa in Colorado, and Grays Lake in Idaho. The private lands involved are holdings inside refuge boundaries and a 1-mile buffer around Grays Lake National Wildlife Refuge. The Service will use this population, and captive-reared sandhill cranes and whooping cranes, in experiments to evaluate methods for introducing whooping cranes into the wild where migration is required.

EFFECTIVE DATE: August 20, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Southwest Regional Office, 500 Gold Avenue SW., Room 4012, Albuquerque, New Mexico 87103–1306.

FOR FURTHER INFORMATION CONTACT: Susan MacMullin, Southwest Regional Office, Albuquerque, New Mexico (see **ADDRESSES** section) (telephone 505/248–6663; facsimile 505/248–6922).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act Amendments of 1982, Public Law 97–304, added section 10(j) to the Endangered Species Act (Act) of 1973, (16 U.S.C. 1531 *et seq.*) that provides for the designation of specific introduced populations of listed species as ''experimental populations.'' Under other authority of the Act, the Service already was permitted to reintroduce populations into unoccupied portions of the historic range of a listed species when it would foster the conservation and recovery of the species. However, local opposition to reintroduction efforts, based on concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the Act, hampered efforts to use reintroductions as a management tool.

Under section 10(j) of the Act, past and future reintroduced populations established outside the current range of a species may be designated as ''experimental'' and, under some circumstances further designated ''nonessential'' experimental. Such designations increase the Service's flexibility to manage such populations because ''experimental'' populations may be treated as threatened species, which allows more discretion in devising management programs than for endangered species, especially regarding incidental and other takings. Experimental populations ''nonessential'' to the continued existence of the species are to be treated as if they were only proposed for listing for purposes of section 7 of the Act, except as noted below.

A ''nonessential'' experimental population is not subject to the formal consultation requirement of section 7(a)(2) of the Act, except that the full protections accorded a threatened species under section 7 apply to individuals found on units of the National Wildlife Refuge System or the National Park System. Section 7(a)(1) of the Act, which requires Federal agencies to carry out programs to conserve listed species, applies to all experimental populations. Individuals to be reintroduced into any experimental population can be removed from an existing source or donor population only if such removal is not likely to jeopardize the continued existence of the species; a permit issued in accordance with 50 CFR 17.22 is also required.

An experiment to reintroduce whooping cranes to their historic range in the Rocky Mountains began in 1975,

testing the ''cross-fostering'' technique of placing whooping crane eggs in nests of greater sandhill cranes (*Grus canadensis*). On May 15, 1978, whooping crane critical habitat was designated in four areas to benefit the whooping cranes being reintroduced into the Rocky Mountains (43 FR 20938).

Section 10(j) requires the Secretary of the Interior to determine whether populations reintroduced before 1982 were experimental and essential to the continued existence of the species. In 1982, the population which migrates between the Gulf Coast of Texas and Northwest Territories, Canada, (Aransas/Wood Buffalo Population) then contained 73 birds (including 17 pairs). The only captive flock (at Patuxent Wildlife Research Center) contained 35 birds, but only 5 egg-laying females. The whooping crane population in the Rocky Mountains (Rocky Mountain Population) contained 14 birds, was increasing through releases, and breeding was expected in the near future. It appeared the Rocky Mountain reintroduction might soon be an operational success rather than an experiment, and the Service considered the population essential to the continued existence of the species. Consequently, the Service did not designate the Rocky Mountain Population as experimental when the Act amendments first provided that opportunity.

The cross—fostering program was terminated in 1989 because the birds were not pairing and the mortality rate was too high to establish a self-sustaining population. Only three nonbreeding adults now survive in the Rocky Mountain region. The total population of whooping cranes has increased to approximately 350 individuals. The wild population now numbers approximately 220 individuals, including 47 experienced breeding pairs. Four captive populations have also been established with approximately 130 whooping cranes, including 15 breeding pairs and another 20 pairs due to begin breeding over the next few years. These are among the factors discussed below which allow the Secretary to now find the Rocky Mountain Population no longer essential to the continued existence of the species.

The Service will remove whooping crane critical habitat designations from four National Wildlife Refuges; Bosque del Apache in New Mexico, Monte Vista and Alamosa in Colorado, and Grays Lake in Idaho. The only private lands involved are private holdings inside refuge boundaries and a 1-mile buffer around Grays Lake National Wildlife Refuge. These critical habitats were established to provide food, water and other nutritional or physiological needs of the whooping crane, particularly potential nesting, rearing and feeding habitat at Grays Lake, roosting and feeding habitat during migration through Alamosa and Monte Vista, and wintering, roosting, and feeding habitat at Bosque del Apache. Section 7(a)(1) of the Act will still apply to all Federal agencies, and both sections 7(a)(1) and 7(a)(2) requirements for ''threatened species'' will apply on Service lands (National Wildlife Refuges). Federal agencies will still be required to carry out programs to conserve this population, and the Act's consultation and the National Wildlife Refuge System Refuge compatibility requirements will still apply on National Wildlife Refuges.

The proposed actions involve the following Service Regions and the States within those Regions: Pacific Region (Idaho), Southwest Region (Arizona and New Mexico), and Mountain-Prairie Region (Colorado, Montana, Utah, and Wyoming). The principal use areas of this population are the middle Rio Grande Valley of New Mexico, the lower San Luis Valley of Colorado, and summering areas in southeastern Idaho and western Wyoming. Southeastern Arizona, northeastern Utah, southwestern Montana, northwestern Colorado, and northern New Mexico are only occupied temporarily during migration or infrequently by a single whooping crane in summer or winter. The portion of the middle Rio Grande Valley involved includes a few kilometers on either side of the Rio Grande ranging from the town of Belen, New Mexico, southward to Bosque del Apache National Wildlife Refuge, 24 km (15 miles) south of Socorro, New Mexico. The portion of the San Luis Valley involved is 24 km (15 miles) on either side of a line running north-northwest from Capulin, Colorado, to Saguache, Colorado.

On March 11, 1967 (32 FR 4001), and again on June 2, 1970 (35 FR 8495), the whooping crane was listed as endangered. Threats resulted from hunting and specimen collection, human disturbance, and conversion of the primary nesting habitat to hay, pastureland, and grain production (Allen 1952) in the 19th and early 20th centuries.

The whooping crane is in the family Gruidae, Order Gruiformes, and is the tallest bird in North America. Males approach 1.5 meters (59 inches) in height and captive adult males average 7.3 kilograms (16 pounds), and females 6.4 kilograms (14 pounds). Adults are potentially long-lived with an estimated maximum longevity in the wild of 22 to 24 years (Binkley and Miller 1980) and 27 to 40 years in captivity (McNulty 1966). Mating is characterized by monogamous life-long pair bonds but individuals pair again following death of a mate. Fertile eggs are occasionally produced at 3 years of age, but more typically at 4 years of age (Mirande et al. 1993). Experienced pairs may not breed every year, especially when habitat conditions are poor. Whooping cranes ordinarily lay two eggs. They will renest if their first clutch is destroyed or lost before mid-incubation (Kuyt 1981). Although two eggs are laid, whooping cranes infrequently fledge two chicks.

In the 19th century, the principal breeding range extended from central Illinois northwest through northern Iowa, western Minnesota, northeastern North Dakota, southern Manitoba, and Saskatchewan to the vicinity of Edmonton, Alberta. Some nesting occurred at other sites such as western Wyoming in the 1900's (Allen 1952, Kemsies 1930). A nonmigratory population still existed in southwestern Louisiana in the 1940's (Allen 1952, Gomez 1992). Through the use of two independent techniques of population estimation, Banks (1978) derived estimates of 500 to 700 whooping cranes in 1870. By 1941, the migratory population contained only 16 individuals.

Whooping cranes currently exist in three wild populations and four captive locations totaling 350 individuals. The largest captive population of 60 birds, including 9 breeding pairs, is located at the Patuxent Environmental Science Center (Patuxent) near Laurel, Maryland. Another seven pairs at Patuxent should begin producing eggs in the next 2 years. This site was staffed and administered by the Service as Patuxent Wildlife Research Center until October 1993 when it became part of National Biological Service and was renamed Patuxent Environmental Science Center. In October 1996, it became part of U.S. Geological Survey. A captive flock of 44 birds is maintained by the Service at the International Crane Foundation (Foundation), a nonprofit foundation near Baraboo, Wisconsin. The Foundation flock contains five breeding pairs and another five pairs which should enter production in the next 2 years. A third captive flock is housed in Calgary, Alberta, Canada, at the Calgary Zoo Ranch. This flock, under the oversight of the Canadian Wildlife Service, contains 21 cranes, including 1 breeding pair. Eight other

pairs at this facility should begin breeding by late this decade. Two pairs maintained at the San Antonio Zoological Gardens and Aquarium in San Antonio, Texas, should begin breeding in the next few years.

The Aransas/Wood Buffalo Population, the only self-sustaining natural wild population, contains 165 individuals that nest in the Northwest Territories and adjacent areas of Alberta, Canada, primarily within the boundaries of Wood Buffalo National Park. The migration route is similar in spring and fall. It passes through northeastern Alberta, south-central Saskatchewan, northeastern Montana, western North Dakota, western South Dakota, central Nebraska and Kansas, west-central Oklahoma, and east-central Texas. These birds winter along the central Texas, Gulf of Mexico coast at Aransas National Wildlife Refuge and adjacent areas. Whooping cranes adhere to ancestral breeding areas, migratory routes, and wintering grounds, leaving little possibility of pioneering into new regions. The Aransas/Wood Buffalo Population can be expected to continue utilizing its current nesting location with little likelihood of expansion, except on a local geographic scale. The flock recovered from a population low of 16 birds in 1941. Forty-nine pairs nested in 1997. This population remains vulnerable to destruction through a natural catastrophe (hurricane), a red tide outbreak, or contaminant spill, due primarily to its limited wintering distribution along the intracoastal waterway of the Texas coast (Service 1994).

The reintroduced population in Florida consists of 52 captive-produced whooping cranes released 1993–1996 in the Kissimmee Prairie. In this experimental effort designed to develop a nonmigratory self-sustaining population designated as experimental nonessential, annual releases of 20 or more birds are planned for up to 6 more years. Project success will be evaluated annually (58 FR 5647; January 22, 1993).

The Rocky Mountain Population consists only of a male and two female adult cross-fostered cranes surviving from an experiment to establish a migratory, self-sustaining population. These birds are termed cross-fostered because they were reared by sandhill cranes at Grays Lake National Wildlife Refuge, a 8,900-hectare marsh in southeastern Idaho.

These cranes winter in the middle Rio Grande Valley of New Mexico at Casa Colorado State Game Refuge and Bosque del Apache National Wildlife Refuge from November–February. In February–March, they migrate north to south-central Colorado where they spend 4–6 weeks in the San Luis Valley. The main crane use area in the San Luis Valley is Monte Vista National Wildlife Refuge, 10 kilometers south of the town of Monte Vista. These whooping cranes spend April–September on their summer grounds in southeastern Idaho and western Wyoming. In September–October, before migration, they flock with sandhill cranes at Grays Lake and other wetlands and pastures before migrating southeast through northeastern Utah and western Colorado where they remain in the San Luis Valley for 4–6 weeks. They migrate through northern New Mexico and arrive at the wintering area in early November.

From 1975–1988, 289 eggs were transferred in the reintroduction experiment (including 73 eggs from the captive flock at Patuxent); 210 hatched, and 85 chicks fledged (Drewien et al. 1989). Population growth was slow due to small numbers of fertile eggs in some years and high mortality of young before fledging. The losses of chicks and fledged individuals, and the absence of breeding, resulted in a peak population of only 33 individuals in winter 1984–85.

By 1985, biologists began to suspect the absence of pairing might be due to improper sexual imprinting, particularly by female whooping cranes. Sexual imprinting of a foster-reared species on the foster-parent species had been confirmed in raptors, waterfowl, gulls, finches, and gallinaceous birds (Bird et al. 1985, Immelmann 1972). Older female whooping cranes frequently did not return in spring to Grays Lake or other areas occupied by males on their territories. In 1981, 1982, and 1989, captive-reared adult female whooping cranes were released at Grays Lake to enhance pairing activities and determine if adult males recognize conspecifics as mates. These experiments indicated that some cross-fostered males recognized conspecific females as appropriate mates. Improper sexual imprinting behavior seemed to be stronger in the cross-fostered females than in the males.

An experiment to test for improper sexual imprinting due to foster rearing among crane species occurred at the Foundation in 1987 (Mahan and Simmers 1992). Sandhill cranes were foster-reared by red-crowned cranes (sample n=1), white-naped cranes (n=2), and Siberian cranes (n=1). They were then observed from the age of 12 to 24 months, the period when pairing typically begins in sandhill cranes. They were placed in pens adjacent to an opposite-sexed, same-aged bird of the foster species on one side and an opposite-sexed, same-age conspecific on the other side. Each test bird socialized more with the foster species than with a conspecific and the preference was most apparent for females. A cross-fostered young would have to prefer a conspecific in order to obtain an appropriate mate. Thus, the cross-fostering technique does not appear to be suitable for reintroducing a crane to historical habitat.

The cross-fostering experiment was ended because these birds were not pairing and the mortality rate was too high to continue (Garton et al. 1989). Several experiments to encourage pair formation were carried out from 1986 through 1992 without success (Service 1994). By the winter of 1995–1996, cross-fostered adult female whooping cranes of ages 4 through 14 years had passed through a nesting season on 45 occasions without pairing. In 1992, a wild male cross-fostered whooping crane and female sandhill crane paired and produced a hybrid chick. This pairing is believed to be a consequence of improper sexual imprinting which resulted from the cross-fostering process. This is the first known instance of cross-species pairing despite frequent association of these two species in North America.

The cross-fostered cranes exhibited various parental behaviors on summer territories at Grays Lake and in a pen nearby. These activities and chick adoptions at the United States captive facilities suggested that some cross-fostered whooping cranes might adopt or bond with and rear a whooping crane chick. Such bonding experiments could occur in pens with wild-captured adults and would theoretically result in a captive-reared juvenile imprinted on conspecifics and exhibiting some wild qualities. Wild cross-fostered adults were captured and placed with chicks in pens. When the young reached fledging age, all birds were released to the wild to learn from their foster parent where to migrate and spend the winter. This approach was tested without significant success in 1993 and 1994.

The United States Whooping Crane Recovery Plan was approved January 23, 1980, and revised December 23, 1986, and February 11, 1994. In 1985, the Director-General of the Canadian Wildlife Service and the Director of the Service signed a Memorandum of Understanding entitled ''Conservation of the Whooping Crane Related to Coordinated Management Activities.'' It was revised in 1990, and 1995. It discusses cooperative recovery actions, disposition of birds and eggs, population restoration and objectives,

new population sites, international management, recovery plans, and consultation and coordination. All captive whooping cranes and their future progeny are jointly owned by the Service and Canadian Wildlife Service, and both nations are involved in recovery decisions.

The recovery plan's criteria for downlisting the whooping crane from the endangered to threatened category require maintaining a population level in excess of 40 pairs in the Aransas/Wood Buffalo Population and establishing 2 additional, self-sustaining populations each consisting of at least 25 nesting pairs (Service 1994). The experimental reintroduction underway in Florida, if successful, would provide the first additional population. The first priority for establishing the second reintroduced population is a migratory flock within historic nesting habitat in the prairie provinces of Canada (Edwards et al. 1994). The Canadian Wildlife Service and provincial wildlife agencies are cooperating in field studies to identify such a release area. By late in this decade the three principal captive flocks should be capable of producing enough whooping cranes to simultaneously support reintroductions in Florida and Canada, but there is no technique for introducing captive-reared cranes in a migratory situation so they will use an appropriate migration route and wintering location.

The Service proposes to use wild whooping cranes of the Rocky Mountain Population and captive-reared sandhill cranes and whooping cranes to evaluate methods of introducing captive-reared whooping cranes into a wild migratory situation. The research proposed within the range of the Rocky Mountain Population is needed to identify a technique for establishing a wild migratory population of whooping cranes in Canada. Such a technique is essential if the Service is to achieve recovery goals for downlisting (Task 31 of the Whooping Crane Recovery Plan; Service 1994:58).

The requirements of the National Environmental Policy Act and the section 7 requirements of the Act have been fulfilled for the proposed action.

The Rocky Mountains are the preferred location for research on techniques for establishing a migratory flock because a small experimental population has been present there for 20 years. A large data base on whooping crane and sandhill crane habitats and behaviors exists for this area which provides a comparative baseline for future research in the same geographic area. The Service prefers to avoid experimentation in other United States areas of the historic migratory range until late this decade when a reintroduction site is selected in Canada. The Act and National Environmental Policy Act requirements will need to be fulfilled for those portions of the United States that would be involved as migration and winter areas for a flock reintroduced in Canada.

Adult cranes teach their young where to migrate and spend the winter. A promising topic of research in the Rocky Mountains is the use of ultralight aircraft to teach captive-reared cranes an appropriate migration route and wintering area. In 1993, Mr. Bill Lishman reared Canada geese in Ontario, trained them to follow an ultralight aircraft, and in fall led 18 on a 600 kilometer flight to Virginia where they spent the winter. The following spring at least 13 returned to Ontario on their own initiative. In 1994, Mr. Kent Clegg reared six sandhill cranes and taught them to follow an ultralight aircraft in local flights within Idaho. In 1995, Mr. Clegg raised a group of sandhill cranes and led 11 in fall migration from southeastern Idaho to Bosque del Apache National Wildlife Refuge in New Mexico. Two were killed by golden eagles (*Aquila chrysaetos*) during migration and one returned to Idaho on its own initiative. After release to the wild in New Mexico, two were killed by coyotes (*Canis latrans*) and two by hunters. The four that survived migrated north to Colorado in March and north from Colorado in April. Two summered in southeastern Idaho within 53 km of the Clegg ranch. The summering site of the other two birds is unknown. Three of the 1995 ultralight cranes returned to Bosque del Apache to winter in the fall of 1996. In 1996, Mr. Clegg reared eight sandhill cranes and led them in migration from Idaho to New Mexico. All birds arrived safely in New Mexico and there were no losses to eagles during the migration, nor to hunters or coyotes in the first months after their release to the wild. The day after their arrival at Bosque del Apache National Wildlife Refuge in New Mexico, it appeared that two research birds joined large flocks of sandhill cranes leaving the refuge to migrate south into Mexico. These birds are still missing and presumed dead. The other six 1996 cranes integrated with the wild cranes within hours of their arrival at the refuge, migrated into Colorado in March, and further north in April. Losses to golden eagles, coyotes, and hunters were reduced during the 1996–97 study. Rearing, migrating, and monitoring techniques were refined. Two severe winter storms prolonged the migration, but when conditions were suitable for flight the birds were able to fly farther and for longer periods than in 1995. Research may be required on some alternative technique in the future if experimentation with ultralight aircraft indicates it is not a promising reintroduction technique for the Canadian site.

Satellite transmitters were placed on two 1995 and two 1996 research cranes in January 1997 to test the merits of these transmitters for monitoring movements. The 1995 and 1996 cranes are summering in southeastern Idaho and western Wyoming. Such locations are characteristic summering sites for yearling birds reared in southeastern Idaho.

The Rocky Mountain Population qualifies as being nonessential to the continued existence of the whooping crane because:

(1) The three cross-fostered whooping cranes of the Rocky Mountain Population are not breeding and all members will likely die in the next 10 years. They are not contributing to the long-term existence of the species in the wild. None of the cross-fostered whooping cranes have paired with conspecifics and they appear to be behaviorally sexually neutered. Loss of such individuals will not deter recovery of the species.

(2) There are approximately 130 whooping cranes in captivity at 4 discrete locations and about 235 whooping cranes elsewhere at 2 locations in the wild. This species has been protected against the threat of extinction from a single catastrophic event by gradual recovery of the Aransas/Wood Buffalo Population (average increase of 4.6 percent per year for the past 50 years, Mirande et al. 1993), and by increase and management of the cranes at the captive sites. If the average growth rate continues, the Aransas/Wood Buffalo Population will reach 500 by about 2020. The standard deviation in growth is almost double the mean growth, so in some years the population will decline temporarily although long-term growth continues to be good. Captive-produced birds which die during the experiments can be replaced through captive breeding or by transfer of eggs from the wild population in Canada. Eggs have been transferred to captivity from the Aransas/Wood Buffalo Population for building the captive flocks or experimental reintroductions since 1967. The wild population has continued to grow during this interval despite the egg transfers. Since 1985, biologists involved in the egg transfer have endeavored to ensure that one

viable egg remains in each nest. Such egg switching within the Park provides infertile pairs the opportunity to raise a chick. These egg switches have increased flock growth and the potential for species recovery by an estimated 16-19 percent (Kuyt, pers. comm. 1991). Whooping cranes of the Aransas/Wood Buffalo Population have the highest long-term recruitment rate (13.9 percent) of any North American crane population (Drewien et al. 1995).

Egg and chick production doubled in the captive flocks in 1992, and has continued to increase to the present. Within the captive population there also are 20 young pairs expected to enter the breeding component of the population over the next 4 years. Wild- and captive-flock increases illustrate the potential of the species to replace individual birds which might die during the experimentation.

(3) The repository of genetic diversity for the species will be the approximately 350 wild and captive whooping cranes mentioned in (2) above. Any birds selected for research on reintroduction techniques in a migratory situation will be as genetically redundant as practical, hence any loss of reintroduced animals in the experiments will not significantly impact the goal of preserving maximum genetic diversity in the species.

(4) Research in the Rocky Mountain Population will further the conservation of the species. Such research is essential to recovery and downlisting the species to threatened status. The beneficial result of identifying a suitable reintroduction technique for placing captive-produced whooping cranes in a migratory circumstance outweighs any negative effects of the experiments. If a suitable reintroduction technique is identified, it will expedite recovery and downlisting/delisting of the whooping crane.

Management

Effect on the Rocky Mountain Population

After captive-reared whooping cranes are released to the wild in the proposed experiments, the Service does not propose to return them to captivity. Avian tuberculosis has been a significant disease problem among whooping cranes in the Rocky Mountains and is very difficult to detect. To protect captive flocks from this disease, the Service will not take a whooping crane from the wild and place it in the captive flocks. Wild birds placed in captivity also pose a greater danger because: (1) Self-inflicted injury may occur as they attempt to escape from caretakers, (2) they may attack and injure caretakers, and (3) such cranes are prone to injury when they struggle while being examined during health checks.

The release of six or more captive-reared whooping cranes in the future into this population may slightly prolong its existence. The numbers proposed, including small additional numbers if additional research is required, will be far below the numbers required to have any significant likelihood of establishing a self-sustaining population. The additional birds in the wild will provide additional viewing opportunities for bird watchers, enjoyment for those participating in the annual crane festivals at Monte Vista, Colorado, and Socorro, New Mexico, and may slightly prolong the existence of wild whooping cranes within the Rocky Mountains.

Potential Conflicts

The release of additional whooping cranes in the Rocky Mountains will not alter sandhill crane hunting activities along the migration pathway and wintering sites. Sandhill cranes and snow geese (Chen cerulescens) are designated as look-alike species, species that look somewhat like whooping cranes. Hunters of these species might misidentify a whooping crane and shoot it, believing it is a legal target. Sandhill cranes are hunted in some areas and precautions are taken to reduce the likelihood that whooping cranes might be mistaken for sandhill cranes and shot. Sandhill crane hunting is not permitted in Idaho and Colorado nor on the national wildlife refuges involved in this rule. Hunting sandhill cranes and snow geese has been permitted in the middle Rio Grande Valley of New Mexico, in northeastern Utah, and in a small area in southwestern Wyoming for the past decade without causing the known loss of a whooping crane. In New Mexico, the whooping cranes generally stay on Bosque del Apache National Wildlife Refuge or State game refuges during fall/winter hunting seasons.

Special Handling

Under the proposed special regulation, which is promulgated under authority of section 4(d) of the Act and which accompanies this final rule for experimental population designation, Federal and State employees and agents would be authorized to relocate whooping cranes to avoid conflict with human activities and relocate whooping cranes that have moved outside the appropriate release area when removal is necessary or requested. Research activities may require capture in the wild of cross-fostered or captive-reared and released whooping cranes. These individuals will be captured using the night-lighting technique which has been used successfully to capture 269 cranes without injury (Drewien and Clegg 1992). Cranes utilized in the experiments will be equipped with a legband-mounted radio telemetry or satellite transmitter and periodically monitored to assess movements. They will be checked for mortality or indications of disease (listlessness, social exclusion, flightlessness, or obvious weakness).

Mortality

Although efforts will be made to reduce mortality, some will inevitably occur as captive-reared birds adapt to the wild. Collision with power lines and fences, predators, and disease are known hazards to wild whooping cranes in the Rocky Mountains. The Service anticipates the proposed actions may affect the whooping crane due to the potential death of one or more wild, cross-fostered and captive-reared individuals during the experiments. Such losses are not unique to this experiment, but could result during normal life experiences of wild whooping cranes and of whooping cranes retained in captivity. Standard avicultural precautions taken in shipping, handling, and capture should keep losses to a minimum. Recently released whooping cranes will need protection from natural sources of mortality (predators, disease, inadequate foods) and from human-caused sources of mortality. Natural mortality will be reduced through prerelease conditioning, gentle release, and vaccination. Human-caused mortality will be minimized through conservation education programs.

Health Care

As a consequence of the proposed experiments, disease could be transferred from a captive facility to the wild. Precautions taken to ensure that no disease is transferred will be those measures approved in previous transfers when the captive whooping crane flock was split between Patuxent and the Foundation; when birds were shipped from 1992–1995 to Calgary Zoo Ranch to start the captive flock for Canadian Wildlife Service; and when birds were transferred from 1993–1997 for the reintroduction to the wild in Florida. Health screening procedures have been developed for release of captive-reared whooping cranes in the wild and have proven effective in avoiding disease or parasite transfers in multiple shipments

from 1993–1996. Such techniques have proven effective in previous transfers between captive sites and between captive sites and the wild.

Captive Facilities

Facilities for captive maintenance of the birds in Idaho were constructed for earlier studies and are designed similar to facilities at Patuxent and the Foundation. They conform to standards set forth in the Animal Welfare Act. To further ensure the well-being of birds in captivity and their suitability for release to the wild, the pens include water where the cranes can feed and roost.

Coordination With Agencies and Interested Parties

In October 1992, the Canadian and United States Whooping Crane Recovery Teams recommended uses for the cross-fostered whooping cranes surviving in the Rocky Mountain Population. Both teams suggested using the remaining birds in further experimentation. Information about the recovery teams' recommendations was mailed to the involved Service Regions, States, and special interest groups for their review and comments.

In February 1993, the Southwest Region of the Service sent a memorandum to the State wildlife agency director in each of the affected States; the chairman and members of the Central Flyway Technical Committee; the crane subcommittee of the Pacific Flyway Council; representatives of the National Audubon Society; the president and trustees of the Whooping Crane Conservation Association; managers of national wildlife refuges involved; and to crane festival groups in Socorro, New Mexico, and Monte Vista, Colorado, requesting their views on actions being considered for the Rocky Mountain Population of whooping cranes. In addition, Technical Committees of the Pacific and the Central Flyway Councils expressed opinions on the actions. Some recipients responded by mail and others provided only verbal comments by telephone.

The involved regions of the Service support the changes. Refuge managers at the three locations anticipated no problem with removal of the critical habitat designation and changing the designation to experimental nonessential. All involved States, the Pacific Flyway Crane Subcommittee, the Central Flyway Technical Committee, the Central Flyway Council, and the Pacific Flyway Council favored the change in designation. The Whooping Crane Conservation Association and Chairman of the Crane Festival in Colorado supported the changes. National Audubon Society representatives expressed mild concern about possible increased hazards to whooping cranes as a consequence of the experimental designation but favored additional experimentation.

A majority of the respondents supported taking some birds into captivity, endorsed further experimentation with the birds left in the wild, and, after the proposed experiments were completed, favored leaving some whooping cranes in the wild for public education, viewing, and possible further research. In 1993, the Service decided to leave all the birds in the wild so there would be a greater likelihood of having a sufficient number of birds for the experiments.

The Canadian Wildlife Service endorses the actions described in this rule. The members of the Canadian and United States Whooping Crane Recovery Teams, and professional biologists working with State, provincial, Federal, and private groups who have expertise in research or management of cranes, also endorse the changes. The Whooping Crane Conservation Association and World Wildlife Fund-Canada provided funding support for the guide bird experimentation in 1993 and 1994 and for ultralight aircraft-crane research in 1995 and 1996, indicating their endorsement of such experimental efforts and uses of the Rocky Mountain whooping cranes.

On June 24, 1993, the Service announced the availability of the draft revised recovery plan for the whooping crane and solicited review and comment (58 FR 34269). Review copies were mailed to the involved States, Federal agencies, special interest groups, and others. The plan described further proposed experimentation with the Rocky Mountain Population. Favorable comments were received on the plan and all comments were supportive of the proposed research.

Summary of Comments and Recommendations

In the February 6, 1996, proposed rule (61 FR 4394) the Service requested comments or recommendations concerning any aspect of the proposal that might contribute to the development of a final decision on the proposed rule. A 60-day comment period was provided. State wildlife agencies; the National Audubon Society; the Whooping Crane Conservation Association; Defenders of Wildlife; Regional Directors of each involved Service region; refuge managers; State waterfowl biologists and nongame biologists; the Canadian Wildlife Service; the Chamber of Commerce at Socorro, New Mexico; representatives of the electric utility industry; and private citizens were mailed copies of the rule or told of specifics of the rule (total contacts 47) and invited to provide comments.

A Service news release was issued on February 6 to coincide with publication of the proposed rule in the **Federal Register**. The release, entitled ''U.S. Fish and Wildlife Service Proposes To Designate Rocky Mountain Population Of Whooping Cranes As Experimental,'' described the proposed action, told the readers where to acquire a copy of the rule, and provided a name and address to which comments on the action should be directed. The news release was sent to newspapers in New Mexico and others listed in an outreach plan. The release was sent to Service Regional Offices in Portland and Denver for routing to media and Congressional Offices in States affected by the proposed actions. The news release also was placed on the Internet on the Service's Home Page for Region 2 under the news release category. Nine comment letters were received. Six letters endorsed and three opposed the proposed action. Specific issues raised by those commenting and the Service's responses are presented below.

Letters supporting the actions were received from one individual, a representative of the utility industry, a nonprofit conservation organization, the Central Flyway Council, and two representatives of State wildlife agencies as summarized below. The President of the Whooping Crane Conservation Association (Association), a nonprofit conservation organization dedicated to conservation of the species, wrote in support of the designation change, the removal of critical habitat, and the proposed experiments. The Association membership is primarily individuals in Canada and the United States.

The Director of Wyoming Game and Fish Department indicated his staff had reviewed the proposed actions and they supported the rule. The Terrestrial Nongame and Endangered Wildlife Program Manager for Colorado Division of Wildlife endorsed the actions, the removal of restrictions no longer necessary, and the experiments that may prolong existence of the flock in the Rocky Mountains. A utility company representative wrote in support of the designation change, the removal of critical habitat, and the experiments designed to learn how to establish additional migratory populations. An individual wrote endorsing the change

in designation and the removal of critical habitat.

Joe Kramer, Chairman, Central Flyway Council wrote in support of the change in designation and the removal of critical habitat designations from the three National Wildlife Refuges. He stated the Council believes the change provides the flexibility necessary for sound and progressive management of this species. The Central Flyway Council is comprised of the States of Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wyoming, and the Canadian provinces of Alberta, Northwest Territories, and Saskatchewan. Three individuals expressed opposition to the proposed actions as summarized below.

Comment: One respondent felt that nature is best left alone as much as possible, disrupting nature's balance causes harm, and no whooping crane needs to be taught to migrate.

Response: The Service agrees that the balance of nature is important and should not be disrupted if it is truly a balanced system. Unfortunately, many activities of man have disrupted this balance, necessitating some intervention by man if species and ecosystems are to be conserved. Previous releases of captive-reared sandhill cranes have documented that such birds may not exhibit appropriate migration behavior (Drewien et al. 1982).

Comment: A second respondent expressed concern about the low numbers of whooping cranes and failed to comprehend how the Service could consider any member of the species ''nonessential'' or ''experimental'.

Response: The Service understands that the terminology presents an enigma. The term ''nonessential'' refers only to those individuals which are not essential to future survival of the species. The three whooping cranes surviving in the Rocky Mountains are not breeding and will eventually die of natural causes. Consequently, they are not contributing to the future survival of the species. The small number of captive-reared whooping cranes which might be involved in research will be individual birds genetically redundant to the captive and wild populations. These individuals also are not ''essential'' to survival of the species. The Service believes it is justified in designating these birds as ''nonessential experimental'' as long as their involvement in the research increases the ultimate likelihood of full recovery of the species. The purpose of the experimentation is to identify a technique for reintroducing whooping cranes in areas where migration is required between the nesting grounds and a safe wintering site. Until such a technique is identified, the Service will be unable to reestablish wild populations in areas where the birds must migrate to survive. Full recovery of the species will not be possible until additional wild migratory populations are established.

Comment: A third individual respondent was not opposed to the ''* * *experiment per se, only that it not be conducted in New Mexico.'' If conducted in New Mexico, the commenter postulated that the Service would be signing the immediate death warrant of the cranes because they would have to compete against 30,000 hunters, an army of poachers, and 33 professional hunters of the U.S. Department of Agriculture.

Response: Hunters of sandhill cranes and snow geese in the middle Rio Grande Valley of New Mexico, where the whooping cranes winter, are required to take a course on bird identification and pass an exam on proper identification of protected species before they are permitted to hunt. This requirement has been in effect since whooping cranes were reintroduced to the area in 1975. Although the potential exists for shooting a whooping crane, we are not aware of a whooping crane being killed by hunters in New Mexico since they were reintroduced. The nonessential designation will not allow purposeful take such as hunting or otherwise intentionally killing cranes. The Service does not agree with the respondent's allegation that New Mexico is an inappropriate place to accomplish the experimentation.

Comment: The third respondent ''extremely'' opposed the proposed removal of the critical habitat designation, fearing it would permit unrestricted herbicide and pesticide spraying, trapping, and placement of M–44 sodium cyanide devices, wire snares, and compound 1080 baits by the U.S. Department of Agriculture.

Response: When the critical habitat designation is removed from National Wildlife Refuges, which is predominantly where the designation has been in effect, other Federal agencies, such as U.S. Department of Agriculture, must still consult with the Service before undertaking any actions affecting the refuge. On private lands, despite the removal of critical habitat, the whooping cranes will still be protected from intentional killing which is prohibited under section 9 of the Act.

National Environmental Policy Act

An Environmental Assessment, prepared under the authority of the National Environmental Policy Act of 1969, is available to the public at the Service office identified in the **ADDRESSES** section. The Service determined that this action is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act (implemented at 40 CFR parts 1500–1508).

Required Determinations

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within the experimental population area, significant economic impacts will not result from this action. Also, no direct costs, enforcement costs, information collection, or record keeping requirements are imposed on small entities by this action, and the rule contains no record keeping requirements as defined under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule does not require a Federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

The Service has determined that this action would not involve any taking of constitutionally protected property rights that require preparation of a takings implication assessment under Executive Order 12630.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Regional Office (see **ADDRESSES** section above).

Author: The primary author of this document is Dr. James Lewis (see **ADDRESSES** section above) at telephone 505/248–6663 or facsimile 505/248–6922.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Regulation Promulgation

Accordingly, the Service hereby amends part 17, subchapter B of chapter

I, title 50 of the Code of Federal Regulations, 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 revising the entry for ''Crane, whooping'' under BIRDS, 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
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Crane, Whooping ...	**Grus americana** ...	Canada, U.S.A. (Rocky Mountains East to Carolinas), Mexico.	Entire, except where listed as an experimental population.	E	1.3,487,621	17.95(b)	NA
Do	do	do	U.S.A. (FL)	NX	487	NA	17.84(h)
Do	do	do	U.S.A. (CO, ID, NM, UT, WY).	NX	621	NA	17.84(h)

3. Section 17.84 is amended by revising paragraphs (h)(1), (h)(3), (h)(4)(ii), and (h)(8) to read as follows:

§ 17.84 Special rules-vertebrates.

* * * * *

(h) * * *

(1) The whooping crane populations identified in paragraphs (h)(8)(i) and (h)(8)(ii) of this section are nonessential experimental populations.

* * * * *

(3) Any person with a valid permit issued by the Fish and Wildlife Service (Service) under § 17.32 may take whooping cranes in the wild in the experimental population area for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, and other conservation purposes consistent with the Act and in accordance with applicable State fish and wildlife conservation laws and regulations.

(4) * * *

(ii) Relocate a whooping crane that has moved outside the Kissimmee Prairie or the Rocky Mountain range of the experimental population when removal is necessary or requested;

* * * * *

(8) Geographic areas that nonessential experimental populations inhabit include the following—

(i) The entire State of Florida. The reintroduction site will be the Kissimmee Prairie portions of Polk, Osceola, Highlands, and Okeechobee counties. Current information indicates that the Kissimmee Prairie is within the historic range of the whooping crane in Florida. There are no other extant populations of whooping cranes that could come into contact with the experimental population. The only two extant populations occur well west of the Mississippi River. The Aransas/Wood Buffalo National Park population nests in the Northwest Territories and adjacent areas of Alberta, Canada, primarily within the boundaries of the Wood Buffalo National Park, and winters along the Central Texas Gulf of Mexico coast at Aransas National Wildlife Refuge. Whooping cranes adhere to ancestral breeding grounds leaving little possibility that individuals from the extant population will stray into Florida or the Rocky Mountain Population. Studies of whooping cranes have shown that migration is a learned rather than an innate behavior. The experimental population released at Kissimmee Prairie is expected to remain within the prairie region of central Florida; and

(ii) The States of Colorado, Idaho, New Mexico, Utah and the western half of Wyoming. Birds in this area do not come in contact with whooping cranes of the Aransas/Wood Buffalo Population.

* * * * *

Dated: June 3, 1997

William Leary,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–19058 Filed 7–18–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 970626157–7176–01; I.D. 041697C]

RIN 0648–AJ65

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna Effort Controls

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

ACTION: Final rule.

SUMMARY: NMFS amends the regulations governing the Atlantic tuna fisheries to set Atlantic bluefin tuna (ABT) General category effort controls for the 1997 fishing year. The regulatory amendments are necessary to achieve domestic management objectives.

DATES: Effective July 15, 1997.

ADDRESSES: Copies of supporting documents, including an Environmental Assessment-Regulatory Impact Review (EA/RIR), are available from, Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301–713–2347, or Pat Scida, 508–281–9260.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under the authority of the Atlantic

Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA authorizes the Secretary of Commerce (Secretary) to issue regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations to carry out ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background information about the need for revisions to Atlantic tunas fishery regulations was provided in the preamble to the proposed rule (62 FR 36040, July 3, 1997) and is not repeated here. These regulatory changes will improve NMFS' ability to further the management objectives for the Atlantic tuna fisheries.

Quota Subdivision

In this final rule, the 1997 General category quota is split, based upon historical catch patterns (1983–96), into three subquotas and distributed as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. These percentages are applied only to 623 metric tons (mt) out of the total General category quota of 633 mt. The remaining 10 mt is reserved for the New York Bight fishery in October. Thus, of the 623 mt, 374 mt is available in the period beginning June 1 and ending August 31, 187 mt is available in the period beginning September 1 and ending September 30, and 62 mt is available in the period beginning October 1 and ending December 31. When the October through December period General category catch is projected to have reached 62 mt, NMFS will set aside the remaining 10 mt for the New York Bight only. Upon the effective date of the New York Bight set-aside, fishing for, retaining, or landing large medium or giant ABT is prohibited in all waters outside the set-aside area.

Attainment of the subquota in any fishing period will result in a closure until the beginning of the following fishing period, whereupon any underharvest or overharvest will be carried over to the following period, with the subquota for the following period adjusted accordingly. Announcements of inseason closures will be filed with the Office of the Federal Register, stating the effective date of closure, and further communicated through the Highly Migratory Species (HMS) Fax Network, the HMS Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the HMS Information Line to check the status of the fishery before leaving for a fishing trip. The phone numbers for the HMS Information Line are (301) 713–1279 and (508) 281–9305. Information regarding the Atlantic tuna fisheries is also available through Nextlink Interactive, Inc., at (888) USA–TUNA.

The New York Bight area is redefined as the area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27′ W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47′ N. lat.

Restricted-Fishing Days

NMFS also establishes the 1997 schedule of restricted-fishing days for vessels permitted in the General category. In 1996, the restricted-fishing days followed the pattern of Sunday, Monday, and Tuesday (with some exceptions for market closures and holidays) from mid-July to mid-September. This rule reflects the restricted-fishing days mutually agreed upon by associations representing General category fishermen and dealers for July and August, and specifies restricted-fishing days for September in order to lengthen the General category fishery. Persons aboard vessels permitted in the General category are prohibited from fishing (including tag and release fishing) for ABT of all sizes on the following days for the 1997 season: July 16, 17, 23, and 30; August 6, 10, 11, 12, 17, 20, 24, and 27; and September 1, 3, 6, 7, 10, 11, 14, 17, 19, 21, 24, and 28. On these designated restricted-fishing days, persons aboard vessels permitted in the Charter/Headboat category may fish for school, large school, and small medium ABT only, provided the Angling category remains open, and are subject to the catch limits in effect.

Changes From the Proposed Rule

Based on consideration of the comments received, several changes were made to the proposed rule. Restricted-fishing days have been added for the fishing period beginning September 1 and ending September 30. In addition, a southern boundary line for the New York Bight set-aside area is established at 38°47′ N. lat.

Comments and Responses

NMFS conducted three public hearings on the proposed rule and received written and oral comments over a 14-day comment period. Responses to the comments are provided below.

Proposed Quota Subdivision

Comment: Some commenters requested that there be no quota allocated for October–December, and that the quota allocated for that period be redistributed to the July–August or September subquotas. Other fishery participants supported quota for the October–December period.

Response: NMFS has established a subquota for the October–December period for the past two seasons based on comments received in 1995 and 1996 that extending General category fishing into October could result in the landing of higher quality bluefin and therefore could improve prices received by fishermen. Due to the lack of agreement among industry representatives on ways to improve this apportionment consistent with management objectives, no change is made from the proposed rule.

Comment: Some commenters suggested that the proposed 60 percent-40 percent quota subdivision for before and after September 1 is inappropriate because it incorporates data from 1995 and 1996 when effort controls were in place, thus the landings patterns were influenced by the regulations. In addition, comments were received stating that school and medium sized fish should not be counted in calculating the historical average, since those fish can no longer be sold.

Response: NMFS has re-evaluated the landings data from 1983–96, by excluding from the analysis (1) the data from 1995 and 1996, and (2) landings of school and medium bluefin by General category vessels (prior to July 1992). Neither of these adjustments significantly alters the historical proportion of landings before and after September 1. Therefore, the quota distribution is not changed.

Comment: Many commenters supported a southern boundary for the New York Bight set-aside area. Many fishery participants stated that the purpose of the New York Bight set-aside was to provide for the historical late-season General category fishery for the Mud Hole region off New York and New Jersey. Most commenters suggested that the boundary be established at a point in southern New Jersey.

Response: NMFS agrees that there should be a southern boundary for the New York Bight set-aside area in order to preserve fishing opportunities for the traditional Mud Hole fishery. The southern boundary is set at 38°47′ N. lat.

General Category Restricted-Fishing Days

Comment: Most commenters requested the establishment of

restricted-fishing days, similar to those proposed for July and August, for September since catch rates in that month can be extremely high.

Response: NMFS acknowledges that since September catch rates can be high, extending restricted-fishing days into September would lengthen the General category season. Therefore, Sundays, Wednesdays, and the three days corresponding to Japanese market closure are established as restricted-fishing days for September with this final rule.

Comment: Some commenters warned that effort on Labor Day (September 1) will be extremely high due to holiday fishing by part-time fishermen, and because it is the first day of the September fishing period, and they suggested that September 1 should be designated as a restricted-fishing day.

Response: In order to lengthen the September fishery for commercial bluefin fishermen, NMFS also includes September 1 as a restricted-fishing day.

Comment: Some commenters requested additional restricted-fishing days off for July and August.

Response: NMFS chooses to adhere to the schedule of July and August dates mutually agreed upon by associations representing a significant portion of General category fishermen and dealers.

Comment: Some commenters requested restricted-fishing days for the fishing period beginning October 1.

Response: Due to the deterioration of weather conditions as the fall progresses, and due to the fact that there was no clear agreement among industry groups, NMFS feels that restricted-fishing days in October are not warranted. If necessary, regulations allow for inseason adjustments to the effort control schedule.

Classification

This rule is published under the authority of ATCA. The AA has determined that the regulations contained in this final rule are necessary for management of the Atlantic tuna fisheries.

NMFS prepared an EA for this final rule with a finding of no significant impact on the human environment. In addition, an RIR was prepared with a finding of no significant impact. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Because many of the designated restricted-fishing days have been scheduled to correspond directly to Japanese market closures, the likelihood of extending the fishing season is increased and additional revenues may accrue to small businesses as market prices received by U.S. fishermen are improved. Thus, an Initial Regulatory Flexibility Analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

On May 29, 1997, NMFS issued a biological opinion, which concluded that continued operation of the hand gear fisheries is not likely to adversely affect the continued existence of any endangered or threatened species under NMFS jurisdiction. The rule implements effort controls similar to prior years, making minor changes in the restricted-fishing day schedule and in period subquotas, and likely will not increase fishing effort or shift activities to new fishing areas. Therefore, the final rule is not expected to increase endangered species or marine-mammal interaction rates.

The AA has determined that there is good cause to waive the 30-day delay in the effective date normally required by 5 U.S.C. 553(d). While this rule establishes effort controls for the General category, the only requirements with which a fisherman would have to come into compliance is not to fish on the restricted-fishing days or during a closed period. While 8 of the restricted-fishing days would have fallen within the 30-day delay in effective date period, these days have been agreed to by General category industry representatives and are consistent with the suggestions of affected constituents received during the public comment period. NMFS will rapidly communicate these dates and closures to fishing interests through the FAX network and NOAA weather radio. As such, it is unnecessary to delay the effective date of this rule.

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 15, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285 is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

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

2. In § 285.22, paragraph (a)(1) and the first sentence of paragraph (a)(3) are revised to read as follows:

§ 285.22 Quotas.

* * * * *

(a) *General.* (1) The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the General category under § 285.21(b) is 633 mt, of which 374 mt are available in the period beginning June 1 and ending August 31; 187 mt are available in the period beginning September 1 and ending September 30; and 72 mt are available in the period beginning October 1.

* * * * *

(3) When the October General category catch is projected to have reached a total of 10 mt less than the overall October quota, the Director will publish a notification in the **Federal Register** to set aside the remaining quota for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27′ W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47′ N. lat. * * *

* * * * *

3. In § 285.24, paragraph (a)(1) is revised to read as follows:

§ 285.24 Catch limits.

(a) *General category.* (1) From the start of each fishing year, except on designated restricted-fishing days, only one large medium or giant Atlantic bluefin tuna may be caught and landed per day from a vessel for which a General category permit has been issued under this part. On designated restricted-fishing days, persons aboard such vessels may not fish for, possess or retain Atlantic bluefin tuna. For calendar year 1997, designated restricted-fishing days are: July 16, 17, 23, and 30; August 6, 10, 11, 12, 17, 20, 24, and 27; and September 1, 3, 6, 7, 10, 11, 14, 17, 19, 21, 24, and 28.

* * * * *

[FR Doc. 97–19046 Filed 7–15–97; 5:08 pm]

BILLING CODE 3510–22–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 961227373–6373–01; I.D. 062797C]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Reductions

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

ACTION: Correction to fishing restrictions.

SUMMARY: This document corrects an error in the trip limit for lingcod taken in the Pacific groundfish fishery off Washington, Oregon, and California, published July 7, 1997.

DATES: Effective July 1, 1997 (July 16, 1997, for the ''B'' platoon).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION: In the document announcing a reduction to the 2-month cumulative trip limit for lingcod, the prohibition against retaining lingcod smaller than 22 inches (56 cm), except for a 100–lb (45–kg) trip limit for trawl-caught lingcod smaller than 22 inches (56 cm), was inadvertently deleted in the regulatory text. Accordingly, the publication on July 7, 1997 (62 FR 36228), which was the subject of FR Doc. 97–17625, is corrected as follows: On page 36230, in the first column, paragraph G.(1) of item 3 is corrected to read, ''(1) *Limited entry fishery*. The cumulative trip limit for lingcod is 30,000 lb (13,608 kg) per vessel per 2-month period. The 60–percent monthly limit is 18,000 lb (8,165 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)''.

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

Dated: July 15, 1997.

Bruce Morehead,

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

[FR Doc. 97–19051 Filed 7–18–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 678

[I.D. 061797C]

Atlantic Shark Fisheries; Large Coastal Closure Notice

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

ACTION: Closure.

SUMMARY: NMFS is closing the commercial fishery for large coastal sharks conducted by vessels with a Federal Atlantic Shark permit in the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This action is necessary to prevent exceeding the semiannual quota for the period July 1 through December 31, 1997.

EFFECTIVE DATE: 2330 hours local time July 21 through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, John Kelly, or Margo Schulze, 301–713–2347; Mark Murray-Brown, 508–281–9260; or Buck Sutter, 813–570–5447.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed by NMFS according to the fishery management plan (FMP) for Atlantic Sharks under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.24(b) of the regulations provides for two semiannual quotas of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishermen. The second semiannual quota is available for harvest from July 1 through December 31, 1997.

The Assistant Administrator for Fisheries, NOAA (AA), is required under § 678.25 to monitor the catch and landing statistics and, on the basis of these statistics, to determine when the catch of Atlantic, Caribbean, and Gulf of Mexico sharks will equal any quota under § 678.24(b). When shark harvests reach, or are projected to reach, a quota established under § 678.24(b), the AA is further required under § 678.25 to close the fishery.

The first semiannual quota was available for harvest from January 1 through June 30, 1997. Final data indicated that the catch of large coastal shark species from January through April 7, 1997, totaled 958 mt, which was 316 mt more than the established quota. Therefore, the adjusted quota for large coastal shark species for the second 1997 semiannual period was decreased from 642 mt to 326 mt (62 FR 26428, May 14, 1997).

The AA has determined, based on the reported catch and other relevant factors, that the adjusted semiannual quota for the period July 1 through December 31, 1997, for large coastal sharks, in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained by July 21, 1997. During this closure, for vessels issued a permit under § 678.4, retention of large coastal sharks from the management unit is prohibited, unless the vessel is operating as a charter vessel or headboat, in which case the vessel limit per trip is two small coastal, large coastal and pelagic sharks combined plus two Atlantic sharpnose sharks per person per trip. In addition, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of large coastal sharks harvested by a person aboard any vessel that has been issued a permit under § 678.4, is prohibited, except for those that were harvested, off-loaded, and sold, traded, or bartered prior to July 21, 1997, and were held in storage by a dealer or processor.

Vessels that have been issued a Federal permit under § 678.4 are reminded that as a condition of permit issuance, the vessel may not retain a large coastal shark during the closure, except as provided by § 678.24(a)(2). Fishing for pelagic and small coastal sharks may continue. The recreational fishery is not affected by this closure.

Classification

This action is taken under 50 CFR part 678 and is exempt from review under E.O. 12866.

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

Dated: July 16, 1997.

Bruce Morehead,

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

[FR Doc. 97–19112 Filed 7–16–97; 2:24 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 071597A]

Fisheries of the Exclusive Economic Zone Off Alaska, Pelagic Shelf Rockfish in the Eastern Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Eastern Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pelagic shelf rockfish total allowable catch (TAC) in the Eastern Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 15, 1997, until 2400 hrs, A.l.t., December 31, 1997.

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

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

The pelagic shelf rockfish TAC in the Eastern Regulatory Area of the Gulf of Alaska was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 990 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the pelagic shelf rockfish TAC in the Eastern Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 890 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Eastern Regulatory Area of the GOA.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 TAC for pelagic shelf rockfish in the Eastern Regulatory Area of the GOA. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to public interest. The fleet will soon take the directed fishing allowance for pelagic shelf rockfish. Further delay would only result in overharvest and disrupt the FMP's objective of allowing incidental catch to be retained throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: July 15, 1997.

Bruce Morehead,

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

[FR Doc. 97–19048 Filed 7–16–97; 9:28 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 071597B]

Fisheries of the Exclusive Economic Zone Off Alaska, Offshore Pelagic Shelf Rockfish in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for offshore pelagic shelf rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the offshore pelagic shelf rockfish total allowable catch (TAC) in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 15, 1997, until 2400 hrs, A.l.t., December 31, 1997.

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

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

The offshore pelagic shelf rockfish TAC in the Central Regulatory Area of the Gulf of Alaska was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 3,320 metric tons (mt), determined in accordance with § 679.20 (c)(3)(ii).

In accordance with § 679.20 (d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the offshore pelagic shelf rockfish TAC in the Central Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,100 mt, and is setting aside the remaining 220 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20 (d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for offshore pelagic shelf rockfish in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 TAC for offshore pelagic shelf rockfish in the Central Regulatory Area of the GOA. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to public interest. The fleet will soon take the directed fishing allowance for offshore pelagic shelf rockfish. Further delay would only result in overharvest and disrupt the FMP's objective of allowing incidental catch to be retained throughout the year. NMFS finds for good cause that the implementation of

this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: July 15, 1997.

Bruce Morehead,

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

[FR Doc. 97–19049 Filed 7–16–97; 9:28 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970619143–7143–01; I.D. 070997D]

RIN 0648–AC68

Fisheries of the Exclusive Economic Zone Off Alaska; Define Fishing Trip in Groundfish Fisheries; Correction

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

ACTION: Correction to final regulations.

SUMMARY: NMFS is correcting a section of regulations that contain an inadvertent error that was introduced during a recent revision to regulations that pertain to the groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands. This action corrects regulations defining a fishing trip.

DATES: Effective July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907–586–7228

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the **Federal Register** on June 30, 1997 (62 FR 35109), that revised the definition of fishing trip with respect to monitoring compliance with groundfish directed closures.

As published, the instructions to revise the regulations contained an inadvertent error that resulted in the removal of two definitions of fishing trip with respect to the Individual Fishing Quota program and a vessel used to process or deliver fish. NMFS is correcting this error as follows and makes no substantive changes.

In § 679.2, the definition of ''fishing trip'' (page 35111) did not contain the amendatory instruction indicating that only definition (1) was affected, and two existing definitions were removed in error. This action restates the definition of ''fishing trip.''

Correction of Publication

Accordingly, the publication of June 30, 1997, of the final regulations (I.D. 061097A), which was the subject of FR Doc. 97–17046, is corrected as follows:

§ 679.2 [Corrected]

On page 35111, in the first column, amendatory instruction number 2 is corrected to read as follows:

2. In § 679.2, the definition of ''Fishing trip'' is revised to read as follows:

§ 679.2 Definitions.

* * * * *

Fishing trip means:

(1) With respect to monitoring compliance with groundfish directed fishing closures, an operator of a vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed in an area after the effective date of a notification prohibiting directed fishing in the same area under § 679.20 or § 679.21 until:

(i) The offload or transfer of all fish or fish product from that vessel;

(ii) The vessel enters or leaves an area where a different directed fishing prohibition applies; or

(iii) The end of a weekly reporting period, whichever comes first.

(2) With respect to the IFQ program, the period beginning when a vessel operator commences harvesting IFQ species and ending when the vessel operator lands any species.

(3) With respect to Part E of this part, one of the following periods:

(i) For a vessel used to process groundfish or a catcher vessel used to deliver groundfish to a mothership, a weekly reporting period during which one or more fishing days occur.

(ii) For a catcher vessel used to deliver fish to other than a mothership, the time period during which one or more fishing days occur, that starts on the day when fishing gear is first deployed and ends on the day the vessel offloads groundfish, returns to an Alaskan port, or leaves the EEZ off Alaska and adjacent waters of the State of Alaska.

* * * * *

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Dated: July 16, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–19114 Filed 7-18-97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 139
Monday, July 21, 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 Aviation Administration

14 CFR Part 25

[Docket No. NM–135; Notice No. SC–96–8A–NM]

Special Conditions: Boeing, Model 767–27C Airplanes, Airborne Warning and Control System (AWACS) Modification; Liquid Oxygen System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed special conditions.

SUMMARY: This notice revises an earlier proposal for special conditions for Boeing Model 767–27C airplanes modified by installation of an Airborne Warning and Control System (AWACS). These airplanes will be equipped with an oxygen system utilizing liquid oxygen (LOX). The applicable regulations do not contain adequate or appropriate safety standards for the design and installation of oxygen systems utilizing LOX for storage. This action revises the original proposal to address certain recommended additional requirements for the LOX system. The revised standards are intended to ensure that the design and installation of the liquid oxygen system is such that a level of safety equivalent to that established by the airworthiness standards for transport category airplanes is provided.

DATES: Comments must be received on or before August 11, 1997.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket (ANM–7), Docket No. NM–135, 1601 Lind Avenue SW, Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–135. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: William Schroeder, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Airplane Certification Service, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (425) 227–2148.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action is taken on these proposals. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–135.'' The postcard will be date stamped and returned to the commenter.

Background

On November 21, 1996, the FAA published notice in the **Federal Register** (61 FR 59202) of proposed special conditions for Boeing Model 767–27C airplanes modified to an AWACS configuration. The special conditions are proposed requirements for design and installation of a liquid oxygen (LOX) system. These special conditions are considered necessary to provide the appropriate design and installation criteria required to assure safety of the LOX system.

The Department of the Air Force, commenting to the docket by letter, recommended additional requirements for design and installation of the LOX system. Based on some of those recommendations, the FAA has revised special conditions f. and m. By this notice, the comment period is reopened to allow interested persons to comment on the additional requirements.

Discussion of Comments

One commenter, the Department of the Air Force, Headquarters Aeronautical Systems Center, responded to the request for comments, providing the following comments and recommended additions/changes to the identified paragraphs of the proposed special conditions. Those recommended additions/changes are prompted by U.S. Air Force past experience with LOX systems in other airplanes. The proposed special conditions addressed by the comments, the relevant comments, and the FAA's assessment and conclusions are as follows:

Special Condition b. The liquid oxygen converter shall be located in the airplane so that there is no risk of damage due to an uncontained rotor or fan blade failure.

The commenter agrees with the special condition but has additional concerns. The commenter advises that the Department of the Air Force would require inspection of the compartment or zone in the airplane which contains the LOX converter and heat exchanging equipment to ensure that no buildup of flammable vapors may occur. The commenter states minor leakage of LOX systems fittings is a common problem because of the cold LOX and gas temperature effects on the metal fittings. The commenter further states that the buildup of gaseous oxygen in combination with flammable vapors in an airplane compartment is a serious concern, and therefore recommends that the compartment have adequate ventilation and smoke detectors that will alert the flightcrew in case of fire. If the LOX converter is located in the lower lobe, the commenter recommends that inflight access to this compartment be provided. The commenter further states that for USAF AWACS airplanes they have also recommended that safety equipment, including fire extinguisher(s) and portable protective breathing equipment, be provided. A recharger outlet to refill the portable protective breathing equipment is advisable, says the commenter, or the

protective breathing device should have 30 minutes minimum oxygen supply.

The FAA agrees with the commenter's concern for LOX fittings and the buildup of oxygen in combination with flammable fluids, and access to the compartment containing the LOX converter. Much of these concerns are addressed in proposed special conditions a, c, e, g, h, and l. The special conditions do not require total shrouding and drainage of all LOX fittings, but depends on dilution of oxygen to reduce the hazard. In that respect, the FAA notes that the LOX converter is installed in the aft lower lobe of the airplane (classified as an electronic equipment bay), and inflight access is provided. Ventilation to this bay is considered adequate at 1000 to 3000 cubic feet per minute to preclude the hazardous accumulation of oxygen in the event of LOX converter or line leaks. Additionally, § 25.1451 requires that oxygen equipment and lines be installed so that escaping oxygen cannot cause ignition of grease, fluid, or vapor accumulations that are present in normal operation or as a result of failure or malfunction of any system. The FAA considers that the special conditions, as proposed, provided adequate protection to address the concerns expressed by the commenter and therefore does not consider that additional requirements are necessary in this regard.

The FAA does not concur with the commenter regarding the requirements for fire extinguishers, portable breathing equipment, and smoke detectors. The lower lobes of the 767–27C are classified as electronic equipment bays; therefore, there is no requirement to provide cargo bay liners, smoke detections, or fire suppression systems. Carry-on cargo is not permitted in either lower lobe unless it is stored in containers providing fire protection equivalent to that afforded by Class D cargo or baggage compartments. The installed AWACS mission/electronic equipment in these bays contains very small quantities of smoke-producing materials, and most are installed in metal cabinets. With regard to the Liquid Oxygen System located in the aft lower lobe, if a leak occurred in this system, a hazardous concentration of oxygen should be precluded by the large amount of ventilation (1,000 cfm minimum to 3,000 cfm with the outflow valve open). If a catastrophic failure of the LOX system occurred, a smoke detector would not reduce this danger as the smoke would occur only after the oxygen-enriched fire ignited.

Special Condition c. The liquid oxygen system and associated gaseous oxygen distribution lines should be designed and located to minimize the hazard from uncontained rotor debris.

The commenter requests specific safety practices to be followed in the design and installation of oxygen lines in the proximity of heat-generating equipment and other lines carrying flammable fluid or electrical wires and components. The FAA does not disagree with these practices, but considers that the existing standards (i.e., §§ 25.1451, 25.1309(a), 25.1309(b), and 25.1453) already define safe practices.

Special Condition d. The flight deck oxygen system shall meet the supply requirements of part 121 after the distribution line has been severed by a rotor fragment.

The commenter states that this requirement is not clear. The FAA notes that the published version of the proposed special conditions contained a typographical error in that the word ''severed'' was printed as ''served,'' and this may have led to the confusion. This special condition requires that an adequate supply of oxygen be available to the flightcrew after cutting any line in the rotor burst area, and is clear with the spelling corrected. The commenter also notes military oxygen requirements concerning multiple oxygen supplies that are not relevant to this installation and states that the flightcrew should have control of the oxygen system. The FAA notes that the requirement for flightcrew control of the oxygen system is addressed in § 25.1445(a)(2).

The commenter further states that one flight crewmember, such as the flight engineer, should be designated as the crewmember responsible for the oxygen system. The FAA has no requirement for this in gaseous oxygen systems and sees no reason to require it as a special condition for LOX systems. The commenter states that the AWACS crewmembers should have oxygen dispensing and breathing equipment comparable to that provided to the flightcrew (i.e., pressure demand breathing equipment). The FAA is evaluating the crewmembers' oxygen dispensing equipment in a separate issue paper, and will not address it in the Special Conditions under discussion.

Special Condition e. The pressure relief valves on the liquid oxygen converters shall be vented overboard through a drain in the bottom of the airplane. Means must be provided to prevent hydrocarbon fluid migration from impinging upon the vent outlet of the liquid oxygen system.

The commenter concurs with the requirement for venting and draining the LOX converter and recommends certain safety procedures during the servicing of the LOX. Servicing of the LOX is not addressed in the airworthiness standards for transport category airplanes and is therefore considered beyond the scope of the notice.

Special Condition f. The system shall include provisions to ensure complete conversion of the liquid oxygen to gaseous oxygen.

The commenter agrees with the requirement to completely convert the liquid oxygen to gaseous oxygen, but advocates a specific requirement that the converted gas be no more than 20° F less than cabin ambient temperature under the conditions of maximum demand for normal use of the oxygen system. The FAA agrees with the commenter and proposes to revise Special Condition f. to add the following sentence: ''The resultant oxygen gas must be delivered to the first oxygen outlet for breathing such that the temperature is no more than 20° F less than the cabin ambient temperature under the conditions of the maximum demand or flow of oxygen gas for normal use of the oxygen system.''

The commenter expressed another concern regarding Special Condition f., which would require that the LOX converter include a ''line valve'' that would enable the flightcrew to shut down flow from the LOX converter, should a severed or broken line allow LOX to spill into the airplane. The FAA concurs with this concern and proposes to add the following sentence to Special Condition f: ''A LOX shutoff valve shall be installed on the main oxygen distribution line prior to any secondary lines. The shutoff valve must be compatible with LOX temperatures and be readily accessible (either directly if manual, or by remote activation if an automatic valve).''

Special Condition j. Oxygen system components shall be burst pressure tested to 3.0 times, and proof pressure tested to 1.5 times, the maximum normal operating pressure. Compliance with the requirement for burst testing may be shown by analysis, or a combination of analysis and test.

The commenter gives background information on a manufacturer of LOX converters, and advises that a rupture disk be included on the outer shell of the converter. The FAA does not wish to regulate a design solution when other designs (e.g., designing the outer shell with pressure capability equivalent to the inner shell) could satisfy the requirements of § 25.1309(b).

The commenter also discusses the advantages of dual pressure relief valves (failure redundancy and flow rate requirements). The FAA agrees that

there is an advantage in case one valve fails, but again does not wish to regulate a design solution when other design implementations could satisfy the design requirements of § 25.1309(b). The FAA also does not agree that two valves are required for flow rate requirements, as this is dependent on valve sizing.

Special Condition k. Oxygen system components shall be electrically bonded to the airplane structure.

The commenter concurs with this condition, but states that it requires that the system be tested to ensure that the Ohm rating from any component on the LOX system will not exceed that which would preclude static discharging. The FAA will evaluate the applicant's type design data to ascertain suitability of process and testing of electrical bonding, but does not consider it necessary to specify the Ohm level that the bonding is tested to in the special condition.

Special Condition l. All gaseous or liquid oxygen connections located in close proximity to an ignition source shall be shrouded and vented overboard using the system specified in (e) above.

The commenter provided the same comments for this special condition as for Special Condition b. See FAA response to comments on Special Condition b.

Special Condition m. A means will be provided to indicate the quantity of oxygen in the converter and oxygen availability to the flightcrew.

The commenter agrees with the requirement for oxygen quantity indication and oxygen availability indication to the flightcrew and notes the desirability of a low level oxygen warning light due to LOX converter failure modes. In addition, the commenter notes that oxygen quantity indication should be based on volume and not on pressure, since the system will essentially operate at a constant pressure until it is nearly out of oxygen, as opposed to a gaseous oxygen system which depletes quantity at a linear rate (measuring pressure).

The FAA concurs with the requirement for a low LOX level caution annunciation and proposes to add the following sentence to Special Condition m: ''A low LOX level amber caution annunciation will be furnished to the flightcrew prior to the LOX converter oxygen level reaching the quantity required to provide sufficient oxygen for emergency descent requirements.'' The commenter also recommends a built-in test function so that the flight crew can ascertain that the low LOX level caution annunciation is functional. The FAA does not consider it necessary to require this as a Special Condition as it is adequately addressed in § 25.1309(d)(4).

As a result of these comments, and as discussed earlier in this document, the FAA has modified special conditions f. and m. from that proposed in Notice SC–96–8–NM. Public comment is therefore invited on these additional requirements.

Certification flight testing of the Model 767–27C by Boeing is imminent. For this reason, and because a delay would significantly affect the remainder of the certification schedule for the Model 767–27C, the public comment period for this supplemental notice is shortened to 20 days.

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

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to the other model under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model series of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation Safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 767–27C airplanes modified to an AWACS configuration:

a. The liquid oxygen converter and other oxygen equipment shall not be installed where baggage, cargo, or loose equipment are stored (unless items are stored within an appropriate container which is secured or restrained by acceptable means).

b. The liquid oxygen converter shall be located in the airplane so that there is no risk of damage due to an uncontained rotor or fan blade failure.

c. The liquid oxygen system and associated gaseous oxygen distribution lines should be designed and located to minimize the hazard from uncontained rotor debris.

d. The flight deck oxygen system shall meet the supply requirements of Part 121 after the distribution line has been severed by a rotor fragment.

e. The pressure relief valves on the liquid oxygen converters shall be vented overboard through a drain in the bottom of the airplane. Means must be provided to prevent hydrocarbon fluid migration from impinging upon the vent outlet of the liquid oxygen system.

f. The system shall include provisions to ensure complete conversion of the liquid oxygen to gaseous oxygen. The resultant oxygen gas must be delivered to the first oxygen outlet for breathing such that the temperature is no more than 20°F less than the cabin ambient temperature under the conditions of the maximum demand or flow of oxygen gas for normal use of the oxygen system. A LOX shutoff valve shall be installed on the main oxygen distribution line prior to any secondary lines. The shutoff valve must be compatible with LOX temperatures and be readily accessible (either directly if manual, or by remote activation if automatic).

g. If multiple converters are used and manifold together, check valves shall be installed so that a leak in one converter will not allow leakage of oxygen from any other converter.

h. Flexible hoses shall be used for the airplane system connections to shock-mounted converters, where movement relative to the airplane may occur.

i. Condensation from system components or lines shall be collected by drip pans, shields, or other suitable collection means and drained overboard through a drain fitting separate from the liquid oxygen vent fitting, as specified in (e) above.

j. Oxygen system components shall be burst pressure tested to 3.0 times, and proof pressure tested to 1.5 times, the maximum normal operating pressure. Compliance with the requirement for burst testing may be shown by analysis, or a combination of analysis and test.

k. Oxygen system components shall be electrically bonded to the airplane structure.

l. All gaseous or liquid oxygen connections located in close proximity to an ignition source shall be shrouded and vented overboard using the system specified in Special Condition e. above.

m. A means will be provided to indicate the quantity of oxygen in the converter and oxygen availability to the flightcrew. A low LOX level amber caution annunciation will be furnished

to the flight crew prior to the LOX converter oxygen level reaching the quantity required to provide sufficient oxygen for emergency descent requirements.

Issued in Renton, Washington, on July 14, 1997.

Gary L. Killion,

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

[FR Doc. 97–19104 Filed 7–18–97; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Household Products Containing Petroleum Distillates and Other Hydrocarbons; Advance Notice of Proposed Rulemaking; Reopening of Comment Period

AGENCY: Consumer Product Safety Commission.

ACTION: Reopening of comment period for advance notice of proposed rulemaking.

SUMMARY: There are child-resistant packaging standards in effect under the Poison Prevention Packaging Act (''PPPA'') for some products that contain petroleum distillates or other hydrocarbons. In the **Federal Register** of February 26, 1997, the Consumer Product Safety Commission (''CPSC'' or ''Commission'') published an advance notice of proposed rulemaking (''ANPR'') requesting comments on whether additional products containing these substances should be subject to child-resistant packaging standards. 62 FR 8659. At the request of the Chemical Specialties Manufacturers Association (''CSMA''), the Commission extended the period for receiving written comments on the ANPR until July 11, 1997. 62 FR 22897 (April 28, 1997).

As requested by the Cosmetic, Toiletry, and Fragrance Association (''CTFA''), the Commission further reopens the comment period until September 1, 1997.

DATES: Written comments in response to the ANPR must be received by the Commission by September 1, 1997.

ADDRESSES: Comments, preferably in five copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. Alternatively, comments may be filed by telefacsimile to (301)504–0127 or by e-mail to cpsc-os@cpsc.gov. Comments should be captioned ''Comments on ANPR for Petroleum Distillates.''

FOR FURTHER INFORMATION CONTACT: Suzanne Barone, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, ext. 1196.

SUPPLEMENTARY INFORMATION: Existing PPPA standards require child-resistant packaging for some products that contain petroleum distillates or other hydrocarbons. Aspiration of small amounts of these chemicals into the lung can cause chemical pneumonia, pulmonary damage, and death.

In the **Federal Register** of February 26, 1997, the CPSC published an ANPR that initiated a rulemaking proceeding to consider whether additional household products containing petroleum distillates and other hydrocarbons should be subject to PPPA standards. 62 FR 8659. The Commission solicited written comments from interested persons concerning these risks, the regulatory alternatives discussed in the ANPR, other possible means to address the risks, and the economic impacts of the various regulatory alternatives. The Commission originally provided for a 75-day comment period, which would have expired on May 12, 1997. At the request of the CSMA, the Commission extended the period for receiving written comments on the ANPR until July 11, 1997. 62 FR 22897 (April 28, 1997).

By a letter dated July 1, 1997, the CTFA requested a further extension of the comment period until September 1, 1997. CTFA asserted that additional time was needed because the ANPR lacked a definition of ''petroleum distillates,'' and there was confusion among CTFA's members regarding which petroleum distillates would be contained in cosmetic products, if any. CTFA also has asserted that some of its member companies have recently become aware that several product categories not previously contemplated by manufacturers could be affected by the ANPR. Further, CTFA claimed that because cosmetics are not generally subject to CPSC's statutes (except the Poison Prevention Packaging Act), a significant effort was required to educate CTFA's members about the rulemaking and request for information. CTFA stated that additional time is required in order to submit accurate, complete, and useful information to the agency to enable the staff to assess the impact of the ANPR on the cosmetics industry.

CTFA represents companies that can supply valuable information concerning the issues identified in the ANPR. Accordingly, the Commission granted its request for an extension of the comment period, and reopens the period for submission of written comments to September 1, 1997.

Dated: July 15, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–19019 Filed 7–18–97; 8:45 am]

BILLING CODE 6355–01–U

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

Countervailing Duties

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of public hearing on proposed countervailing duty regulations and announcement of opportunity to file post-hearing comments.

SUMMARY: The Department of Commerce (''the Department''), having received written comments on the proposed countervailing duty regulations, now announces that a public hearing on the regulations will be held on September 9, 1997. Requests to participate in the hearing must be filed by July 31, 1997. The Department is also announcing that it will accept public comments on issues raised at the hearing. The deadline for filing post-hearing comments is September 19, 1997.

DATES: A public hearing will be held at 10:00 on September 9, 1997. Requests to participate in the hearing must be filed by August 7, 1997. The deadline for filing post-hearing comments is September 19, 1997.

ADDRESSES: Address requests to participate in the hearing and post-hearing comments to the following: Robert S. LaRussa, Acting Assistant Secretary for Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street N.W., Washington, D.C. 20230. Requests to participate in the hearing should also include the following subject line: ''Request to participate in hearing on proposed CVD regulations.'' Each person submitting a request is asked to include his or her name, address, and phone number and to identify the party(ies) on whose behalf the request is

filed. Written comments should include the following subject line: ''Post-hearing comments regarding proposed CVD regulations.'' Each person submitting a comment is asked to include his or her name, address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Yeske at (202) 482–0189.

SUPPLEMENTARY INFORMATION: On February 26, 1997, the Department published proposed countervailing duty regulations containing changes resulting from the Uruguay Round Agreements Act (62 FR 8818). We requested written comments from the public to be submitted by April 28, 1997. On April 23, 1997, we published a notification of extension of the deadline for filing comments to May 12, 1997 (62 FR 19719). The deadline was further extended to May 27, 1997 (62 FR 25874). We have received written comments and scheduled a public hearing for September 9, 1997.

The proposed regulations and the public comments received are available on the Internet at the following address: ''http://www.ita.doc.gov/import__admin/records/.'' In addition, the proposed regulations are available to the public on 3.5'' diskettes, with specific instructions for accessing compressed data, at cost, and paper copies are available for reading and photocopying in Room B–099 of the Central Records Unit. Any questions concerning file formatting, document conversion, access on Internet, or other file requirements should be addressed to Andrew Lee Beller, Director of Central Records, (202) 482–0866.

Hearing

A public hearing on the proposed regulations will be held at 10:00 on September 9, 1997, in Room 1414 of the Herbert C. Hoover Building at Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. In order to participate in the hearing, parties must submit a written request to the Department no later than August 7, 1997. Written requests should detail the topics parties wish to discuss at the hearing. The Department will accommodate as many requesting parties as time permits. The hearing will include panel discussions on topics in which parties have shown a significant interest. At this time, we have identified ''Privatization'' and ''Equity'' as panel topics. We invite interested parties to suggest additional topics and individuals to participate in the panel discussions.

Comments (Format and Number of Copies)

The Department will accept post-hearing comments regarding any issues raised at the hearing or in any written comments previously submitted to the Department. The deadline for the submission of post-hearing comments is September 19, 1997. Each person submitting a comment should include his or her name and address, and give reasons for any recommendation. To facilitate their consideration by the Department, comments regarding the proposed regulations should be submitted in the following format: (1) Identify each comment by reference to the section and/or paragraph of these proposed regulations to which the comment pertains;[1] (2) begin each comment on a separate page; (3) concisely state the issue identified and discussed in the comment; and (4) provide a brief summary of the comment (a maximum of 3 sentences) and label this section ''summary of the comment.''

To simplify the processing and distribution of the public comments pertaining to the Department's proposed regulations, parties are encouraged to submit documents in electronic form accompanied by an original and three paper copies. All documents filed in electronic form must be on DOS formatted 3.5'' diskettes, and must be prepared in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect. If possible, the Department would appreciate the documents being filed in either ASCII format or WordPerfect, and containing generic codes. The Department would also appreciate the use of descriptive filenames.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

Dated: July 14, 1997.

[FR Doc. 97–19119 Filed 7–18–97; 8:45 am]

BILLING CODE 3510–DS–P

[1] If a comment does not pertain to a particular proposed regulation, please clearly identify the comment as ''Other,'' followed by a brief description of the issue to which the comment pertains; *e.g.*, ''Other—Infrastructure.''

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN159–1–9704(a); TN174–1–9726(a); TN175–1–9725(a); FRL–5859–4]

Approval of Source Specific Revisions to the Tennessee SIP Regarding Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking action on three source specific revisions to the Tennessee State Implementation Plan (SIP) which establish reasonably available control technology requirements (RACT) for the control of volatile organic compound (VOC) emissions from certain operations at Brunswick Marine Corporation, Outboard Marine Corporation, and Essex Group Incorporated. EPA is approving the operating permits for these sources into the SIP with the exception of the portion of one permit which allows the Tennessee Technical Secretary to determine RACT which is being disapproved. These permits were issued consistent with the alternate control plans which established RACT requirements in accordance with the provisions of the Tennessee SIP for developing VOC emission control requirements for major sources for which there is no regulation or guidance for determining RACT. In the final rules section of this **Federal Register**, the EPA is approving the submitted chapter in its entirety as a direct-final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 20, 1997.

ADDRESSEES: Written comments on this action should be addressed to William Denman at the Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Copies of

documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference files TN159–01–9704, TN174–01–9726, and TN175–01–9725. The Region 4 office may have additional background documents not available at the other locations.

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

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. William Denman 404/562–9030.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: William Denman at 404/562–9030.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: July 3, 1997.

Michael V. Peyton,

Acting Regional Administrator.

[FR Doc. 97–19085 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA040–5017 & VA009–5017; FRL–5846–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: Approval of Group III SIP and Coke Oven Rules for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. Approval of Virginia's Group III SIP would establish an ambient air quality standard for particulate matter smaller than 10 micrometers in diameter (PM–10); provide regulatory definitions for ''particulate matter,'' ''particulate matter emissions'' ''PM10,'' ''PM10 emissions,'' and ''total suspended particulate matter'' (TSP); and modify rules regarding air pollution episodes to include PM–10 as well as TSP action levels. Approval of the coke oven provisions would provide for limits on mass emissions, opacity, and fugitive dust from nonrecovery coke works.

In the final rules section of this **Federal Register,** EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 20, 1997.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Section, Mailcode 3AT22, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Thomas A. Casey, (215) 566–2194, at the EPA Region III address above (Mailcode 3AT22) or via e-mail at casey.thomas@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action entitled, ''Approval and Promulgation of Air Quality Implementation Plans; Virginia: Approval of Group III SIP and Coke Oven Rules for Particulate Matter,'' which is located in the Rules and Regulations Section of this **Federal Register.**

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 16, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–19097 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA078–4042b; FRL–5858–9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Approval of Source-Specific RACT for R.R. Donnelley & Sons Company—East Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing reasonably available control technology (RACT) for R. R. Donnelley & Sons Company—East Plant. In the final rules section of this **Federal Register,** EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 20, 1997.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building,

Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Boylan, (215) 566–2094, at the EPA Region III office or via e-mail at boylan.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: June 30, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 97–19096 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL 72–1–9720b: FRL–5858–3]

Approval and Promulgation of State Implementation Plan, Florida: Approval of Revisions to the Florida SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 25, 1996, the Florida Department of Environmental Protection (FDEP) submitted revisions to the Florida State Implementation Plan (SIP) to: revise the gasoline tanker truck leak testing procedures by adopting by reference federal test methods; change the requirements to submit test results to the FDEP rather than the Florida Department of Agriculture and Consumer Services; and update the gasoline tanker truck leak test form. In the final rules section of this **Federal Register**, the EPA is approving the State of Florida's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments on this proposed action must be received by August 20, 1997.

ADDRESSES: Written comments on this action should be addressed to Mr. Gregory Crawford at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

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

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Crawford, Regulatory Planning Section, Air Planning Branch, Air, Pesticides, and Toxics Management Division, Region 4, Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303. The telephone number is 404/562–9042.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 25, 1997.

A. Stanley Meiburg,

Regional Administrator.

[FR Doc. 97–19094 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102, DA 97–1502]

Compatibility of Wireless Services With Enhanced 911

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the wireless Enhanced 911 (E911) rulemaking proceeding, the Commission seeks additional comment on the *ex parte* presentations filed by Wireless E911 Coalition, GTE Wireless and Ad Hoc Alliance for Public Access to 911 (Alliance) regarding certain technical issues pertaining to the provision of 911 emergency calling services. In light of *ex parte* presentations by the wireless carriers and equipment manufacturers, the staff of the Wireless Telecommunications Bureau prepared a set of questions to help our understanding and evaluation of technical issues related to the E911 rules. In response to our inquiry, GTE Wireless filed its response on July 7, 1997, the Wireless E911 Coalition filed its response on July 10 and Alliance filed its response on July 11. Additional comment on these responses is sought to assist the Commission in determining whether to revise Section 20.18(b) of the Commission's Rules. The effect of revising Section 20.18(b) would be to bring the timely implementation of basic 911 services to wireless customers.

DATES: Comments must be filed by July 28, 1997 and no reply comments will be accepted.

ADDRESSES: Send comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Won Kim, Policy Division, Wireless Telecommunications Bureau, (202) 418–1310.

SUPPLEMENTARY INFORMATION:

1. In wireless Enhanced 911 (E911) rulemaking proceeding, GTE Wireless filed *ex parte* presentation on July 7, the Wireless E911 Coalition filed its *ex parte* presentation on July 10, and Alliance filed its *ex parte* presentation on July 11, urging the Commission to revise Section 20.18(b) of the Commission's Rules. The full text of the GTE Wireless July 7 *ex parte* presentation, the Wireless E911 Coalition July 10 *ex parte* presentation, and Alliance July 11 *ex parte* presentation are available for inspection

and duplication during regular business hours in the FCC Reference Center, Federal Communications Commission, 1919 M Street, N.W., Room 239, Washington, D.C. 20554. Copies may also be obtained from International Transcription Service, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

2. Pursuant to § 1.415(d) of the Commission's Rules, 47 CFR 1.415(d), the Commission hereby seeks additional comment in the wireless Enhanced 911 (E911) rulemaking proceeding[1] regarding the *ex parte* presentations filed by Wireless E911 Coalition, GTE Wireless and Ad Hoc Alliance for Public Access to 911 (Alliance) regarding certain technical issues pertaining to the provision of 911 emergency calling services pursuant to the rules adopted in the *Report and Order.*

3. In the *Report and Order*, the Commission established rules requiring wireless carriers to implement basic 911 and E911 services. Some of the petitions seeking reconsideration, and *ex parte* presentations regarding the *Report and Order*, raise issues touching on the technical feasibility of the schedule and other aspects of the *Report and Order.* In light of *ex parte* discussions with the Wireless E911 Coalition and several other wireless service and equipment manufacturers, the staff of the Wireless Telecommunications Bureau prepared a set of questions to help our understanding and evaluation of these technical issues.

4. In response to our inquiry, GTE Wireless filed its response on July 7, the Wireless E911 Coalition filed its response on July 10, and Alliance filed its response on July 11. Additional comment on these responses is sought to assist the Commission in determining whether to revise § 20.18(b) of the Commission's Rules, requiring covered carriers to transmit 911 calls which transmit a Code Identification without validation of the call, and process all 911 calls (regardless of whether a Code Identification is included as part of the call transmission) where requested by the administrator of the designated Public Safety Answering Point.[2]

5. Pursuant to applicable procedures set forth in §§ 1.1415(d) and 1.419 of the Commission's Rules, 47 CFR 1.415(d), 1.419, interested parties may file comments to these *ex parte* presentations filed by GTE Wireless, the Wireless E911 Coalition, and Alliance no later than July 28, 1997. No reply comments or other pleadings will be accepted. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. All comments should be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, referencing CC Docket No. 94–102.

List of Subjects in 47 CFR Part 20

Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–19135 Filed 7–18–97; 8:45 am]

BILLING CODE 6712–01–U

[1] *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, Notice of Proposed Rulemaking, 59 FR 54878 (1994); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, Report and Order and Further Notice of Proposed Rulemaking, 61 FR 40348, 40374 (1996) (*Report and Order*).

[2] Section 20.18(b) of the Commission's Rules, 61 FR 40352 (1996).

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 23 and 26

[Docket OST–97–2550; Notice 97–5]

RIN 2105–AB92

Participation by Disadvantaged Business Enterprise in Department of Transportation Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Extension of comment period.

SUMMARY: The Department is extending the comment period on its supplemental notice of proposed rulemaking (SNPRM) to revise its rules governing the disadvantaged business enterprise (DBE) program. The SNPRM proposed numerous changes to the DBE program to respond to changes in the legal standards applicable to such programs and to improve the program's administration. The extension is in response to requests from a number of interested parties for additional time to review the proposed rule and formulate comments.

DATES: Comments should be received by September 29, 1997. Late-filed comments will be considered to the extent practicable.

ADDRESS: Interested persons should send comments to Docket Clerk, Docket No. OST–97–2550, Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC 20590. We request that, in order to minimize burdens on the docket clerk's staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, S.W., Room 10424, Washington, DC 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD).

SUPPLEMENTARY INFORMATION: In May 30, 1997, the Department issued a supplemental notice of proposed rulemaking (SNPRM) to amend the Department's disadvantaged business enterprise (DBE) program (62 FR 29548). The SNPRM proposed ''narrow tailoring'' changes to the program to respond to the Supreme court's decision in *Adarand* v. *Peña,* proposed a variety of improvements to the certification and other administrative provisions of the Department's rules intended to reduce burdens on participants, and proposed revisions and updates to requirements for DBE participation in airport concessions. The original comment closing date for the SNPRM was July 29, 1997.

This SNPRM is one of great interest to many affected parties, including disadvantaged business enterprises, other contractors, airports, state highway agencies, and transit authorities. It is also a lengthy and complex document. Because of the SNPRM's importance, and its length and complexity, several parties have requested additional time to formulate comments on it. These parties include the American Public Transit Association (a trade association for transit authorities); the Airports Council International-North America and the American Association of Airport Executives (airport trade associations); the Airport Minority Advisory Council (a trade association for DBEs and others interested in airport contracting); airports in Reno and Las Vegas, Nevada, St. Louis, Missouri, and Roanoke, Virginia; the Maine and Wisconsin Departments of Transportation; Senator Susan Collins of Maine; and the City of Philadelphia.

These letters, which have requested extensions of between 30 and 90 days in the comment period, have focused on the amount of time needed to digest the SNPRM and formulate thoughtful comments. In addition, Department staff who have been meeting with groups of interested parties to explain the content of the SNPRM have heard numerous informal expressions of concern about the time needed to review the SNPRM and draft comments on it.

The Department believes that these requests for extension have merit. This is an important rulemaking, and the Department has emphasized, in discussing it with interested parties, that we are very interested in receiving thoughtful, thorough comments that will help the Department create a final rule that is legally sound and practically workable. We believe that providing additional time for comments will help commenters and the Department achieve this objective. Therefore, we are extending the comment period for an additional 60 days, through September 29, 1997.

Issued this 14th day of July, 1997 at Washington, D.C.

Nancy E. McFadden,

General Counsel.

[FR Doc. 97–19111 Filed 7–18–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Newcomb's Snail From the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes threatened status pursuant to the Endangered Species Act of 1973, as amended, for Newcomb's snail (*Erinna newcombi*). This freshwater snail is restricted to the Hawaiian Island of Kaua'i. The distribution of this snail has greatly decreased from the known historic distribution and extant populations are presently limited to restricted habitats within five perennial streams on State land. The five known populations of this snail and its habitat are currently threatened by predation by a species of non-native predatory snail and two species of non-native marsh flies. These populations are also subject to an increased likelihood of extirpation from naturally occurring events, including natural disasters such as hurricanes and landslides. Comments and materials related to this proposal are solicited.

DATES: To ensure consideration in the final rule for this species, comments from all interested parties should be received by September 19, 1997. Public hearing requests must be received by September 4, 1997.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Manager, Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3108, Box 50088, Honolulu, Hawaii 96850. Comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Pacific Islands Ecoregion Manager, at the above address (808/541–2749; facsimile 808/541–2756).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago is comprised of eight main islands (Ni'ihau, Kaua'i, O'ahu, Moloka'i, Lãna'i, Kaho'olawe, Maui, and Hawaii) and their offshore islets, plus the shoals and atolls of the Northwest Hawaiian Islands. The main islands and the northwestern chain were formed sequentially by basaltic lava that emerges from a crustal hot spot currently located near the southeast coast of the island of Hawaii (Stearns 1985). Hawaii is the youngest island in the chain and is characterized by gently sloping shield volcanoes and currently active lava flows. Volcanoes on the other islands are either dormant or extinct. Ongoing erosion has formed steep-walled valleys with well developed soils and stream systems throughout the chain. Kaua'i, the oldest and most northwesterly of the main islands, is characterized by high rainfall, deep valleys, numerous perennial streams, and luxuriant vegetation.

Four species of Lymnaeidae snails are native to Hawaii (Morrison 1968, Hubendick 1952). Three of these species are found on two or more of the eight main islands. The fourth species, Newcomb's snail, is restricted to the island of Kaua'i. Newcomb's snail is unique among the Hawaiian lymnaeids in that the shell spire typically associated with lymnaeids has been completely lost. The result is a smooth, black shell formed by a single, oval whorl, 6 millimeters (mm) (0.25 inches (in.)) long and 3 mm (0.12 in.) wide. A similar shell shape is found in a Japanese lymnaeid (Burch 1968), but Burch's study of chromosome number shows that Newcomb's snail has evolutionary ties to the rest of the Hawaiian lymnaeids, all of which are derived from North American ancestors (Patterson and Burch 1978). This parallel evolution of similar shell morphology in Japan and Hawaii from two distinct lineages of lymnaeid snails is of particular scientific interest.

At the present time, there is no generally accepted nomenclature for the genera of Hawaiian lymnaeids, although each of these snail species, including Newcomb's snail, is recognized as a well defined species. Newcomb's snail was originally described as *Erinna newcombi* in 1855 by H. & A. Adams (see Hubendick 1952). Hubendick (1952) did not feel that the distinctive shell form (described above) and reduced structures of the nervous system of Newcomb's snail warranted a monotypic genus. In fact, Hubendick included all Hawaiian lymnaeids in the genus *Lymnaea.* Morrison (1968) opposed Hubendick, and argued that the distinctive shell characters of Newcomb's snail supported the generic name *Erinna.* Burch (1968), Patterson and Burch (1978), Taylor (1988), and Cowie (1995) all followed Morrison and referred to Newcomb's snail as *Erinna newcombi.* This is the currently accepted scientific name for Newcomb's snail.

Newcomb's snail is an obligate freshwater species. While the details of its ecology are not well known, Newcomb's snail probably has a life history similar to other members of the family. These snails generally feed on algae and vegetation growing on submerged rocks. Eggs are attached to submerged rocks or vegetation and there are no dispersing larval stages; the entire life cycle is tied to the stream system in which the adults live (Baker 1911). Dispersal of Newcomb's snail between stream systems is probably very infrequent due to their obligate freshwater habitat requirements. Historic dispersal probably relied on long-term erosional events that captured adjacent stream systems. It should be noted that this life history differs greatly from the freshwater Hawaiian neritid snails (*Nertinana* sp.), which have marine larvae that colonize streams following a period of oceanic dispersal (Kinzie 1990). It is likely that larvae of these neritid snails can disperse across the oceanic expanses that separate the Hawaiian Islands and colonize streams

on any or all of these islands. This dispersal capacity is not available to Newcomb's snail.

The specific habitat requirements of Newcomb's snail include fast flowing perennial streams with stable overhanging rocks, springs, rock seeps (rheocrenes), and waterfalls (Michael Kido, University of Hawaii *in litt.* 1994; Stephen Miller, U.S. Fish and Wildlife Service *in litt.* 1994; Polhemus 1992; Burch 1968; Hubendick 1952). Surveys of main stream channels of many of the perennial streams of Kaua'i indicate that Newcomb's snail is rarely found in this habitat (Adam Asquith, U.S. Fish and Wildlife Service *in litt.* 1994a; Don Heacock, State of Hawaii, Department of Land and Natural Resources, Division of Aquatic Resources *in litt.* 1995; M. Kido *in litt.* 1994, 1995; S. Miller *in litt.* 1994a, b; Timbol 1983). The limited occurrence of this snail in main stream channels may be due to scouring by sediment, rocks, and boulders that are moved downstream during heavy rains. Consequently, available suitable habitat is generally associated with small feeder streams, seeps, and waterfalls.

The present known range of Newcomb's snail is limited to five stream systems. Each stream supports a single population of Newcomb's snail (A. Asquith *in litt.* 1994a; M. Kido *in litt.* 1994; S. Miller *in litt.* 1994a, b; Hubendick 1952). These populations are located in the Hanalei River, Kalalau Stream, the Lumahai River, Makaleha Stream, and Waipahe'e Stream. Makaleha and Waipahe'e Streams both flow into Kapa'a Stream. The populations fall into two groups—populations first observed prior to 1925 and populations observed since 1993. Five populations were identified prior to 1925. Three of these populations (Wainiha, Hanakāpī'ai, and Hanakoa) no longer exist. Of the two remaining pre-1925 populations, one (Waipahe'e) is small and the other (Kalalau) is relatively large (see below). These data indicate that the number of populations of Newcomb's snail has been greatly reduced since 1925, perhaps by as much as 60 percent.

Since 1990, surveys of at least 46 streams, tributaries and springs on Kaua'i have located three previously unknown populations of Newcomb's snail (A. Asquith *in litt.* 1994a, b; D. Heacock *in litt.* 1995; M. Kido *in litt.* 1994, 1995; S. Miller *in litt.* 1994a, b; Timbol 1983). Two of these populations are small (see below), and the third population has been described as large.

No historic information is available on the population sizes of Newcomb's snail. However, recent reports indicate that two of the five known populations of Newcomb's snail are relatively large: The Kalalau and Lumahai populations. The Kalalau population is found in the northeastern tributary on two permanent waterfalls and in the section of intervening stream between the waterfalls. The high density of individuals in this population may be indicative of an undisturbed natural condition. The estimated maximum density at the base of the upper permanent waterfall, including the area behind the falling water, is approximately 800 snails/square meter (m^2) (75 snails/square foot (ft^2)) (S. Miller *in litt.* 1994b). The total area occupied by these snails could not be accurately evaluated due to the extreme vertical orientation of the waterfall. Habitat used by these snails is probably limited to the lower section of the waterfall. Little information on specific size or area is currently available for the population of Newcomb's snail from the Lumahai River, although this population has been reported to be large (M. Kido *in litt.* 1995).

The population in Makaleha Stream is divided into two subpopulations. The subpopulation at the waterfall that forms the head of the main channel of Makaleha Stream is estimated at 30 snails/m^2 (2 to 3 snails/ft^2) distributed over 2 to 3 m^2 (21 to 32 ft^2) (M. Kido *in litt.* 1994). This is considerably smaller than the previously described waterfall population in Kalalau Stream. The reasons for differences in these two populations are not known with certainty, but may be due to the presence or absence of non-native predators and biocontrol agents that feed on lymnaeid snails. The subpopulation that occupies Makaleha Springs and its small feeder stream covers approximately 20 to 30 m^2 (212 to 318 ft^2) (S. Miller *in litt.* 1994a). Snail densities at this site are difficult to estimate but may be as high as 20 to 30 snails/m^2 (1 to 3 snails/ft^2) (S. Miller *in litt.* 1994a).

The sizes of two other populations of Newcomb's snail have been characterized as small. The population in the Waipahe'e branch of Kealia Stream is estimated to cover 5 to 10 m^2 (53 to 106 ft^2) with a density of approximately 50 to 80 snails/m^2 (4 to 8 snails/ft^2) (A. Asquith *in litt.* 1994a). The population of Newcomb's snail in the Hanalei River is divided into four subpopulations in the upper reach of this river (M. Kido *in litt.* 1994, 1995). One subpopulation has approximately 10 to 20 snails/m^2 (1 to 2 snails/ft^2) and occupies 2 to 3 m^2 (21 to 32 ft^2) (M. Kido *in litt.* 1994). A second subpopulation supports approximately 25 snails. The two remaining subpopulations are reported to be small with very few snails (M. Kido *in litt.* 1995).

Based on these data, the Service estimates that the five known populations of Newcomb's snail have a total of approximately 6,000 to 7,000 individuals. The great majority of these snails, perhaps over 90 percent, are located in the two populations at Kalalau and Lumahai.

Previous Federal Action

The February 28, 1996, Notice of Review of Plant and Animal Taxa That Are Candidates for Listing as Endangered or Threatened Species (61 FR 7596) included Newcomb's snail as a candidate species. Candidates are those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list, but issuance of the proposed rule is precluded.

The processing of this proposed listing rule conforms with the Service's final listing priority guidance for fiscal year 1997, published in the **Federal Register** on December 5, 1996 (61 FR 64475–64481). The guidance clarifies the order in which the Service will process rulemakings following two related events: (1) The lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 104–6), and (2) 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. Tier 3 includes the processing of new proposed listings for species facing high magnitude threats. This proposed rule for Newcomb's snail falls under Tier 3. The Pacific Islands Ecoregion currently has no outstanding Tier 1 or 2 species, therefore processing of Tier 3 activities is encouraged under the listing priority guidance (61 FR 64480). This rule has been updated by the Pacific Islands Ecosystem Office to reflect any changes in distribution, status and threats since the effective date of the listing moratorium.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing

provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to Newcomb's snail (*Erinna newcombi* H. and A. Adams 1855) are as follows:

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

Although modification of habitat is not an immediate threat, water development projects have been proposed within Newcomb's snail habitat in the past. For example, in 1994, a proposed water development project at Makaleha Springs (State of Hawai'i 1994a) threatened to destroy the population of Newcomb's snail at this site. This project was ultimately rejected by the State of Hawai'i, Commission of Water Resource Management (Michael Wilson *in litt.* 1995). However, the State of Hawai'i Department of Water and Land Development can submit a new application for future development of the water resources at Makaleha Springs.

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

Overutilization is not known to be a factor affecting Newcomb's snail, and future overutilization of this species is not anticipated.

C. Disease and Predation

Predation by the non-native rosy glandina snail (Euglandina rosea) is a serious threat to the survival of Newcomb's snail. This predatory snail was introduced into Hawaìi in 1955 (Funasaki *et al.* 1988), and has established populations throughout the main islands. The rosy glandina feeds on snails and slugs, and field studies have established that it will readily feed on native snails found in Hawaìi (Hadfield *et al.* 1994). Furthermore, Kinzie (1992) demonstrated that the rosy glandina snail can fully submerge itself under water and feed on aquatic snails such as Newcomb's snail. The rosy glandina has been observed on the wet, algae-covered rocks of the Makaleha Springs stream very near individuals of Newcomb's snail (S. Miller *in litt.* 1994a), and is believed to prey on them. The rosy glandina snail has caused the extinction of many populations and species of native snails throughout the Pacific islands (Hadfield *et al.* 1994, Miller 1993, Hopper and Smith 1992, Murray *et al.* 1988, Tillier and Clarke 1983), and represents a significant threat to the survival of Newcomb's snail.

Predation on the eggs and adults of native Hawaiian lymnaeid snails by two non-native species of Sciomyzidae flies also represents a significant threat to the survival of Newcomb's snail. Two species of marsh flies (*Sepedomerus macropus* and *Sepedon aenescens*) that feed on lymnaeid snails (Davis 1960) were introduced into Hawaii in 1958 and 1966, respectively, as biological control agents for a non-native lymnaeid snail, *Galba viridis* (Funasaki *et al.* 1988). *Galba viridis* was targeted for biocontrol because it is an intermediate host of the cattle liver fluke (*Fasciola gigantica*) (Alicata 1938, Alicata and Swanson 1937). These authors misidentified *Galba viridis* as *Fossaria ollula*, as discussed in Morrison (1968). The non-native lymnaeid and the two biocontrol flies occur on Kauài as well as on other islands in Hawaìi (Funasaki *et al.* 1988, Davis and Chung 1969, Davis 1960, Hubendick 1952). One of the marsh fly species has been observed at a site (Hanakoa stream) where Newcomb's snail was historically recorded but is no longer present (S. Miller *in litt.* 1994b). Another marsh fly was observed near the waterfall of a Kauài stream (Manoa) that had many dead lymnaeids in the waterfall plunge pool (S. Miller *in litt.* 1994b). These biocontrol agents represent a significant threat to Newcomb's snail and other native lymnaeid snails.

D. The Inadequacy of Existing Regulatory Mechanisms

All of the five known extant populations of Newcomb's snail are located on watershed lands of the State of Hawaii. Currently, there are no State or Federal laws that afford protection for Newcomb's snail. Recent recommendations by the Stream Protection and Management Task Force (State of Hawaìi 1994b) may lead to some protection for some of the populations of Newcomb's snail. All of the stream systems that currently support populations of Newcomb's snail or have supported populations in the past have been identified as streams with outstanding aquatic resources (National Park Service 1990). All but one of these stream systems have been recommended as candidate streams for protection (National Park Service 1990). Kapàa Stream was not included in these recommendations, yet this stream system supports the Makaleha and Waipahèe populations of Newcomb's snail.

Newcomb's snail is not currently listed as an endangered or threatened species in Hawaii. If Newcomb's snail is listed under the Federal Endangered Species Act, the State of Hawaii Endangered Species Act (HRS, Sect. 195D–4(a)) will automatically be invoked. The State statue reads as follows:

''Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the [Federal] Endangered Species Act shall be deemed to be a threatened species under the provisions of this chapter.''

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States (33 CFR parts 320–330). Waters of the United States include navigable waters and other waters, their headwaters (streams with an average annual flow of less than 5 cubic feet per second), and wetlands (either isolated or adjacent to other waters). Section 404 regulations require that applicants obtain a permit for projects that involve the discharge of fill material into waters of the United States. Projects may qualify for authorization to place fill material into headwaters and isolated waters, including wetlands, under Nationwide Permit 26 (NWP 26) if ''[t]he discharge does not cause the loss of more than 3 acres of waters of the United States nor cause the loss of waters of the United States for a distance greater than 500 linear feet of stream bed'' (61 FR 65916). These projects can normally be permitted with minimal environmental review by the Corps. Projects that qualify for authorization under NWP 26 and ''caus[e] a loss of ⅓ acre or less of waters of the United States the permittee must submit a report within 30 days of completion of the work * * *'' Formal predischarge evaluation of the impacts of such projects is thus precluded under the section 404 permit process. An individual permit may be required by the Corps if a project otherwise qualifying under NWP 26 would have greater than minimal adverse environmental impacts. No activity which is likely to jeopardize the continued existence of a threatened or endangered species, or which is likely to destroy or adversely modify the critical habitat of such species, is authorized under any NWP (61 FR 65920). Candidate species receive no special consideration under section 404, regardless of the type of permit deemed

necessary. Thus, this taxon currently receives no protection under section 404 of the Clean Water Act.

E. Other Natural or Manmade factors Affecting Its Continued Existence

Naturally occurring events may affect the continued existence of Newcomb's snail. As indicated above, the five known populations of Newcomb's snail cover very small areas in settings that may be subjected to extreme effects associated with exceptionally heavy rainfall or hurricanes. Hurricanes struck the island of Kauai in 1983 and 1992. Rainfall associated with these hurricanes can wash out streams (Polhemus 1993) and create landslides that can alter stream flow (Jones *et al.* 1984). Events such as these could destroy the habitat of Newcomb's snail or physically displace individuals into areas where they cannot survive.

Reduced stream flow due to water development projects, droughts, or other natural or human causes may have several potential negative effects on the ability of Newcomb's snail to complete its life cycle. Loss of water could reduce or eliminate the habitat of Newcomb's snail and possibly lead to increased resource competition or desiccation and death. Reduced water flow could also lead to increased predation by non-native predators. Low flows may allow marsh flies or the rosy glandina snail easier access to individual snails that are otherwise protected by the force of water movement. Droughts are not uncommon in the Hawaiian Islands. Between 1860 and 1986 the island of Kauai was affected by 33 droughts, 20 of which significantly affected the available water supply on the island (Giambelluca *et al.* 1991). The development of water resources also is a continuing issue. These projects divert water from streams, springs and aquifers that may otherwise maintain habitats for Newcomb's snail.

Intentional or accidental introductions of snail predators constitute a significant threat to Newcomb's snail. The State of Hawaii continues to carry out an active program of introductions of biological control agents. These introduced organisms are meant to control agricultural pests, and the impacts on native species have only recently been considered in evaluating a release program. The marsh flies and the rosy glandina snail are examples of biological control agents that were introduced to Hawaii without adequate assessment of their impact on Newcomb's snail or other native Hawaiian species.

Finally, the combined effects of numerous factors can degrade stream ecosystems, leading to a gradual decline in snail population size and an increase in the likelihood of negative stochastic or biological effects.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list Newcomb's snail (*Erinna newcombi*) as threatened. Critical habitat is not being designated at this time for reasons addressed in the ''Critical Habitat'' section of this proposed rule.

Critical Habitat

Critical Habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical 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 geographical 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 that 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 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for Newcomb's snail at this time. 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 threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Given the very restricted range of this species, the Service is concerned that the disclosure of the location of the species may lead to purposeful vandalism of known populations. The Service has received letters from a landowner on the island of Kaua'i that threaten such vandalism for other listed species. The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required for the designation of critical habitat, would increase the degree of threat to this snail due to vandalism.

In addition, the species proposed herein is known to occur, at least in part, on non-federally owned lands. Critical habitat designation provides protection only on Federal lands or on private or State owned lands when there is Federal involvement through authorization or funding of, or participation in, a project or activity. All Federal and state agencies and local planning agencies involved, have been notified of the location and importance of protecting *Erinna newcombi* habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 consultation process. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by such agency, does not jeopardize the continued existence of a federally listed species, or does not destroy or adversely modify designated critical habitat. Newcomb's snail is confined to small geographic areas and each population is composed of so few individuals that the determinations for jeopardy and adverse modification would be essentially the same. Therefore, designation of critical habitat provides no additional benefit beyond those that the species would receive by virtue of its listing as a threatened species and likely would increase the degree of threat from vandalism, collecting, or other human activities. The Service finds that designation of critical habitat for Newcomb's snail is not prudent at this time.

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 results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, 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 taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being

designated. Regulations implementing this interagency cooperation provision of the Act are codified in 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 federally agency must enter into formal consultation with the Service.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include Army Corps of Engineers authorization of projects such as the construction of drainage diversions, roads, bridges, and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*), U.S. Environmental Protection Agency authorized discharges under the National Pollutant Discharge Elimination System (NPDES), and U.S. Housing and Urban Development or Natural Resource Conservation Service funded projects.

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified in 50 CFR 17.21 and 17.31, 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, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified in 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a 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 the listing on proposed and ongoing activities within a species' range. The Service believes that, based on the best available information, the following activities will not result in a violation of section 9 of the Act:

(1) Scientific or recreational activities within the main channel of streams that support populations of Newcomb's snail, but exclusive of the specific sites known to support populations of this snail.

Activities that the Service believes could potentially result in ''take'' of Newcomb's snail include, but are not limited to the following:

(1) Release, diversion, or withdrawal of water that results in displacement, disruption of breeding or feeding, or death of individual snails.

(2) Actions that lead to the destruction or alteration of the occupied habitat of Newcomb's snail (*e.g.*, in stream dredging, rock removal, channelization, discharge of fill material, actions that result in siltation of the habitat, diversion of ground water flow required to maintain the habitat).

(3) Introduction of non-native species that are predators or competitors of aquatic snails and especially those snails in the family Lymnaeidae and the closely related family Physidae.

Questions regarding whether specific activities will constitute a violation of section 9 of the Federal Endangered Species Act should be directed to the Manager of the Pacific Islands Ecoregion (see **ADDRESSES** section). Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241; facsimile 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any addition populations of this species and the reasons why habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Pacific Islands Ecoregion Manager (See **ADDRESSES** section).

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).

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from Pacific Islands Ecoregion (see **ADDRESSES** section).

Author: The primary author of this document is Dr. Stephen E. Miller, U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, Ecological Services, 300 Ala Moana Boulevard, Room 3108, P.O. Box 50088, Honolulu, Hawaii 96850 (808/541–3441; facsimile 808/541–3470). Recent data on the

distribution of Newcomb's snail were contributed by Dr. Adam Asquith, U.S. Fish and Wildlife Service, Pacific Islands Ecoregion; Mr. Michael Kido, Environmental Research Laboratory, University of Hawaii, Kaua'i; and Mr. Don Heacock, Kaua'i District Aquatic Biologist, State of Hawaii, Department of Land and Natural Resources, Division of Aquatic Resources.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, 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 SNAILS, 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						
*	*	*	*	*	*		*
SNAILS:							
*	*	*	*	*	*		*
Snail, Newcomb's	*Erinna newcombi*	U.S.A. (HI)	NA	T	NA	NA	NA
*	*	*	*	*	*		*

Dated: June 9, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–19057 Filed 7–18–97; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Notice of Availability of a Draft Recovery Plan for California Freshwater Shrimp for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the California freshwater shrimp (*Syncaris pacifica* Holmes 1895) listed as an endangered species on October 30, 1988 (53 FR 43889). The California freshwater shrimp occurs in the Marin, Sonoma and Napa counties north of San Francisco Bay, California. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received September 19, 1997 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3310 Camino Avenue, Suite 130, Sacramento, California 95821–6340. Written comments and material regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Please contact Karen Miller or Matthew Vandenberg, U.S. Fish and Wildlife Service, at 916/979–2752 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe the site specific management actions considered necessary for conservation and survival of the species, establish objectives, and measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires the public notice and an opportunity for public review and comment be provided during recovery plan development. The Service, and other affected Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The California freshwater shrimp is endemic to Marin, Sonoma, and Napa Counties. There are 16 coastal streams harbor extant shrimp populations. Management issues and concerns include introduced fish, deterioration or loss of habitat resulting from water diversion, impoundments, livestock and dairy activities, agricultural activities and developments, flood control activities, gravel mining, timber harvesting, migration barriers, and water pollution.

The California freshwater shrimp draft recovery plan has been reviewed by the appropriate Service staff in Region 1 and was developed with input from selected experts on the biology of the species. The plan will be finalized and approved following incorporation of comments and material received during this comment period.

Public Comments Solicited

The Service solicits written comments on the draft recovery plan described. All biological comments received by the date specified above will be considered prior to the approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 25, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region I, Portland. Oregon.

[FR Doc. 97–19059 Filed 7–18–97; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 25 and 32

RIN 1018–AE18

1997–98 Refuge-Specific Hunting and Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to add additional national wildlife refuges (refuges) to the list of areas open for hunting and/or sport fishing, along with pertinent refuge-specific regulations for such activities; and amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing for the 1997–98 seasons. Refuge hunting and fishing programs are reviewed annually to determine whether additional refuges should be added or whether individual refuge regulations governing existing programs should be modified, deleted or have additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications ensuring continued compatibility of hunting and fishing with the purposes for which individual refuges, and the Refuge System were established.

The Service has determined uses in this proposed rule are compatible with the purposes for which these refuges were established. The Service further determined that this proposed action is in accordance with the provisions of all applicable laws, is consistent with principles of sound fish and wildlife management, helps implement Executive Orders 12996 (Management and Public Use of the National Wildlife Refuge System) and 12962 (Recreational Fisheries) and is otherwise in the public interest by providing additional recreational opportunities at national wildlife refuges. Sufficient funds will be available within the refuge budgets to operate the hunting and sport fishing programs as proposed.

DATES: Comments may be submitted on or before August 20, 1997.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Stephen R. Vehrs, at the above address; Telephone (703) 358–2397; Fax (703) 358–1826.

SUPPLEMENTARY INFORMATION: National wildlife refuges generally are closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound fish and wildlife management, and otherwise must be in the public interest.

50 CFR parts 25 and 32 contain administrative provisions and other provisions governing hunting and fishing on national wildlife refuges. Hunting and fishing are regulated on refuges to:

1. Ensure compatibility with refuge and Refuge System purposes;
2. Properly manage the fish and wildlife resource;
3. Protect other refuge values; and
4. Ensure refuge user safety.

On many refuges, the Service policy of adopting State hunting and fishing regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled ''Statutory Authority.'' Refuge-specific hunting and fishing regulations are issued when a wildlife refuge is opened to either migratory game bird hunting, upland game hunting, big game hunting or sport fishing. These regulations list the wildlife species that may be hunted or are subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. Previously issued refuge-specific regulations for hunting and fishing are contained in 50 CFR part 32. Many of the amendments to these sections are promulgated to standardize and clarify the existing language of these regulations.

With the passage of Public Law 102–402, the Rocky Mountain Arsenal National Wildlife Refuge Act of 1992 (Act), the Service will establish a refuge over what was previously a Department of Defense (Army) military installation, but only following toxic substances cleanup.

Public Law 102–402 specifies that the Service shall manage the area as if it were a unit of the National Wildlife Refuge System during cleanup activities on the Rocky Mountain Arsenal (Arsenal). The Service proposes this amendment to the regulations to establish regulatory authority for these lands, prior to establishment as a refuge and inclusion in the National Wildlife Refuge System, in accordance with Public Law 102–402. These regulations will provide appropriate authority and jurisdiction to conduct necessary management actions, including law enforcement, at the Arsenal.

Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 30-day comment period is specified in order to facilitate public input. Consideration was given to providing a 60-day comment period, however, the Service determined that an additional 30-day delay in processing these refuge-specific hunting and fishing regulations would hinder the effective planning and administration of hunting and fishing programs. Specifically, a delay of an additional 30 days would jeopardize holding the hunting or fishing programs this year, or shorten their duration and thereby lessen the management effectiveness of this regulation. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, good cause exists in that, in order to continue to provide for previously authorized hunting opportunities while at the same time provide for adequate resource protection, the Service must be timely in providing modifications to certain hunting programs on some refuges. Accordingly, good cause exists to limit the comment period to 30 days (5 U.S.C. 553(d)(3)).

Interested persons may submit written comments concerning this proposed rule to the person listed above under the heading **ADDRESSES**. All substantive comments will be reviewed and considered.

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act (RRA) authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The NWRSAA and the RRA also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

Hunting and sport fishing plans are developed for each existing refuge prior to opening it to hunting or fishing. In many cases, refuge-specific regulations are developed to ensure the compatibility of the programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and the RRA has been ensured for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at the time of acquisition. This has ensured that the determinations required by these acts have been made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. Continued compliance is ensured by the development of long-term hunting and sport fishing plans and by annual review of hunting and sport fishing programs and regulations.

In preparation for these openings, the following documents are included in the refuge's ''openings package'' for Regional review and approval from the Washington Office: an interim hunting and fishing management plan; an environmental action memorandum and categorical exclusion certification; a Section 7 determination pursuant to the Endangered Species Act, that these openings will have no effect, or are not likely to have an adverse effect, on listed species or critical habitats; a letter of concurrence from the affected State; interim compatibility determination; and refuge-specific regulations to administer the hunting and/or fishing programs. Upon review of these documents, the Service, acting for the Secretary, has determined that the opening of these National Wildlife Refuges to hunting and fishing is compatible with the principles of sound fish and wildlife management and otherwise will be in the public interest.

The following refuges propose new hunting and/or fishing openings: Rocky Mountain Arsenal National Wildlife Refuge, Colorado; Ten Thousand Islands National Wildlife Refuge, Florida; Black Bayou Lake National Wildlife Refuge, Louisiana; Fort Niobrara National Wildlife Refuge, Nebraska; and Balcones Canyonlands National Wildlife Refuge, Texas. The remaining regulations represent revisions to existing refuge specific regulations.

In accordance with the NWRSAA and the RRA, the Service has determined that these openings are compatible and consistent with the primary purposes for which the refuge was established. The Service also has determined that funds are available to administer the program.

Paperwork Reduction Act

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Economic Effect

Service review has revealed that this rulemaking will increase hunter and fishermen visitation to the surrounding area of the refuges before, during or after the recreational uses, compared to the refuge being closed to these recreational uses.

These refuges generally are located away from large metropolitan areas. Businesses in the area of the refuges consist primarily of small family-owned stores, restaurants, gas stations and other small commercial enterprises. In addition, there are several small, commercial recreational fishing and hunting camps and marinas in the general areas. This proposed rule would have a positive effect on such entities; however, the amount of revenue generated is not large.

Many area residents enjoy a rural lifestyle that includes frequent recreational use of the abundant natural resources of the area. A high percentage of the households enjoy hunting, fishing, and boating in area wetlands, rivers and lakes. Refuge lands generally were not available for general public use prior to government acquisition; however, they were fished and hunted upon by friends and relatives of the landowners, and some were under commercial hunting and fishing leases. Many nearby residents also participate in other forms of non-consumptive outdoor recreation, such as biking, hiking, camping, birdwatching, canoeing, and other outdoor sports.

Economic impacts of refuge fishing and hunting programs on local communities are calculated from average expenditures in the ''1995 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation''. In 1995, 42 million U.S. residents 16 years old and older hunted and/or fished. More specifically, 37 million fished and 14.5 million hunted. Those who both fished and hunted account for the 9.5 million overage. Nationwide expenditures by sportsmen totaled $42 billion. Trip-related expenditures for food, lodging, and transportation were $16 billion or 37 percent of all fishing and hunting expenditures; equipment expenditures amounted to $19 billion, or 46 percent of the total; other expenditures such as those for magazines, membership dues, contributions, land leasing, ownership, licenses, stamps, tags, and permits accounted for $6.9 billion, or 16 percent of all expenditures. Overall, anglers spent an average of $41 per day. For each day of hunting, migratory bird hunters spent an average of $33, upland game hunters an average of $20, and big game hunters averaged spending $40.

At these 72 National Wildlife Refuges included in this proposed regulation, 776,000 fishermen are estimated to spend $31.8 million annually in pursuit of their sport, while approximately 380,000 hunters will spend $12.5 million annually hunting on the refuges. While many of these fishermen and hunters already make such expenditures prior to the refuge opening, some of these additional expenditures directly are due to the land now being open to the general public.

This rulemaking will have a small but positive impact on local economies by increasing visitation and expenditures in the surrounding area of the refuges. The Service has determined that this rulemaking would not have a significant effect on a substantial number of small entities in the area, such as businesses, organizations and governmental jurisdictions, under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded

Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform

The Department has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) is ensured when hunting and sport fishing plans are developed, and the determinations required by NEPA are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. The changes in hunting and fishing herein proposed were reviewed with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and found to either have no affect on or are not likely to adversely affect listed species or critical habitat. The amendment of refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The Service exclusion found at 516 DM 6, App. 1.4 B(5) is employed here as these amendments are considered ''[m]inor changes in the amounts or types of public use on FWS or State-managed lands, in accordance with regulations, management plans, and procedures.'' These refuge-specific hunting and fishing regulations simply qualify or otherwise define a hunting or fishing activity, for purposes of resource management. These documents are on file in the offices of the Service and may be viewed by contacting the primary author noted below. Information regarding hunting and fishing permits and the conditions that apply to individual refuge hunts, sport fishing activities, and maps of the respective areas are retained at refuge headquarters and can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7152.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8550.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Primary Author: Stephen R. Vehrs, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects

50 CFR Part 25

Administrative practice and procedure, Concessions, Reporting and recordkeeping requirements, Safety, Wildlife refuges.

50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, the Service proposes to amend Title 50, Chapter I, subchapter C of the *Code of Federal Regulations* as follows:

PART 25—[AMENDED]

1. The authority citation for part 25 is revised to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i, 3901 *et seq.*; and Pub. L. 102–402, 106 Stat. 1961.

2. Section 25.11 is amended by revising paragraph (a) to read as follows:

§ 25.11 Purpose of regulations.

(a) The regulations in this subchapter govern general administration of units of the National Wildlife Refuge System, public notice of changes in U.S. Fish and Wildlife Service policy regarding Refuge System units, issuance of permits required on Refuge System units and other administrative aspects involving the management of various units of the National Wildlife Refuge System. The regulations in this subchapter apply to areas of land and water held by the United States in fee title and to property interests in such land and water in less than fee, including but not limited to easements. For areas held in less than fee, the regulations in this subchapter apply only to the extent that the property interest held by the United States may be affected. The regulations in this subchapter also shall apply to and govern those areas of the Rocky Mountain Arsenal over which management responsibility has been transferred to the U.S. Fish and Wildlife Service pursuant to the Rocky Mountain Arsenal Act of 1992 (Pub. L. 102–402, 106 Stat. 1961), prior to their establishment as a refuge and inclusion in the National Wildlife Refuge System.

* * * * *

PART 32—[AMENDED]

3. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

4. Section 32.7 is amended by removing the listing of ''Kesterson National Wildlife Refuge'' from the State of California; by adding the alphabetical listings of ''Rocky Mountain Arsenal National Wildlife Refuge'' to the State of Colorado, ''Ten Thousand Islands National Wildlife Refuge'' to the State of Florida, ''Black Bayou Lake National Wildlife Refuge'' to the State of Louisiana, ''Fort Niobrara National Wildlife Refuge'' to the State of Nebraska, ''Balcones Canyonlands National Wildlife Refuge'' to the State of Texas, ''Leopold Wetland Management District'' to the State of Wisconsin; and by revising the listing of ''Wauby

National Wildlife Refuge'' under the State of South Dakota to read ''Waubay National Wildlife Refuge''.

5. Section 32.20 *Alabama* is amended by revising paragraphs B. and D. of Eufaula National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

EUFAULA NATIONAL WILDLIFE REFUGE

* * * * *

B. Upland Game Hunting. Hunters may hunt rabbit and squirrel on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D. Sport Fishing. Fishermen may fish, frog and trap turtles on designated areas of the refuge subject to State fishing regulations and the following conditions:

1. Fishing, frogging and turtle trapping open year-round in all waters contiguous with the Walter F. George Reservoir. Bank fishing permitted during daylight hours only.

2. Fishing, including bow fishing, permitted in impounded refuge waters from March 1 through October 31, during daylight hours.

3. Creel, possession, and size limit for Walter F. George Reservoir apply to all impounded refuge waters.

* * * * *

6. Section 32.22 *Arizona* is amended by revising paragraphs A.4., A.6., A.9. and A.13., by removing paragraph B.3., redesignating paragraphs B.4., B.5. and B.6. as paragraphs B.3., B.4., B.5. respectively, and revising them, by revising paragraph D.1. and removing paragraph D.2. of Cibola National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

* * * * *

CIBOLA NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Hunters must pay a hunt fee in a portion of the refuge. Consult refuge hunting leaflet for location.

* * * * *

6. Hunting in a portion of farm unit 2 closes at 12 p.m. each day. Consult refuge hunting leaflet for location.

* * * * *

9. Waterfowl hunting requires the use of decoys on farm unit 2. Daily removal of decoys from the refuge required.

* * * * *

13. The Hart Mine Marsh Area opens to hunting only between 10 a.m. and 3 p.m. daily, during goose season.

B. Upland Game Hunting. * * *

* * * * *

3. Hunters may hunt cottontail rabbit from September 1 through the last day of the respective State's quail season.

4. During the Arizona waterfowl season, hunters may not hunt quail and rabbit in Farm Unit 2 until 12 p.m. each day.

5. Hunters may not hunt within 50 yards of any road or levee.

* * * * *

D. Sport Fishing. * * *

1. Fishermen may fish and frog in Cibola Lake only from March 15 through Labor Day.

* * * * *

7. Section 32.23 *Arkansas* is amended by adding paragraph D.3. of Holla Bend National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

HOLLA BEND NATIONAL WILDLIFE REFUGE

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Fishermen may bowfish only from August 1 through August 31 subject to State bowfishing regulations. Only bowfishing equipment permitted. Fishermen may not use broad heads, field points, or metal arrows.

* * * * *

8. Section 32.24 *California* is amended by removing Kesterson National Wildlife Refuge; by revising paragraphs A.1., A.2., A.3., A.4., and by adding paragraphs A.6., A.7. and A.8. of San Luis National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

SAN LUIS NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. * * *

1. Hunters may use only portable blinds and temporary blinds constructed of natural materials in the free-roam hunting area.

2. Hunters must remove all portable blinds, decoys, and other personal equipment from the refuge following each day's hunt.

3. Hunters may snipe hunt only within the free-roam portion of the San Luis unit's waterfowl hunting area. Snipe hunters may only possess and use nontoxic shot.

4. In areas where the refuge limits hunter numbers through a daily permit process, hunters may not possess more than 25 shells while in the field.

* * * * *

6. Hunters may not transport loaded firearms. This includes walking or bicycling between parking areas and spaced blind areas, or while traveling in a boat under power.

7. Refuge restricts hunters, in the spaced blind area, to their original assigned blind except when they are placing decoys, traveling to and from the parking area, retrieving downed birds, or when shooting to retrieve crippled birds.

8. Access to Salt Slough Unit free-roam hunting area is by boat only with a maximum speed limit of 5 mph. Prohibited boats include air-thrust and/or inboard water-thrust types.

* * * * *

9. Section 32.25 *Colorado* is amended by removing and reserving the text of paragraph D. of Alamosa National Wildlife Refuge; by revising paragraph D of Arapaho National Wildlife Refuge; by revising paragraphs A., B., C., and D. of Browns Park National Wildlife Refuge; by adding the alphabetical listing of Rocky Mountain Arsenal National Wildlife Refuge to read as follows:

§ 32.25 Colorado.

* * * * *

ALAMOSA NATIONAL WILDLIFE REFUGE

* * * * *

D. Sport Fishing. [Reserved]

ARAPAHO NATIONAL WILDLIFE REFUGE

* * * * *

D. Sport Fishing. Fishermen may fish in designated areas of the refuge subject to the following conditions:

1. Fishermen may not fish between June 1 and July 31 each year.

2. Fishermen may fish only during daylight hours.

BROWNS PARK NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt geese, ducks, coots, and mourning doves only in designated areas of the refuge.

B. Upland Game Hunting. Hunters may hunt cottontail rabbits only in designated areas of the refuge.

C. Big Game Hunting. Hunters may hunt mule deer and elk only in designated areas of the refuge.

D. Sport Fishing. Fishermen may fish only in designated areas of the refuge.

* * * * *

ROCK MOUNTAIN ARSENAL NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishermen may fish only in designated areas of the refuge subject to the following conditions:

1. Refuge fishing permit required.

2. Fishing permitted only from sunrise to sunset from April 15 through October 15 annually.

3. Catch and release only fishing.

4. Additional refuge regulations listed in refuge fishing regulations leaflet and fishing permits.

10. Section 32.28 *Florida* is amended by revising the introductory text of paragraph D. and adding paragraph D.3.of Cedar Keys National Wildlife; by revising paragraph D. of J.N. ''Ding'' Darling National Wildlife Refuge; by revising paragraph D. of Lower Suwannee National Wildlife Refuge; by revising paragraph A. of St. Marks National Wildlife Refuge; and by adding the alphabetical listing of Ten Thousand Islands National Wildlife Refuge to read as follows:

§ 32.28 Florida.

* * * * *

CEDAR KEYS NATIONAL WILDLIFE REFUGE

* * * * *

D. Sport Fishing. Fishermen may fish in salt water year round in accordance with State regulations subject to the following condition:

* * * * *

3. A 300 foot buffer zone beginning at mean high tide line and extending into the waters around Seahorse Key closed to all public entry from March 1 through June 30.

* * * * *

J. N. ''DING'' DARLING NATIONAL WILDLIFE REFUGE

* * * * *

D. Sport Fishing. Fishermen may fish and crab on designated areas of the refuge subject to the following conditions:

1. Fishing permitted in refuge waters except in areas designated as ''closed to public entry,'' and the Mangrove Head Pond, Tower Pond, and Tarpon Bay Slough at the Bailey Tract.

2. Crabbing permitted in refuge waters except in areas designated as ''closed to public entry.''

3. Fishermen may not take horseshoe crabs, stone crabs, or spider crabs.

4. Fishermen may not take blue crabs for commercial purposes.

5. Sport fishermen may take blue crabs along the Wildlife Drive only with the use of dip nets. Fishermen may not use lines, traps, or bait on or within 150 feet of the Wildlife Drive.

6. Fishermen may use baited lines and traps within refuge waters if such devises are continuously attended/monitored and removed at the end of each day. Attended/monitored means that all devices used in the capture of blue crabs must be within the immediate view of the sport crabber.

7. Daily limit of blue crabs is 20 per person of which no more that 10 shall be females.

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LOWER SUWANNEE NATIONAL WILDLIFE REFUGE

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D. Sport Fishing. Fishermen may fish in accordance with State regulations subject to the following conditions:

1. Fishermen may take game and nongame fish only with pole and line or rod and reel.

2. Fishermen may not take turtles and frogs.

3. Fishermen may not use boats in refuge ponds. Boats may not be left on the refuge overnight.

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ST. MARKS NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt ducks and coots in designated areas of the refuge subject to the following condition: Permits required.

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TEN THOUSAND ISLANDS NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt ducks and coots in designated areas of the refuge subject to the following condition: Permits required.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

11. Section 32.29 *Georgia* is amended by revising paragraph D.1. of Blackbeard Island National Wildlife Refuge; by revising paragraphs D.1. and D.3. of Harris Neck National Wildlife Refuge; and by revising paragraph C. of Piedmont National Wildlife Refuge to read as follows:

§ 32.29 Georgia.

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BLACKBEARD ISLAND NATIONAL WILDLIFE REFUGE

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D. Sport Fishing. * * *

1. Fishermen may fish in freshwater year-round from sunrise to sunset, except during managed deer hunts.

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HARRIS NECK NATIONAL WILDLIFE REFUGE

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D. Sport Fishing. * * *

1. Fishermen may fish in freshwater year-round from sunrise to sunset, except during managed deer hunts.

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3. Fishermen may use the Barbour River public boat ramp as public access year-round from 4:00 a.m. to 12:00 p.m.(midnight), daily. However, fishermen may not use the Barbour River public boat ramp as access from 12:00 p.m.(midnight) to 4:00 a.m., daily.

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PIEDMONT NATIONAL WILDLIFE REFUGE

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C. Big Game Hunting. Hunters may hunt white-tailed deer and turkey on designated areas of the refuge subject to the following condition: Permits required.

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12. Section 32.30 *Hawaii* is amended by revising paragraph C. of Hakalau Forest National Wildlife Refuge to read as follows:

§ 32.30 Hawaii.

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HAKALAU FOREST NATIONAL WILDLIFE REFUGE

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C. Big Game Hunting. Hunters may hunt feral pigs and feral cattle on designated areas of the refuge subject to the following condition:

1. Hunters must have reservations or permits to access the refuge from Keanakolu Road.

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13. Section 32.32 *Illinois* is amended by revising paragraphs A. and B., by revising the introductory text of paragraph C., by revising paragraph C. 3, by adding paragraph C.5., by revising the introductory text of paragraph D. and paragraphs D.1., D.2., D.3., D.4. and D.5. of Crab Orchard National Wildlife Refuge; by revising paragraphs A.1., A.2., A.3. and the introductory text of paragraph B. of Cypress Creek National Wildlife Refuge; by adding paragraphs A.1., A.2., C.1., and D.4. of Emiquon National Wildlife Refuge to read as follows:

§ 32.32 Illinois.

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CRAB ORCHARD NATIONAL WILDLIFE REFUGE

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A. Hunting of Migratory Birds. Hunters may hunt waterfowl on designated areas of the refuge in accordance with posted regulations and subject to the following conditions.

1. Hunters may hunt waterfowl, by daily permit drawing, on the controlled areas of Grassy Point, Carterville, and Greenbriar land areas, plus Orchard, Sawmill, Turkey, and Grassy islands, from one-half hour before sunrise to posted closing times each day during the goose season. Hunters may hunt waterfowl in these areas, including the lake shoreline, only from existing refuge blinds during the goose season.

2. Waterfowl hunters outside the controlled goose hunting areas may use only portable or temporary blinds. Blinds must be a minimum of 200 yards apart and removed or dismantled at the end of each day's hunt.

3. Goose hunters outside the controlled goose hunting area on Crab Orchard Lake must hunt from a blind that is on shore or anchored a minimum of 200 yards away from any shoreline.

4. Hunters may possess and use only nontoxic shot while hunting migratory game bird species.

B. Upland Game Hunting. Hunters may hunt upland game on designated areas of the refuge in accordance with posted regulations and subject to the following conditions:

1. Upland game hunting prohibited in the controlled goose hunting areas during the goose hunting season, except furbearer hunting permitted from sunset to sunrise.

2. Hunters may not use rifles or handguns with ammunition larger than .22 caliber rim fire, except they may use black powder firearms up to and including .40 caliber.

3. Hunters may possess and use only nontoxic shot while hunting all permitted species except wild turkey. Hunters may possess and use lead shot for hunting wild turkey.

C. Big Game Hunting. Hunters may hunt white-tailed deer on designated areas of the refuge in accordance with posted regulations and subject to the following conditions:

* * * * *

3. Hunters may not hunt deer in the controlled goose hunting areas during the goose hunting season.

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5. Permitted hunters may use center fire ammunition for handgun deer hunting during the handgun deer season.

D. Sport Fishing. Fishermen may fish on designated areas of the refuge in accordance

with posted regulations and subject to the following conditions:

1. Crab Orchard Lake—west of Wolf Creek Road—Fishermen may fish from boats all year. Fishermen must remove trot-lines/jugs from sunrise until sunset from Memorial Day through Labor Day; east of Wolf Creek Road—fishermen may fish from boats March 15 through September 30. Fishermen may fish all year at the Wolf Creek and Route 148 causeway areas. Fishermen must check and remove fish from all jugs and trot lines daily. It is illegal to use stakes to anchor any trot-lines; they must be tagged with angler's name and address. Fishermen may use all noncommercial fishing methods except they may not use underwater breathing apparatus. Fishermen may not use jugs or trot-lines with any flotation device that has previously contained any petroleum-based materials or toxic substances. Fishermen must attach a buoyed device that is visible on the water's surface to all trot-lines.

2. A–41, Bluegill, Blue Heron, Managers, Honkers, and Visitors Ponds: Fishermen may fish only from sunrise to sunset March 15 through September 30. Fishermen may not use boats or flotation devices.

3. Fishermen may not submerge any pole or similar object to take or locate any fish.

4. Organizers of all fishing events must possess a refuge-issued permit.

5. Fishermen may not fish within 250 yards of an occupied waterfowl hunting blind.

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CYPRESS CREEK NATIONAL WILDLIFE REFUGE

*A. Hunting of Migratory Game Birds.** * *

1. Site specific regulations apply to dove hunting on sunflower fields.

2. Duck hunters may not hunt on the Bellrose Waterfowl Reserve.

3. Only goose hunters allowed in Bellrose Waterfowl Reserve following the closure of the regular duck hunting season. Special site regulations apply.

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B. Upland Game Hunting. Hunters may hunt bob-white quail, rabbit, squirrel, raccoon, opossum, coyote, red fox, grey fox and turkey (spring) on designated areas of the refuge subject to the following conditions:

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EMIQUON NATIONAL WILDLIFE REFUGE

*A. Hunting of Migratory Game Birds.** * *

1. Only temporary structures or blinds constructed of native materials are permitted.

2. Hunters must remove boats, decoys, and portable blinds at the end of each day's hunt.

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C. Big Game Hunting. * * *

1. Hunters must remove hunting stands at the end of each day's hunt.

D. Sport Fishing. * * *

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4. Fishermen may not sportfish in areas open to hunting during hunting seasons.

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14. Section 32.35 *Kansas* is amended by removing paragraph C.2., and by revising paragraph D. of Flint Hills National Wildlife Refuge; by revising paragraph D., of Kirwin National Wildlife Refuge; and by revising paragraph D. Of Quivira National Wildlife Refuge to read as follows:.

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§ 32.35 Kansas.

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FLINT HILLS NATIONAL WILDLIFE REFUGE

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D. Sport Fishing. Fishermen may sportfish on designated portions of the refuge subject to State regulations and any refuge specific regulations as listed in the refuge brochure.

KIRWIN NATIONAL WILDLIFE REFUGE

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D. Sport Fishing. Fishermen may sportfish on designated areas of the refuge subject to the following conditions:

1. Fishermen may fish in accordance with the Kirwin National Wildlife Refuge Visitor's Map and Guide.

2. Fishermen may not use motorized vehicles on the ice.

QUIVIRA NATIONAL WILDLIFE REFUGE

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D. Sport Fishing. Fishermen may sportfish on designated portions of the refuge subject to State regulations and any refuge specific regulations as listed in the refuge brochure.

15. Section 32.37 *Louisiana* is amended by adding the alphabetical listing of Black Bayou Lake National Wildlife Refuge; by revising paragraph D.3., of Catahoula National Wildlife Refuge; by revising paragraphs A., B., and C. of D'Arbonne National Wildlife Refuge; and by revising paragraphs A., B., and C. of Upper Ouachita National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

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BLACK BAYOU LAKE NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishermen may fish on designated areas of the refuge subject to the following conditions:

1. Fishermen may fish from sunrise to sunset.

2. Fishermen may not leave boats or other personal equipment on the refuge overnight. Fishermen may launch boats only at designated sites. Fishermen may not use boat motors greater that 50 horsepower.

3. Fishermen may not use trotlines, limb lines, yo-yos, traps or nets.

4. Fishermen may not take frogs, turtles and mollusks.

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CATAHOULA NATIONAL WILDLIFE REFUGE

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D. Sport Fishing. * * *

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3. Cowpen Bayou and the HWY 28 borrow pits open to fishing all year.

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D'ARBONNE NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt ducks, coots, and woodcock on designated areas of the refuge subject to the following condition: Permits required.

B. Upland Game Hunting. Hunters may hunt quail, squirrel, rabbit, raccoon and opossum on designated areas of the refuge subject to the following condition: Permits required.

C. Big Game Hunting. Hunters may hunt white-tailed deer on designated areas of the refuge subject to the following condition: Permits required.

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UPPER OUACHITA NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt ducks, coots, and woodcock on designated areas of the refuge subject to the following condition: Permits required.

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B. Upland Game Hunting. Hunters may hunt quail, squirrel, rabbit, raccoon and opossum on designated areas of the refuge subject to the following condition: Permits required.

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C. Big Game Hunting. Hunters may hunt white-tailed deer on designated areas of the refuge subject to the following condition: Permits required.

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16. Section 32.42 *Minnesota* is amended by revising paragraphs A., B., and adding paragraph C.4. of Minnesota Valley National Wildlife Refuge; by revising paragraphs A., B., C., and D. of Morris Wetland Management District; by removing paragraph C.3. and redesignating paragraphs C.4. and C.5. as paragraphs C.3. and C.4., respectively, of Rydell National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

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MINNESOTA VALLEY NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt geese, ducks, and coots on designated areas of the refuge. Permits are required for special hunts.

B. Upland Game Hunting. Hunters may hunt upland game, except for furbearers and crows, on designated areas of the refuge consistent with state regulations, subject to the following conditions:

1. Hunters may only use shotguns and bows and arrows in designated areas.

2. Hunters may only use or possess non-toxic shot.

C. Big Game Hunting. * * *

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4. Hunters may not use or possess single shot projectiles (shotgun slugs, or bullets) on the Soberg Waterfowl Production Area.

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MORRIS WETLAND MANAGEMENT DISTRICT

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted throughout the district subject to the following condition:

1. Hunters may not hunt on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

B. Upland Game Hunting. Upland game hunting is permitted throughout the district subject to the following condition:

1. Hunters may not hunt on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

C. Big Game Hunting. Big game hunting is permitted throughout the district subject to the following condition:

1. Hunters may not hunt on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

D. Sport Fishing. Sport fishing is permitted throughout the district subject to the following condition:

1. Fishermen may not fish on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

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RYDELL NATIONAL WILDLIFE REFUGE

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C. Big Game Hunting. * * *

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3. Hunters may not construct or use permanent blinds, permanent platforms, or permanent ladders. Hunters may use portable stands, but must remove them from the refuge at the end of each day's hunt.

4. Hunters who harvest deer in the Special Permit Area must take their deer to the refuge check station.

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17. Section 32.43 *Mississippi* is amended by revising paragraphs A., B., C., and D., of Noxubee National Wildlife Refuge; by revising paragraph A. of St. Catherine Creek National Wildlife Refuge; by revising paragraphs A., B., and C. of Tallahatchie National Wildlife Refuge; and by revising paragraph A. of Yazoo National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

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NOXUBEE NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt waterfowl, coots, and woodcock on designated areas of the refuge subject to the following condition: Permits required.

B. Upland Game Hunting. Hunters may hunt quail, squirrel, rabbit, beaver, raccoon and opossum on designated areas of the refuge subject to the following condition: Permits required.

C. Big Game Hunting. Hunters may hunt white-tailed deer and turkey on designated areas of the refuge subject to the following condition: Permits required.

D. Sport Fishing. Fishermen may fish on designated areas of the refuge subject to the following condition: Permits required.

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ST. CATHERINE CREEK NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt ducks, geese and coots on designated areas of the refuge subject to the following condition: Permits required.

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TALLAHATCHIE NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt mourning doves, migratory waterfowl, coots, snipe and woodcock on designated areas of the refuge subject to the following condition: Permits required.

B. Upland Game Hunting. Hunters may hunt quail, squirrel, rabbit, beaver, raccoon and opossum on designated areas of the refuge subject to the following condition: Permits required.

C. Big Game Hunting. Hunters may hunt deer and turkey on designated areas of the refuge subject to the following condition: Permits required.

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YAZOO NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt mourning doves and waterfowl on designated areas of the refuge subject to the following condition: Permits required.

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18. Section 32.45 *Montana* is amended by revising paragraphs A., B., and D., of Charles M. Russell National Wildlife Refuge; by revising paragraph B. of Hailstone National Wildlife Refuge; by removing and reserving the text of paragraphs A., B., and C. of Halfbreed Lake National Wildlife Refuge; by revising paragraph C. of Lake Mason National Wildlife Refuge; by revising paragraph D. of Swan River National Wildlife Refuge; by revising paragraph B. of UL Bend National Wildlife Refuge; and by revising paragraph D. of War Horse National Wildlife Refuge to read as follows:

§ 32.45 Montana.

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CHARLES M. RUSSELL NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Refuge open to hunting of migratory game birds in accordance with state law.

B. Upland Game Hunting. Hunting of upland game birds, turkey and coyote is permitted on designated areas of the refuge subject to the following condition:

1. Coyote hunting allowed from the first day of antelope rifle season through March 1 annually.

* * * * *

D. Sport fishing. Refuge open to sport fishing in accordance with state law, and as specifically designated in refuge publications.

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HAILSTONE NATIONAL WILDLIFE REFUGE

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B. Upland Game Hunting. Hunters may hunt upland game birds on designated areas of the refuge subject to the following conditions:

1. Hunters shall possess and use, while in the field, only nontoxic shot.

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HALFBREED LAKE NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

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LAKE MASON NATIONAL WILDLIFE REFUGE

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C. Big Game Hunting. Refuge open to big game hunting in accordance with state law.

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SWAN RIVER NATIONAL WILDLIFE REFUGE

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D. Sport Fishing. Refuge open to sport fishing in accordance with state law, and as specifically designated in refuge publications.

UL BEND NATIONAL WILDLIFE REFUGE

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B. Upland Game Hunting. Refuge is open to upland game hunting in accordance with state laws, regulations and the following condition:

1. Coyote hunting allowed from the first day of antelope rifle season through March 1 annually.

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WAR HORSE NATIONAL WILDLIFE REFUGE

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D. Sport Fishing. Refuge open to sport fishing in accordance with state law, and as specifically designated in refuge publications.

19. Section 32.46 *Nebraska* is amended by revising paragraph C. of Crescent Lake National Wildlife Refuge; by adding alphabetically Fort Niobrara National Wildlife Refuge; by revising paragraph D. of Valentine National Wildlife Refuge to read as follows:

§ 32.46 Nebraska.

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CRESCENT LAKE NATIONAL WILDLIFE REFUGE

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C. Big Game Hunting. Hunters may hunt white-tailed deer and mule deer on designated areas of the refuge pursuant to State law.

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FORT NIOBRARA NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishermen may fish on designated portions of the refuge subject to state regulations and any specific regulations as listed in refuge publications.

VALENTINE NATIONAL WILDLIFE REFUGE

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D. Sport Fishing. Fishermen may fish on designated portions of the refuge subject to state regulations and any specific regulations as listed in refuge publications.

20. Section 32.47 *Nevada* is amended by revising paragraphs D.1., D.2., and removing paragraph D.3., of Sheldon National Wildlife Refuge to read as follows:

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§ 32.47 Nevada.

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SHELDON NATIONAL WILDLIFE REFUGE

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D. Sport Fishing. * * *

1. Fishermen may only bank fish, fish by wading, use nonmotorized boats, float tubes and similar floatation devices in Big Springs Reservoir, Dufurrena Ponds, and Catnip Reservoir. Fishermen may not fish from motorized boats.

2. Only individuals 12 years of age or under, or 65 years of age or older, or individuals who are disabled are permitted to fish in McGee Pond.

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21. Section 32.49 *New Jersey* is amended by revising paragraphs A., C., and D. of Wallkill River National Wildlife Refuge to read as follows:

§ 32.49 New Jersey.

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WALLKILL RIVER NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt migratory game birds on designated areas of the refuge subject to the following conditions:

1. Hunters must sign and be in possession of refuge hunting permits at all times while hunting on the refuge.

2. Refuge hunting regulations, as listed in the hunting leaflet for Wallkill River National Wildlife Refuge, will be in effect.

3. Shotgun hunters may use or possess only nontoxic shot while hunting migratory game birds.

* * * * *

C. Big Game Hunting. Hunters may hunt white-tailed deer and wild turkeys on designated areas of the refuge subject to the following conditions:

1. Hunters must sign and be in possession of refuge hunting permits at all times while hunting on the refuge.

2. Refuge hunting regulations, as listed in the hunting leaflet for Wallkill River National Wildlife Refuge, will be in effect.

D. Sport Fishing. Fishermen may sportfish on designated areas of the refuge subject to the following conditions:

1. Fishermen may fish from canoes or cartop boats on the Wallkill River.

2. Anglers must park in designated parking areas if accessing the Wallkill River through refuge land.

3. Fishermen may not take frogs and/or turtles.

4. Fishermen may not fish at night.

22. Section 32.55 *Oklahoma* is amended by revising paragraph B. of Deep Fork National Wildlife Refuge; by revising paragraphs A., B., and C. of Little River National Wildlife Refuge; by removing paragraph B.3. of Optima National Wildlife Refuge; by revising the introductory text of paragraph B., by adding paragraph B.4., by removing paragraphs C.3. and C.4., and redesignating paragraph C.5. as paragraph C.3. of Tishomingo National Wildlife Refuge; by removing paragraph B.2., by revising paragraph D.1. of Washita National Wildlife Refuge; and by revising paragraph D.4. of Wichita Mountains National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

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DEEP FORK NATIONAL WILDLIFE REFUGE

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B. *Upland Game Hunting.* Hunters may hunt rabbits and squirrels on portions of the refuge in accordance with state hunting regulations subject to the following exceptions and conditions:

1. Hunters may hunt squirrels on portions of Deep Fork National Wildlife Refuge during the state season except it is closed during the first half of archery deer season.

2. Hunters may hunt rabbits on portions of Deep Fork National Wildlife Refuge during the state season except it is closed from the beginning of the archery deer season until after rifle deer season.

3. Hunters may only use shotguns with non-toxic shot.

4. The refuge leaflet designates all hunting and parking areas.

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LITTLE RIVER NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt waterfowl (ducks) in Units 2 and 4 of the refuge subject to the following conditions:

1. The season will open not earlier than November 15 and close not later than December 20 each year.

2. Prohibited off-road vehicle use.

3. Hunters may not build permanent blinds.

4. Hunters may hunt only from one-half hour before sunrise until noon each day.

B. Upland Game Hunting. Hunters may hunt squirrel, rabbit, turkey and raccoon on designated areas of the refuge subject to the following conditions:

1. Turkey hunters must obtain permits and pay fees.

2. Prohibited off-road vehicle use.

3. Hunters may hunt raccoons only from October 1 through December 20 annually.

4. Shotgun hunters may not possess or use lead shot.

C. Big Game Hunting. Hunters may hunt deer on designated portions of the refuge subject to the following conditions:

1. Hunters must obtain permits and pay fees.

2. Prohibited off-road vehicle use.

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TISHOMINGO NATIONAL WILDLIFE REFUGE

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B. Upland Game Hunting. Hunters may hunt quail, squirrel, turkey and rabbits on the Tishomingo Wildlife Management Unit of the refuge subject to the following conditions:

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4. Turkey hunters may only hunt during the statewide spring shotgun season and during the fall archery season.

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WASHITA NATIONAL WILDLIFE REFUGE

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D. Sport Fishing. * * *

1. Fishermen may fish and frog only from March 15 through October 14 on the Washita River and Foss Reservoir. Fishermen may bank fish from the Lakeview Recreation Area to the Pitts Creek Recreation Area all year.

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WICHITA MOUNTAINS NATIONAL WILDLIFE REFUGE

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D. Sport Fishing. * * *

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4. Fishermen may only catch largemouth and smallmouth bass between 13–16 inches in length, but there is no size limit on spotted bass, with a daily creel limit of 6 (aggregate) at Lake Elmer Thomas.

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23. Section 32.56 *Oregon* is amended by adding paragraph A.6. of Cold Springs National Wildlife Refuge; by revising paragraphs A.2., B.1., B.2., B.3., and D.1. of Malheur National Wildlife Refuge; by adding paragraph A.7. of McKay Creek National Wildlife Refuge; by adding paragraph A.6 and revising paragraph C of Umatilla National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

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COLD SPRINGS NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. * * *

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6. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

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MALHEUR NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. * * *

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2. Hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. * * *

1. Hunters may hunt pheasant, quail, partridge, and rabbit from the third Saturday in November to the end of the pheasant season in designated areas of the Blitzen Valley east of Highway 205, and on designated areas open to waterfowl hunting.

2. Hunters may hunt all upland game species during authorized State seasons on the refuge area west of Highway 205 and south of Foster Flat Road.

3. Hunters shall possess and use, while in the field, only nontoxic shot when hunting on designated areas east of Highway 205.

* * * * *

D. Sport Fishing. * * *

1. Fishermen may fish year-round in the Blitzen River, East Canal, and Mud Creek upstream from and including Bridge Creek. Fishermen may fish in Krumbo Reservoir during the State season from the fourth Saturday in April to the end of October.

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McKAY CREEK NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. * * *

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7. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

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UMATILLA NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. * * *

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6. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

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C. Big Game Hunting. Hunters may hunt deer on designated areas of the refuge subject to the following condition:

1. Hunting by permit only.

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24. Section 32.57 *Pennsylvania* is amended by adding paragraph A.3., by revising the introductory text of paragraph B., by revising paragraphs B.3. and B.5., and by revising paragraphs C.1., C.2., and C.3. of Erie National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

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ERIE NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. * * *

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3. No dog training.

B. Upland Game Hunting. Hunters may hunt grouse, squirrel, rabbit, woodchuck, pheasant, quail, raccoon, fox, skunk, opossum and coyote on designated areas of the refuge subject to the following conditions:

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3. Upland game hunters must wear on head, chest and back, a minimum of 400 square inches of blaze orange material.

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5. Dog trainers must obtain permits.

C. Big Game Hunting. * * *

1. Hunters may hunt only from March 1 through August 31 except for spring turkey season.

2. Hunters must remove blinds, platforms, scaffolds, and/or tree stands from the refuge daily.

3. All deer hunters must wear on head, chest and back, a minimum of 400 square inches of blaze orange material during antlered, anterless and muzzleloader seasons.

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25. Section 32.61 *South Dakota* is amended by revising paragraph D. of Waubay National Wildlife Refuge to read as follows:

§ 32.61 South Dakota.

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WAUBAY NATIONAL WILDLIFE REFUGE

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D. Sport Fishing. Sport fishermen may fish on the refuge in accordance with state law, and as specifically designated in refuge publications.

26. Section 32.62 *Tennessee* is amended by revising paragraphs A., and D.2., and adding paragraph D.3. of Chickasaw National Wildlife Refuge; by revising paragraphs A. and D. of Lower Hatchie National Wildlife Refuge to read as follows:

§ 32.62 Tennessee.

* * * * *

CHICKASAW NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt ducks, coots, mourning doves, woodcock, and snipe on designated areas of the refuge subject to the following condition: Permits required.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Fishermen may fish only from sunrise to sunset.

3. Fishermen may not frog or turtle on the refuge.

* * * * *

LOWER HATCHIE NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt ducks, coots, mourning doves, woodcock, and snipe on designated areas of the refuge subject to the following condition: Permits required.

* * * * *

1D. Sport Fishing. Fishermen may fish on designated areas of the refuge and Sunk Lake Public Use Natural Area subject to the following conditions:

1. Only with pole and line or rod and reel.

2. Only from sunrise to sunset.

3. Fishermen may not frog or turtle.

4. Fishermen may not fish in the sanctuary areas or Sunk Lake Public Use Natural Area from November 15 through March 15 annually.

* * * * *

27. Section 32.63 *Texas* is amended by revising paragraphs A.1., A.2., A.4., removing paragraph A.6 and redesignating paragraph A.7. as paragraph A.6. of Anahuac National Wildlife Refuge; by adding alphabetically the listing of Balcones Canyonlands National Wildlife Refuge; by revising paragraphs B.2., B.3, and C. of Hagerman National Wildlife Refuge; by revising paragraphs A.1., A.2., A.6. and adding paragraph A.7. of McFaddin National Wildlife Refuge; and by revising paragraphs A.1., A.2., A.5., and adding paragraph A.6. of Texas Point National Wildlife Refuge to read as follows:

§ 32.63 Texas.

* * * * *

ANAHUAC NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. * * *

1. Permits and payment of a fee required to hunt on portions of the refuge.

2. Hunters may hunt only on designated days of the week during the general waterfowl hunting season. Hunters may hunt on designated areas during all days of the September teal season. Notice of hunting days and maps depicting areas open to hunting are issued annually in the refuge hunting brochure.

* * * * *

4. Hunters must use and be in possession of federally-approved non-toxic shot only.

* * * * *

BALCONES CANYONLANDS NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunters may hunt turkey on designated areas of the refuge subject to the following conditions:

1. Hunting will take place in December and/or January.

2. Hunters must check in and out of a hunt area.

3. Hunters may use only bows and arrows or shotguns and rifles.

4. Hunters shall be at least 12 years of age. Hunters between the ages of 12 and 17 (inclusive) must hunt under the supervision of an adult 21 years of age or older.

5. Bag limit must be in accordance with annual state regulations.

6. Hunters must visibly wear 400 square inches of hunter orange above the waist. Wearing a hunter orange hat or cap mandatory.

7. Hunters must obtain a refuge permit and pay a hunt fee.

C. Big Game Hunting. Hunters may hunt white-tailed deer and feral hogs on designated areas of the refuge subject to the following conditions:

1. Hunting will take place in December and/or January.

2. Hunters must check in and out of a hunt area.

3. Hunters may use only bows and arrows, or shotguns and rifles.

4. Hunters shall be at least 12 years of age. Hunters between the ages of 12 and 17 (inclusive) must hunt under the supervision of an adult 21 years of age or older.

5. Bag limit must be in accordance with annual state regulations.

6. Hunters must visibly wear 400 square inches of hunter orange above the waist. Wearing a hunter orange hat or cap mandatory.

7. Hunters must obtain a refuge permit and pay a hunt fee.

D. Sport Fishing. [Reserved]

* * * * *

HAGERMAN NATIONAL WILDLIFE REFUGE

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Only shotguns permitted.

3. No shot larger than No. 4 shot may be brought onto the area.

* * * * *

C. Big Game Hunting. Hunters may hunt white-tailed deer and feral hogs on designated areas of the refuge subject to the following conditions:

1. Hunters may archery hunt as listed in the refuge hunt information sheet. Hunters must obtain a refuge permit and pay a hunt fee.

2. Firearms hunting utilizing shotguns, 20 gauge or larger, loaded with rifled slug, permitted during a special youth hunt as listed in the refuge hunt information sheet. Permits required.

* * * * *

MCFADDIN NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds.* * *

1. Hunters must obtain a refuge permit and pay a hunt fee to hunt on portions of the refuge.

2. Hunters may hunt only on designated days of the week during the general waterfowl hunting season. Hunters may hunt on designated areas during all days of the September teal season. Notice of hunting days and maps depicting areas open to hunting issued annually in the refuge hunting brochure.

* * * * *

6. Hunters must use and be in possession of federally-approved non-toxic shot only.

7. Hunters may use only airboats in accordance with guidelines issued in the refuge hunting brochure.

* * * * *

TEXAS POINT NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds.* * *

1. Hunters may hunt only on designated days of the week during the general waterfowl hunting season and the September teal season. Notice of hunting days and maps depicting areas open to hunting issued annually in the refuge hunting brochure.

2. Hunting permitted until noon.

* * * * *

5. Hunters must use and be in possession of federally-approved non-toxic shot only.

6. Hunters may use only airboats in accordance with guidelines issued in the refuge hunting brochure.

* * * * *

28. Section 32.64 *Utah* is amended by revising paragraph D. of Ouray National Wildlife Refuge to read as follows:

§ 32.64 Utah.

* * * * *

OURAY NATIONAL WILDLIFE REFUGE

* * * * *

D. Sport Fishing. The refuge is open to sport fishing in accordance with state law, and as specifically designated in refuge publications.

29. Section 32.66 *Virginia* is amended by revising paragraph C.6. and adding paragraph C.7. of Great Dismal Swamp National Wildlife Refuge to read as follows:

§ 32.66 Virginia.

* * * * *

GREAT DISMAL SWAMP NATIONAL WILDLIFE REFUGE

* * * * *

C. Big Game Hunting. * * *

* * * * *

6. Hunters may not possess a loaded firearm (ammunition in the chamber, magazine, or clip), or loaded bow on or within 50 feet of a refuge road, including roads closed to vehicles.

7. Hunters may not shoot onto or across a refuge road, including roads closed to vehicles.

* * * * *

30. Section 32.67 *Washington* is amended by revising paragraphs A.1., A.3. A.4., A.5., A.6. and removing paragraph A.7. of McNary National Wildlife Refuge; and by adding paragraph A.5., and revising paragraph B.1. of Toppenish National Wildlife Refuge; by adding paragraph A.6., by removing and reserving the text of paragraph C. of Umatilla National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

MCNARY NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. * * *

1. Hunting is by permit only on the McNary Division.

* * * * *

3. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

4. Hunters may not possess more than 25 shells while in the field.

5. On the first Saturday in December, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

6. The furthest downstream island (Columbia River mile 341–343) in the Hanford Islands Division closed to hunting.

* * * * *

TOPPENISH NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. * * *

* * * * *

5. Snipe hunters will possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. * * *

1. Hunters may not hunt upland game birds until noon of each hunt day.

* * * * *

UMATILLA NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. * * *

* * * * *

6. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

C. Big Game Hunting. [Reserved]

* * * * *

31. Section 32.69 *Wisconsin* is amended by adding the alphabetical listing of Leopold Wetland Management District to read as follows:

§ 32.69 Wisconsin.

* * * * *

LEOPOLD WETLAND MANAGEMENT DISTRICT

A. Hunting of Migratory Game Birds. Hunters may hunt migratory game birds throughout the District except that hunters may not hunt on designated portions of the Blue-wing Waterfowl Production Area in Ozaukee County or the Wilcox Waterfowl Production Area in Waushara County.

B. Upland Game Hunting. Hunters may hunt upland game throughout the district except that hunters may not hunt on designated portions of the Blue-wing Waterfowl Production Area in Ozaukee County or the Wilcox Waterfowl Production Area in Waushara County.

C. Big Game Hunting. Hunters may hunt big game throughout the District except that hunters may not hunt on designated portions of the Blue-wing Waterfowl Production Area in Ozaukee County or the Wilcox Waterfowl Production Area in Waushara County.

D. Sport Fishing. [Reserved]

* * * * *

32. Section 32.70 *Wyoming* is amended by revising the introductory text of paragraph C. and revising paragraph D. of National Elk Refuge; and by revising paragraphs A., C., and D. of Seedskadee National Wildlife Refuge to read as follows:

§ 32.70 Wyoming.

* * * * *

NATIONAL ELK REFUGE

* * * * *

C. Big Game Hunting. Hunters may hunt elk and bison on designated areas of the refuge subject to the following conditions:

* * * * *

D. Sport Fishing. Fishermen may sport fish on the refuge in accordance with State law, as specifically designated in refuge publications.

* * * * *

SEEDSKADEE NATIONAL WILDLIFE REFUGE

A. Hunting of Migratory Game Birds. Hunters may hunt migratory game birds only on designated areas of the refuge.

* * * * *

C. Big Game Hunting. Hunters may hunt pronghorn antelope, mule deer and moose only on designated areas of the refuge.

D. Sport Fishing. Fishermen may sport fish on the refuge only in accordance with State law, and as specifically designated in refuge publications.

Dated: July 9, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–18515 Filed 7–18–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 62, No. 139

Monday, July 21, 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

Cooperative State Research, Education, and Extension Service

Special Research Grants Program—Pest Management Alternatives Research: Special Program Addressing Food Quality Protection Act Issues for Fiscal Year 1997; Request for Proposals; Correction

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Cooperative State Research, Education, and Extension Service published a document in the **Federal Register** of June 18, 1997, concerning the request for proposals for the Special Research Grants Program—Pest Management Alternatives Research: Special Program Addressing Food Quality Protection Act Issues for Fiscal Year 1997. The document incorrectly identified fosamine ammonium as an organophosphate in Appendix I.

FOR FURTHER INFORMATION CONTACT: Michael Fitzner, Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2220; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2220. Telephone: (202) 401–4939; fax number: (202) 401–4888; e-mail address: mfitzner@reeusda.gov.

Correction

In notice document 97–15912, page 33312, in the **Federal Register** issue of Wednesday, June 18, 1997, make the following correction:

On page 33312 in the second column, fosamine ammonium is identified as an organophosphate pesticide addressed by this program. Fosamine ammonium should be deleted from Appendix I.

Done at Washington, DC on this 10th day of July, 1997.

B. H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–19022 Filed 7–18–97; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service Programs Excluded From Executive Order No. 12372

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice.

SUMMARY: This notice excludes certain programs administered by the Cooperative State Research, Education, and Extension Service (CSREES) from coverage under Executive Order No. 12372, ''Intergovernmental Review of Federal Programs.''

FOR FURTHER INFORMATION CONTACT: Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, 1400 Independence Avenue, SW., Washington, DC 20250–2240, (202) 401–1766. E-mail: OEP@reeusda.gov.

SUPPLEMENTARY INFORMATION: A full understanding of the requirements of Executive Order No. 12372, 47 FR 30959, July 14, 1982, as amended by Executive Order No. 12416, 48 FR 15587, April 8, 1983, may be gained by referring to the Department of Agriculture final rules on the requirements for intergovernmental review of agency programs and activities published in 7 CFR part 3015, subpart V.

CSREES conducts competitive and special agricultural research grants programs and other project programs to support agricultural research, education, and extension.

The CSREES programs listed herein are excluded from coverage under Executive Order No. 12372 because they do not directly affect State and local governments. These programs are listed by Catalog of Federal Domestic Assistance (CFDA) numbers.

10.223 Hispanic-Serving Institutions Education Grants Program

This program provides grants to support the activities of Hispanic-Serving Institutions (HSI) to enhance educational equity for underrepresented students; to strengthen institutional educational capacities including libraries, curriculum, faculty, scientific instrumentation, instruction delivery systems, and student recruitment and retention, in order to respond to identified State, regional, national, or international educational needs in the food and agricultural sciences; to attract and support undergraduate and graduate students from underrepresented groups in order to prepare them for careers related to the food, agricultural, and natural resource systems of the United States, beginning with the mentoring of students at the high school level and continuing with the provision of financial support for students through their attainment of a doctoral degree; and to facilitate cooperative initiatives between two or more Hispanic-Serving Institutions, or between Hispanic-Serving Institutions and units of State government or the private sector to maximize the development and use of resources, such as faculty, facilities, and equipment to improve food and agricultural sciences teaching programs.

10.224 Fund for Rural America Program

This program provides grants awarded on the basis of merit, quality, and relevance to advancing the purposes of federally supported agricultural research, extension, and education provided in Section 1402 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101).

10.225 Community Food Projects Competitive Grants Program

This program provides a one-time infusion of Federal dollars to support the development of community food projects designed to meet the food needs of low-income people; increase the self-reliance of communities in providing for their own food needs; and promote comprehensive responses to local food, farm, and nutrition issues. The purpose of the program is to make such projects self-sustaining.

Done at Washington, DC, this 14th day of July, 1997.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–19023 Filed 7–18–97; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Kansas Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Kansas Grain Inspection Service, Inc. (Grain Inspection), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: September 1, 1997.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 5, 1997, **Federal Register** (62 FR 10022), GIPSA announced an Opportunity for Designation in Kansas - Termination of Kansas' Designation, Possible Cancellation of Kansas' Designation, and Requests for Applications for Designation from Persons Interested in Providing Official Services in Kansas. Applications were due by March 31, 1997. There were four applicants: Amarillo Grain Exchange, Inc., applied for designation to provide official services in the Kansas counties of Grant, Haskell, Morton, Seward, Stanton, and Stevens; the Kansas State Grain Inspection Department (Kansas) applied for designation to provide official services in the entire Kansas area (the area currently assigned to them); Kansas Grain Inspection Service, Inc. (Grain Inspection), a proposed organization being formed by the Kansas Grain and Feed Association to function under a trust, that plans to establish its main office in Topeka, Kansas, applied for designation to provide official services in the entire State of Kansas; and the Missouri Department of Agriculture applied for designation to provide official services in the Kansas counties of Atchison, Doniphan, Johnson, Leavenworth, and Wyandotte.

Kansas, the currently designated official agency, subsequently withdrew its application.

GIPSA requested comments on the applicants for the Kansas area in the April 14, 1997, **Federal Register** (62 FR 18085). Comments were due by May 13, 1997. GIPSA received 10 comments by the deadline.

The 10 commentors: 8 grain firms currently served by Kansas, 1 financial institution, and 1 grain association, each supported designation of Grain Inspection. These comments were of the view that Grain Inspection would be best able to provide official services.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Grain Inspection is better able to provide official services in the geographic area for which they applied. Effective September 1, 1997, and ending August 31, 2000, Grain Inspection is designated to provide official services in the geographic area specified in the March 5, 1997, **Federal Register**.

Interested persons may obtain official services by contacting Grain Inspection at 913–296–3451.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 14, 1997

Neil E. Porter

Director, Compliance Division

[FR Doc. 97–18942 Filed 7–18–97; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Oklahoma

AGENCY: Natural Resources Conservation Service (NRCS) in Oklahoma, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Oklahoma for review and comment.

SUMMARY: Is is the intention of NRCS in Oklahoma to issue a series of new and revised conservation practice standards in Section IV of the FOTG. These new standards include Channel Vegetation (Code 322); Chiseling and Subsoiling (Code 324); Conservation Crop Rotation (Code 328); Cross Wind Ridges (Code 589A); Cross Wind Stripcropping (Code 489B); Cross Wind Trap Strips (Code 489C); and Herbaceous Wind Barriers (Code 422A). Some of these practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received on or before August 20, 1997.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Kevin D. Norton, Acting State Resource Conservationist, Natural Resources Conservation Service (NRCS), 100 USDA, Suite 203, Stillwater, OK 74074–2655. Copies of these standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Oklahoma will receive comments relative to the proposed changes. Following the period, a determination will be made by the NRCS in Oklahoma regarding disposition of those comments and a final determination of change will be made.

Dated: July 9, 1997.

Ronnie L. Clark,

State Conservationist, Stillwater, Oklahoma.

[FR Doc. 97–19038 Filed 7–18–97; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Mid-Carolina Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request from Mid-Carolina Electric Cooperative for financing assistance from the Rural Utilities Service (RUS) related to the construction of a new operations center in Richland County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and

Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, D.C. 20250–1571, telephone (202) 720–0468, E-mail at bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The new operations center is proposed to be located northeast of the town of Irmo, South Carolina, on the northern side of U.S. Highway 176 just east of the Interstate 26/101 Interchange. The size of the proposed site for the new operations center is approximately 6 acres.

The new operations center will consist of a 20,000 square foot office/operations center building, a 20,000 square foot warehouse, a one-acre asphalt outside storage area with concrete pads for electrical equipment and wire storage, a vehicle refueling area including one fuel pump for gasoline and one pump for diesel fuel, two double-walled 10,000 gallon underground fuel storage tanks (one for gasoline and one for diesel fuel) with leak detection and monitoring, a 30 kilowatt standby electric generator with 500 gallon aboveground, diesel fuel storage tank, and parking and paved areas to accommodate 50 employees and visitor vehicles and 10 utility trucks. The facade of the two buildings that make up the office/operations center will be masonry or metal. The majority of the area surrounding the proposed new operations center will not be fenced; however, the outside pole yard will be enclosed by a 7-foot high chain link fence topped with 3 strands of barbed wire.

RUS considered the alternatives of no action and 3 alternative site locations. Under the no action alternative, RUS would not approve financing assistance for construction of the new operations center. Since RUS believes that Mid-Carolina Electric Cooperative has a need to expand its operations facility to provide better response times by maintenance and repair crews to the northern part of its service territory and to avoid future overcrowding at its existing headquarters facility located in Lexington, South Carolina, the no action alternative is not considered to be acceptable. The preferred site is considered to be the best location for the new operations center and is currently owned by Mid-Carolina Electric Cooperative.

Copies of the BER and FONSI are available for review at, or can be obtained from, RUS at the address provided herein or from Mr. Russ C. Dantzler, Mid-Carolina Electric Cooperative, 254 Longs Pond Road, P.O. Drawer 669, Lexington, South Carolina 29071–0669, telephone (803) 359–5551.

Dated: July 11, 1997.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 97–19025 Filed 7–18–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 59–97]

Foreign-Trade Zone No. 18—San Jose, CA Area Application for Subzone Status Cirrus Logic, Inc. (Integrated Circuits) Fremont, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the city of San Jose, California, grantee of FTZ 18, requesting special-purpose subzone status for the integrated circuit distribution facility of Cirrus Logic, Inc., Fremont, California. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 10, 1997.

The Cirrus Logic facility (377,000 sq. ft. on 26 acres, 1,400 employees) is located at 3100 West Warren Ave., Fremont, California, some 15 miles north of San Jose. It is used for storage, inspection, testing, packaging and distribution of silicon wafers (HTSUS 8542.13.8005) and integrated circuits (HTSUS 8542.13.8072), which are used in computers and other electronic products. A portion of the wafers and integrated circuits are shipped to the plant from abroad, and some 60 percent of the products shipped from the plant are exported.

FTZ procedures would exempt the facility from possible Customs duty payments on foreign materials that are exported. On its domestic sales, Cirrus Logic would be able to defer Customs duty payments until merchandise is shipped from the plant. It appears that the main purpose for FTZ procedures is to help the company to implement a more cost-effective system for handling Customs requirements (including a reduced Customs merchandise processing fee).

The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 19, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 6, 1997).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

U.S. Department of Commerce, Export Assistance Center, 5201 Great American Pkwy. #456, Santa Clara, CA 95054.

Dated: July 11, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–19014 Filed 7–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 58–97]

Foreign-Trade Zone 25—Broward County, Florida; Application for Foreign-Trade Subzone Status; CITGO Petroleum Corporation; (Petroleum Product Storage) Broward County, Florida

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Broward County, Florida, grantee of FTZ 25, requesting special-purpose subzone status for the petroleum product storage facility of CITGO Petroleum Corporation (CITGO) (an indirect subsidiary of Petroleos de Venezuela, S.A., the national oil company of Venezuela), located in Broward County, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 7, 1997.

The CITGO facility (14 acres, 10 tanks/ 590,000 barrel capacity) is located at 801 Southeast 28th Street, Broward County, Florida, south of Fort Lauderdale. The storage facility (7 employees) is currently used for the

storage and distribution of jet fuel for the Miami, Fort Lauderdale and West Palm Beach airports. The company is also planning to use the facility to store and distribute other petroleum products, such as gasoline, diesel fuel and distillate fuels. Some of the products are or will be sourced from abroad or from U.S. refineries under FTZ procedures.

Zone procedures would exempt CITGO from Customs duties and federal excise taxes on foreign status jet fuel used for international flights. On domestic sales, the company would be able to defer Customs duty payments until the products leave the facility. The application indicates that the savings from FTZ procedures will help improve the facility's international competitiveness.

No specific manufacturing request is being made at this time. Such a request would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 19, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 6, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, P.O. Box 13123, Port Everglades Station, Ft. Lauderdale, Florida 33316

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 11, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–19015 Filed 7–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of July 1997, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

Antidumping duty proceedings	Period
Armenia: Solid Urea	
A–831–801	7/1/96–6/30/97
Azerbaijan: Solid Urea	
A–832–801	7/1/96–6/30/97
Belarus: Solid Urea	
A–822–801	7/1/96–6/30/97
Brazil: Industrial Nitrocellulose	
A–351–804	7/1/96–6/30/97
Brazil: Silicon Metal	
A–351–806	7/1/96–6/30/97
Estonia: Solid Urea	
A–447–801	7/1/96–6/30/97
Georgia: Solid Urea	
A–833–801	7/1/96–6/30/97
Germany: Industrial Nitrocellulose	
A–428–803	7/1/96–6/30/97
Germany: Solid Urea	
A–428–605	7/1/96–6/30/97
Iran: In-Shell Pistachio Nuts	
A–507–502	7/1/96–6/30/97
Italy: Pasta	
A–475–818	7/24/96–6/30/97
Japan: Clad Steel Plate	
A–588–838	2/28/96–6/30/97
Japan: Cast Iron Pipe Fittings	
A–588–605	7/1/96–6/30/97
Japan: Electric Cutting Tools	
A–588–823	7/1/96–6/30/97
Japan: High Power Microwave Amplifiers	
A–588–005	7/1/96–6/30/97
Japan: Industrial Nitrocellulose	
A–588–812	7/1/96–6/30/97

Antidumping duty proceedings	Period
Japan: Synthetic Methionine	
A–588–041	7/1/96–6/30/97
Kazakhstan: Solid Urea	
A–834–801	7/1/96–6/30/97
Kyrgyzstan: Solid Urea	
A–835–801	7/1/96–6/30/97
Latvia: Solid Urea	
A–449–801	7/1/96–6/30/97
Lithuania: Solid Urea	
A–451–801	7/1/96–6/30/97
Moldova: Solid Urea	
A–841–801	7/1/96–6/30/97
Romania: Solid Urea	
A–485–601	7/1/96–6/30/97
Russia: Ferrovanadium	
A–821–807	7/1/96–6/30/97
Russia: Solid Urea	
A–821–801	7/1/96–6/30/97
South Korea: Industrial Nitrocellulose	
A–580–805	7/1/96–6/30/97
Tajikistan: Solid Urea	
A–842–801	7/1/96–6/30/97
Thailand: Butt-Weld Pipe Fittings	
A–549–807	7/1/96–6/30/97
Thailand: Canned Pineapple	
A–549–813	7/1/96–6/30/97
Thailand: Furfuryl Alcohol	
A–549–812	7/1/96–6/30/97
The People's Republic of China: Butt-Weld Pipe Fittings	
A–570–814	7/1/96–6/30/97
The People's Republic of China: Industrial Nitrocellulose	
A–570–802	7/1/96–6/30/97
The People's Republic of China: Sebacic Acid	
A–570–825	7/1/96–6/30/97
The Ukraine: Solid Urea	
A–823–801	7/1/96–6/30/97
The United Kingdom: Industrial Nitrocellulose	
A–412–803	7/1/96–6/30/97
Turkmenistan: Solid Urea	
A–843–801	7/1/96–6/30/97
Turkey: Pasta	
A–489–805	7/24/96–6/30/97
Uzbekistan: Solid Urea	
A–844–801	7/1/96–6/30/97
Countervailing Duty Proceedings	
European Economic Community: Sugar	
C–408–046	1/1/96–12/31/96
Italy: Pasta	
C–475–819	10/17/95–12/31/96
Turkey: Pasta	
C–489–806	10/17/95–12/31/96

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Interim Regulations, 60 FR 25130, 25137 (May 11, 1995)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation

of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of July 1997. If the Department does not receive, by the last day of July 1997, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 15, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–19122 Filed 7–16–97; 2:49 pm]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–821, A–588–837]

Large Newspaper Printing Presses and Components Thereof (LNPP) From Germany and Japan: Scope Inquiry Instructions and Revision of Suspension of Liquidation Procedures for Entries of LNPP Elements Outside the Scope of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 21, 1997.

FOR FURTHER INFORMATION CONTACT: David Genovese, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4697.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 351, as published in the **Federal Register** on May 19, 1997 (62 FR 27296).

Background

On September 4, 1996, the Department published the antidumping duty order on LNPP from Japan and Germany (61 FR 46,621 and 46,623, respectively). The scope of the orders cover LNPP systems, additions and five named components: printing units, reel tension pasters, folders, conveyance and access apparatuses, and computerized control systems. Also included in the scope are elements (*i.e.,* parts and subcomponents) of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part. These orders also contained instructions as to the suspension of liquidation of subject merchandise. These liquidation instructions directed the Customs Service to suspend liquidation and to require the posting of cash deposits on entries of LNPP systems, additions and components, and all elements imported to fulfill an LNPP contract. With respect to elements, suspension of liquidation would be in effect until the Department was able to make a determination as to whether a specific element met the 50 percent threshold described above, which would be decided after all entries of such merchandise had been made and the component of which they are a part had been produced.

On September 24, 1996, Koenig & Bauer-Albert AG and KBA-Motter Corp. (KBA), a German producer of LNPP and its affiliated U.S. importer, asked the Department to reevaluate its liquidation instructions. They argued that by requiring the suspension of liquidation of all LNPP elements, the Department unlawfully encompassed non-subject merchandise (*i.e.,* elements that constitute less than 50 percent of the cost of manufacture of the component of which they are a part) and unfairly imposed a financial burden on U.S. companies who would have to post cash deposits on such non-subject merchandise until the Department, at some future date, was able to make a determination as to whether the imported elements met the 50 percent threshold described above. The Department thereafter solicited comments from all interested parties concerning the liquidation instructions as to elements.

Scope Inquiry Procedures and Revision of Suspension of Liquidation Instructions

Following are the scope inquiry procedures and revised suspension of liquidation instructions that the Department and interested parties agreed upon with regard to the importation of LNPP elements that constitute less than 50 percent of the cost of manufacture of the finished LNPP component of which they are a part.

1. Upon the request of an interested party (*i.e.,* foreign manufacturer/exporter or U.S. importer), the Department will initiate a scope inquiry with respect to LNPP elements (*i.e.,* parts and subcomponents) to be imported into the United States in order to fulfill a LNPP contract which are claimed to fall outside the scope of the above-referenced AD orders. The Department will instruct the Customs Service to suspend liquidation at a zero cash deposit rate if the party can establish to the Department's satisfaction, through the submission of certain factual information, that the sum of the LNPP elements to be imported pursuant to a particular LNPP contract represents less than 50 percent of the cost of manufacture of the LNPP component of which they are a part. The deadline for requesting such an inquiry is no later than 75 days prior to the intended date of entry of the LNPP elements.

2. In such an inquiry, the interested party will: (1) Make a claim that all of the elements to be imported into the United States from Germany or Japan pursuant to a particular LNPP contract constitute less than 50 percent of the cost of manufacture of the finished LNPP component of which they are part and, thus, are not subject merchandise; and (2) submit the documentation specified below to substantiate its claim. The interested party is also required to serve the submitted materials upon counsel for the petitioner on the earlier of: (i) the same day they are filed with the Department, if an applicable Administrative Protective Order (''APO'') is outstanding, or (ii) within one day of the issuance of an applicable APO. Public versions of such materials will be served upon counsel for the petitioner in accordance with section 351.303(f) of the Department's regulations. The petitioner will have 15 calendar days from the date of receipt of such documents for review and the filing of comments.

3. The foreign manufacturer/exporter and U.S. importer are required to

provide the following information to the Department:

—A list of the elements to be imported from Germany or Japan, and other countries, and those to be sourced domestically pursuant to a LNPP contract, including the component classification for each element;
—The LNPP contract and subsequent amendments;
—A diagram of the LNPP;
—A copy of the most recent cost estimate for the finished LNPP in the United States on a component-specific basis;
—the actual or estimated cost (depending on what is available prior to the time of importation of the German or Japanese elements into the United States) of elements comprising the finished component by country of origin (*i.e.*, Japan, Germany, United States, other)
—Data on historical variances between estimated and actual costs of production of LNPP merchandise;
—A financial statement for the business unit that produces LNPPs;
—A schedule of element importation and component production completion in the United States.

If, after providing the above-specified information, the interested party finds that the costs reported to the Department were understated and that the cost of manufacture of the import elements will be over 50 percent of the cost of manufacture of the LNPP component of which they are a part, the interested party must immediately inform the Department of Commerce.

4. After the expiration of the 15-day comment period, the Department will conduct its review of the submitted documentation and will, to the extent practicable, make an expedited preliminary ruling as to whether the merchandise falls outside of the scope of the orders. If the Department determines preliminarily that such merchandise is outside of the scope, for all such entries made pursuant to a particular LNPP contract, the Department will instruct the Customs Service to suspend liquidation at a zero deposit rate.

5. Pursuant to the Department's preliminary ruling, the U.S. importer will be able to declare a zero deposit rate for the imported merchandise at issue. Upon entry of the merchandise into the U.S. Customs territory, the U.S. importer and/or foreign manufacturer/exporter will be required to submit an appropriate certification to the Department concerning the contents of the entry. An appropriate certification would generally read as follows:

I, [Name and Title], hereby certify that the cost of the large newspaper printing press (LNPP) parts contained in entry summary number(s) _____ pursuant to contract number _____, constitute less than 50 percent of the cost of manufacture of the complete LNPP component of which they are a part.

6. The Department will make a final scope ruling within the context of an administrative review, if requested by interested parties. Verification of the submitted information will occur within the context of such review, when appropriate. If the Department finds in its final ruling that the imported merchandise falls below the 50 percent threshold, then the Department will instruct the Customs Service to liquidate the entries at issue without regard to antidumping duties. Conversely, if the Department finds that the imported merchandise falls within the scope of the orders (*i.e.*, because the actual total cost of the elements imported to fulfill a LNPP contract is 50 percent or more of the cost of manufacture of the complete LNPP component of which they are a part), then the U.S. importer will be subject to the assessment of antidumping duties on the imported elements, together with any applicable interest from the date of entry of such elements, at the rate determined in the review.

Dated: July 14, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–19013 Filed 7–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Certain Stainless Steel Wire Rod From India; Final Results of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of new shipper antidumping duty administrative review; Certain Stainless Steel Wire Rod from India.

SUMMARY: On February 11, 1997, the Department of Commerce (the Department) published the preliminary results of the new shipper administrative review of the antidumping duty order on certain stainless steel wire rod (SSWR) from India (62 FR 6171). This review covers one manufacturer/exporter of the subject merchandise to the United States, Isibars Limited (Isibars), and the period January 1, 1996 through June 30, 1996. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received, we have not changed the results from those presented in the preliminary results of review.

We determine that sales have not been made below normal value (NV). Thus, we will instruct the U.S. Customs Service to liquidate subject entries without regard to antidumping duties.

EFFECTIVE DATE: July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Donald Little or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4733.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1997, the Department published in the **Federal Register** (62 FR 6171) the preliminary results of its new shipper administrative review of the antidumping duty order on SSWR from India.

Under the Act, the Department may extend the deadline for completion of new shipper administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 270 days. On May 19, 1997, the Department extended the time limit for the final results in this case. See Certain Stainless Steel Wire Rod from India: Extension of Time Limit for Antidumping Duty Administrative Review, 62 FR 27236 (May 19, 1997).

We have now completed the new shipper administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by the order are SSWR which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other

shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

This review covers one manufacturer/exporter, Isibars, and the period January 1, 1996 through June 30, 1996.

Analysis of Comments Received

We gave interested parties an opportunity to comment on our preliminary results. We received a case brief on March 3, 1997 from petitioners (Al Tech Specialty Steel Corp.; Carpenter Technology Corp.; Republic Engineered Steels; Slater Steels Corporation; Talley Metals Technology, Inc. and United Steel Workers of America AFL-CIO), and a rebuttal brief on March 10, 1997 from Isibars. On April 9, 1997, the Department requested additional comments from petitioners and Isibars; these comments were received on April 21, 1997.

Comment 1: Petitioners argue that the record evidence in this new shipper review demonstrates that, through different movements in certain third-country (Philippine) prices of the subject merchandise, Isibars has established a fictitious market within the meaning of section 773(a)(2) of the Act. Petitioners argue that certain third-country sales should not be taken into account in determining NV because it appears they were intended to artificially reduce the NV of the subject merchandise.

Petitioners assert that the statute in this regard is clear:

> The occurrence of different movements in the prices at which different forms of the foreign like product are sold * * * after the issuance of an antidumping duty order may be considered by the administering authority as evidence of the establishment of a fictitious market for the foreign like product if the movement in such prices appears to reduce the amount by which normal value exceeds export price (or constructed export price) of the subject merchandise.

Section 773(a)(2) of the Act.

Petitioners argue that all sales to the Philippines—those both inside and outside the 90/60-day window for selecting comparison sales in the third country—share the same terms and conditions of sale, delivery, and payment.[1] Petitioners argue that Isibars knew precisely at which price it must sell comparable merchandise in the Philippines in order to eliminate artificially any dumping margins because the comparison sale occurred after the U.S. sale. Petitioners claim that the sharply different movements in prices for the subject merchandise are themselves dispositive of a fictitious market, and the Department should not consider the sales in question in its determination of NV.

Isibars claims that petitioners miscite the statutory provision on fictitious markets and that the statutory provision is concerned with the change in relative prices from before the issuance of an antidumping order to after the issuance of the order. Isibars asserts that the prices were lower during the relevant 90/60-day period only because that period was at the end of the period of review (POR), and prices declined over the POR. Isibars argues that, as a general matter, it sold to only a few customers in small quantities and sold to them only at certain times during the POR. Isibars claims that there is nothing unusual in that regard with respect to the particular comparison market sale. Isibars also maintains that there is nothing unusual in the fact that the comparison market sale occurred after the U.S. sale. Isibars claims that the petitioners want the Department to use sales outside the 90/60-day window, which would be contrary to Department practice.

Department Position: We agree with Isibars that the limited number of sales to a few customers does not provide sufficient support for finding the requisite pricing pattern during the POR. To the contrary, the record evidence of pricing supports Isibars' argument that prices declined throughout the POR. Also, we agree with Isibars that there is nothing unusual in a comparison market sale that was made after the U.S. sale; the Department's practice allows for comparison of U.S. prices to home market or third-country sales made up to two months after the U.S. sale. We therefore conclude that Isibars' third-country sales within the comparison window do not constitute a fictitious market. For additional discussion, see the proprietary memorandum from Joseph A. Spetrini dated July 10, 1997.

Comment 2: Petitioners argue that certain sales in the comparison market are aberrant and should be disregarded as outside the ordinary course of trade, as defined in section 771(15) of the Act. Petitioners assert that, in determining whether a sale is outside the ordinary course of trade, the Department does not rely on one factor taken in isolation, but rather considers all of the circumstances particular to the sale in question. See Final Determination of Sales at Less than Fair Value: Canned Pineapple Fruit From Thailand, 60 FR 29553 (June 5, 1995). Petitioners contend that the Department's analysis of these factors is guided by the purpose of the ordinary course of trade provision which is to prevent dumping margins from being based on sales that are not representative of home market or third-country sales. *See Monsanto Co.* v. *United States*, 698 F. Supp. 275, 278 (CIT 1988). Petitioners argue that Isibars realized a low profit on the third-country comparison sale and that the prices were lower than those of other POR sales. Petitioners assert that the Department's preliminary determination in this review does the opposite of what was intended by the ordinary course of trade provision and calculates a negative dumping margin based on sales that are not representative of third-country sales.

Isibars argues that its prices were reflective of general price trends and that petitioners' argument that the Department should compare the U.S. sale to a comparison market sale outside the 90/60-day window is contrary to Department practice and the common sense notion that contemporaneous sales should be compared for a fair, apples-to-apples comparison. Isibars argues that market conditions have changed over time, and that dumping would be shown if the Department used the comparison sales advocated by petitioners because noncontemporaneous (non-comparable) sales would in fact be compared. Isibars claims that there is no record support for petitioners' claim that the particular third-country sale chosen for comparison by the Department had a lower profit than other sales in the Philippines. Isibars argues that profitability would depend on the cost of raw materials used to make the sale as opposed to sales at other points in time. Isibars argues that, even if the sale

[1] Although petitioners refer to the "90/60 window," the Department in fact has a practice of choosing its comparison sales in the home market or third country from a window that begins three months prior to the month of the U.S. sale, and ends two months after the month of the U.S. sale.

was at a lower profit, lower profit, or any other factor mentioned by petitioners, has never been found sufficient, in and of itself, to regard a sale as outside the ordinary course of trade.

Department Position: Section 771(15) of the Act states that the term ''ordinary course of trade'' means the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind. The statute notes that sales and transactions disregarded under 773(b)(1) (below-cost sales) and under 773(f)(2) (affiliated transactions), among others, shall be considered outside the ordinary course of trade.

The facts and circumstances of this review do not support the argument that the comparison sale used in the preliminary results was outside the ordinary course of trade. The comparison sale is the same type of wire rod sold throughout the POR in the Philippines and in the United States and, as noted above, Isibars sold to this customer at other times during and before the POR. The sales quantity of the comparison sale was similar to the quantities of other sales during the POR. Also, this sale was not made pursuant to a long-term contract as petitioners contend. Furthermore, there is no basis for petitioners' argument that Isibars realized a low profit on the third-country comparison sale. Because there was no cost allegation in this review, cost data was not provided. Therefore, we do not have information to determine the profit realized on these sales, nor can we determine whether this sale was made below the cost of production. For additional discussion, see the proprietary memorandum from Joseph A. Spetrini dated July 10, 1997.

Comment 3: Petitioners claim that the date of sale methodology for the U.S. and third-country sales is improper. Petitioners note that Isibars claims that the appropriate date of sale for its third-country and U.S. sales is the invoice date. Petitioners note that Isibars states that the sales documents demonstrate that the prices and quantities in the purchase order can change up to the time of the invoice. Petitioners argue that it is important to note that the Department's questionnaire does not instruct respondents to report the invoice date as that date of sale, but states:

> Because the Department attempts to compare sales made at the same time, establishing the date of sale is an important part of the dumping analysis. Normally, the date of sale is the date of invoice. However, for long term contracts, the date of sale generally is the date of contract.

See Appendix I, Glossary of Terms at I–4, Antidumping Questionnaire dated August 19, 1996 (emphasis added).

Petitioners contend that reporting of the invoice date as date of sale violates the Department's stated practice to ''compare sales made at the same time.'' Petitioners contend that Department's verification exhibits demonstrate that the reported date of sale for certain third-country sales is not correct.

Petitioners contend that the proper date of sale for the U.S. sale is the date of order confirmation. Petitioners maintain that, when the significance of the timing of the single U.S. sale is considered in the context of this antidumping proceeding, it appears that Isibars has manipulated the date of sale to avoid comparisons that would yield a positive margin. Petitioners argue that the order confirmation date is the point at which Isibars and the U.S. customer agreed to the terms of sale, and that it was at that point that the U.S. industry lost the opportunity to sell to the U.S. customer.

Petitioners argue that Isibars has manipulated the date of sale to suit its particular needs in different administrative reviews. Petitioners state that, in the first administrative review of the antidumping duty order on stainless steel bar from India (bar), Isibars claims that the proper date of sale is the date of the first written evidence of agreement on price and quantity, and that the U.S. date of sale is the order date. Petitioners argue that Isibars cannot have it both ways.

Petitioners also state that Isibars requested a new shipper review of the antidumping duty order on stainless steel flanges from India (flanges) where it argued that purchase order was the appropriate date of sale. Petitioners argue that the Department accepted Isibars' conflicting date of sale methodologies and calculated zero margins in all three preliminary results (for wire rod, flanges, and bar). Petitioners argue that when the dates of sale are corrected so that they are in line with the Department's normal, long-standing practice, the results change.

Petitioners argue that the wire rod and flanges new shipper reviews should use the same date of sale methodology because, they claim the facts related to the date of sale in both cases are identical. Petitioners assert that even though these two new shipper reviews were initiated within months of each other, both after the Department's implementation of its new date-of-invoice policy, Isibars used different date of sales methodologies in its responses. Petitioners contend that, in flanges, Isibars argued in direct contradiction to its argument on the record of this review of wire rod. Petitioners assert that in flanges Isibars argued:

> The Department's draft proposed new dumping regulations on the date of sale have not yet been implemented and thus do not affect the timeliness of Isibars' review request.

April 12, 1996 letter from Isibars to the Department in the review of flanges.

Petitioners contend that Isibars acknowledged the existence of the Department's proposed regulations and the new language regarding date of sale. Petitioners assert that, despite this, Isibars contended that the proposed regulations regarding date of sale did not apply to Isibars, and that therefore the Department should use purchase order as the proper date of sale. Petitioners argue that the Department agreed with Isibars and used the purchase order as the date of sale for U.S. sales.

Petitioners maintain that the date-of-invoice policy covered the reviews of both flanges and wire rod. Petitioners argue that the exception in flanges to the Department's new policy of normally using invoice date as the date of sale was granted to Isibars despite the Department's decision to implement the date of sale methodology for all reviews initiated after April 1, 1996. Petitioners contend that Isibars argued for, and the Department granted, an exception to this new policy because Isibars ''provided clear evidence that sale terms were agreed to in writing in the purchase order.'' See Certain Forged Stainless Steel Flanges from India; Preliminary Results of Antidumping Duty New Shipper Reviews, 61 FR 59861 (November 25, 1996).

Petitioners argue that, although the same fact pattern exists with respect to this new shipper review on wire rod for Isibars, Isibars argues that the Department should now apply its date-of-invoice policy. Petitioners argue that Isibars claimed that the purchase order was the date of sale in flanges because Isibars issued the invoice almost four months after the POR. Petitioners argue that if the Department applied its normal date-of-invoice policy (effective at the time of the flanges review was initiated) to Isibars sales data, the new shipper review for Isibars would have been terminated. Petitioners argue that while the bar review preceded the Department's implementation of its new date of invoice policy, the position Isibars took in the flanges review

followed the implementation by one month. Petitioners contend that, despite the Department's stated change in policy regarding date of invoice, Isibars continued to argue that purchase order was the appropriate date of sale.

Petitioners state that, in response to its claim that the purchase order is the proper date of sale in this review, Isibars argues that the invoice date is the date of sale since the quantity changed up to the time of invoice date. Petitioners contend that the ''change'' in quantity referred to by Isibars is not a change in quantity but a normal quantity tolerance.

Petitioners contend that the Department recognizes that its new invoice date policy ''still provides the Department with flexibility * * *.'' See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Open-End Spun Rayon Singles Yarn from Austria, 62 FR 14400 (March 26, 1997). Petitioners argue that in the flanges review for Isibars (which was initiated after the Department implemented its new date-of-invoice policy), the Department exercised its flexibility, and based date of sale on the date of the purchase order. Petitioners argue that there is nothing different in this review from the flanges review which would justify switching from one methodology to another where the fact pattern is identical. Petitioners argue that the Department's stated policy remains that it will compare sales made at the same time. Petitioners argue that, because establishing the proper date of sale is such a critical part of any dumping analysis, the Department has qualified its new date-of-invoice policy. Petitioners point out that, in the preamble to the proposed regulations (61 FR 7308), in response to one commentator's concerns that the use of the respondent's invoice date could make the date of sale subject to manipulation, the Department responded that it normally will use the date of invoice as the date of sale, but that ''this date may not be appropriate in some circumstances * * *.'' Antidumping Duties; Countervailing Duties; Proposed Rule, 61 FR 7308, 7330 (February 27, 1996). Petitioners also maintain that the Department noted that, particularly during administrative reviews, it will ''carefully scrutinize any change in record keeping'' that could change the date of sale. *Id.* at 7331.

Isibars claims that the Department initiated this new shipper review under the new date of sale methodology relying on the invoice date and that the Department requested in its questionnaire that Isibars use invoice date as the date of sale. Isibars argues that it records the date of shipment as the date of sale for financial reporting and internal purposes, and that it records sales transactions as complete upon shipment. Isibars also asserts that the record indicates that there are differences between ordered and shipped quantities. Isibars maintains that the Department found no problems with Isibars' reported dates of sale during verification.

Isibars argues that, in the bar and flanges reviews, the Department's questionnaires instructed Isibars to report date of sale based on order date. Isibars argues that therefore the bar and flanges cases are not applicable to this case. Isibars claims that the contract (order) date is not important under the invoice date methodology, except in the case of certain long-term contracts. Isibars maintains that the U.S. sale was not made pursuant to a long-term contract, meaning that the invoice date is the proper date of sale even under the legal authority petitioners cite.

Department Position: We agree with Isibars. Section 351.401(i) of the proposed regulations (61 FR 7308) states that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. However, the preamble to the proposed regulation indicates that the Department has flexibility in cases in which the date of invoice is not appropriate as the date of sale, such as situations involving certain long-term contracts or situations in which there is an exceptionally long lag time between the date of invoice and the date of shipment.

On March 29, 1996, the Department implemented a new date of sale policy based on the methodology outlined in the proposed regulations. The new policy applied to all investigations initiated after February 1, 1996, and all reviews initiated after April 1, 1996. (See memorandum from Susan G. Esserman dated March 29, 1996, ''Date of Sale Methodology Under New Regulations.'') This new shipper review was initiated on August 6, 1996, and, therefore, the invoice date of sale methodology applies. We requested that Isibars report the invoice date as the date of sale in our questionnaire.

As stated above, the invoice date of sale methodology provides for changes in the date of sale in situations involving certain long-term contracts or situations in which there is an exceptionally long lag time between date of invoice and shipment date. Our review of the sales process for Isibars sales indicates that there is no long-term contract and that sales are made using only purchase orders. The lag between purchase orders and invoices during the POR is not considered exceptionally long. We also have found that there is little lag time between the date of invoice and date of shipment. There are no other circumstances present to warrant making an exception to the general rule of using the date of invoice as the date of sale for this review.

With respect to petitioners' references to the bar and flanges reviews, we note that each proceeding and each segment thereof is based on the facts particular to that segment. Applying the facts of this wire rod review to our date of sale methodology, we determine that invoice date is the proper date of sale. For additional discussion, see the memorandum from Joseph A. Spetrini dated July 10, 1997.

Final Results of the Review

As a result of our comparison of export price and NV, we determine that the following weighted-average dumping margin exists:

Manufacturer/ exporter	Period	Margin
Isibars	1/1/96–6/30/96	0.00

The Department shall instruct the Customs Service to liquidate all appropriate entries without regard to antidumping duties.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(2)(C) of the Act: (1) The rate for the reviewed firm will be as listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be that rate established for the manufacturer of the merchandise in earlier reviews or the original investigation, whichever is the most recent; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate shall be 48.80 percent, the ''All Others'' rate established in the LTFV investigation.

This notice also serves as a final reminder to importers of their

responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also 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 Sec. 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and this notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR Sec. 353.22(h).

Dated: July 10, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–19120 Filed 7–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 970424097–7169–02]

RIN 0625–ZA05

Market Development Cooperator Program (MDCP)

AGENCY: International Trade Administration (ITA), Commerce.

ACTION: Notice of clarification of award period.

SUMMARY: It has come to the attention of ITA that its existing limitation on the period over which MDCP funds can be expended may be in conflict with the standard provision contained in all Department of Commerce notices of funds availability concerning the extension of the period of performance under the award. The purpose of this notice is to clarify existing ITA discretion on the maximum award period and the time over which MDCP award funds may be expended.

All five MDCP notices requesting applications contained the following language:

Award Period: Funds may be expended over the period of time required to complete the scope of work, but not to exceed three (3) years from the date of the award.

This limitation was included in the following **Federal Register** notices: 58 FR 4153, January 13, 1993; 59 FR 21750, April 26, 1994; 60 FR 10353, February 24, 1997; 61 FR 30033, June 13, 1996;; and 62 FR 29710, June 2, 1997.

The intent of the above-referenced language, viewed in the context of inviting MDCP applications, was to solicit initial applications with comparable award and budget periods for purposes of evaluation. The three year award period was not mandated by the MDCP authorizing legislation at 15 U.S.C. 4723. All applications complied with the funding limitation specified by ITA. This language, however, was not intended to prohibit the ITA and the Grants Officer from extending the end date of an MDCP award beyond three years for justified reasons. As specified in the following standard provision of the **Federal Register** notices:

Other Requirements

(4) No Obligation for Future Funding.—If an application is selected for funding, the Department of Commerce has no obligation to provide any additional further funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

Accordingly, it is consistent with the above-referenced **Federal Register** notices to allow for extensions of MDCP awards beyond three years if such extensions are in the best interest of ITA and the award recipient.

FOR FURTHER INFORMATION CONTACT: Jerome S. Morse, Director Resource Management and Planning Staff, Trade Development, ITA, Room 3211, Washington, DC 20230, (202) 482–3197.

Dated: July 15, 1997.

Jerome S. Morse,

Director, Resource Management and Planning Staff Trade Development.

[FR Doc. 97–19083 Filed 7–18–97; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Panel Review of the final antidumping duty determination made by the International Trade Administration in the eighth administrative review respecting Porcelain-on-Steel Cookware From Mexico. (Secretariat File No. USA–97–1904–05).

SUMMARY: Pursuant to the Notice of Motion to Terminate the Panel Review by the requestors, the panel review is terminated as of July 9, 1997. No Complaints were filed pursuant to Rule 39, no Notices of Appearance were filed pursuant to Rule 40 and no panel has been appointed. Thus there are no ''participants'' in this review as defined in Rule 3 of the *Rules of Procedure for Article 1904 Binational Panel Review*. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT:

James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: July 14, 1997.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 97–19045 Filed 7–18–97; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060297C]

An Evaluation of Potential Shrimp Virus Impacts on Cultured Shrimp and Wild Shrimp Populations in the Gulf of Mexico and Southeastern U.S. Atlantic Coastal Waters

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce, on behalf of the Joint Subcommittee on Aquaculture.

ACTION: Public meetings; additional meeting added.

SUMMARY: The Joint Subcommittee on Aquaculture (JSA); Office of Science and Technology Policy, released a report on June 5, 1997, describing the potential impacts of shrimp viruses on cultured shrimp and on wild shrimp populations in the Gulf of Mexico and southeastern U.S. Atlantic coastal waters. Comments received in writing, or at public meetings, will be used to help develop plans for an ecological risk assessment on shrimp viruses. Three public meetings have been previously scheduled and a fourth public meeting is being added to accommodate public interest.

DATES: Public meetings have been previously scheduled at the following locations: Charleston, SC on July 15; Mobile, AL on July 21; and Brownsville, TX on July 23. A fourth public meeting will be held on July 25 in Thibodeaux, Louisiana. Comments may be provided at any of four public meetings. Consideration will be given to comments received on or before August 31, 1997.

ADDRESSES: Copies of a report prepared for the JSA entitled, ''An Evaluation of Shrimp Virus Impacts on Cultured Shrimp and on Wild Shrimp Populations in the Gulf of Mexico and Southeastern U.S. Atlantic Coastal Waters'' (the shrimp virus report) may be obtained by contacting NMFS Assistant Administrator's Office of Industry and Trade, at: 301-713-2379 ext 141 or by accessing the NMFS Home Page, at: http://kingfish.ssp.nmfs.gov/oit/oit.html. To help ensure that written comments are considered, send an original and three copies to Mr. Jerome Erbacher, Office of Industry & Trade, Room 3675, SSMC3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or facsimile to (301) 713-2384. To attend any of the public meetings, contact the Eastern Research Group, Inc. (ERG) Conference Line, (617)674-7374.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Thomas McIlwain, Chairperson of the JSA Shrimp Virus Work Group, NMFS, 3209 Frederick Street, Pascagoula, MS 39567, (601) 762-4591 or Dr. Thomas C. Siewicki, 219 Ft. Johnson Road, Charleston, SC 29412, (803) 762-8534.

SUPPLEMENTARY INFORMATION: For background information please see the notice published in the **Federal Register** on June 11, 1997 (62 FR 31790). Three public meetings have been previously scheduled and a fourth public meeting is being added to accomodate public interest. The fourth meeting will be held on July 25 in Thibodeau, LA.

Dated: July 15, 1997.

David L. Evans,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–19113 Filed 7–18–97; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, August 1, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–19142 Filed 7–16–97; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, August 8, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–19143 Filed 7–16–97; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, August 15, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–19144 Filed 7–16–97; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11.00 a.m., Friday, August 22, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb. 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–19145 Filed 7–16–97; 4:09 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, August 29, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–19146 Filed 7–16–97; 4:09 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0133]

Submission for OMB Review; Comment Request Entitled Defense Production Act Amendments

AGENCIES: Department of Defense (DOD), General Service Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0133).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Defense Production Act Amendments. A request for comments was published at 62 FR 26482, May 14, 1997. No comments were received.

DATES: *Comment Due Date:* August 20, 1997.

ADDRESSES: Comemnts regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0133 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title III of the Defense Production Act (DPA) of 1950 authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense. The DPA Amendments of 1992 provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA.

The rule requires contractors, upon the direction of the contracting officer, to test Title III industrial resources for qualification, and provide the test results to the Defense Production Act Office. The rule expresses Government policy to pay for such testing and provides definitions, procedures, and a contract clause to implement the policy. This information is used by the Defense Production Act Office, Title III Program, to determine whether the Title III industrial resource has been provided an impartial opportunity to qualify.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *100* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *6*; responses per respondent, *3*; total annual responses, *18*; preparation hours per response, *100*; and total response burden hours, *1,800*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Service Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0133, in all correspondence.

Dated: July 15, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–19076 Filed 7–18–97; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report and To Re-Open Scoping for Disposal and Reuse of the Long Beach Naval Station and Naval Shipyard, Long Beach, CA

SUMMARY: Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), and the Defense Base Closure and Realignment Act (DBCRA), the Department of the Navy (Navy) and the City of Long Beach, California, announce their intent to prepare a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) and to re-open scoping for the proposed disposal and reuse of Long Beach Naval Station and Naval Shipyard, Long Beach, California (hereafter referred to as the Naval Complex). Navy will be the lead agency for NEPA documentation and the City of Long Beach will be the lead agency for CEQA documentation.

In 1991, the Defense Base Closure and Realignment Commission (BRAC Commission) recommended the closure of the Long Beach Naval Station. The recommendation was approved by President Bush and accepted by the One Hundred Second Congress later that same year. In 1995, the BRAC Commission recommended closure of the Long Beach Naval Shipyard. The recommendation was approved by President Clinton and accepted by the One Hundred Fourth Congress later that same year. The Naval Station was operationally closed on September 30, 1994, and the Naval Shipyard is scheduled for operational closure on September 30, 1997. The Naval Station was declared surplus to the needs of the Federal Government in September 1995. Navy intends to declare the Naval Shipyard surplus to the needs of the Federal Government in the near future.

The Naval Complex is located on Terminal Island in the Long Beach Harbor District and is generally located south of Ocean Boulevard and east of the Long Beach/Los Angeles municipal boundary. The Naval Complex includes over 500 acres of real property and 602 acres of submerged lands. The fuel depot, located on Naval Station property, will be retained by Navy. A small government-owned, contractor-operated parcel within the Naval Shipyard was also excluded from the BRAC Commission's closure recommendations and will be handled under separate authority. The title of the United States to approximately 85 acres of land and 602 acres of submerged lands is subject to reversion to the City of Long Beach in accordance with the judgment in *United States of America* v. *1039 Acres of Land, etc. et al.*

Pursuant to DBCRA and associated Department of Defense policy, Navy must treat the city's redevelopment plan for the installation as part of the Federal action. The redevelopment plan is a plan developed by the Local Redevelopment Authority (LRA) and

provides for the reuse or redevelopment of the closed bases. The City of Long Beach was approved as the LRA for both the Naval Station and the Naval Shipyard by the Secretary of Defense. The City of Long Beach has prepared separate reuse plans for the Naval Station and the Naval Shipyard. The City Reuse Plans include development of all Naval Station and Naval Shipyard property within the jurisdiction of the City of Long Beach, including the reversionary parcels. Accordingly, the environmental impacts of use of these parcels will also be evaluated in the EIS/EIR.

Initially, Navy determined that disposal and reuse of the Naval Station and Navy Shipyard should be evaluated in separate NEPA documents because the Naval Station and Naval Shipyard were closed under separate BRAC Commission actions and it was possible to make functionally independent decisions. In addition, the Naval Shipyard had not yet been declared surplus. Accordingly, Navy prepared and distributed a Final Environmental Impact Statement, dated February 1997, for disposal and reuse of the Long Beach Naval Station. Navy also published a notice of intent to prepare an EIS for disposal and reuse of the Long Beach Naval Shipyard on September 30, 1996.

Although the Naval Station and Naval Shipyard were closed under separate BRAC Commission actions, Navy has reevaluated its initial decision and determined that it is appropriate to address the disposal and reuse of the Naval Complex in a single environmental document. This determination was based on several factors: the properties are adjacent; the proposed reuse by the LRA for each property is generally similar; the proposed disposal and reuse actions will now occur in the same general timeframe; and there is the possibility that a combined analysis could identify mitigation measures to reduce impacts to the Roosevelt Base Historic District and other potential environmental impacts.

Navy and the city of Long Beach have decided to prepare a joint EIS/EIR for these properties. The city of Long Beach, through its Harbor Department, prepared an EIR for the proposed development of the Naval Station property. The EIR was certified by the Board of Harbor Commissioners on September 3, 1996. The city, through its Harbor Department, published a notice of preparation on November 1, 1996 for proposed development of the Naval Shipyard but has not completed an EIR for that development. Therefore, for CEQA purposes, the joint EIS/EIR will serve as an EIR for the Shipyard and a subsequent EIR for the Naval Station.

The proposed Navy action involves the disposal of land, buildings, and infrastructure for subsequent reuse of the Naval Complex. This property includes administrative buildings, housing, recreational facilities, utility systems, ship repair and maintenance, warehouses, and other support facilities. The proposed city of Long Beach action involves the reuse of the Naval Complex in accordance with its Reuse Plans. These Plans propose the demolition of 6 piers, two dry-docks (the large dry-dock would remain), and most of the buildings. The Reuse Plans also require over 6 million cubic yards of material to be dredged from the West Basin. Under the city of Long Beach's proposed reuse, the former Naval facilities would be replaced by a total of 315 acres devoted to marine container terminal and intermodal railyard operations; an 18-acre shipyard facility surrounding the remaining dry-dock; an 18-acre Sea-Launch satellite launch vehicle preparation facility; a 36-acre liquid bulk facility; a 15-acre police facility; and over 100 acres of neobulk, breakbulk, and other port and port ancillary facilities.

As the LRA's Reuse Plans would require demolition of the Roosevelt Base Historic District, Navy will undertake an adaptive reuse study of the historic district. Navy will also reinitiate consultation under section 106 of the National Historic preservation act with the State Historic Preservation Officer and the Advisory Council on Historic Preservation to develop a Memorandum of Agreement addressing potential effects on the historic district and identifying possible mitigation measures.

This joint EIS/EIR will analyze the environmental effects of the disposal and reuse of the Naval Complex. Environmental issues to be addressed in the joint EIS/EIR include: Geology, topography, and soils; hydrology; biology; noise; air quality; land use; historic and archeological resources; socioeconomics; transportation/circulation; public facilities/recreation; safety and environmental health, including environmental justice; aesthetics; and utilities. The analysis will include an evaluation of the direct, indirect, short-term, and cumulative impacts associated with the proposed action. The probable environmental impacts of the project include potential adverse impacts upon biology, noise and vibration levels, air quality, historical resources, transportation/circulation, ground shaking, liquefaction, and risks from hazardous material.

Alternatives will be developed primarily from the reuse plans adopted by the LRA. A ''no action'' alternative, wherein Navy would retain the property in caretaker status, will be included in the joint EIS/EIR. Other alternatives may be developed from suggestions received during the public scoping process or from the adaptive reuse study of the Roosevelt Base Historic District that will be undertaken by Navy. Navy and the city of Long Beach encourage the involvement of all interested parties in the development of potential alternatives.

No decisions regarding disposal will be made until this NEPA/CEQA process is complete.

ADDITIONAL INFORMATION: The Department of the Navy and the city of Long beach will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for the purpose of identifying significant issues relative to this action, including the use of baseline data for the period prior to the closure of the Naval Complex pursuant to California Resources Code Section 21083.8.1. A public meeting to allow oral comments from the public will be held at the Long Beach City Council Chamber, 333 West Ocean Boulevard, Long Beach, California on August 20, 1997 at 6:00 p.m. This meeting will be advertised in area newspapers and notices will be mailed to the interested parties, including responsible agencies, identified through scoping and during preparation of previous documents. Navy and city of Long Beach representatives will be available at the scoping meeting to receive comments from the public regarding issues of concern. A brief presentation describing the disposal and NEPA/CEQA processes will precede requests for public comments. It is important that federal, state, and local agencies, as well as interested organization and individuals, take this opportunity to identify other reuse alternatives and environmental concerns that should be addressed during preparation of the joint EIS/EIR.

Agencies and the public are invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the commenter believes the joint EIS/EIR should address. Written comments or questions regarding the scoping process and or the joint EIS/EIR should be postmarked no later than September 3, 1997 and sent to

the address below. To ensure that all comments are received and addressed, Navy will be the point of contact for this joint EIS/EIR.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Ault, BRAC Program Office, Southwest Division, Naval Facilities Engineering Command, 1420 Kettner Boulevard, Suite 501, San Diego, CA 92101–2404.

Dated: July 16, 1997.

D.E. Koenig,

LCDR, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 97–19107 Filed 7–18–97; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.320A, 84.321A, and 84.322A]

Office of Elementary and Secondary Education—Alaska Native Programs; Notice Inviting Applications for New Awards for Fiscal Year 1997

SUMMARY: The Secretary invites applications for new awards for fiscal year (FY) 1997 under three direct grant programs for Alaska Natives and announces deadline dates for the transmittal of applications under these programs.

SUPPLEMENTARY INFORMATION: In the March 27, 1997 **Federal Register** (62 FR 14763), the Secretary published a notice inviting applications for new awards for FY 1997 under the Alaska Native Educational Planning, Curriculum Development, Teacher Training and Recruitment Program (CFDA No. 84.320A); the Alaska Native Home-Based Education for Preschool Children program (CFDA No. 84.321A); and the Alaska Native Student Enrichment Programs (CFDA No. 84.322A). Under those competitions, which closed on May 27, 1997, the Secretary expects toward approximately $5 million in grants. However, the total FY 1997 appropriation for these programs is $8 million. To ensure that the applications receiving funding under these programs are of the highest possible quality, and to give more organizations an opportunity to apply, the secretary hereby announces a second FY 1997 grant competition under the Alaska Native programs, and announces the deadline date for the transmittal of applications under this second competition.

Applicants that previously submitted applications under these programs but were not approved for funding in the competitions that closed on May 27, 1997, must submit new or revised applications in order to participate in this competition. Such applicants are encouraged to strengthen their proposals and to reapply by the new closing date of August 29, 1997. As always, applicants may request technical assistance from the Department in the preparation of their applications.

Date Applications Available: July 21, 1997.

Deadline for Transmittal of Applications: August 29, 1997.

Estimated Available Funds: Up to $2.9 million.

Note: The Secretary will hold a single competition for projects under all three programs described in this notice. These funds will be allocated among the highest-quality applications received. Applicants must submit a separate application for each program for which they apply.

Estimated Range of Awards: $50,000 to $2,900,000.

Project Period for All Programs: 36 months.

Note: The Department is not bound by any estimates in this notice. Funding estimates are for the first year of the project period only. Funding for the second and third years is subject to the availability of funds and the approval of continuation (see 34 CFR 75.253).

84.320A—Alaska Native Educational Planning, Curriculum Development, Teacher Training and Recruitment Program

Purpose of Program: To support projects that recognize and address the unique educational needs of Alaska Native students through consolidation, development, and implementation of educational plans and strategies to improve schooling for Alaska Natives, development of curricula, and the training and recruitment of teachers. This program is authorized by section 9304 of the Elementary and Secondary Education Act.

Eligible Applicants: Alaska Native organizations or educational entities with experience in developing or operating Alaska Native programs or programs of instruction conducted in Alaska Native languages, or partnerships involving Alaska Native organizations.

Authority: 20 U.S.C. 7934.

84.321A—Alaska Native Home-Based Education for Preschool Children

Purpose of Program: To support home instruction programs for preschool Alaska Native children that develop parents as educators for their children and ensure the active involvement of parents in the education of their children from the earliest ages. This program is authorized by section 9305 of the Elementary and Secondary Education Act.

Eligible Applicants: Alaska Native organizations or educational entities with experience in developing or operating Alaska Native programs, or partnerships involving Alaska Native organizations.

Authority: 20 U.S.C. 7935.

84.322A—Alaska Native Student Enrichment Programs

Purpose of Program: To support projects that provide enrichment programs and family support services for Alaska Native students from rural areas who are preparing to enter village high schools so that they may excel in science and mathematics. This program is authorized by section 9306 of the Elementary and Secondary Education Act.

Eligible applicants: Alaska Native educational organizations or educational entities with experience in developing or operating Alaska Native programs, or partnerships including Alaska Native organizations.

Authority: 20 U.S.C. 7936.

Selection Criteria: In accordance with the competition announced in the March 27, 1997 **Federal Register** (62 FR 14763), the Secretary will use the selection criteria as it originally appeared to evaluate applications under the competition in this notice. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is as follows:

(a) *Meeting the purposes of the authorizing statute*—30 points.

(b) *Extent of need for the project*—20 points.

(c) *Plan of operation*—20 points.

(d) *Quality of key personnel*—7 points.

(e) *Budget and cost effectiveness*—5 points.

(f) *Evaluation plan*—15 points.

(g) *Adequacy of resources*—3 points.

Applcable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86.

For Applications Or Information Contact: Mr. Sharron E. Jones or Ms. Lynn Thomas, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4500, Mail Stop 6240, Washington, D.C. 20202. Telephone (202) 260–1431 or (202) 260–1541, or FAX: (202) 260–7767. Internet: Sharron__Jones@ed.gov or Lynn__Thomas@ed.gov. 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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed. gov); or on the World Wide Web (at http://gcs.ed.gov). The official application notice for a discretionary grant competition, however, is the notice published in the **Federal Register**.

Dated: July 15, 1997.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 97–19029 Filed 7–18–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–021]

Columbia Gas Transmission Corp.; Notice of Refund Report

July 15, 1997.

Take notice that on June 30, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made to comply with the November 22, 1996, Offer of Settlement in Docket No. RP95–408 *et al.* as approved by the Commission on April 17, 1997.

On June 2, 1997, Columbia made refunds in the amount of $63,515,406.14 as a result of the settlement in Docket No. RP95–408, *et al.*, approved by the Commission on April 17, 1997. On November 22, 1996, Columbia submitted to the Commission an Offer of settlement in Docket Nos. RP95–408–000, RP96–149–000, CP96–118–000, CP96–213–000, CP96–668–000, CP96–385–000, and CP96–121–000. The Offer of Settlement represented an integrated and complete resolution of issues in these dockets, except for the environmental issues reserved for hearing in Phase II and a single rate design issue concerning the straight-fixed-variable (SFV) rate design underlying Columbia's rates. Stipulation I of the Settlement resolves all issues regarding zone or distance-sensitive rates. Stipulation II of the Settlement resolves issues related to rates and refunds, overall system costs, the sale of gathering and products extraction facilities and the unbundling of gathering and products extraction costs, and the disposition of proceeds from sales of base gas.

The refunds made on June 2, 1997 include: (1) Refunds due under Article I, Section D of Stipulation I for the period November 1, 1996 through April 30, 1997, including interest through June 1, 1997; (2) Refunds due under Article I, Section E of Stipulation II for the difference between the Collection Rates in Appendix D and the Settlement Rates in Appendix E of the Settlement for the period February 1, 1996 through January 31, 1997, including interest through June 1, 1997; and (3) Refunds due under Article III, Section G of Stipulation II representing a lump sum payment for the time value of money associated with the deferred taxes applicable to the facilities to be sold to Columbia Natural Resources pursuant to Article II, Section D(1) of Stipulation II.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20424, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 22, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19053 Filed 7–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2703–000]

Montaup Electric Company; Notice of Filing

July 15, 1997.

Take notice that on June 18, 1997, Montaup Electric Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 25, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19055 Filed 7–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–620–000]

Williams Natural Gas Company; Notice of Application

July 15, 1997.

Take notice that on July 3, 1997, as supplemented on July 10, 1997, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP97–620–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon, by sale to Western Gas Resources, Inc. (WGR), 10.7 miles of the Yellowstone 12-inch lateral pipeline and related facilities, and two meter settings in Woods County, Oklahoma and Comanche County, Kansas, all as more fully set forth in the application on file with the Commission and open to public inspection.

WNG states that the Yellowstone 12-inch lateral was originally constructed to transport volumes of gas purchased by WNG from the Yellowstone field to WNG's 26-inch Straight Line. WNG further states that because of changes in the natural gas industry resulting from Commission Order Nos. 436, 500 and 636, WNG has determined that WNG's ownership of the Yellowstone lateral line is no longer required and proposes to abandon the lateral by sale to WGR.

WNG states that upon acquisition by WGR, the Yellowstone 12-inch lateral line will be connected to WGR's, or an affiliate of WGR's existing gathering system which will deliver volumes into the Chaney Dell processing plant and/or Chester processing plant in Woodward County, Oklahoma. In addition, WNG states that WGR intends to file a petition for declaratory order seeking a determination that the subject facilities,

once conveyed to WGR, are gathering facilities exempt from the Commission's jurisdiction under NGA section 1(b).

WNG states that it will sell the Yellowstone 12-inch lateral to WGR for $10; however, as additional consideration, WGR will deliver at least 4 Bcf of natural gas over a three year period from the Chaney Dell or Chester Plants to WNG for transportation through the WNG system.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 5, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19054 Filed 7–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1655–000, et al.]

Nevada Power Company, et al.; Electric Rate and Corporate Regulation Filings

July 14, 1997.

Take notice that the following filings have been made with the Commission:

1. Nevada Power Company

[Docket No. ER97–1655–000]

Take notice that on July 8, 1997, Nevada Power Company (Nevada Power) tendered for filing a second amendment to its Electric Service Agreement Coordination Tariff (Amendment) having a proposed effective date of March 1, 1997. The Amendment is being made to eliminate the 1 mill/kWh markup on energy charges when Nevada Power's system incremental cost in the hour reflects a purchase power resource. The Amendment also states that a 1.0 to 1.0 return ratio for banked energy will be standard except in situations where on-peak energy is being returned during off-peak periods.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

2. Western Resources, Inc.

[Docket Nos. ER97–2411–001 and ER97–2412–001]

Take notice that on July 9, 1997, Western Resources, Inc. tendered for filing its compliance filing in the above-referenced dockets.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

3. Interstate Power Company

[Docket No. ER97–2870–000]

Take notice that on June 20, 1997, Interstate Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

4. Orange and Rockland Utilities, Inc.

[Docket Nos. ER97–3307–000 and ER97–3015–000]

Take notice that on June 21, 1997, Orange and Rockland Utilities, Inc. tendered for filing amendments in the above-referenced dockets.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

5. Northeast Utilities System Companies

[Docket No. ER97–3329–000]

Take notice that on July 2, 1997, New England Power Pool tendered for filing an amendment in the above-referenced docket.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

6. Illinois Power Company

[Docket No. ER97–3441–000]

Take notice that on June 26, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which Consumers Power Company dba Consumers Energy Company (Consumers) and The Detroit Edison Company (Edison), which with Consumers shall be referred to collectively as the Michigan Companies will take transmission service pursuant to its open access transmission tariff. The agreements are based on the form of service agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 15, 1997.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

7. Rochester Gas and Electric Corporation

[Docket No. ER97–3442–000]

Take notice that on June 26, 1997, Rochester Gas and Electric Corporation (RG&E) filed a service agreement between RG&E and the Williams Energy Services Company (Customer). This service agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279–000, as amended by RG&E's December 31, 1996 filing in Docket No. OA97–243–000 (pending).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of June 20, 1997 for the Williams Energy Services Company Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

8. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER97–3443–000]

Take notice that on June 26, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 26 to add one (1) new Customer to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of June 25, 1997, to Detroit Edison Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

9. Commonwealth Electric Company

[Docket No. ER97–3444–000]

Take notice that on June 26, 1997, Commonwealth Electric Company (Commonwealth), tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and the participants of the New England Power Pool (NEPOOL Participants). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to the NEPOOL Participants during the summer of 1997 under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341–000, subject to refund and issuance of further orders.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

10. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER97–3445–000]

Take notice that on June 26, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 20 to add Detroit Edison Company and ProMark Energy to Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is June 25, 1997.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

11. Pacific Gas and Electric Company

[Docket No. ER97–3446–000]

Take notice that on June 26, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing a service agreement between PG&E and Equitable Power Service Co. (Equitable) entitled, Service Agreement for Non-Firm Point-to-Point Transmission Service (Service Agreement).

PG&E proposes that the Service Agreement become effective on June 16, 1997. PG&E is requesting any necessary waivers.

Copies of this filing have been served upon the California Public Utilities Commission and Equitable.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER97–3447–000]

Take notice that on June 26, 1997, Northeast Utilities Service Company (NUSCO), on behalf of Public Service Company of New Hampshire (PSNH), tendered for filing proposed changes to PSNH Federal Energy Regulatory Commission Rate Schedule No. 135, pursuant to 205 of the Federal Power Act and 35.13 of the Commission's Regulations. The rate schedule change amends the rate structure, terms and conditions for wholesale sales to the Town of Wolfeboro Municipal Light Department. The rate schedule change results in a rate decrease and is being made at the request of the customer. NUSCO requests that the rate schedule change become effective on July 1, 1997.

NUSCO states that a copy of this filing has been mailed to The Town of Wolfeboro and the New Hampshire Public Utilities Commission.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

13. San Diego Gas & Electric Company

[Docket No. ER97–3448–000]

Take notice that on June 26, 1997, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and Equitable Power Services Company (EPSC).

SDG&E requests that the Commission allow the Agreement to become effective on the 15th day of August 1997 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and EPSC.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

14. Arizona Public Service Company

[Docket No. ER97–3449–000]

Take notice that on June 26, 1997, Arizona Public Service Company (APS), tendered for filing a service agreement to provide Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Imperial Irrigation District (IID).

A copy of this filing has been served on IID and the Arizona Corporation Commission.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER97–3450–000]

Take notice that on June 26, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Pan Energy Power Services, Inc.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

16. Dayton Power and Light Company

[Docket No. ER97–3451–000]

Take notice that on June 26, 1997, Dayton Power and Light Company (DP&L), tendered for filing an amendment to the above referenced docket.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

17. Public Service Company of New Mexico

[Docket No. ER97–3452–000]

Take notice that on June 26, 1997, Public Service Company of New Mexico (PNM), submitted for filing executed service agreements for non-firm point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff with the following transmission service customers: Cenerprise, Inc., e prime, Inc., and PECO Energy Company—Power Team. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

18. Northeast Utilities Service Company

[Docket No. ER97–3453–000]

Take notice that on June 27, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with AllEnergy Marketing Co., L.L.C. (AllEnergy) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to AllEnergy.

NUSCO requests that the Service Agreement become effective July 1, 1997.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

19. New York State Electric & Gas Corporation

[Docket No. ER97–3454–000]

Take notice that on June 27, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, service agreements under which NYSEG will provide capacity and/or energy to:

- Boston Edison Company (Boston)
- CNG Power Services Corporation (CNG),
- Enron Power Marketing, Inc. (Enron),
- PECO Energy Company—Power Team (PECO),
- Vermont Public Power Supply Authority (VPPSA), and
- Williams Energy Services Company (Williams),

(collectively, the Purchasers) in accordance with NYSEG's market-based power sales tariff.

NYSEG has requested waiver of the notice requirements so that the service agreements with PECO and Enron become effective as of June 11, 1997, and the service agreements with Boston, CNG, VPPSA, and Williams become effective as of June 28, 1997.

NYSEG served copies of the filing upon the Purchasers and the New York State Public Service Commission.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

20. Central Illinois Light Company

[Docket No. ER97–3455–000]

Take notice that on June 27, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and service agreements for two new customers.

CILCO requested an effective date of June 2, 1997.

Copies of the filing were served on all affected customers and the Illinois Commerce Commission.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

21. Florida Power & Light Company

[Docket No. ER97–3530–000]

Take notice that on June 30, 1997, Florida Power & Light Company (FPL) tendered for filing proposed service agreements with NIPSCO Energy Services, Inc. for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on August 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: July 28,1997, in accordance with Standard Paragraph (E) at the end of this notice.

22. First Power, LLC.

[Docket No. ER97–3580–000]

Take notice that on July 1, 1997, First Power, LLC (First Power) petitioned the Commission for acceptance of First Power Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

First Power intends to engage in wholesale electric power and energy purchases and sales as a marketer. First Power is not in the business of generating or transmitting electric power. First Power is not a wholly owned subsidiary and does not have any affiliates.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

23. William T. Esrey

[Docket No. ID–3056–000]

Take notice that on July 8, 1997, William T. Esrey filed an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Director—Duke Energy Corporation
Director, Chairman, and Chief Executive Officer—Sprint Corporation
Director—Everen Capital Corporation
Director—The Equitable Companies, Inc.
Director—The Equitable Life Assurance Society of the United States

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

24. Brady Power Partners

[Docket No. QF92–175–003]

On July 2, 1997, Brady Power Partners (Applicant), 11760 U.S. Highway One, Suite 600, North Palm Beach, Florida 33408, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the Applicant, the facility is a 21.5 MW, geothermal small power production facility located at Brady Hot Springs, near Fernley, Nevada. The Commission previously certified the facility as a qualifying small power production facility in *Brady Power Partners*, 61 FERC ¶ 62,113 (1992). A notice of self-recertification was filed on May 26, 1995. According to the application, the instant recertification is requested to assure that the facility will remain a qualifying facility following an increase in the net electric power production capacity of the faculty to 25.89 MW, and a change in the ownership of Brady Power Partners.

Comment date: Comments due on or before August 5, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

25. Missouri Municipal Power Agency v. Western Area Power Administration

[Docket No. TX97–7–000]

Take notice that on June 18, 1997, Missouri Municipal Power Agency tendered for filing additional information to its June 10, 1997 filing filed in this docket.

Comment date: July 28, 1997, in accordance with Standard Paragraph (E) at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19067 Filed 7–18–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 11516, 11120–002, and 11300—Michigan]

Commonwealth Power Company; Notice of Intent to Conduct Public Scoping Meetings and Site Visits

July 15, 1997.

The Federal Energy Regulatory Commission (FERC or the Commission) will hold public and agency scoping meetings on July 28, 1997, for preparation of a Multiple Project Environmental Assessment (MPEA) under the National Environmental Policy Act (NEPA) for the issuance of original licenses for the Irving, Middleville, and LaBarge Project Nos. 11516, 11120–002, and 11300. The three projects are located on the Thornapple River in Barry and Kent Counties, Michigan.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns while the public scoping meetings are primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and assist the staff in identifying the scope of the environmental issues that should be analyzed in the MPEA. The times and locations of these meetings are as follows:

Agency Scoping Meeting, Tuesday, July 29, 1997, 1:00 p.m. to 3:00 p.m., Caledonia Township Hall, 250 Maple Street, Caledonia, MI 49316.

Public Scoping Meeting, Tuesday, July 29, 1997, 7:00 p.m. to 10:00 p.m., Caledonia Township Hall, 250 Maple Street, Caledonia, MI 49316.

To help focus discussions, a scoping document (Revised Scoping Document 1—including all three projects) outlining subject areas to be addressed at the meeting will be distributed by mail to the parties on the FERC mailing list. Copies of the Revised Scoping Document 1 will also be available at the scoping meetings.

Site Visits

Site visits will be held at the three projects; anyone with questions regarding the site visits should contact the appropriate contact person below. All participants must furnish their own transportation. The date and time of the site visits are as follows:

Date/time	Projects	Contact
Monday, July 28, 1997, 1:00 p.m.	Irving, Middleville, and LaBarge.	Bob Evans, Commonwealth Power (517) 676–0700.

All participants should meet at the Caledonia Township Hall, 250 Maple Street, Caledonia, Michigan, 49316.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned MPEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the MPEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the relative depth of analysis for issues to be addressed in the MPEA; and (5) identify resource issues that are of lesser importance, and, therefore, do not require detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal records of the Commission proceeding on the projects under consideration. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record. Speaking time for attendees at the evening meetings will be determined before the meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. All speakers will be provided at least 5 minutes to present their views.

Individuals, corporations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the MPEA.

Persons choosing not to speak at the meetings, but who have views on the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All such filings should conform with the requirements outlined in detail in Revised Scoping Document 1.

For further information, please contact Sue Cielinski at (202) 219–2942.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19056 Filed 7–18–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140261; FRL–5730–8]

Access to Confidential Business Information by Midwest Research Institute

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Midwest Research Institute, 425 Volker Boulevard, Kansas City, Missouri, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than August 5, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm.

E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W6–0048, contractor MRI, of 425 Volker Boulevard, Kansas City, MO, will assist the Office of Pollution Prevention and Toxic (OPPTS) in the analyses of cost and benefits of actual or potential EPA actions taken under TSCA, including the Asbestos Hazard Emergency Response Act (AHERA) of 1986 and Title X of the Residential Lead-Bead Paint Hazard Reduction Act of 1992 (TSCA Title IV).

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W6–0048, MRI will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. MRI personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of March 21, 1991 (56 FR 12008), MRI was authorized for access to CBI submitted to EPA under sections 4, 5, 6, 8, and 12 of TSCA, contract number 68–D0–0137.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide MRI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters, MRI's site located at 425 Volker Boulevard, Kansas City, MO.

MRI will be authorized access to TSCA CBI at its facility under the EPA *TSCA Confidential Business Information Security Manual*. Before access to TSCA CBI is authorized at MRI's site, EPA will approve MRI's security certification statements, perform the required inspection of its facilities, and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, MRI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 26, 2001.

MRI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: July 12, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution and Prevention and Toxics.

[FR Doc. 97–19086 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5482–5]

Antarctica Public Comment Period Extended

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

ACTION: Public comment period extended for scoping comments for Draft Environmental Impact Statement for the Final Rule for Environmental Impact Assessment of Nongovernmental Activities in Antarctica.

PURPOSE: The U.S. EPA published a ''Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Final Rule for Environmental Impact Assessment of Nongovernmental Activities in Antarctica'' on May 9, 1997, (**Federal Register**/Vol. 62, No. 90/Friday, May 9, 1997/25611–25613) that requested public comments by July 15, 1997. As a result of public comments received at the public scoping meeting held July 8, 1997, (**Federal Register**/Vol. 62, No. 105/Monday, June 2, 1997/Notices/29726–29727) and other written requests from the public, EPA has extended the public comment period to August 1, 1997.

DATES: Written comments from the public regarding the environmental and regulatory issues and alternatives to be addressed in the Draft EIS has been extended to August 1, 1997.

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Mr. Joseph Montgomery or Ms. Katherine Biggs, Office of Federal Activities (2252A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 564–7157 or (202) 564–7144, respectively. Information on this project is also available on the World Wide Web at: http//es.inel.gov/oeca/ofa/.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 97–19026 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5861–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et, seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 0916.07; Renewal—Annual Updates of Emission Data to the Aerometic Information Retrieval System (AIRS); was approved 06/11/97; OMB No. 2060–0088; expires 10/31/97.

EPA ICR No. 1637,03, Determine Conformity of General Federal Actions to State Implementation Plans; was approved 06/11/97; OMB No. 2060–0279; expires 10/31/97.

EPA ICR No. 1794.01; Environmental Leadership Program (ELP) Application and Annual Environmental Performance Report; was approved 06/09/97; OMB No. 2020–0005; expires 06/30/2000.

EPA ICR No. 0794.08; Notification of Substantial Risk of Injury to Health and the Environmental under TSCA Section 8(e); was approved 06/12/97; OMB No. 2070–0046; expires 06/30/2000.

EPA ICR No. 1249.05; Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection; was approved 06/12/97; OMB 2070–0074; expires 06/30/2000.

EPA ICR No. 1064.08; NSPS for Automobile and Light Duty Truck Surface Coating Operations; was approved 06/20/97; OMB No. 2060–0034; expires 06/30/2000.

EPA ICR No. 1012.06; Polychlorinated Biphenyls (PCBs) Disposal Permitting Regulation; was approved 06/27/97; OMB No. 2070–0011; expires 06/30/2000.

EPA ICR No. 1790.01; National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing and Phosphat Fertilizers Production; was approved 06/29/97; OMB No. 2060–0361; expires 06/30/2000.

EPA ICR No. 1803.02; Drinking Water State Revolving Fund Programs; was approved 06/30/97; OMB No. 2040–0185; expires 06/30/2000.

EPA ICR No. 1793.01; Collecting of Environmental Compliance Information on Automotive Service and Repair Shops; was approved 06/30/97; OMB NO. 2020–0006; expires 06/30/2000.

EPA ICR No. 1698.03; Reporting and Recordkeeping Requirements under EPA's Waste Wise Program; was approved 07/03/97; OMB 2050–0139; expires 07/31/2000.

OMB Correction

EPA ICR No. 0940.14; Ambient Air Surveillance Revision; was approved 02/25/97; OMB No. 2060–0084; instead of 2060–0054; expires 03/31/99.

Dated: July 15, 1997.

Joseph Retzer,

Division Director, Regulatory Information Division.

[FR Doc. 97–19089 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5861–1]

Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: Harco Property Site, Wilton, Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into a cost recovery settlement agreement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve liability under CERCLA of Gilbert & Bennett Manufacturing Company (''Gilbert & Bennett'') for costs incurred by EPA in response activities at the Harco Property Site (the ''Site'') in Wilton, Connecticut.

DATES: Comments must be provided on or before August 20, 1997.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCH, Boston, Massachusetts 02203, and should refer to: Agreement for Recovery of Past Response Costs Re: Harco Property Site, Wilton, Connecticut, U.S. EPA Docket No. CERCLA–I–97–1038.

FOR FURTHER INFORMATION CONTACT: Bruce Marshall, U.S. Environmental Protection Agency, Office of Site Remediation and Restoration, J.F.K. Federal Building, Mailcode HBS, Boston, Massachusetts 02203, (617) 573–9686.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, notice is hereby given of a proposed cost recovery settlement agreement under section 122(h) of CERCLA concerning the Harco Property Site in Wilton, CT. The settlement was approved by EPA Region I, subject to review by the public pursuant to this notice. Gilbert & Bennett has executed a signature page committing it to participate in the settlement. Under the proposed settlement, Gilbert & Bennett will pay $171,100, in two installments, to the EPA Hazardous Substance Superfund to reimburse the fund for costs incurred in performing removal activities at the Site. In response to the release or threat of release of hazardous substances at the Site, EPA undertook response actions which included site investigation, sampling and analysis of soil and surface water and oversight of work performed at the Site.

EPA is entering into this agreement under the authority of CERCLA section 122(h) which provides EPA with authority to consider, compromise, and settle a claim under section 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. Written approval of this settlement by the U.S. Department of Justice is not required. EPA will receive written comments relating to this settlement until August 20, 1997.

A copy of the proposed administrative settlement may be obtained in person or by mail from Bruce Marshall, U.S. Environmental Protection Agency, Office of Site Remediation and Restoration, Mailcode HBS, Boston, Massachusetts 02203, (617) 573–9686.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCH, Boston, Massachusetts (U.S. EPA Docket No. CERCLA–I–97–1038).

Dated: July 9, 1997.

Frank Ciavattieri,

Acting Director of the Office of Site Remediation and Restoration.

[FR Doc. 97–19091 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Revised Policy Statement on Securities Lending

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice of revised policy statement.

SUMMARY: The Task Force on Supervision, acting under delegated authority from the Federal Financial Institutions Examination Council (FFIEC), has revised the policy statement on ''Securities Lending'', and is recommending that the FFIEC member agencies adopt and implement the updated policy statement. The Council's three banking agencies adopted the policy pursuant to section 1006(b) of FIRA. It was not published in the **Federal Register**.

EFFECTIVE DATE: Effective immediately.

FOR FURTHER INFORMATION CONTACT:

FRB: Angela Desmond, Senior Counsel, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th & C Streets, NW, Washington, DC 20551 (202/452–3497).

OCC: Roberta L. Ouimette, National Bank Examiner, Asset Management Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219 (202/874–5331).

OTS: William J. Magrini, Senior Project Manager, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552 (202/906–5744).

FDIC: Kenton P. Fox, Senior Capital Markets Specialist, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429 (202/898–7119).

The text of the Revised Policy Statement follows:

Purpose

Financial institutions are lending securities with increasing frequency. In some instances a financial institution may lend its own investment or trading account securities. More and more often, however, financial institutions lend customers' securities held in custody, safekeeping, trust or pension accounts. Not all institutions that lend securities or plan to do so have relevant experience. Because the securities available for lending often greatly exceed the demand for them, inexperienced lenders may be tempted to ignore commonly recognized safeguards. Bankruptcies of broker-dealers have heightened regulatory sensitivity to the potential for problems in this area. Accordingly, we are providing the following discussion of guidelines and regulatory concerns.

Securities Lending Market

Securities brokers and commercial banks are the primary borrowers of securities. They borrow securities to cover securities fails (securities sold but not available for delivery), short sales, and option and arbitrage positions. Securities lending, which used to involve principally corporate equities and debt obligations, increasingly involves loans of large blocks of U.S. government and federal agency securities.

Securities lending is conducted through open-ended ''loan'' agreements, which may be terminated on short notice by the lender or borrower.[1] The objective of such lending is to receive a safe return in addition to the normal interest or dividends. Securities loans are generally collateralized by U.S. government or federal agency securities, cash, or letters of credit.[2] At the outset, each loan is collateralized at a predetermined margin. If the market value of the collateral falls below an acceptable level during the time a loan is outstanding, a margin call is made by the lender institution. If a loan becomes over-collateralized because of appreciation of collateral or market depreciation of a loaned security, the borrower usually has the opportunity to request the return of any excessive margin.

When a securities loan is terminated, the securities are returned to the lender and the collateral to the borrower. Fees received on securities loans are divided between the lender institution and the customer account that owns the securities. In situations involving cash collateral, part of interest earned on the temporary investment of cash is returned to the borrower and the remainder is divided between the lender institution and the customer account that owns the securities.

Definitions of Capacity

Securities lending may be done in various capacities and with differing associated liabilities. It is important that all parties involved understand in what capacity the lender institution is acting. For the purposes of these guidelines, the relevant capacities are:

Principal: A lender institution offering securities from its own account is acting as principal. A lender institution offering customers' securities on an undisclosed basis is also considered to be acting as principal.

Agent: A lender institution offering securities on behalf of a customer-owner is acting as an agent. For the lender institution to be considered a bona fide or ''fully disclosed'' agent, it must disclose the names of the borrowers to the customer-owners (or give notice that names are available upon request), and must disclose the names of the customer-owner to borrowers (or give notice that names are available upon request). In all cases the agent's compensation for handling the transaction should be disclosed to the customer-owner. Undisclosed agency transactions, i.e., ''blind brokerage'' transactions in which participants cannot determine the identity of the counterparty, are treated as if the lender institution were the principal. (See definition above.)

Directed Agent: A lender institution which lends securities at the direction of the customer-owner is acting as a directed agent. The customer directs the lender institution in all aspects of the transaction, including to whom the securities are loaned, the terms of the transaction (rebate rate and maturity/call provisions on the loan), acceptable collateral, investment of any cash collateral, and collateral delivery.

Fiduciary: A lender institution which exercises discretion in offering securities on behalf of and for the benefit of customer-owners is acting as a fiduciary. For purposes of these guidelines, the underlying relationship may be as agent, trustee, or custodian.

Finder: A finder brings together a borrower and a lender of securities for a fee. Finders do not take possession of the securities or collateral. Securities and collateral are delivered directly by the borrower and the lender without the involvement of the finder. The finder is simply a fully disclosed intermediary.

Guidelines

All financial institutions that participate in securities lending should establish written policies and procedures governing these activities. At a minimum, policies and procedures should cover each of the topics in these guidelines.

Recordkeeping

Before establishing a securities lending program, a financial institution must establish an adequate recordkeeping system. At a minimum, the system should produce daily reports showing which securities are available for lending, and which are currently lent, outstanding loans by borrower, outstanding loans by account, new loans, returns of loaned securities, and transactions by account. These records should be updated as often as necessary to ensure that the lender institution fully accounts for all outstanding loans, that adequate collateral is required and maintained, and that policies and concentration limits are being followed.

Administrative Procedures

All securities lent and all securities standing as collateral must be marked to market daily. Procedures must ensure that any necessary calls for additional margin are made on a timely basis.

In addition, written procedures should outline how to choose the customer account that will be the source of lent securities when they are held in more than one account. Possible methods include: Loan volume analysis, automated queue, a lottery, or some combination of these methods. Securities loans should be fairly allocated among all accounts participating in a securities lending program.

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[1] Repurchase agreements, generally used by owners of securities as financing vehicles are, in certain respects, closely analogous to securities lending. Repurchase agreements however, are not the direct focus of these guidelines. A typical repurchase agreement has the following distinguishing characteristics:

- The sale and repurchase (loan) of U.S. government or federal agency securities.
- Cash is received by the seller (lender) and the party supplying the funds receives the collateral margin.
- The agreement is for a fixed period of time.
- A fee is negotiated and established for the transaction at the outset and no rebate is given to the borrower from interest earned on the investment of cash collateral.
- The confirmation received by the financial institution from a borrower broker/dealer classifies the transaction as a repurchase agreement.

[2] Brokers and dealers registered with the Securities and Exchange Commission are generally subject to the restrictions of the Federal Reserve Board's Regulation T (12 CFR Part 220) when they borrow or lend securities. Regulation T specifies acceptable borrowing purposes and any applicable collateral requirements for these transactions.

Internal controls should include operating procedures designed to segregate duties and timely management reporting systems. Periodic internal audits should assess the accuracy of accounting records, the timeliness of management reports, and the lender institution's overall compliance with established policies and procedures.

Credit Analysis and Approval of Borrowers

In spite of strict standards of collateralization, securities lending activities involve risk of loss. Such risks may arise from malfeasance or failure of the borrowing firm or institution. Therefore, a duly established management or supervisory committee of the lender institution should formally approve, in advance, transactions with any borrower.

Credit and limit approvals should be based upon a credit analysis of the borrower. A review should be performed before establishing such a relationship and reviews should be conducted at regular intervals thereafter. Credit reviews should include an analysis of the borrower's financial statement, and should consider capitalization, management, earnings, business reputation, and any other factors that appear relevant. Analyses should be performed in an independent department of the lender institution, by persons who routinely perform credit analyses. Analyses performed solely by the person(s) managing the securities lending program are not sufficient.

Credit and Concentration Limits

After the initial credit analysis, management of the lender institution should establish an individual credit limit for the borrower. That limit should be based on the market value of the securities to be borrowed, and should take into account possible temporary (overnight) exposures resulting from a decline in collateral values or from occasional inadvertent delays in transferring collateral. Credit and concentration limits should take into account other extensions of credit by the lender institution to the same borrower or related interests. Such information, if provided to an institution's trust department conducting a securities lending program, would not be considered material inside information and therefore, not violate ''Chinese Wall'' policies designed to protect against the misuse of material inside information. Violation of securities laws would arise only if material inside information were used in connection with the purchase or sale of securities.

Procedures should be established to ensure that credit and concentration limits are not exceeded without proper authorization from management.

When a lender institution is lending its own securities as principal, statutory lending limits may apply. For national banks and federal savings associations, the limitations in 12 U.S.C. 84 apply. For state-chartered institutions, state law and applicable federal law must be considered. Certain exceptions may exist for loans that are fully secured by obligations of the United States government and federal agencies.

Collateral Management

Securities borrowers pledge and maintain collateral at least 100 percent of the value of the securities borrowed.[3] The minimum amount of excess collateral, or ''margin'', acceptable to the lender institution should relate to price volatility of the loaned securities and the collateral (if other than cash).[4] Generally, the minimum initial collateral on securities loans is at least 102 percent of the market value of the lent securities plus, for debt securities, any accrued interest.

Collateral must be maintained at the agreed margin. A daily ''mark-to-market'' or valuation procedure must be in place to ensure that calls for additional collateral are made on a timely basis. The valuation procedures should take into account the value of accrued interest on debt securities.

Securities should not be lent unless collateral has been received or will be received simultaneously with the loan. As a minimum step toward perfecting the lender's interest, collateral should be delivered directly to the lender institution or an independent third party trustee.

Cash as Collateral

When cash is used as collateral, the lender institution is responsible for making it income productive. Lenders should establish written guidelines for selecting investments for cash collateral. Generally, a lender institution will invest cash collateral in repurchase agreements, master notes, a short-term investment fund, U.S. or Eurodollar certificates of deposits, commercial paper or some other type of money market instrument. If the lender institution is acting in any capacity other than as principal, the written agreement authorizing the lending relationship should specify how cash collateral is to be invested.

Investing cash collateral in liabilities of the lender institution or its holding company would be an improper conflict of interest unless that strategy was specifically authorized in writing by the owner of the lent securities. Written authorizations for participating accounts are further discussed later in these guidelines.

Letters of Credit as Collateral

Since May 1982, letters of credit have been permitted as collateral in certain securities lending transactions outlined in Federal Reserve Regulation T. If a lender institution plans to accept letters of credit as collateral, it should establish guidelines for their use. Those guidelines should require a credit analysis of the financial institution issuing the letter of credit before securities are lent against that collateral. Analyses must be periodically updated and reevaluated. The lender institution should also establish concentration limits for the institutions issuing letters of credit and procedures should ensure that they are not exceeded. In establishing concentration limits on letters of credit accepted as collateral, the lender institution's total outstanding credit exposures from the issuing institution should be considered.

Written Agreements

Securities should be lent only pursuant to a written agreement between the lender institution and the owner of the securities specifically authorizing the institution to offer the securities for loan. The agreement should outline the lender institution's authority to reinvest cash collateral (if any) and responsibilities with regard to custody and valuation of collateral. In addition, the agreement should detail the fee or compensation that will go to the owner of the securities in the form of a fee schedule or other specific provision. Other items which should be covered in the agreement have been discussed earlier in these guidelines.

A lender institution must also have written agreements with the parties who wish to borrow securities. These agreements should specify the duties and responsibilities of each party. A written agreement may detail: Acceptable types of collateral (including letters of credit); standards for collateral

[3] Employee Benefit Plans subject to the Employee Retirement Income Security Act are specifically required to collateralize securities loans at a minimum of 100 percent of the market value of loaned securities (see section concerning Employee Benefit Plans).

[4] The level of margin should be dictated by level of risk being underwritten by the securities lender. Factors to be considered in determining whether to require margin above the recommended minimum include: the type of collateral, the maturity of collateral and lent securities, the term of the securities loan, and the costs which may be incurred when liquidating collateral and replacing loaned securities.

custody and control, collateral valuation and initial margin, accrued interest, marking to market, and margin calls; methods for transmitting coupon or dividend payments received if a security is on loan on a payment date; conditions which will trigger the termination of a loan (including events of default); and acceptable methods of delivery for loaned securities and collateral.

Use of Finders

Some lender institutions may use a finder to place securities, and some financial institutions may act as finders. A finder brings together a borrower and a lender for a fee. Finders should not take possession of securities or collateral. The delivery of securities loaned and collateral should be direct between the borrower and the lender. A finder should not be involved in the delivery process.

The finder should act only as a fully disclosed intermediary. The lender institution must always know the name and financial condition of the borrower of any securities it lends. If the lender institution does not have that information it and its customers are exposed to unnecessary risks.

Written policies should be in place concerning the use of finders in a securities lending program. These policies should cover the circumstances in which a finder will be used, which party pays the fee (borrower or lender), and which finders the lender institution will use.

Employee Benefit Plans

The Department of Labor has issued two class exemptions which deal with securities lending programs for employee benefit plans covered by the Employee Retirement Income Security Act (ERISA)—Prohibited Transaction Exemption 81–6 (46 FR 7527 (January 23, 1981), supplemented 52 FR 18754 (May 19, 1987)), and Prohibited Transaction Exemption 82–63 (47 FR 14804 (April 6, 1982) and correction published at 47 FR 16437 (April 16, 1982)). The exemptions authorize transactions which might otherwise constitute unintended ''prohibited transactions'' under ERISA. Any institution engaged in lending of securities for an employee benefit plan subject to ERISA should take all steps necessary to design and maintain its program to conform with these exemptions.

Prohibited Transaction Exemption 81–6 permits the lending of securities owned by employee benefit plans to persons who could be ''parties in interest'' with respect to such plans, provided certain conditions specified in the exemption are met. Under those conditions neither the borrower nor an affiliate of the borrower can have discretionary control over the investment of plan assets, or offer investment advice concerning the assets, and the loan must be made pursuant to a written agreement. The exemption also establishes a minimum acceptable level for collateral based on the market value of the loaned securities.

Prohibited Transaction Exemption 82–63 permits compensation of a fiduciary for services rendered in connection with loans of plan assets that are securities. The exemption details certain conditions which must be met.

Indemnification

Certain lender institutions offer participating accounts indemnification against losses in connection with securities lending programs. Such indemnifications may cover a variety of occurrences including all financial loss, losses from a borrower default, or losses from collateral default. Lender institutions that offer such indemnification should obtain a legal opinion from counsel concerning the legality of their specific form of indemnification under federal and/or state law.

A lender institution which offers an indemnity to its customers may, in light of other related factors, be assuming the benefits and, more importantly, the liabilities of a principal. Therefore, lender institutions offering indemnification should also obtain written opinions from their accountants concerning the proper financial statement disclosure of their actual or contingent liabilities.

Regulatory Reporting

Securities borrowing and lending transactions should be reported by commercial banks according to the Instructions for the Consolidated Reports of Condition and Income and by thrifts according to Thrift Financial Report instructions.

Dated at Washington, DC this 16th day of July 1997.

Federal Financial Institutions Examination Council.

Joe M. Cleaver,

Executive Secretary.

[FR Doc. 97–19132 Filed 7–18–97; 8:45 am]

BILLING CODE 6210–01–P, 6720–01–P, 6714–01–P, 4810–33–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 4, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Cross County Bank Employee Stock Ownership Plan, Wynne, Arkansas; to retain a total of 16.01 percent of the voting shares of Cross County Bancshares, Inc., Wynne, Arkansas, and thereby indirectly retain Cross County Bank, Wynne, Arkansas.

Board of Governors of the Federal Reserve System, July 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19018 Filed 7–18–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments

must be received not later than August 5, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Richard Todd Proffitt, Pigeon Forge, Tennessee; to acquire an additional 57.4 percent, for a total of 57.8 percent of the voting shares of Tennessee State Bancshares, Inc., Pigeon Forge, Tennessee (formerly Gatlinburg, Tennessee), and thereby indirectly acquire Tennessee State Bank, Gatlinburg, Tennessee.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. David L. and Nancy A. Spehar, Kansas City, Kansas; to acquire voting shares of First Community Bancshares, Inc., Kansas City, Kansas, and thereby indirectly acquire First Community Bank, Kansas City, Kansas.

2. Susan Aileen Young, Chicago, Illinois; to acquire voting shares of C.S.B. Co., Cozad, Nebraska, and thereby indirectly acquire Cozad State Bank and Trust Company, Cozad, Nebraska, and First National Bank of Chadron, Chardron, Nebraska.

C. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Robert W. St. Yves, Prineville, Oregon; to acquire an additional 6.65 percent, for a total of 10.99 percent, of the voting shares of Prineville Bancorporation, Prineville, Oregon, and thereby indirectly acquire Community First Bank, Prineville, Oregon (formerly The Prineville Bank).

Board of Governors of the Federal Reserve System, July 16, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19101 Filed 7–18–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 14, 1997.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. People's Community Capital Corporation, Aiken, South Carolina; to become a bank holding company by acquiring 100 percent of the votings shares of People's Community Bank of South Carolina, Aiken, South Carolina (in organization).

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Planters & Merchants Bancshares, Inc., Hearne, Texas, and Planters & Merchants Bancshares of Delaware, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Homestead Bank, S.S.B., College Station, Texas.

Board of Governors of the Federal Reserve System, July 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19017 Filed 7–18–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 15, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. First State Bancshares, Inc., Ida Grove, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Ida Grove, Iowa.

2. Hometown Independent Bancorp, Inc., Morton, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Morton Community Bank, Morton, Illinois.

3. O.A.K. Financial Corporation, Byron Center, Michigan; to become a bank holding company by acquiring 24.9 percent of the voting shares of Caledonia Financial Corporation, Caledonia, Michigan, and State Bank of Caledonia, Caledonia, Michigan.

4. Progressive Bancorp, Inc., Pekin, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Pekin Savings Bank, S.B., Pekin, Illinois.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Dean Financial Services, Inc., St. Paul, Minnesota; to acquire 100 percent of the voting shares of The First National Corporation of Aitkin, Inc., Aitkin, Minnesota, and thereby indirectly acquire The First National Bank of Aitkin, Aitkin, Minnesota; Mid-Continent Financial Services, Inc.,

Bloomington, Minnesota, and thereby indirectly acquire State Bank of Edgerton, Edgerton, Minnesota; and The First State Bank of Eden Prairie, Eden Prairie, Minnesota.

2. Otto Bremer Foundation, St. Paul, Minnesota; through its subsidiary, Bremer Financial Corporation, St. Paul, Minnesota, to acquire 100 percent of the voting shares of The Halo Bancorporation, Inc., Devils Lake, North Dakota, and thereby indirectly acquire First National Bank of Devils Lake, Devils Lake, North Dakota.

Board of Governors of the Federal Reserve System, July 16, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19100 Filed 7–18–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 14, 1997.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Horizon Bancorp, Inc., Beckley, West Virginia; to acquire Beckley Bancorp, Inc., Beckley, West Virginia, and thereby indirectly acquire Beckley Federal Savings Bank, Beckley, West Virginia, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19016 Filed 7–18–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 5, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Associated Banc-Corp, Green Bay, Wisconsin; to acquire First Financial Corporation, Stevens Point, Wisconsin, and thereby indirectly acquire First Financial Bank, FSB, Stevens Point, Wisconsin, and thereby engage in owning and operating a savings and loan association, pursuant to § 225.28(b)(4) of the Board's Regulation Y; Appraisal Services, Inc., Milwaukee, Wisconsin, and thereby engage in performing appraisals of real estate and tangible personal property, pursuant to § 225.28 (b)(2) of the Board's Regulation Y; and First Financial Card Services Bank, N.A., Stevens Point, Wisconsin, and thereby engage in operating a credit card bank, pursuant to §§ 225.28(b)(1) and (2) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 16, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19099 Filed 7–18–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Federal Trade Commission.

TIME AND DATE: 2:00 p.m., Thursday, August 14, 1997.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions Open to Public.

(1) Oral Argument in Automotive Breakthrough Sciences, Inc., Docket 9275.

Portions Closed to the Public:

(2) Executive Session to follow Oral Argument in Automotive Breakthrough Sciences, Inc., Docket 9275.

CONTACT PERSON FOR MORE INFORMATION: Victoria Streitfeld, Office of Public Affairs: (202) 326–2180. Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 97–19237 Filed 7–17–97; 2:56 pm]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 786]

Cooperative Agreements To Refine a National Surveillance System for Hospital Health Care Workers

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 funds for cooperative agreements to refine a surveillance system for health care workers (HCWs) in hospital settings that will lead to the prevention of occupational transmission of bloodborne infections, vaccine-

preventable diseases, tuberculosis (TB), and other occupational hazards.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under Sections 301, 304, 306, 308(d), and 317(k)(2) of the Public Health Service Act, as amended [42 U.S.C. 241, 242b, 242k, 242m(d) and 247b(k)(2)]. Applicable program regulations are found in 42 CFR 51b and 52, Project Grants for Preventive Health Services and Research Projects.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants include only U.S. public and non-profit private hospitals. Applicants must have an established surveillance system or program for occupational exposures to HCWs which includes a written protocol, plan, or policy including data collection forms. Eligibility requirements must be clearly specified under background information in Application Content.

Competition is limited to hospitals as defined above because the purpose of this program is to refine a surveillance system for HCWs in hospital settings.

Identifiable information provided to CDC through this agreement will be maintained in accordance with the assurance of confidentiality provided to hospitals participating in the National Surveillance System for Hospital HCWs (NaSH) System under Section 308(d) of the Public Health Service Act [42 U.S.C. 242m(d)].

Availability of Funds

Approximately $350,000 is available in FY 1997 to fund approximately 8 awards. It is expected that the average award will be $45,000, ranging from $30,000 to $60,000. It is expected that the awards will begin on or about September 30, 1997, and will be made for a 12-month budget period within a one-year project period. Funding estimates may vary and are subject to change.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in Lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

Use of Funds

Cooperative agreement funds will not be used for the delivery of clinical/therapeutic services.

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of Department of Health and Human Services (HHS) funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1997 Departments of Labor, HHS, and Education, and Related Agencies Appropriations Act, which became effective October 1, 1996, expressly prohibits the use of 1997 appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before state legislatures. Section 503 of this new law, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Public Law 104–208 (September 30, 1996), provides as follows:

Section 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

In recent years, occupational hazards faced by HCWs in the United States have received increasing attention. Existing surveillance systems are often inadequate to describe the scope and magnitude of occupational exposures to infectious agents and other occupational hazards that HCWs experience, the outcomes of these exposures, and the impact of preventive measures. Hospital groups and experts in infectious disease have requested guidance and assistance from CDC to develop a system for hospital data management, so that hospitals may develop prevention strategies, identify emerging problems, and in general create a safe and healthy working environment for patients and HCWs, in accordance with Occupational Safety and Health Administration (OSHA) requirements and CDC Guidelines for the Prevention and Management of Occupational Exposures to Tuberculosis, Bloodborne Pathogens and Vaccine-preventable Diseases (MMWR 1994, Vol. 43 No. RR–13; MMWR 1990, Vol 39 No. RR–1; MMWR 1991, Vol 40 No. RR–12). Many hospitals around the United States have requested technical assistance from CDC to improve current surveillance systems for a variety of occupationally acquired infections and other work-related hazardous conditions and exposures.

CDC has developed a surveillance system that focuses on surveillance of exposures and infections among hospital-based HCWs. This system, modeled after the National Nosocomial Infections Surveillance (NNIS) system for patient infections, includes standardized methodology and software for various occupational health issues. The system is called the National Surveillance System for Hospital HCWs, or (NaSH). The Hospital Infections Program (National Center for Infectious Diseases (NCID)) has developed this system in collaboration with the Hepatitis Branch (Division of Viral and Rickettsial Diseases, NCID), the Division of Tuberculosis Elimination (National Center for HIV, STD, and TB Prevention), the National Immunization Program, and the National Institute for Occupational Safety and Health (NIOSH). Currently, the NaSH system consists of the following surveillance modules: HCW Baseline Assessment; Routine Tuberculin Skin Testing; Exposures to Blood/Body Fluids and Blood borne Pathogens; Exposures to and Infections with Vaccine-Preventable Diseases; Exposures to Infectious

Tuberculosis Patients/HCWs; Non-infectious Injuries; and Annual HCW Survey.

The ultimate goal and primary benefit of this cooperative agreement program is to improve hospital surveillance methods for management of occupational health information and the prevention of exposures at participating hospitals. Hospitals will receive technical assistance in order to better comply with current OSHA and CDC Guidelines for Occupational Exposures to Tuberculosis, Bloodborne Pathogens and Vaccine-Preventable Diseases. Technical assistance will also be provided in the development of a standardized system of data management for the Employee Health data for their HCWs. Information provided by the participating hospitals about their needs will allow CDC to refine the NaSH system, including data collection forms and software, in order to make the NaSH system more suitable for each collaborating hospital.

Purpose

The purpose of this cooperative agreement is to assist hospitals to improve their current methods of assessing rates and reducing transmission of occupationally-acquired infections and other occupationally-related adverse medical outcomes in their facilities. With a comprehensive, organized surveillance system, hospitals will be able to systematically monitor trends in exposures, assess the risk for occupational infection and injury, and evaluate preventive measures including engineering controls work practices, protective equipment, and postexposure prophylaxis to prevent occupationally-acquired infections.

Program Requirements

In conducting activities to achieve the purpose of this cooperative agreement, the recipient will be responsible for the activities under A. below, and CDC will be responsible for conducting activities under B. below.

A. Recipient Activities

1. Improve its surveillance system for occupational exposures and infections in order to have a comprehensive and integrated surveillance system that includes: (a) Immunizing HCWs; (b) periodic tuberculin skin testing; (c) reporting, follow-up, and management of occupational blood/body fluid and bloodborne exposures; (d) reporting, management, and follow-up of exposures to, and infections with, measles, mumps, rubella, influenza, varicella, and TB; (e) reporting, management, and follow-up of non-infectious occupational injuries (e.g., sprains, back injuries).

2. Assess the level of needlestick reporting and distribute the ''Health Care Worker Survey Form'' for HCWs in occupational groups with higher risk of needlesticks.

3. Attend a single planning/training meeting in Atlanta.

Optional Recipient Activity:

4. Recipients may elect to collect and send blood specimens from source patients and HCWs involved in exposures to hepatitis C virus (HCV) to CDC for PCR testing for HCV RNA.

B. CDC Activities

1. Modify the NaSH surveillance system as requested by the recipients to maximize its usefulness to collaborating hospitals.

2. Provide technical assistance in the conduct of the surveillance program.

3. Provide technical assistance in the improvement of on-site hospital data management systems, such as developing data fields customized to the institution, etc.

4. Provide training regarding the use and adaptation of NaSH software to personnel involved in data management at the participating hospitals.

5. Assist in the coordination of data analysis, dissemination, and presentation of aggregated data.

6. CDC will perform:—For those hospitals that elect to send specimens to CDC for additional HCV testing and after appropriate informed consents are obtained—(a) supplemental testing and PCR testing for HCV RNA of source-patients who are anti-HCV positive and (b) PCR testing for HCV RNA at 3 and 6 month follow-up of HCWs exposed to these source patients. PCR testing for HCV is currently not available for commercial use in hospitals.

Technical Reporting Requirements

An original and two copies of progress reports must be submitted to CDC, semiannually. Progress reports are due no later than 30 days after each reporting period. The semiannual progress reports should include annual data (e.g., inpatient days, FTEs for some occupational groups) to calculate rates for the events for which surveillance is conducted in this system. Progress reports should also address progress toward overall objectives as represented in the Purpose and Recipient Activities sections of this announcement.

A final performance report and financial status report are due no later than 90 days after the end of the project period. Please send all reports or other correspondence to: Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–18, Room 314, Atlanta, Georgia 30305.

Application Content

Narrative

All applicants must develop their applications in accordance with the Public Health Service (PHS) Form 5161–1, information contained in this program announcement, and the instructions outlined below. Also, the narrative must be limited to 10 pages excluding appendices and should include the following:

1. Background information about the facility including: Eligibility requirements (documentation about surveillance system or program for occupational exposures to HCWs which includes a written protocol, plan, or policy). Provide the names and job titles for all personnel in the Employee Health and Infection Control Departments of the medical center. Applicant should provide information about: (1) The patient population (i.e., annual number of outpatient visits, inpatient admissions, patients with HIV/AIDS, and patients with TB); (2) the HCW population (i.e., total number of HCWs, number of nurses, physicians, and housekeepers); and (3) the occupational exposures in previous year (i.e., number of exposure-events and HCWs exposed to measles, varicella and TB; total number of percutaneous injuries and number of percutaneous injuries involving source patients infected with HIV and with HCV.)

2. Information about how the project is to be organized, staffed, and managed. This information should demonstrate an understanding of important events or tasks and their management. Include the names and proposed duties of professional personnel assigned to the project and resumes with information on education, background, recent experience, and specific scientific or technical accomplishments. The approximate percentage of time each individual will be available for this project must be stated. The proposed staff hours for each individual should be allocated against each project task or subtask.

3. Information about the facilities and computer equipment to be used in the performance of the cooperative agreement.

4. The objectives of the proposed project which are consistent with the purposes of the cooperative agreement and which are measurable and time-phased.

5. The methods which will be used to accomplish the objectives of the cooperative agreement. Describe activities and methods and supporting resources already in place and/or planned, including capacity and experience to coordinate data collection and analysis.

6. An evaluation plan to monitor progress toward the achievement of the proposed objectives.

7. Letters of support to demonstrate appropriate collaboration with other departments, divisions, etc., in the hospital, if applicable, (e.g., administrative officers, employee health, infectious diseases, and department chair).

8. A budget which is reasonable and consistent with the purpose and objectives of the cooperative agreement. All budget items should be itemized and items individually justified.

The application should be presented in a manner which demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

Format

Pages must be clearly numbered, and a complete index to the application and its appendices must be included. Please begin each separate section on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be typewritten, single-spaced, with unreduced type on 8½″ by 11″ paper, with at least 1″ margins, headings and footers, and printed on one side only.

Evaluation Criteria

Applications will be reviewed and evaluated based on the following criteria: (Total 100 points)

1. The applicant's understanding of the purpose of the proposed program objectives and the willingness to cooperate with CDC. (20 points)

2. The extent to which the applicant demonstrates understanding of the need for systematic and integrated surveillance, and for utilizing data to assist in prevention of occupational transmission of bloodborne infections, vaccine-preventable diseases, TB, and other occupational hazards. (15 points)

3. The extent that the applicant has the organizational structure, administrative support, and ability to access appropriately defined target populations. (10 points)

4. A statement of the applicant's demonstrated capabilities and experience in conducting surveillance of occupational exposures and infections. (15 points)

5. The adequacy of the plans to coordinate and conduct the project objectives described under recipient activities and supporting evidence that applicant can successfully perform these activities. (25 points)

6. The degree to which the proposed objectives are consistent with the defined purpose of this program, specific, measurable, and time-phased. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in proposed research. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) the proposed justification when representation is limited or absent; (c) a statement as to whether the design of the study is adequate to measure differences when warranted; and (d) documentation of plans for recruitment and outreach for study participants that includes the process of establishing partnerships with community(ies) and recognition of mutual benefits. (15 points)

7. Human Subjects: If the proposed project involves human subjects, whether or not exempt from the DHHS regulations, the extent to which adequate procedures are described for the protection of human subjects. Recommendations on the adequacy of protections include: (a) Protections appear adequate and there are no comments to make or concerns to raise, (b) protections appear adequate, but there are comments regarding the protocol, (c) protections appear inadequate and the ORG has concerns related to human subjects, (d) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable. (not scored)

8. The extent to which the budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds. (not scored)

Executive Order Review 12372 Review

Applicants are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for State and local review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions in the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications to CDC, they should forward them to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, Georgia 30305, no later than 30 days after the application deadline date. The granting agency does not guarantee to ''accommodate or explain'' for State process recommendations it receives after that date.

Public Health System Reporting Requirement

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate State or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State or local health agency is determined by the applicant. The following information must be provided:

A. A copy of the face page of the application (SF 424).

B. A summary of the project that should be titled ''Public Health System Impact Statement'' (PHSIS), not to exceed one page, and should include the following:

1. A description of the population to be served.

2. A summary of the services to be provided.

3. A description of the coordination plans with the appropriate State or local health agencies.

If the State and/or local health official desires a copy of the entire application, it may be obtained from the State Single Point of Contact (SPOC) or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Approval for data collection initiated under this cooperative agreement is going through the Office of Management and Budget (OMB) reports clearing process.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the DHHS Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and form provided in the application kit.

Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, dated Friday, September 15, 1995.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (revised 5/96, OMB Number 0937–0189) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, on or before August 22, 1997.

1. Deadline: Applications shall be considered to meet the deadline if they are either: a. Received on or before the deadline date; or b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will NOT be acceptable proof of timely mailing.)

2. Late applications: applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561.

You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 786. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–18, Room 314, Atlanta, Georgia 30305, telephone (404) 842–6595, or through the Internet or CDC WONDER electronic mail at: lxt1@cdc.gov. Programmatic technical assistance may be obtained from Scott Campbell, R.N., MSPH, or Denise Cardo, M.D., HIV Infections Branch, Hospital Infections Program, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop E–68, Atlanta, Georgia 30333, telephone (404) 639–6425, or through the Internet or CDC WONDER electronic mail at: sic3@cdc.gov.

You may obtain this and other CDC announcements from one of two Internet sites on the actual publication date: CDC's homepage at http://www.cdc.gov or at the Government Printing Office homepage (including free on-line access to the **Federal Register** at http://www.access.gpo.gov).

Please refer to Program Announcement Number 786 when requesting information and submitting an application on the Request for Assistance.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512-1800.

Dated: July 15, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–19060 Filed 7–18–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Order/Notice to Withhold Income for Child Support Support.

OMB No.: 0970–0154.

Description: The child support enforcement agency needs the information to process court/tribunal administered direct income withholding orders to collect support. The form will provide employers with the required amounts to deduct child support payment from an employee's/obligor's income.

Respondents: State, Local or Tribal Govt.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Order/Notice	54	1,620	.1666	14,579

Estimated Total Annual Burden Hours: 14,579.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the

information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 15, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–19075 Filed 7–18–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Emergency Temporary Assistance for Needy Families Data Report.

OMB No.: New Request.

Description: This information is being collected to meet the statutory requirements of section 411 of the Social Security Act and section 116 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. It consists of disaggregated demographic and program information that will be used to determine participation rates and other statutorily required indicators for the Temporary Assistance for Needy Families (TANF) program.

Respondents: States, Puerto Rico, Virgin Islands, Guam and the District of Columbia.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Data Report	54	4	451	97,416

Estimated Total Annual Burden Hours: 97,416.

Additional Information: ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by September 1, 1997. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Driscoll at (202) 401–9313.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Dated: July 18, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–19068 Filed 7–18–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0215]

Babineaux's Veterinary Products, Inc., et al.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of one new animal drug application (NADA) held by Babineaux's Veterinary Products, Inc., and two NADA's held by Schein Pharmaceutical, Inc. / Steris Laboratories, Inc. The sponsors requested voluntary withdrawal of approval of the NADA's because the products are no longer being marketed. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing those portions which reflect approval of these NADA's.

EFFECTIVE DATE: July 31, 1997

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: Babineaux's Veterinary Products, Inc., 6425 Airline Hwy., Metairie, LA 70003, is the sponsor of NADA 46–147 Dirocide (diethylcarbamazine citrate) Syrup. Schein Pharmaceutical, Inc. / Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043–4705, is the sponsor of NADA 48–391 phenylbutazone injection and NADA 49–183 oxytocin injection. The sponsors requested withdrawal of approval of the NADA's under 21 CFR 514.115(d) because the products are no longer being marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 46–147, 48–391, and 49–183 and all supplements and amendments thereto is hereby withdrawn, effective July 31, 1997.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 510.600, 520.622b, 522.1680, and 522.1720 to reflect

withdrawal of approval of these NADA's.

Dated: July 11, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–19065 Filed 7–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97E–0107]

Determination of Regulatory Review Period for Purposes of Patent Extension; ProstaScint™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ProstaScint™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biologic 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 human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biologic product, ProstaScint™ (capromab pendetide). ProstaScint™ is indicated as a diagnostic imaging agent in newly-diagnosed patients with biopsy-proven prostate cancer, thought to be clinically-localized after standard diagnostic evaluation (e.g., chest x-ray, bone scan, CT scan, or MRI), who are at high-risk for pelvic lymph node metastases. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ProstaScint™ (U.S. Patent No. 5,162,504) from the Cytogen Corp., and the Patent and Trademark Office requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated April 10, 1997, FDA advised the patent and Trademark office that this human biologic product had undergone a regulatory review period and that the approval of ProstaScint™ 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 ProstaScint™ is 2,561 days. Of this time, 1,906 days occurred during the testing phase of the regulatory review period, while 655 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: October 26, 1989. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 26, 1989.

2. *The date the application was initially submitted with respect to the human biologic product under section 351 of the Public Health Service Act*: January 13, 1995. The applicant claims January 12, 1995, as the date the product license application (PLA) for ProstaScint™ (PLA 94–0041) was initially submitted. However, FDA records indicate that PLA 94–0041 was submitted on January 13, 1995.

3. *The date the application was approved*: October 28, 1996. FDA has verified the applicant's claim that PLA 94–0041 was approved on October 28, 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 its application for patent extension, this applicant seeks 353 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 19, 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 January 20, 1998 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: July 8, 1997.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 97–19011 Filed 7–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0301]

Ube Industries (America), Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ube Industries (America), Inc., has filed a petition proposing that the food additive regulations be amended to change the melting point range specifications for Nylon 6/66 resins intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4548) has been filed by Ube Industries (America), Inc., c/o Center for Regulatory Services, 2347 Paddock Lane, Reston, VA 20191. The petition proposes to amend the food additive regulations in § 177.1500 *Nylon resins* (21 CFR 177.1500), for Nylon 6/66 resins described in the table in paragraph (b), item 4.2, to change the melting point range from 380–400 °F to 380–425 °F.

The agency has determined under 21 CFR 25.24(9) that this action is of the 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.

Dated: July 8, 1997.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–19127 Filed 7–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92G–0432]

Yandilla Mustard Oil Enterprise Pty. Ltd.; Withdrawal of GRAS Affirmation Petition

AGENCY: Food and Drug Administration., HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 0G0359) proposing that low erucic acid mustard seed oil be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

FOR FURTHER INFORMATION CONTACT: Nega Beru, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3097.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 22, 1993 (58 FR 5736), FDA announced that a petition had been filed by Yandilla Mustard Oil Enterprise Pty. Ltd., Wallendbeen, NSW 2588, Australia. This petition proposed that low erucic acid mustard seed oil be affirmed as GRAS for use as a direct human food ingredient.

In response to repeated requests from the petitioner urging action, on October 4, 1994, the agency informed the petitioner that a decision on whether the agency concurs with the petitioner's determination that Yandilla mustard seed oil is GRAS is not likely to be forthcoming for some time. The agency cited resource constraints and the work that still needed to be done in order to resolve certain safety issues raised by the petition. No response was received from the petitioner.

By letter dated April 4, 1996, FDA reiterated to the petitioner why the agency is unlikely to reach a decision on the petition in the near future and further informed the petitioner of an agency initiative to remove from its pending petition inventory those petitions on which the agency is unable to reach closure in the near future. In that letter, the agency requested that the petitioner withdraw the petition, without prejudice to a future filing, and asked the petitioner to inform the agency of its decision within 30 days of the date of the letter; the agency added that failure to respond within that time would be considered tacit approval to withdraw the petition. More than 1 year has passed since the letter was sent and the firm has not responded. Indeed, the last communication from the petitioner was in June 1994. Therefore, the agency is announcing that it considers this petition to be withdrawn by the firm, without prejudice to a future filing.

Dated: July 2, 1997.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–19123 Filed 7–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N–0262]

Merck & Co., Inc., et al.; Withdrawal of Approval of 39 New Drug Applications, 13 Abbreviated Antibiotic Applications, and 46 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 25, 1997 (62 FR 34297). The document announced the withdrawal of approval of 39 new drug applications (NDA's), 13 abbreviated antibiotic applications (AADA's), and 46 abbreviated new drug applications (ANDA's). The document inadvertently withdrew approval of NDA 50–678 for DYNABAC (dirithromycin tablets) held by Lilly Research Laboratories, Lilly Corporate Center, Indianapolis, IN 46285. This document confirms that approval of NDA 50–678 is still in effect, and that the withdrawal of approval of the NDA was in error.

EFFECTIVE DATE: June 25, 1997.

FOR FURTHER INFORMATION CONTACT: Olivia A. Vieira, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20852, 301–594–2041.

In FR Doc. 97–16609 appearing on page 34297 in the issue of Wednesday, June 25, 1997, the following correction is made: On page 34298, in the table, the entry for NDA 50–678 is removed.

Dated: July 11, 1997.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–19012 Filed 7–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meetings:

Name of SEP: Changes in Functioning Among Mentally Retarded Adults.

Date: July 31–August 1, 1997.

Time: July 31–7:00 p.m.–10:00 p.m.; August 1–8:00 a.m.–adjournment.

Place: Ramada Inn Newark Airport, 550 Route 1 South, Newark, New Jersey 07144.

Contact Person: Norman Chang, Ph.D, Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.

Name of SEP: Neurobiology of Autism.

Date: August 6–7, 1997.

Time: August 6–7:00 p.m.–10:00 p.m.; August 7–8:00 a.m.–adjournment.

Place: Wales Hotel, 1295 Madison Avenue, New York, New York 10029.

Contact Person: Norman Chang, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1458.

Purpose: To evaluate and review grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health)

Dated: July 15, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–19078 Filed 7–18–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Growth and Development of the Nervous System: Molecular Mechanisms.

Date: August 5–6, 1997.

Time: August 5—7:30 p.m.–10:00 p.m.; August 6—8:30 a.m.–adjournment.

Place: Hyatt Regancy Hotel—New Brunswick, Two Albany Street, New Brunswick, New Jersey.

Contact Person: Gopal Bhatnagar, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.

Purpose: To evaluate and review grant a grant applications. This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research, and 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: July 15, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–19079 Filed 7–18–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Spina Bifida: Cognitive and Neurological Variability.

Date: July 22–23, 1997.

Time: July 22—7:30 p.m.–10:00 p.m.; July 23—8:30 a.m.–adjournment.

Place: Marriott Hotel at Medical Center, 6580 Fannin Street, Houston, Texas 77030.

Contact Person: Anne Krey, Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.

Purpose: To evaluate and review a grant application.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. (93.864, Population Research and No. 93.865, Research for Mothers and Children), National Institutes of Health)

Dated: July 15, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–19080 Filed 7–18–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

Name of SEP: SBIR Phase II Topic 41—Solid State Detector for Gas Chromatography (Telephone Conference Call).

Date: July 21, 1997.

Time: 2:00 p.m.

Place: National Institute of Environmental Health Sciences, East Campus, Building 4401, Room 3446, Research Triangle Park, NC 27709.

Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Linking Environmental Agents, Oxidative Damage and Disease.

Date: July 30– August 1, 1997.

Time: 8:00 p.m.

Place: National Institute of Environmental Health Sciences, Radisson Governors Inn, 54

and I–40 at Davis Drive, Research Triangle Park, NC 27709.

Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than fifteen days prior to these meetings due to the urgent need to meet timing limitations imposed by the grant/contract review and funding cycle.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: July 15, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–19081 Filed 7–18–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 31, 1997.
Time: 9:00 a.m.
Place: NIH, Rockledge 2, Room 4200, Telephone Conference.
Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, Maryland 20892, (301) 435–1219.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 31, 1997.
Time: 2:30 p.m.
Place: NIH, Rockledge 2, Room 4200, Telephone Conference.
Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, Maryland 20892, (301) 435–1219.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.
Date: August 5, 1997.
Time: 11:30 a.m.
Place: NIH, Rockledge 2, Room 4140, Telephone Conference.
Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 6701 Rockledge Drive, Room 4140, Bethesda, Maryland 20892, (301) 435–1214.

Name of SEP: Microbiological and Immunological Sciences.
Date: August 12, 1997.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4182, Telephone Conference.
Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Clinical Sciences.
Date: August 12, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4106, Telephone Conference.
Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Biological and Physiological Sciences.
Date: August 12, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4152, Telephone Conference.
Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda, Maryland 20892, (301) 435–1720.

Name of SEP: Biological and Physiological Sciences.
Date: August 13, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5202, Telephone Conference.
Contact Person: Dr. Anita Miller Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.

Name of SEP: Biological and Physiological Sciences.
Date: August 14, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 5122, Telephone Conference.
Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1265.

Name of SEP: Clinical Sciences.
Date: August 15, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4106, Telephone Conference.
Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Microbiological and Immunological Sciences.
Date: August 1, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, Maryland 20892, (301) 435–1219.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Date: July 15, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–19077 Filed 7–18–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Cancellation of Receipt Date for SAMHSA Conference Grant Applications

AGENCY: Center for Substance Abuse Prevention and Center for Substance Abuse Treatment, SAMHSA.

ACTION: Cancellation of September 10, 1997 application receipt date.

SUMMARY: SAMHSA's Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT) are canceling the September 10, 1997, receipt date for applications for the following grant programs:

CSAP's Knowledge Dissemination Conference Grants (CFDA No. 93.174)
CSAT's Substance Abuse Treatment Conference Grants (CFDA No. 93.218)

To be placed on a mailing list for an application kit and current programmatic guidelines, potential applicants should contact: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, Maryland 20847–2345, Tele:

1–800–729–6686; TDD: 1–800–487–4889, Web Address: www.health.org.

For information regarding future receipt dates or for programmatic assistance, potential applicants should contact the following individuals:

CSAP: Ms. Luisa del Carmen Pollard, Division of Prevention Application and Education, CSAP, Rockwall II Building, Suite 800, 5600 Fishers Lane, Rockville, Maryland 20857, Tele: (301) 443–0377, E-mail address: lpollard@samhsa.gov

CSAT: Mr. George Kanuck, Office of Evaluation, Statistical Analysis and Synthesis, CSAT, Rockwall II Building, Suite 840, 5600 Fishers Lane, Rockville, Maryland 20857, Tele: (301) 443–4440, E-mail address: gkanuck@samhsa.gov

Dated: July 14, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–19010 Filed 7–18–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting; Pursuant to Public Law 92–463, Notice is Hereby Given of the Teleconference Meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in July 1997

A portion of the meeting will be open and include roll call, general announcements and a discussion of the minutes of the January 27, 1997 combined meeting of the Agency's five National Advisory Committees (SAMHSA National Advisory Council, Center for Substance Abuse Prevention National Advisory Council, Center for Substance Abuse Treatment National Advisory Council, Center for Mental Health Services National Advisory Council, and the Advisory Committee for Women's Services). Attendance by the public will be limited to space available. Public comments are welcome during the open session. Please communicate with the individual listed as contact below for guidance if you would like to make comments or if you have a disability which requires reasonable accommodation.

The meeting will also include the review, discussion and evaluation of individual contract proposals. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, section 10(d).

A summary of the meeting and a roster of Council members may be obtained from: Ms. Susan E. Day, Program Assistant, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 12C–15, Rockville, Maryland 20857. Telephone: (301) 443–4640.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: SAMHSA National Advisory Council.

Meeting Date: July 29, 1997.

Place: Substance Abuse and Mental Health Services Administration, Parklawn Building, Conference Room 12–94, 5600 Fishers Lane, Rockville, Maryland 20857.

Open: July 29, 1997, 2:00 p.m. to 2:45 p.m.

Closed: July 29, 1997, 2:45 p.m. to 3:30 p.m.

Contact: Toian Vaughn, Executive Secretary, Room 12C–15, Parklawn Building, Telephone: (301) 443–4640 and FAX: (301) 443–1450.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: July 16, 1997.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–19129 Filed 7–18–97; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of the SAMHSA Special Emphasis Panel I in August.

A summary of the meetings and rosters of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individuals named as Contacts for the meetings listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: August 4–6, 1997.

Place: Willard International Hotel, 1401 Pennsylvania Avenue, NW, The Douglass Conference Room, Washington, DC 20004–1010.

Closed: August 4–5, 1997 9:00 a.m.–5:00 p.m., August 6, 1997 9:00 a.m.–adjournment.

Panel: Center for Mental Health Services Homelessness Prevention: Phase II.

Contact: Michael S. Backenheimer, Ph.D., Room 17–89, Parklawn Building, Telephone: 301–443–4783 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: August 4–8, 1997.

Place: Willard International Hotel, 1401 Pennsylvania Avenue, NW, The Taft Conference Room, Washington, DC 20004–1010.

Closed: August 4–7, 1997 9:00 a.m.–5:00 p.m.

August 8, 1997 9:00 a.m.–adjournment.

Panel: Center for Substance Abuse Treatment, Competitive Supplements for Child Care Services.

Contact: Jeanette G. Chamberlain, Ed.D., R.N., Room 17–89, Parklawn Building, Telephone: 301–443–4590 and FAX: 301–443–3437.

Dated: July 16, 1997.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–19128 Filed 7–18–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4180–C–02]

Community Development Block Grant Program for Indian Tribes and Alaska Native Villages Fiscal Year 1997 Notice of Funding Availability; Amendment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year 1997; amendment.

SUMMARY: On April 11, 1997 (62 FR 17976), HUD published a notice announcing the availability of $67,453,491 in Fiscal Year (FY) 1997 funds for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (ICDBG Program). The April 11, 1997 notice provided that $2 million of the available FY 1997 ICDBG Program funds would be retained for grants to alleviate or remove imminent threats to health and safety that require an immediate

solution. This notice increases the amount retained to meet the funding needs of imminent threat applications to $2,450,000. Further, the amounts allocated to the Area Offices of Native American Programs for single purpose grant funding have been proportionately reduced to reflect the increase in the retained amount.

DATES: This notice does not affect the deadline date provided in the June 6, 1997 NOFA. Applications must still be received by the appropriate Area ONAP of the HUD Office of Native American Programs no later than 3:00 p.m. (local time) on Friday, July 25, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Barth, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, P.O. Box 36003, 450 Golden Gate Avenue, San Francisco, CA 94102; telephone (415) 436–8122 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On April 11, 1997 (62 FR 17976), HUD published a notice announcing the availability of $67,453,491 in Fiscal Year (FY) 1997 funds for the Community Development Block Grant Program for Indian Tribes and Alaska native Villages (the ICDBG Program). The primary objective of the ICDBG Program is the development of viable Indian and Alaskan native communities, including decent housing, a suitable living environment, and economic opportunities principally for persons of low- and moderate-income. In the body of the April 11, 1997 Notice of Funding Availability (NOFA) is information concerning the following: (1) The purpose of the NOFA; (2) eligible applicants and activities; (3) available funding amounts; (4) application submission requirements; (5) the selection criteria; and (6) how applicants will be notified of results.

The April 11, 1997 NOFA announced that $2 million of the available FY 1997 ICDBG Program funds would be retained to alleviate or remove imminent threats to health and safety that require an immediate solution. Given the unusually severe weather conditions experienced by Indian tribes in the upper Midwest last winter and spring, requests for imminent threat assistance resulting from these conditions have substantially exceeded earlier estimates based on historical experience.

In order to have funds available for the possibility of additional imminent threat requests prior to the availability of FY 1998 ICDBG Program funds, HUD is increasing the amount retained under the FY 1997 NOFA from $2,000,000 to $2,450,000. The amounts allocated to the HUD Area Offices of Native American Programs for single purpose grant funding have been proportionately reduced to reflect the increase in the retained imminent threat amount.

Accordingly, FR Doc. 97–9307, the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages Fiscal Year 1997 Notice of Funding Availability, published in the **Federal Register** on April 11, 1997 (62 FR 17976), is amended as follows:

1. On page 17978, first and middle columns, under Section III, paragraphs (a)(2) and (a)(4)(i), are revised to read as follows:

III. Funding and Eligibility

(a) * * *

(2) *Allocations.* The requirements for allocating funds to Area ONAPs responsible for program administration are found at 24 CFR 953.101. Following these requirements, the allocations for FY 1997 are as follows:

Eastern/Woodlands—$5,146,792

Southern Plains—$12,168,709

Northern Plains—$10,264,775

Southwest—$27,990,710

Northwest—$3,932,269

Alaska—$5,500,236

Total—$65,003,491

The total allocation includes $453,491 in unused funds from the amount reserved by the Assistant Secretary in Fiscal Year 1996 for imminent threat grants. As indicated in Section III.(a)(4) below, $2,450,000 will be retained to fund imminent threat grants.''

* * * * *

(4) *Imminent Threats.* (i) The criteria for grants to alleviate or remove imminent threats to health or safety that require an immediate solution are described at 24 CFR part 953, subpart E. Please note that the problem to be addressed must be such that an emergency situation would exist if it were not addressed. In accordance with the provisions of 24 CFR part 953, subpart E, $2,450,000 will be retained to meet the funding needs of imminent threat applications submitted to any of the Area ONAPs. The grant ceiling for imminent threat applications for FY 1997 is $ 350,000. This ceiling is established pursuant to the provisions of § 953.400(c).

* * * * *

Dated: July 16, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–19121 Filed 7–18–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–010–1430–01; AZA–26226]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Coconino County, Arizona, have been examined and found suitable for classification for lease to the town of Fredonia under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The town of Fredonia proposes to use the land for a recreation site which generally crosses the following described lands:

Gila and Salt River Meridian, Arizona

T. 41 N., R. 2 W.,
Sec. 1, S½SW¼;
Sec. 10, N½NE¼, SW¼NE¼, S½NW¼;
Sec. 11, N½N½;
Sec. 12, W½NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 13, E½NE¼, SW¼NE¼, NE¼SW¼, S½SW¼, NW¼SE¼;
Sec. 22, N½;
Sec. 23, N½NE¼, SW¼NE¼, S½NW¼;
Sec. 24, NW¼NW¼NW¼.

Containing approximately 45 acres.

The lands are not needed for Federal purposes. Lease is consistent with current BLM land use planning and would be in the public interest. The lease, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a recreation site. Comments on the classification are restricted to whether the land is physically suited for the

proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a recreation site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

DATES: Until September 4, 1997, interested persons may submit comments regarding the proposed lease or classification of the lands to the Field Manager, Arizona Strip Field Office, 345 East Riverside Drive, St. George, Utah 84790.

FOR FURTHER INFORMATION CONTACT: Laurie Ford, Realty Specialist, Bureau of Land Management, Arizona Strip Field Office, 345 East Riverside Drive, St. George, Utah 84790 or phone (801)688–3271.

Dated: July 7, 1997.

Raymond D. Mapston,

Acting Field Manager.

[FR Doc. 97–19034 Filed 7–18–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMO–17–1430–01; NMNM 96975]

Notice of Direct Sale of Public Land, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

New Mexico Principal Meridian

T. 8 N., R. 16 W.,

Sec. 33, E½E½E½E½E½E½.

Containing 10 acres, more or less.

The land will be sold to Pitchford Properties of Cibola County, New Mexico. The sale will be issued for the purpose of resolving an unauthorized use. The subject land was inadvertently occupied by private land owners. The disposal is consistent with the Bureau's planning efforts, Rio Puerco Resource Management Plan, State and local government programs, and applicable regulations.

DATES: Interested parties may submit comments on the direct sale by September 4, 1997.

ADDRESSES: Comments should be sent to the District Manager, BLM, Albuquerque District Office, 435 Montano NE, Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Joseph Jaramillo, BLM, Rio Puerco Resource Area at (505) 761–8779.

SUPPLEMENTARY INFORMATION: The direct sale will be subject to:.

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document or other document of conveyance, is available for review at this BLM office.

Publication of this notice in the **Federal Register** will segregate the public land from appropriation under the public land laws including the mining laws but not the mineral leasing laws. This segregation will terminate upon the issuance of a patent or other document of conveyance, 270 days from date of publication of this notice in the **Federal Register** upon publication of a Notice of Termination, whichever occurs first.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 9, 1997.

Sue E. Richardson,

Associate District Manager.

[FR Doc. 97–19033 Filed 7–18–97; 8:45 am]

BILLING CODE 4310–AB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–942–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT:

James B. McCavitt, Acting Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2135 Butano Drive, Sacramento, CA 95825–0451, (916) 978–4310.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridian, California

T. 25 N., R. 7 W.,—Supplemental plat of the NE¼ of section 28, accepted June 18, 1997, to meet certain administrative needs of the BLM, Redding Resource Area.

T. 4 N., R. 27 E.,—Dependent resurvey and retracement survey, (Group 1239) accepted June 26, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Bishop Resource Area.

T. 29 S., R. 40 E.,—Corrective dependent resurvey, dependent resurvey, subdivision, and metes-and-bounds survey, (Group 1261) accepted June 30, 1997, to meet certain administrative needs of the BLM, California Desert District, Ridgecrest Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: July 11, 1997.

James B. McCavitt,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 97–19035 Filed 7–18–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Government-Owned Invention; Availability for Licensing

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of a Government-owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government, as represented by the Department of the Interior, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Technical and licensing information on this invention may be obtained by writing to: Dr. Donald Ralston, Research & Technology Transfer Liaison, Bureau of Reclamation, 1849 C Street, NW, Washington, D.C. 20240. Any request for information should include the Title for the relevant invention as indicated below.

FOR FURTHER INFORMATION CONTACT: Dr. Donald Ralston at (202) 208–5671.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation may enter into a Cooperative Research and Development Agreement (CRADA) with the licensee to perform further research on the invention for purposes of commercialization. The title of the invention available for licensing is:

Instant, Chemical-Free Dechlorination of Water Supplies

The invention is a process that uses a catalyst composed of a Raney metal doped with one or more transition metal oxides to instantly and continuously decompose aqueous trace chlorine into chloride ion and oxygen at room temperature. Applications include chlorine damage reduction in industrial reverse osmosis membranes, dechlorination of residential drinking water, and chlorine removal for aquarium systems.

Dated: July 15, 1997.

Stanley L. Ponce,

Research Director.

[FR Doc. 97–19074 Filed 7–18–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: Comments must be submitted on or before August 20, 1997, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information for noncoal reclamation, found at 30 CFR part 875. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR part 875, which is 1029–0103.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on April 23, 1997 (62 FR 19810). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR part 875, which is 1029-0103.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on April 23, 1997 (62 FR 19810). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Noncoal reclamation, 30 CFR part 875.

OMB Control Number: 1029–0103.

Summary: This Part establishes procedures and requirements for State and Indian tribes to conduct noncoal reclamation under abandoned mine land funding. The information is needed to assure compliance with the Surface Mining Control and Reclamation Act of 1977.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: State governments and Indian Tribes.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

Addresses: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503.

Dated: July 16, 1997.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 97–19106 Filed 7–18–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[A.G. Order No. 2095–97]

RIN 1105–AA50

Final Guidelines for Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act

AGENCY: Department of Justice.

ACTION: Final guidelines.

SUMMARY: The United States Department of Justice (DOJ) is publishing Final Guidelines to implement Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

EFFECTIVE DATE: July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Bonnie J. Campbell, Director, Violence Against Women Office, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, 202–616–8894.

SUPPLEMENTARY INFORMATION: Megan's Law, Public Law 104–145, 110 Stat. 1345, amended subsection (d) of section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071), which contains the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (hereafter referred to as the ''Jacob Wetterling Act'' or ''the Act''). The provisions of the Jacob Wetterling Act amended by Megan's Law relate to the release of registration information. The changes in these provisions require conforming changes in the final guidelines published by the Department of Justice on April 4, 1996 in the **Federal Register** (61 FR 15110) to implement the Jacob Wetterling Act. In addition, other changes in the guidelines are necessary to resolve questions that have arisen in the Justice Department's review of state sex offender registration programs and discussion of compliance requirements with the states.

Megan's Law makes two changes in the Jacob Wetterling Act: (1) It eliminates a general requirement that information collected under state registration programs be treated as private data, and (2) it substitutes mandatory language for previously permissive language concerning the release of relevant information that is necessary to protect the public concerning registered offenders.

The time frame for compliance with the Megan's Law amendment to the Jacob Wetterling Act is the general time frame for compliance with the Act specified in section 170101(f) (42 U.S.C. 14071(f))—three years from the Act's original enactment date of September 13, 1994, subject to a possible extension of two years for states which are making good faith efforts to come into compliance with the Act. States that fail to comply with the Megan's Law provisions or other provisions of the Jacob Wetterling Act within the specified time frame will be subject to a mandatory 10% reduction of Byrne Formula Grant funding (under 42 U.S.C. 3756), and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance.

In addition to changes reflecting the Megan's Law amendment, these final guidelines include changes that clarify other provisions of the Jacob Wetterling Act. Since the publication of the original guidelines for he Act, a large majority of the states have submitted enacted or proposed sec offender registration provisions to the Department of Justice for preliminary review concerning compliance with the Act. This review process has raised a number of questions which indicate that additional guidance would be helpful. This revision of the guidelines attempts to address these questions. The main changes or additional clarifications concern the following issues:

1. The Jacob Wetterling Act provides that registration information is initially to be taken and submitted by ''the court'' or a ''prison officer.'' 42 U.S.C. 14071(b) (1) & (2). The purpose of this requirement is to ensure that a responsible official will obtain registration information near the time of release and transmit it to the registration agency. Some states assign this responsibility to probation or parole officers, who have functions relating to correctional matters or the execution of sentences, but who might not be regarded as prison officers or courts on a narrow reading of those terms. The revised guidelines make it clear that such assignments of responsibility to such officers are permissible under the Act.

2. The Act provides that, if a person required to register is released, then the responsible officer must obtain the registration information and forward it to the registration agency with three days of receipt. 42 U.S.C. 14071(b)(2). Many states, however, do not wait until the day of release to obtain registration information, but require offenders to provide this information some period of time (e.g. 30 days or 60 days) prior to release. The revised guidelines make it clear that, under the latter type of procedure, it is adequate if the registration information is forwarded no later than three days after release because that equally ensures the submission of registration information within the time frame contemplated by the Act.

3. As noted above, the Act requires that a responsible officer obtain and transmit the initial registration information. Some states provide that the responsible officer is to send the initial registration information concurrently to the state registration agency and to the appropriate local law enforcement agency, as opposed to transmitting the information exclusively to the state registration agency, which would then forward it to the appropriate local law enforcement agency. The revised guidelines make it clear that the concurrent transmission approach is allowed because that approach also results in the availability of the registration information at the state and local levels as contemplated by the Act.

4. The Act requires registrants to report changes of address within 10 days. 42 U.S.C. 14071(b)(1)(A). Most state registration programs do not require registrants to send change of address information directly to the state registration agency but provide that this information is to be submitted to a local law enforcement agency or other intermediary, which is then required to forward it to the state registration agency. The revised guidelines make it clear that providing for the submission of change of address information in this manner (through an intermediary) is allowed under the Act. Likewise, a state could provide for the submission of initial registration information by the responsible prison officer or court through an intermediary. *See* 42 U.S.C. 14071(b)(2).

5. The Act requires that the state registration agency notify local law enforcement agencies concerning the release or subsequent movement of registered offenders to their areas. 42 U.S.C. 14071(b) (2) and (4). The revised guidelines make it clear that states have discretion concerning the form this notice will take. Permissible options include, for example, written notice, electronic or telephonic transmission of registration information, and provision of on-line access to registration information.

6. The Act requires periodic address verification for registered offenders, through the return of nonforwardable address verification forms that are sent to the registered address. 42 U.S.C. 14071(b)(3). Some state registration programs do not have the state registration agency directly send or receive address verification forms but delegate that function to local law enforcement agencies. The revised guidelines clarify that this approach to periodic address verification is permitted under the Act, as long as state procedures ensure that the state registration agency will be promptly made aware if the verification process discloses that the registrant is no longer at the registered address. The revised guidelines also clarify that states, if they wish, may require personal appearance of the registrant at a law enforcement

agency to return an address verification form, as opposed to return of the form through the mail.

7. The Act contemplates the creation of a gap-free network of state registration programs, under which offenders who are registered in one state cannot escape registration requirements merely by moving to another state. *See, e.g.,* 42 U.S.C. 14071(b) (4) and (5). The revised guidelines effectuate this legislative objective by more clearly defining the obligation of states to register out-of-state offenders who move into the state.

8. The Act requires that released convicted offenders in the relevant offense categories be subject to registration and period address verification for at least 10 years. 42 U.S.C. 14071(b)(6). This requirement is unqualified, and the revised guidelines make it clear that a state is not in compliance if it allows registration obligations to be waived or terminated before the end of this period on such grounds as a finding of rehabilitation or a finding that registration (or continued registration) would not serve the purposes of the state's registration provisions. However, if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned, registration (or continued registration) is not required under the Act.

9. Where a person required to register is re-incarcerated for another offense or civilly committed, some states toll registration requirements during the subsequent incarceration or commitment. The revised guidelines clarify that this approach is consistent with the Act because tolling the registration period during confinement results in longer aggregate registration while the registrant is released. In addition, it is unnecessary to carry out address registration and verification procedures during confinement and doing so does not further the Act's objective of protecting the public from released offenders.

10. The Act prescribes more stringent registration requirements for a subclass of offenders characterized as ''sexually violent predators.'' *See* 42 U.S.C. 14071(a)(1) and (3)(C)–(E). Some states require that sexually violent predators be civilly committed, as opposed to being subject to more stringent registration requirements. The revised guidelines clarify that this approach may be allowed because it would be superfluous to carry out address registration and verification procedures while such an offender is committed.

11. The Act requires that the determination whether a person is (or is no longer) a ''sexually violent predator'' be made by the sentencing court. 42 U.S.C. 14071(a)(2). In light of the variation among states in court structure and assignments of judicial responsibility, the revised guidelines clarify that this requirement means only that the determination must be made by a court whose decision is legally competent to trigger the more stringent registration requirements prescribed for sexually violent predators by the Act. It does not mean that ''the sentencing court'' for purposes of the sexually violent predator determination must be the same court in which the offender was convicted for an underlying sexually violent offense.

12. The Act requires registration by persons convicted of a ''criminal offense against a victim who is a minor.'' 42 U.S.C. 14071(a)(1). One of the clauses in the Act's definition of this term covers ''criminal sexual conduct toward a minor.'' 42 U.S.C. 14071(a)(3)(A)(iii). The revised guidelines state explicitly that this includes incest offenses against minors. The Act's definition of ''criminal offense against a victim who is a minor'' also includes two clauses relating to solicitation offenses: ''solicitation of a minor to engage in sexual conduct,'' and ''solicitation of a minor to practice prostitution.'' 42 U.S.C. 14071(a)(3)(a)(iv) & (vi). The revised guidelines provide greater detail in explaining the solicitation offenses that state registration systems must cover to comply with these provisions.

13. The Act also requires registration by persons convicted of a ''sexually violent offense.'' 42 U.S.C. 14071(a)(1). It essentially provides that the term ''sexually violent offense'' means aggravated sexual abuse and sexual abuse as described in federal law or the state criminal code. 42 U.S.C. 14071(a)(3)(B). The revised guidelines clarify that states may comply with this requirement either by covering offenses that meet the federal law definition, or by covering comparable offenses under state law. The availability of the latter option is not limited to states that use the terms ''aggravated sexual abuse'' and ''sexual abuse'' or other specific terminology in referring to sex offenses in their criminal codes.

14. The revised guidelines clarify that the Act's time limits for reporting initial registration information and change of address information refer to the time within which the information must be submitted or sent, as opposed to the time within which it must be received by the state registration agency.

15. The Act requires criminal penalties for persons in the relevant offense categories who knowingly fail to register or keep registration information current. 42 U.S.C. 14071(c). The revised guidelines clarify that this neither requires states to allow a defense for offenders who were unaware of the legal obligation to register nor precludes states from doing so. As a practical matter, states can ensure that offenders are aware of their obligations through consistent compliance with the Act's provisions for advising offenders of registration requirements at the time of release and obtaining a signed acknowledgment that this information has been provided.

16. The revised guidelines clarify that the Act does not preclude states from taking measures for the security of registrants who have been relocated and provided new identities under federal or state witness protection programs because the Act does not require that the registration system records include the registrant's original name or the registrant's residence prior to the relocation.

17. The revised guidelines encourage states to require registration for all convicted offenders in the pertinent offense categories, including offenders convicted in federal, military, and Indian tribal courts, as well as offenders convicted in state courts.

18. The revised guidelines encourage states to ensure that their sex offender registration agencies are ''criminal justice agencies'' as defined in 28 CFR 20.3(c), to permit the free exchange of registration information between state registries and the FBI's records systems.

Subsequent to the enactment of Megan's Law, congress enacted additional legislation relating to sex offender tracking and registration in the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Public Law 104–236, 110 Stat. 3093 (hereafter referred to as the ''Pan Lychner Act''). The Pam Lychner Act includes, *inter alia,* amendments to the Jacob Wetterling Act affecting the duration of registration requirements, sexually violent predator certification, fingerprinting of registered offenders, address verification, and reporting of registration information to the FBI. The changes made by the Pam Lychner Act will be the subject of future guidelines. States have until three years from the Pan Lychner Act's enactment date of October 3, 1996 to come into compliance with the features of the Wetterling Act added by the Pam Lychner Act, subject to a possible two-year extension. These new provisions are not addressed in this publication.

Summary of Comments on the Proposed Guidelines

On April 4, 1997, the U.S. Department of Justice published Proposed Guidelines in the **Federal Register** (62 FR 16180) to implement Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. The comment period expired on June 3, 1997.

Following the publication of the Proposed Guidelines, the Department received seven comment letters, primarily from state officials and realtors' associations. These letters contained numerous comments, questions and recommendations, all of which were considered carefully in developing the Final Guidelines. A summary of the comments and responses to them are provided in the following paragraphs.

A. Notification Requirements

1. Duty To Notify

Three respondents expressed concern about the potential liability of real estate professionals with regard to the notification requirements. All three recommended that the guidelines specify that the sole responsibility for notification lies with the appropriate state law enforcement agency. No further clarification of the Act's provision on this issue is necessary, however. As two of the three respondents noted, ''[t]he federal statute is clear'' that the obligation to release information is placed on the designated state or local agency. Whether and to what extent real estate professionals may or must disclose information in real estate transactions is a matter of state law, and has no bearing on state compliance with the Act.

2. Notification When Sex Offender Moves Out

Two of the three same respondents suggested that communities should be notified when a sex offender moves out of an area. The guidelines do not address this issue because the Act itself does not. Thus, this matter is left to the discretion of the states.

B. Sexually Violent Predator

1. Definition

One respondent objected to the definition of ''sexually violent predator.'' The Act itself, however, contains definitions of ''sexually violent predator'' and the component term ''mental abnormality.'' The guidelines cannot alter definitions appearing in the statute. Since the Act does not define ''personality disorder,'' the guidelines already provide that the definition of this term is a matter of state discretion.

2. Tracking

One respondent commented that tracking for high-risk sexual predators should include electronic monitoring. The guidelines do not address this issue because the Act is concerned solely with registration programs and does not address electronic monitoring in any manner. States are free, however, to adopt electronic monitoring or other means of sex offender management.

C. Registration

1. Role of Courts

One respondent commented that it is not a function of a court to fingerprint, photograph, or obtain much of the personal information specified in the Act. The Act requires that the initial registration information be taken by ''the court'' or ''prison'' officers. The guidelines provide maximum flexibility consistent with the Act through a broad interpretation of those terms. Thus, for example, probation and parole officers, as well as judicial and correctional personnel in a narrower sense, may take initial registration information.

2. Timing of Transmittal of Registration Information

One respondent objected that allowing transmission of registration information up to three days after release would not ensure timely notification of an offender's impending release. The time rule for transmission of initial registration information under the Act and guidelines is an outer limit. Thus, states are free to require that the information be submitted at an earlier point.

3. Notification of Obligation To Register

One respondent stated that the guidelines suggest that offenders be advised at the time of release of their legal obligation to register and sign an acknowledgment. The respondent recommended that the obligation also should be explained at the time of a guilty plea, sentencing or initial registration, because not all registrants will be subject to incarceration. The notice of registration obligations and signed acknowledgement referred to by the respondent, however, are required explicitly by the Act itself. Moreover, the Act and guidelines impose the same requirements on all sentenced offenders at the time of release, regardless of whether they are released unconditionally from prison, or placed on parole, supervised release, or probation.

4. Address Verification and Tracking

One respondent stated that out-of-state or transient offenders could be better tracked and verified through technological solutions rather than through the mail. This respondent further recommended that states should be encouraged to use technology, such as location verification through automatic number identification and offender identification through pin numbers and passwords. The guidelines have not been changed to reflect these comments because the Act requires a particular address verification procedure, involving sending and returning an address verification form. Nothing in the guidelines or in the Act precludes states from adopting otherwise permissible supplemental address verification and tracking procedures, including the technological approaches suggested by the respondent.

5. Scope of Registration

One respondent recommended that state registration and notification should go beyond address registration. In particular, the respondent stated that the public should have access to information about where an offender works, law enforcement should know if the offender has had any contact with the law, the offender's phone number should be updated for verifications, and the offender should report compliance with treatment or counseling sessions. The guidelines have not been revised on the basis of these comments because the Act generally does not require these particular measures. Nothing in the guidelines or in the Act precludes states from adopting otherwise permissible supplemental address verification and tracking procedures, including the technological approaches suggested by the respondent.

6. Cost of Registration

One respondent recommended that states be encouraged to charge the offender a fee to help cover the cost of monitoring the registration information. The Act does not address the issue of payment, but states are free to impose such requirements.

7. Availability of Information

One respondent recommended that information collected on an offender's status within a particular state should be available to prison or court officers taking initial registration information. While it is likely that such information will be available to the officials responsible for taking registration information, the guidelines do not

address this issue because it is not part of the Act's requirements.

8. Designation of State Law Enforcement Agency/Intermediary

One respondent noted that states may wish to use a non-profit organization as the contact point for the dissemination of information to the general public. The same respondent also suggested that either public or private sector entities could be used as intermediaries to submit change of address information. Neither the Act nor the guidelines preclude these approaches, and further clarification of this point does not appear to be necessary. As stated in the guidelines, however, states are encouraged to ensure that the designated state law enforcement agency is a ''criminal justice agency'' as defined in 28 CFR 20.3(c), to permit the free exchange of registration information between the state registry and the FBI's record systems.

D. Notice of Release/Movement

One respondent recommended that the term ''electronic transmission'' in relation to notice to local law enforcement agencies should include telephonic reporting. The guidelines clarify that state registration agencies have discretion regarding the form of notice to local law enforcement agencies concerning the presence of registered sex offenders. The possible forms of notice listed in the guidelines are illustrative, not exhaustive. The list of illustrations have been extended to include explicitly ''telephonic'' transmission.

E. Change of Address Reporting/ Address Verification

1. Frequency

One respondent recommended that offenders be required to report monthly. The guidelines have not been changed to reflect this comment because the Act itself only requires annual address verification and quarterly verification for sexually violent predators. As the guidelines already make clear, however, states are free to require more frequent verification.

2. Ten-year Reporting Requirement

One respondent recommended that reporting requirements be for a period of 10 years from the conclusion of supervision. The guidelines have not been revised to reflect this comment because the Act only requires a ten-year registration period running from the time of release. As the guidelines already make clear, however, states are free to require registration for longer periods.

Final Guidelines

These guidelines carry out a statutory directive to the Attorney General, in section 170101(a)(1) (42 U.S.C. 14071(a)(1)), to establish guidelines for registration systems under the Act. Before turning to the specific provisions of the Act, four general points should be noted concerning the Act's interpretation and application.

First, states that wish to achieve compliance with the Jacob Wetterling Act should understand that its requirements constitute a floor for state registration systems, not a ceiling, and that they do not risk the loss of part of their Byrne Formula Grant funding by going beyond its standards. For example, a state may have a registration system that covers a broader class of sex offenders than those identified in the Jacob Wetterling Act, requires address verification for such offenders at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period of time than the period specified in the Act.

Exercising these options creates no problem of compliance because the provisions in the Jacob Wetterling Act concerning duration of registration, covered offenders, and other matters, do not preclude states from imposing additional or more stringent requirements that encompass the Act's baseline requirements. The general objective of the Act is to protect people from child molesters and violent sex offenders through registration requirements. It is not intended to, and does not have the effect of, making states *less* free than they were under prior law to impose registration requirements for this purpose.

Second, states that wish to achieve compliance with the Jacob Wetterling Act also should understand that they may, within certain constraints, use their own criminal law definitions in defining registration requirements and will not have to revise their registration systems to use technical definitions of covered sex offenses based on federal law. This point will be explained more fully below.

Third, the Jacob Wetterling Act contemplates the establishment of programs that will impose registration requirements on offenders who are subsequently convicted of offenses in the pertinent categories. The Act does not require states to attempt to identify and impose registration requirements on offenders who were convicted of offenses in these categories prior to the establishment of a conforming registration system. Nevertheless, the Act does not preclude states from imposing any new registration requirements on offenders convicted prior to the establishment of the registration system.

Fourth, the Act's definitions of covered offense categories are tailored to its general purpose of protecting the public from persons who molest or sexually exploit children and from other sexually violent offenders. Hence, these definitions do not include all offenses that involve a sexual element. For example, offenses consisting of consensual acts between adults are not among the offenses for which registration is required under the Act.

Some state registration and notification systems have been challenged on constitutional grounds. The majority of courts that have dealt with the issue have held that systems like those contemplated by the Jacob Wetterling Act do not violate released offenders' constitutional rights. A few courts, however, have found that certain provisions of the state systems violate (or likely violate) the Constitution. *See Rowe* v. *Burton*, 884 F. Supp. 1372 (D. Alaska 1994) (on motion for preliminary relief) (notification provision), *appeal dismissed*, 85 F.3d 635 (9th Cir. 1996); *State* v. *Babin*, 637 So.2d 814 (La. App.) (retroactive application of notification provision), *writ denied*, 644 So.2d 649 (La. 1994); *State* v. *Payne*, 633 So.2d 701 (La. App. 1993) (same), *writ denied*, 637 So.2d 497 (La. 1994); *cf. In re Reed*, 663 P.2d 216 (Cal. 1983) (en banc) (registration requirements for misdemeanor offenders violate the California Constitution).

There has been extensive litigation concerning whether aspects of New Jersey's community notification program violate due process or ex post facto guarantees as applied to individuals who committed the covered offense prior to enactment of the notification statute. The Department of Justice believes that the New Jersey community notification statute at issue in those cases does not violate the Ex Post Facto Clause and that the Fourteenth Amendment's Due Process Clause of its own force does not require recognition of such a liberty interest on the part of offenders affected by that statute, and has filed ''friend of the court'' briefs supporting the New Jersey law.

The New Jersey Supreme Court, in *John Doe* v. *Poritz*, 142 N.J. 1, 662 A.2d 367 (1995), upheld the New Jersey statute, although it imposed certain procedural protections under federal and state law. In *Artway* v. *Attorney General of New Jersey*, 876 F. Supp. 666 (D.N.J. 1995), the District Court held that retroactive application of the

notification provisions of New Jersey's Megan's Law violated the Ex Post Facto Clause. On appeal, however, this part of the District Court's decision was vacated on ripeness grounds. 81 F.3d 1235, *rehearing denied,* 83 F.3d 594 (3d Cir. 1996). Then, the District Court ruled in a class-action case that the notification provisions of New Jersey's Megan Law, as modified by the New Jersey Supreme Court's decision in *Doe,* are constitutional, even when retroactively applied. *W.P.* v. *Poritz,* 931 F. Supp. 1199 (D.N.J. 1996), *appeal pending; see also Paul P.* v. *Verniero,* Civ. No. 97–2919 (D.N.J. June 26, 1997) (unpub.) (denying preliminary injunction against the prospective application of the New Jersey notification act on the grounds that the act does not deny due process or impose double jeopardy; *Alan A.* v. *Verniero,* Civ. No. 97–1288 (D.N.J. June 27, 1997) (unpub., appeal pending) (same).

There is ongoing litigation over the validity of notification systems—and particularly the validity of their retroactive application—in other states as well. *See, e.g., Doe* v. *Pataki,* 940 F. Supp. 603 (S.D.N.Y. 1996) (enjoining retroactive application of community notification as an ex post factor punishment), *appeal pending; Doe* v. *Weld,* 1996 WL 769398 (D. Mass. Dec. 17, 1996) (declining to enjoin retroactive application of community notification provisions); *Stearns* v. *Gregoire,* Dkt. No. C95–1486D, slip op. (W.D. Wash. Apr. 12, 1996) (same), *appeal pending;* Opinion of the Justices, 423 Mass. 1201, 668 N.E.2d 738 (1996) (advisory opinion that community notification provisions are constitutional, even as retroactively applied); *Kansas* v. *Myers,* 260 Kan. 669, 923 P.2d 1024 (1996) (holding that retroactive application of community notification violates the Ex Post Facto Clause), *petition for cert. denied,*__U.S.__,65 U.S.L.W. 3416 (June 27, 1997). The United States has filed briefs in several of these cases supporting the state laws.

The remainder of these guidelines addresses the provisions of the Jacob Wetterling Act—including the Megan's Law amendment, but not including the changes made by the Pam Lychner Act—in the order in which they appear in section 170101 of the Violent Crime Control and Law Enforcement Act of 1994.

General Provisions—Subsection (a) (1)–(2)

Paragraph (1) of subsection (a) of section 170101 directs the Attorney General to establish guidelines for state programs that require:

(A) current address registration for persons convicted of ''a criminal offense against a victim who is a minor'' or ''a sexually violent offense, '' and

(B) current address registration under a different set of requirements for persons who are determined to be ''sexually violent predators.''

For purposes of the Act, ''state'' should be understood to encompass the political units identified in the provision defining ''state'' for purposes of eligibility for Byrne Formula Grant funding (42 U.S.C. 3791(a)(2)) in light of the tie-in between compliance with the Act and the allocation of Byrne Formula Grant funding. Hence, the ''states'' that must comply with the Act to maintain full eligibility for such funding are the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

Paragraph (2) of subsection (a) states that the determination whether a person is a ''sexually violent predator'' (which brings the more stringent registration standards into play), and the determination that a person is no longer a ''sexually violent predator'' (which terminates the registration requirement under those more stringent standards), shall be made by the sentencing court after receiving a report by a state board composed of experts in the field of the behavior and treatment of sexual offenders.

''State board'' in paragraph (2) should be understood to mean a body or group containing two or more experts that is authorized by state law or designated under the authority of state law. Beyond the requirement that a board must be composed of experts in the field of the behavior and treatment of sexual offenders, the Act affords states discretion concerning the selection and composition of such boards. For example, a state could establish a single permanent board for this purpose, could establish a system of state-designated boards, or could authorize the designation of different boards for different courts, time period, geographic areas or cases. In addition, the Act permits states to set their own standards concerning who qualifies as an expert in the field of the behavior and treatment of sexual offenders for purposes of board participation, and to utilize qualifying experts from outside the state to serve on the boards.

''Sentencing court'' in paragraph (2) should be understood to mean a court whose determination is competent under state law to trigger or terminate the more stringent registration requirements the Act prescribes for sexually violent predators. It does not mean that ''the sentencing court'' for purposes of the sexually violent predator determination must be the same court in which the offender was convicted for an underlying offense that gave rise to a requirement to register.

As noted above, subsection (a)(1) requires states to register persons convicted of certain crimes against minors and sexually violent offenses, but states are free to go beyond the Act's minimum standards and include other classes of offenders within their sex offender registration programs. For example, states are encouraged to require sex offenders convicted in federal, military, or Indian tribal courts who reside in their jurisdictions to register. Although the Act does not require states to register such offenders, the presence of any convicted sex offender in the state—whether the offender was prosecuted in a state, federal, military, or Indian tribal court—raises similar public safety concerns. Some states (*e.g.,* Washington and California) already require sex offenders convicted in federal or military courts to register.

The Act's requirement is one of current address registration, and the Act does not dictate under what name a person must be required to register. Hence, the Act does not preclude states from taking measures for the security of registrants who have been provided new identities and relocated under the federal witness security program (see 18 U.S.C. 3521 *et seq.*) or comparable state programs. A state may provide that the registration system records will identify such a registrant only by his or her new name and that the registration system records will not include the pre-relocation address of the registrant or other information from which his or her original identity or participation in a witness security program could be inferred. States are encouraged to make provision in their laws and procedures for the security of such registrants and to honor requests from the United States Marshals Service and other agencies responsible for witness protection to ensure that the identities of these registrants are not compromised. Due to the federal statutory preemption concerning what may or may not be disclosed about federally protected witnesses, 18 U.S.C. 3521(b)(1)(G) & (3), a state's failure to promulgate protective provisions may adversely affect its eligibility to send witnesses to, or to receive witness data from, the federal witness security program.

Definition of ''Criminal Offense Against a Victim Who is a Minor''—Subsection (a)(3)(A)

The Act prescribes a 10-year registration requirement for persons convicted of a ''criminal offense against a victim who is a minor.'' Subparagraph (A) of paragraph (3) of subsection (a) defines the term ''criminal offense against a victim who is a minor.'' ''Minor'' should be understood to mean a person below the age of 18.

States do not have to track the terminology used in the Act's definition of ''criminal offense against a victim who is a minor'' in defining registration requirements. Rather, compliance depends on whether the substantive coverage of a state's registration requirements includes the offenses described in subparagraph (A) of paragraph (3).

The specific clauses in the Act's definition of ''criminal offense against a victim who is a minor'' are as follows:

(1) Clauses (i) and (ii) cover kidnapping of a minor (except by a parent) and false imprisonment of a minor (except by a parent). All states have statutes that define offenses—going by such names as ''kidnapping,'' ''criminal restraint,'' or ''false imprisonment—whose gravamen is abduction or unlawful restraint of a person. States can comply with these clauses by requiring registration for persons convicted of these statutory offenses whose victims were below the age of 18. The Act does not require inclusion of these offenses in the registration requirement when the offender is a parent, but states may choose to require registration for parents who commit these offenses.

(2) Clause (iii) covers offenses consisting of ''criminal sexual conduct toward a minor.'' States can comply with this clause by requiring registration for persons convicted of all statutory sex offenses under state law whose elements involve physical contact with a victim—such as provisions defining crimes of ''rape,'' ''sexual assault,'' sexual abuse,'' or ''incest''—in cases where the victim was in fact a minor at the time of the offense. Coverage is not limited to cases where the victim's age is an element of the offense (such as prosecutions for specially defined child molestation offenses). Offenses that do not involve physical contact, such as exhibitionism, are not subject to the Act's mandatory registration requirements pursuant to clause (iii), but states are free to require registration for persons convicted of such offenses as well if they so choose.

(3) Clause (iv) covers offenses consisting of solicitation of a minor to engage in sexual conduct. The notion of ''sexual conduct'' should be understood in the same sense as in clause (iii). Hence, states can comply with clause (iv) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

—A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense would be covered by clause (iii), and

—A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to engage in sexual activity involving physical contact.

(4) Clause (v) covers offenses consisting of using a minor in a sexual performance. This includes both live performances and using minors in the production of pornography.

(5) Clause (vi) covers offenses consisting of solicitation of a minor to practice prostitution. The interpretation of this clause is parallel to that of clause (iv). States can comply with clause (vi) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

—A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense is a prostitution offense, and

—A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to get a person to engage in prostitution.

(6) Clause (vii) covers offenses consisting of any conduct that by its nature is a sexual offense against a minor. This clause is intended to insure uniform coverage of convictions under statutes defining sex offenses in which the status of the victim as a minor is an element of an offense, such as specially defined child molestation offenses, and other offenses prohibiting sexual activity with underage persons. States can comply with this clause by including convictions under these statutes uniformly in the registration requirement.

(7) Considered in isolation, clause (viii) gives states discretion whether to require registration for attempts to commit offenses described in clauses (i) through (vii). However, any verbal command or attempted persuasion of the victim to engage in sexual conduct would bring the offense within the scope of the solicitation clause (clause (iv)), and make it subject to the Act's mandatory registration requirements. Moreover, this provision must be considered in conjunction with the Act's requirement of registration for persons convicted of a ''sexually violent offense,'' which does not allow the exclusion of attempts if they are otherwise encompassed within the definition of a ''sexually violent offense.''

Hence, state discretion to exclude attempted sexual offenses against minors from registration requirements pursuant to clause (viii) is limited by other provisions of the Act. The simplest approach for states would be to include attempted sexual assaults on minors (as well as completed offenses) uniformly as predicates for the registration requirement.

At the conclusion of the definition of ''criminal offense against a victim who is a minor.'' the Act states that (for purposes of the definition) conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger. However, here again, states are free to go beyond the Act's baseline requirements. The exemption of certain offenders based on age from the Act's mandatory registration requirements does not bar states from including such offenders in their registration systems if they wish. Moreover, the scope of subsection (a)(3)(A)'s exemption is also limited by other provisions of the Act that require registration of persons convicted of ''sexually violent offenses'' (as defined in (a)(3)(B)), with no provision excluding younger offenders where the criminality of the conduct depends on the victim's age.

Since the Act's registration requirements depend in all circumstances on conviction of certain types of offenses, states are not required to mandate registration for juveniles who are adjudicated delinquent—as opposed to adults convicted of crimes and juveniles convicted as adults—even if the conduct on which the juvenile delinquency adjudication is based would constitute an offense giving rise to a registration requirement if engaged in by an adult. However, states may require registration for juvenile delinquents, and the conviction of a juvenile who is prosecuted as an adult does count as a conviction for purposes of the Act's registration requirements.

Definition of ''Sexually Violent Offense''—Subsection (a)(3)(B)

The Act prescribes a 10-year registration requirement for offenders convicted of a ''sexually violent offense,'' as well as for those convicted

of a ''criminal offense against a victim who is a minor.''

Subparagraph (B) of paragraph (3) defines the term ''sexually violent offense'' to mean any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18, United States Code, or as described in the state criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit such an offense. In light of this definition, there are two ways in which a state could satisfy the requirement of registration for persons convicted of ''sexually violent offenses'':

First, a state could comply by requiring registration for offenders convicted for criminal conduct that would violate 18 U.S.C. 2241 or 2242—the federal ''aggravated sexual abuse'' and ''sexual abuse'' offenses—if prosecuted federally. Specifically, sections 2241 and 2242 generally proscribe non-consensual ''sexual acts'' with anyone, ''sexual acts'' with persons below the age of 12, and attempts to engage in such conduct. ''Sexual act'' is generally defined (in 18 U.S.C. 2246(2)) to mean an act involving any degree of genital or anal penetration, oral-genital or oral-anal contact, or direct genital touching of a victim below the age of 16 in certain circumstances. (The second part of the definition in subparagraph (B) of paragraph (3), relating to physical contact with intent to commit aggravated sexual abuse or sexual abuse, does not enlarge the class of covered offenses under the federal law definitions because sections 2241 and 2242 explicitly encompass attempts as well as completed offenses.)

Second, a state could comply by requiring registration for offenders convicted of the state offenses that correspond to the federal offenses described above—i.e., the most serious sexually assaultive crime or crimes under state law, covering non-consensual sexual acts involving penetration—together with state offenses (if any) that have as their elements engaging in physical contact with another person with intent to commit such a crime.

Definition of ''Sexually Violent Predator''—Subsection (a)(3) (C)–(E)

Offenders who meet the definition of ''sexually violent predator'' are subject to more stringent registration requirements than other sex offenders.

(1) Subparagraph (C) defines ''sexually violent predator'' to mean a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(2) Subparagraph (D) essentially defines ''mental abnormality'' to mean a condition involving a disposition to commit criminal sexual acts of such a degree that it makes the person a menace to others. There is no definition of ''personality disorder'' in the Act; hence, the definition of this term is a matter of state discretion. For example, a state may choose to utilize the definition of ''personality disorder'' that appears in the Diagnostic and Statistical Manual of Mental Disorders: DSM–IV. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994).

(3) Subparagraph (E) defines ''predatory'' to mean an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization. As noted earlier, the Act provide that the determination whether an offender is a ''sexually violent predator'' is to be made by the sentencing court with the assistance of a board of experts. The Act does not require, or preclude, that all persons convicted of a sexually violent offense undergo a determination as to whether they satisfy the definition of ''sexually violent predator.'' It also does not specify under what conditions such an inquiry must be undertaken. A state that wishes to comply with the Act must adopt some approach to this issue, but the specifics are a matter of state discretion. For example, a state might provide that the decision whether to seek classification of an offender as a ''sexually violent predator'' is a matter of judgment for prosecutors or might provide that a determination of this question should be undertaken routinely when a person is convicted of a sexually violent offense and has a prior history of committing such crimes.

Similarly, the Act affords states discretion with regard to the timing of the determination whether an offender is a ''sexually violent predator.'' A state may, but need not, provide that a determination on this issue be made at the time of sentencing or as a part of the original sentence. It could, for example, be made instead by the responsible court when the offender has served a term of imprisonment and is about to be released from custody.

As with other features of the Jacob Wetterling Act, the sexually violent predator provisions only define baseline requirements for states that wish to maintain eligibility for full Byrne Formula Grant funding. States are free to impose these more stringent registration requirements on a broader class of offenders and may use state law categories or definitions for that purpose, without contravening the Jacob Wetterling Act. Likewise, while the Act does not require civil commitment of sexually violent predators or other offenders under any circumstances, states may, if they so wish, require civil commitment of persons determined to be sexually violent predators under the Act's standards and procedures in lieu of the Act's heightened registration requirements for such persons.

If a state chooses to subject all persons convicted of a ''sexually violent offense'' to the more stringent registration requirements and standards provided by the Act for ''sexually violent predators,'' then a particularized determination that an offender is a ''sexually violent predator'' would have no practical effect and would be superfluous. Hence, if a state elected this approach, it would not be necessary for the state to have ''sexually violent predator'' determinations made by the sentencing court or to constitute boards of experts to advise the courts concerning such determinations, prior to the commencement of registration. In a state that eschewed particularized ''front end'' determinations of ''sexually violent predator'' status in this manner, however, it would still be necessary to condition termination of the registration requirement on a determination by the sentencing court (assisted by a board of experts) pursuant to section 170101(b)(6)(B) of the Act that the person does not suffer from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

Specifications Concerning State Registration Systems Under the Act—Subsection (b)

Paragraphs (1) and (2) of subsection (b) set out duties for prison officers and courts in relation to offenders required to register who are released from prison or who are placed on any form of post-conviction supervised release (''parole, supervised release, or probation''). The duties generally include taking registration information, informing the offender of registration obligations, and transmitting the registration information to the designated state law enforcement agency.

The terms ''prison officer'' and ''court'' should be understood to include any officer having functions relating to correctional matters, offender supervision, or the execution of sentences. Hence, states have the option of assigning responsibility for the initial taking and transmission of registration

information to probation or parole officers, as well as to persons who are prison or court officers in a narrower sense.

The specific duties set out in subparagraph (A) of paragraph (1) include: (i) Informing the person of the duty to register and obtaining the information required for registration (i.e., address information), (ii) informing the person that he must give written notice of a new address within 10 days to a designated state law enforcement agency if he changes residence, (iii) informing the person that, if he changes residence to another state, he must inform the registration agency in the state he is leaving and must also register the new address with a designated state law enforcement agency in the new state within 10 days (if the new state has a registration requirement), (iv) obtaining fingerprints and a photograph if they have not already been obtained, and (v) requiring the person to read and sign form stating that these requirements have been explained.

Beyond these basic requirements, which apply to all registrants, subparagraph (B) of paragraph (1) of subsection (b) requires that additional information be obtained in relation to a person who is required to register as a ''sexually violent predator.'' The information that is specifically required under subparagraph (B) is the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person. The Act does not require that prison officers or courts conduct an investigation to determine the offender's treatment history. For purposes of documenting the treatment received, prison officials and courts may rely on information that is readily available to them, either from existing records or the offender. In addition, prison officers and courts may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment for a mental abnormality or personality disorder. If states want to require the inclusion of more detailed information about the offender's treatment history, however, they are free to do so.

States that wish to comply with the Act will need to adopt statutes or administrative provisions to establish the duties specified in subsection (b)(1) and ensure that they are carried out. These informational requirements, like other requirements in the Act, only define minimum standards, and states may require more extensive information from offenders. For example, the Act does not require that information be obtained relating to registering offenders' employment, but states may legitimately wish to know if a convicted child molester is seeking or has obtained employment that involves responsibility for the care of children.

As a second example, although it is not required under the Act, states are strongly encouraged to collect DNA samples, where permitted under applicable legal standards, to be typed and stored in state DNA databases. States also are urged to participate in the Federal Bureau of Investigation's (FBI's) Combined DNA Index System (CODIS). CODIS is the FBI's program of technical assistance to State and local crime laboratories that allows that to store and match DNA records from convicted offenders and crime scene evidence. The FBI provides CODIS software, in addition to user support and training, free of charge, to state and local crime laboratories for performing forensic DNA analysis. CODIS permits DNA examiners in crime laboratories to exchange forensic DNA data on an intrastate level and will enable states to exchange DNA records among themselves through the national CODIS system. Thus, collection of DNA samples and participation in CODIS greatly enhance a state's capacity to investigate and solve crimes involving biological evidence, especially serial and stranger rapes.

Paragraph (2) of subsection (b) states, in part, that the officer or court shall forward the registration information obtained from an offender who is being released to a designated state law enforcement agency within three days. In some states, the responsible official does not wait until the time of release to obtain registration information but obtains this information some period of time (e.g., 30 days or 60 days) prior to release. Under such a procedure, it is adequate if the registration information is forwarded no later than three days after release.

The Act leaves states discretion in designating an agency as the responsible ''state law enforcement agency,'' including the means by which such a designation is made, the timing of such a designation, and the agencies that may be designated. States are not required to select the state police as the designated agency and may choose any agency with functions relating to the enforcement of law or protection of public safety. For example, states may designate as the pertinent ''state law enforcement agency'' a correctional agency, a crime statistics bureau or criminal records agency, or a department of public safety.

States are encouraged, however, to ensure that the designated state law enforcement agency is a ''criminal justice agency'' as defined in 28 CFR 20.3(c). This will permit the free exchange of registration information between the state registry and the FBI's records systems.

Paragraph (2) of subsection (b) also provides that after receiving the registration information from the responsible officer or court, the designated state law enforcement agency must immediately enter the information into the appropriate state law enforcement record system and notify a law enforcement agency having jurisdiction where the person expects to reside. The Act leaves states discretion concerning the form of notification to the relevant local law enforcement agency. Permissible options include, for example, written notice, electronic or telephonic transmission of registration information, and provision of on-line access to registration information. The Act also leaves states discretion in determining which state record system is appropriate for storing registration information. States that wish to achieve compliance with the Act, however, may need to modify state record systems if they are not currently set up to receive all the types of information that the Act requires from registrants.

In some states, the responsible prison officer or court sends the initial registration information both to the designated State law enforcement agency and to a local law enforcement agency having jurisdiction where the registrant will reside, as opposed to transmitting the information only to the state agency. This approach is allowed, and in such states the state agency need not be required to provide notice to the local law enforcement agency because such notice would be superfluous in relation to a local law enforcement agency that has received the registration information directly from the prison officer or court.

Likewise, the Act does not preclude a state procedure under which the prison officer or court transmits the initial registration information indirectly to the designated state law enforcement agency by sending it in the first instance only to a local law enforcement agency having jurisdiction where the registrant will reside, which is then required to forward the information to the state agency. Procedures of this type will be deemed in compliance, so long as the information is submitted or sent to the local law enforcement agency within the applicable time frame (no later than three days after release), and state procedures ensure that the local agency

will forward the information promptly to the state agency. In a state with this type of procedure, having the state agency notify a local law enforcement agency from which it received the initial registration information would be superfluous and is not required.

Paragraph (2) of subsection (b) further provides that the state law enforcement agency shall immediately transmit the conviction data and fingerprints to the FBI. The Act should not be understood as requiring duplicative transmission of conviction data and fingerprints to the FBI at the time of initial registration if the state already has sent this information to the FBI (e.g., at the time of conviction).

Paragraph (3) of subsection (b) relates to verification of the offender's address. In essence, annual verification of address with the designated state law enforcement agency is required for all offenders through the return within 10 days of an address verification form sent by the agency to the registrant. However, the verification intervals are 90 days (rather than a year) for ''sexually violent predators.''

As noted earlier, these are baseline requirements which do not bar states from requiring verification of address at shorter intervals than those specified in the Act. Likewise, states may, if they wish, strengthen the requirements for transmission and return of verification forms beyond the minimum required by the Act, such as requiring registrants to appear in person at a law enforcement agency to return verification forms that have been sent to their residences.

In some states, the designated state law enforcement agency does not directly carry out address verification but develops verification forms which are sent out and received by local law enforcement agencies. This delegation of responsibility for the verification function is allowed, so long as the procedure specified in the Act for periodic address verification through transmission and return of a verification form is complied with, and state procedures ensure that the designated state law enforcement agency will promptly be made aware if the verification process discloses that the registrant is no longer at the registered address.

As indicated above, under paragraph (1)(A) of subsection (b) of the Act, registrants are required to submit or send change of address information within 10 days of the change of residence. Paragraph (4) of subsection (b) requires the designated state law enforcement agency to notify other interested law enforcement agencies of a change of address by the registrant. Specifically, when a registrant changes residence to a new address, the designated law enforcement agency must (i) notify a law enforcement agency having jurisdiction where the registrant will reside, and (ii) if the registrant moves to a new state, notify the law enforcement agency with which the offender must register in the new state (if the new state has a registration requirement).

Under many state registration programs, registrants do not send change of address information directly to the designated state law enforcement agency but provide this information to a local law enforcement agency or other intermediary (such as a probation officer), which is then required to forward it to the state agency. This approach is allowed under the Act, so long as the registrant is required to submit or send change of address information to the intermediary within the time frame specified by the Act (no later than 10 days after the change of address), and state procedures ensure that the intermediary will forward the information promptly to the designated state law enforcement agency. If the intermediary that receives the change of address information in the first instance is a local law enforcement agency having jurisdiction where the registrant will reside, then the designated state law enforcement agency does not have to notify that local law enforcement agency of the change of address because doing so would be superfluous. If, however, the intermediary is a local law enforcement agency in the place from which the registrant is moving, the requirement remains of immediately notifying a law enforcement agency having jurisdiction over the new place of residence. Either the state agency or the local law enforcement agency that receives the change of address information in the first instance must provide such notification.

Paragraph (5) requires a person convicted of an offense that requires registration under the Act who moves to another state to register within 10 days with a designated state law enforcement agency in his new state of residence (if the new state has a registration requirement). This entails responsibilities for states in relation to out-of-state offenders who move into the state, as well as personal responsibilities for the registrant. To comply with the Act, a state registration program must require registration by out-of-state offenders in the Act's offense categories who move into the state and must provide that such offenders are required to register within 10 days of establishing residence in the State.

Subparagraph (A) of paragraph (6) states that the registration requirement remains in effect for 10 years. As noted earlier, states may choose to establish longer registration periods, but registration requirements of shorter duration are not consistent with the Act. Hence, for example, a state program is not in compliance with the Act if it allows registration obligations to be waived or terminated before the end of the 10 year period on such grounds as a finding of rehabilitation, or a finding that registration (or continued registration) would not serve the purposes of the state's registration provisions. However, if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned, registration (or continued registration) is not required under the Act. Also, a state may toll registration requirements during periods in which an offender is incarcerated for another offense or civilly committed because it is superfluous to carry out address registration and verification procedures while the registrant is confined.

Subparagraph (B) of paragraph (6) states that the registration requirement for ''sexually violent predators'' under the Act terminates upon a determination that the offender no longer suffers from a mental abnormality or personality disorder that would make him likely to engage in a predatory sexually violent offense. This provision does not require review of the offender's status at any particular interval. For example, a state could set a minimum period of 10 years before entertaining a request to review the status of a ''sexually violent predator,'' the same period as the general minimum registration period for sex offenders under the Act.

The termination provision in subparagraph (B) of paragraph (6) only affects the requirement that a person register as a ''sexually violent predator'' under subparagraph (B) of subsection (a)(1) of the Jacob Wetterling Act. It does not limit states in imposing more extensive registration requirements under their own laws. Moreover, even if it has been determined as provided in subparagraph (B) of paragraph (6) that a person is no longer a ''sexually violent predator,'' this does not relieve the person of the 10-year registration requirement under other provisions of the Jacob Wetterling Act which applies to any person convicted of a ''criminal offense against a victim who is a minor'' or a ''sexually violent offense.''

Criminal Penalties for Registration Violations—Subsection (c)

The Act provides that a person required to register under a state

program established pursuant to the Act who knowingly fails to register and keep such registration current shall be subject to criminal penalties. Accordingly, states that wish to comply with the Act will need to enact criminal provisions covering this situation as part of, or in conjunction with, the legislation defining their registration systems, if they have not already done so.

The Act neither requires states to allow a defense for offenders who were unaware of their legal registration obligations nor precludes states from doing so. As a practical matter, states can ensure that offenders are aware of their obligations through consistent compliance with the Act's provisions for advising offenders of registration requirements at the time of release and obtaining a signed acknowledgment that this information has been provided. If the violation by a registrant consists of failing to return an address verification form within 10 days of receipt, the state may allow a defense if the registrant can prove that he did not in fact change his residence address, as provided in subsection (b)(3)(A)(iv).

Release of Registration Information—Subsection (d)

Subsection (d) governs the disclosure of information collected under a state registration program. This part of the Act has been amended by the federal Megan's Law (Pub. L. 104–145, 110 Stat. 1345). To comply with the Megan's Law amendment, a state must establish a conforming information release program that applies to offenders required to register on the basis of convictions occurring after the establishment of the program. States do not have to apply new information release standards to offenders whose convictions predate the establishment of a conforming program, but the Act does not preclude states from applying such standards retroactively to offenders convicted earlier if they so wish.

The Megan's Law amendment made two important changes from the prior law: First, subsection (d) originally provided that information collected under state registration programs is to be treated as private data, subject to limited exceptions. The Megan's Law amendment has repealed the general ''private data'' restriction and has substituted an affirmative statement (in subsection(d)(1) that information collected under a state registration program may be disclosed for any purpose permitted under the law of the state. Hence, under the current law, there is no requirement that registration information be treated as private or confidential to any greater extent than the state may wish.

Second, paragraph(2) of subsection(d), as amended, provides that the designated state law enforcement agency, and any local law enforcement agency authorized by the state agency, *shall* release relevant information that is necessary to protect the public concerning a specific person required to register under the Act. In contrast, the prior law only provided that information *may* be released for this purpose.

The principal objective of this change is to ensure that registration programs will include means for members of the public to obtain information concerning registered offenders that is necessary for the protection of themselves or their families. In light of this change, a state cannot comply with the Act by releasing registration information only to law enforcement agencies, to other governmental or non-governmental agencies or organizations, to prospective employers, or to the victims of registrants' offenses. States also cannot comply by having purely permissive or discretionary authority for officials to release registration information. Information must be released to members of the public as necessary to protect the public from registered offenders. This mandatory disclosure requirement applies both in relation to offenders required to register because of conviction for ''a criminal offense against a victim who is a minor'' and those required to register because of conviction for a ''sexually violent offense.''

States do, however, retain discretion to make judgments concerning the circumstances in which, and the extent to which, the disclosure of registration information to the public is necessary for public safety purposes and to specify standards and procedures for making these determinations. Several different approaches to this issue appear in existing state laws.

One type of approach, which is consistent with the requirements of the Jacob Wetterling Act as amended, involves particularized risk assessments of registered offenders, with differing degrees of information release based on the degree of risk. For example, some states classify registered offenders in this manner into risk levels, with (1) registration information limited to law enforcement uses for offenders in the ''low risk'' level, (2) notice to organizations with a particular safety interest (such as schools and other child care entities) for ''medium risk'' offenders, and (3) notice to neighbors for ''high risk'' offenders.

States are also free under the Act to make judgments concerning the degree of danger posed by different types of offenders and to provide information disclosure for all offenders (or only offenders) with certain characteristics or in certain offense categories. For example, states may decide to focus particularly on child molesters, in light of the vulnerability of the potential victim class, and on recidivists, in light of the threat posed by offenders who persistently commit sexual offenses.

Another approach consistent with the Act is to make information accessible to members of the public on request. This may be done, for example, by making registration lists open for inspection by the public, by establishing call-in numbers which members of the public can contact to obtain information on the registration status of identified individuals, or by providing such information in response to written requests. As with proactive notification systems, states that have information-on-request systems may make judgments about which registered offenders or classes of registered offenders should be covered and what information will be disclosed concerning theses offenders.

States are encouraged to involve victims and victim advocates in the development of their information release programs and in the process for particularized risk assessments of registrants if the state program involves such assessments.

Paragraph(2) of subsection(d) does not deprive states of the authority to exercise centralized control over the release of information, or if the state prefers, to have local agencies make determinations concerning public safety needs and information release.

A proviso at the end of paragraph (2) states that the identity of the victim of an offense that requires registration under the Act shall not be released. This proviso safeguards victim privacy by prohibiting disclosure of victim identity to the general public in the context of information release programs for registered offenders. It does not bar the dissemination of victim identity information for law enforcement or other governmental purposes (as opposed to disclosure to the public) and does not require that a state limit maintenance of or access to victim identity information in public records (such as police and court records) which exist independently of the registration system. Because the purpose of the proviso is to protect the privacy of victims, its restriction may be waived at the victim's option.

So long as the victim is not identified, the proviso in paragraph (2) does not bar including information concerning the characteristics of the victim and the nature and circumstances of the offense in information release programs for registered offenders. For example, states are not barred by the proviso from releasing such information as victim age and gender, a description of the offender's conduct, and the geographic area where the offense occurred.

Immunity for Good Faith Conduct—Subsection (e)

Subsection (e) states that law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under the Act.

Compliance—Subsection (f)

States have three years from the date of enactment (i.e., September 13, 1994) to come into compliance with the Act, unless the Attorney General grants an additional two years where a state is making good faith efforts at implementation. States that fail to come into compliance within the specified time period will be subject to a mandatory 10% reduction of Byrne Formula Grant funding, and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance.

To maintain eligibility for full Byrne Grant formula funding after September 13, 1997, states must submit to the Bureau of Justice Assistance by July 13, 1997, their existing or proposed registration and notification systems for sex offenders. These submissions will be reviewed to determine the status of state compliance with the Act. In addition, any state that has not been able to establish a registration and notification system in compliance with the Act must submit to the Bureau of Justice Assistance by July 13, 1997, a written explanation of why compliance has not been achieved and a description of the state's good faith efforts that may justify an extension of time (of not greater than two years) for achieving compliance. States also will be required to submit information in subsequent program years concerning any changes in sex offender registration systems that may affect compliance with the Act.

Dated: July 14, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–19047 Filed 7–18–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act (''RCRA'')

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Hawaiian Western Steel, et al.,* Civil Action No. 92–00587 ACK (D.Hawaii), was lodged on June 30, 1997 with the United States District Court for the District of Hawaii. This Consent Decree resolves penalty and corrective action claims brought by the United States against Cominco, Inc., pursuant to Section 3008 of the Resource Conservation and Recovery Act, 42 U.S.C. 6928. Among other things, the settling defendant disposed of hazardous waste at two sites within the Campbell Industrial Park, Ewa Beach, Hawaii (''the Site'') located on the island of Oahu, Hawaii. The Consent Decree provides that Cominco will pay $425,000 to the United States Treasury for penalties related to the violations alleged in the Complaint, and will complete corrective action at one site should the prior settling parties fail to complete the work.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Hawaiian Western Steel, et al.,* DOJ #90–7–1–659A.

The proposed Consent Decree may be examined at the office of the United States Attorney, Room 6100, PJKK Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850; the Region IX office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check for the reproduction costs. If you want a copy of the Consent Decree, then the amount of the check should be $5.50 (22 pages at 25 cents per page). The check should be made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 97–19037 Filed 7–18–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that on June 12, 1997, a Consent Decree was lodged in *United States* v. *Gordon Stafford, et al.,* Civil Action No. 1:90CV102 with the United States District Court for the Northern District of West Virginia.

The Complaint in this case was filed under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607, with respect to Harrison County PCB Superfund Site located in Harrison County, West Virginia against Gary Lee Powell and Marion Engineering Company. Pursuant to the terms of the Consent Decree, which resolves claims under the above-mentioned statute, the settling defendants will pay the United States $300,000 for costs which the United States incurred in the cleanup of the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Gordon Stafford, et al.,* DOJ Ref. No. 90–11–3–356A.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of West Virginia, Federal Courthouse, Elkins, West Virginia. Copies of the Consent Decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892) and the offices of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. When requesting a copy by mail, please

enclose a check in the amount of $4.00 (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–19036 Filed 7–18–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97–34; Applications Nos. D–10245 and D–10246]

Amendment to Prohibited Transaction Exemptions (PTEs) 90–30 Involving Bear, Stearns & Co. Inc., 90–32 Involving Prudential Securities Incorporated, et al.

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Grant of an amendment to the Underwriter Exemptions.[1]

SUMMARY: This document contains a final exemption issued by the Department of Labor (the Department) which amends the Underwriter Exemptions. The Underwriter Exemptions are individual exemptions that provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition of certain asset backed pass-through certificates representing undivided interests in those investment trusts. The amendment: (1) Modifies the definition of ''Trust'' to include a pre-funding account (the Pre-Funding Account) and a capitalized interest account (the Capitalized Interest Account) as part of the corpus of the Trust; (2) provides retroactive relief for transactions involving asset pool investment trusts containing pre-funding accounts which have occurred on or after January 1, 1992; (3) includes in the definition of ''Certificate'' a debt instrument that represents an interest in a Financial Asset Securitization Investment Trust (FASIT); and (4) makes certain changes to the Underwriter Exemptions that reflect the Department's current interpretation of the Underwriter Exemptions.

EFFECTIVE DATE: This amendment to the Underwriter Exemptions is effective for transactions occurring on or after January 1, 1992, except as otherwise provided in subsection II.A.(7) and section III.AA. of the exemption.

FOR FURTHER INFORMATION CONTACT: Wendy McColough of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 23, 1997, notice was published in the **Federal Register** (62 FR 28502) of the pendency before the Department of a proposed exemption to amend PTEs 90–30, 55 FR 21461 (May 24, 1990) and 90–32, 55 FR 23147 (June 6, 1990), two of the Underwriter Exemptions. The Underwriter Exemptions are a group of individual exemptions that provide substantially identical relief for the operation of certain asset pool investment trusts and the acquisition and holding by plans of certain asset-backed pass-through certificates representing interests in those trusts. These exemptions provide relief from certain of the restrictions of sections 406(a), 406(b) and 407(a) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of certain provisions of section 4975(c)(1) of the Code.

The amendment to PTEs 90–30 and 90–32 was requested by application dated March 25, 1996, and as restated in a later submission dated February 26, 1997, on behalf of Bear, Stearns & Co. Inc.[2] and Prudential Securities Inc.[3] (the Applicants). In preparing the application, the Applicants received input from members of the PSA The Bond Market Trade Association (formerly the Public Securities Association) (PSA).

The Department proposed the amendment to these individual exemptions pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[4] In addition, the Department proposed to provide the same relief on its own motion pursuant to the authority described above for many of the other Underwriter Exemptions which have substantially similar terms and conditions.[5] The Department also proposed to provide the same relief to Ironwood Capital Partners Ltd. (D–10424) and Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc. (D–10433), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62.

The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C.

The notice also invited interested persons to submit comments on the

[1] The term Underwriter Exemptions refers to the following individual Prohibited Transaction Exemptions (PTEs): PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–11, 61 FR 3490 (January 31, 1996); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); and PTE 97–28, 62 FR 28515 (May 23, 1997).

In addition, the Department notes that it is also granting individual exemptive relief for Ironwood Capital Partners Ltd., Final Authorization Number (FAN) 97–02E (November 25, 1996) and Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., FAN 97–03E (December 9, 1996), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62.

[2] PTE 90–30, 55 FR 21461 (May 24, 1990). Bear, Stearns & Co. Inc. (Bear, Stearns) is an international investment banking firm which engages in securities transactions as both a principal and agent and which provides a broad range of underwriting, research and financial services to its clients.

[3] PTE 90–32, 55 FR 23147 (June 6, 1990). PTE 90–32 was granted to Prudential-Bache Securities, Inc. which subsequently changed its corporate name to Prudential Securities Incorporated (Prudential). Prudential is a full service securities broker-dealer and investment banking firm.

[4] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1995]) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. In the discussion of the exemption, references to section 406 and 408 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[5] In this regard, the entities who received the other Underwriter Exemptions were contacted concerning their participation in this amendment process.

requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held. The Department received one written comment submitted by PSA. The comment indicated complete support for the proposed amendment to the Underwriter Exemptions. No requests for a hearing were received by the Department in regard to the proposed amendment.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries;

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transactions which are the subjects of the exemption.

Exemption

Under section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990), the Department amends the following individual Prohibited Transaction Exemptions (PTEs): PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–11, 61 FR 3490 (January 31, 1996); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14,1997); and PTE 97–28, 62 FR 28515 (May 23, 1997) (collectively, the Underwriter Exemptions).

In addition, the Department is also granting individual exemptions to Ironwood Capital Partners Ltd., Final Authorization Number (FAN) 97–02E (November 25, 1996) and Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., FAN 97–03E (December 9, 1996), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62.

I. Transactions

A. Effective January 1, 1992, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[6]

B. Effective January 1, 1992, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have

[6] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act, and regulation 29 CFR 2510.3–21(c).

invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold serviced by the same entity.[7] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective January 1, 1992, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[8]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. Effective January 1, 1992, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a rating agency (as defined in section III.W) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in Section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in Section III.Z.), provided that:

(a) The pre-funding limit (as defined in Section III.AA.), is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by a rating agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were

[7] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[8] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this Amendment, references to ''prospectus'' include any related prospectus supplement thereto, pursuant to which certificates are offered to investors.

transferred to the trust on the closing date;

(e) Effective for transactions occurring on or after May 23, 1997, in order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the sponsor or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) Such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in either a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or Section 860L, respectively, of the Internal Revenue Code of 1986, as amended: and

(b) That is issued by and is an obligation of a trust; with respect to certificates defined in (1) and (2) above for which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T.); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U.); and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1);[9]

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or[10]

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or

(ii) are credited to a capitalized interest account (as defined in Section III.X.); and

(iii) are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period,

For purposes of this clause (c) of subsection III.B.(3), the term ''permitted investments'' means investments which

[9] It is the Department's view that the definition of ''Trust'' contained in subsection III.B. includes a two-tier trust structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues certificates that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

[10] The Department notes that the definition of ''Trust'' contained in Section III.B. includes cash or investments credited to an account to provide payments to certificateholders pursuant to a yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in section B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts.

are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency.

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) the obligations contained in the investment pool consist only of assets of the type described in clauses (a)–(f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a rating agency for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Ironwood Capital Partners Ltd. and Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc.(which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; or

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) above is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section III.Q. below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations:

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(1) which is secured by equipment which is leased;

(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(1) the trust owns or holds a security interest in the lease;

(2) the trust owns or holds a security interest in the leased motor vehicle; and

(3) the trust's interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *Rating Agency* means Standard & Poor's Structured Rating Group, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co. or Fitch Investors Service, L.P.

X. *Capitalized Interest Account* means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. *Closing Date* means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. *Pre-Funding Account*— means a trust account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. *Pre-Funding Limit* means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to: (i) 40 percent, effective for transactions occurring on or after January 1, 1992, but prior to May 23, 1997; and (ii) 25 percent, for transactions occurring on or after May 23, 1997.

BB. *Pre-Funding Period* means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

IV. Modifications

For the Underwriter Exemptions provided to Residential Funding Corporation, Residential Funding Mortgage Securities, Inc., et. al. and GE Capital Mortgage Services, Inc. and GECC Capital Markets (the Applicants) (PTEs 94–29 and 94–73, respectively);

A. Section III.A. of this amendment is modified to read as follows:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(c) With respect to which (i) one of the Applicants or any of its affiliates is the sponsor, and an entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is similar to this exemption is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent; or (ii) one of the Applicants or any of its affiliates is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in either a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Internal Revenue Code of 1986, as amended: and

(b) That is issued by and is an obligation of a trust with respect to which (i) one of the Applicants or any of its affiliates is the sponsor, and an entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is similar to this exemption is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent or (ii) one of the Applicants or any of its affiliates is the sole underwriter or the manager or co-manager of the underwriting syndicate, or a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. Section III.C. of this amendment is modified to read as follows:

C. *Underwriter* means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Ironwood Capital Partners Ltd. and Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc. (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity;

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C. (1) or (2) above is a manager or co-manager with respect to the certificates; or

(4) an entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is similar to this exemption.

EFFECTIVE DATE: This exemption is effective for transactions occurring on or after January 1, 1992 except as otherwise provided in subsection II.A.(7) and section III.AA.

Signed at Washington, D.C., this 16 day of July, 1997.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–19131 Filed 7–18–97; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10310, et al.]

Proposed Exemptions; Bricklayers and Allied Crafts Local No. 74 of DuPage County

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Pension Fund of the Bricklayers and Allied Crafts, Local No. 74 of DuPage County, Illinois, a/k/a Masons' and Plasterers', Local No. 74 of Dupage County, Illinois (the Pension Plan) and Bricklayers and Allied Craftsmen Local No. 74 Apprenticeship, Education and Training Trust Fund (the Apprenticeship Plan; Together, the Plans) Located in Westmont, Illinois

[Application No. D–10310 and L–10311]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the proposed sale of certain real property (the Property) by the Apprenticeship Plan to the Pension Plan, provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) no commissions or other expenses are paid by the Plans in connection with the sale; (3) the purchase price for the Property represents its fair market value as determined by a qualified, independent appraiser; and (4) the Pension Plan's independent fiduciary and the Apprenticeship Plan's trustees have reviewed the proposed transaction and have determined that the transaction is appropriate for each of the Plans and in the best interest of the Plans' participants and beneficiaries.

Summary of Facts and Representations

1. The Apprenticeship Plan is a welfare plan providing apprenticeship training services. It was formed as a result of a trust agreement entered by the Southern DuPage County Contractors Association and the Bricklayers and Allied Crafts, Local No. 74 of DuPage County, Illinois, a/k/a Masons' and Plasterers' Local Union No. 74 of DuPage County, Illinois (the Union). The Pension Plan was also formed as a result of a trust agreement between these same two entities and is a qualified pension plan. The Apprenticeship Plan has approximately 300 participants and assets of approximately $115,282. The Pension Plan has approximately 400 participants and had assets with a fair market value of approximately $14,459,758 as of December 1, 1995. The Plans have three common management trustees and one common Union trustee.

2. The Plans each currently own adjoining condominiums located at 6422 South Cass Avenue and 6424 South Cass Avenue in Westmont, Illinois. The condominium at 6422 South Cass Avenue has been owned by the Pension Plan, while the condominium at 6424 South Cass Avenue (i.e., the Property) has been owned by the Apprenticeship Plan. Pursuant to cost-sharing arrangements, the Pension Plan currently acts as a lessor in the condominium it owns at 6422 South Cass Avenue to the Union and to the Bricklayers and Allied Craftsmen Local Union No. 74 of DuPage County, Illinois Welfare Plan (the Welfare Plan). The Apprenticeship Plan acts as a lessor in the Property to the Union, the Welfare Plan and the Pension Plan. The rental rates charged by the Plans are based upon a survey of area rental property. These amounts are contained in five year leases which are subject to cancellation upon reasonably short notice and which permit annual increases based upon increased costs of the owner of the real estate. The relevant offices are occupied by no entities other than the Union and its Pension, Apprenticeship and Welfare Plans. The applicants represent that the leases are exempt from the prohibited transaction restrictions under Prohibited Transaction Exemptions (PTEs) 76–1 (41

FR 12740, March 26, 1976) and 77–10 (42 FR 33918, July 1, 1977).[1]

3. Under the exemption proposed herein, the Apprenticeship Plan will sell the Property to the Pension Plan. The purchase price for the Property is to be $96,000. This price was established by an independent appraisal of the Property performed by an independent appraiser, Mr. Matthew R. Bulthuis, of Oak Brook, Illinois as of April 30, 1996. Mr. Bulthuis has updated the appraisal as of April 30, 1997, and determined that the Property still had a fair market value of $96,000 as of that date. The applicants have requested relief from section 406(b)(2) of the Act because all of the management trustees for both the Pension Plan and the Apprenticeship Plan are identical, and one of the Union trustees is common to both Plans.

4. Following the purchase of the Property by the Pension Plan, it is anticipated that the usage of the Property will remain essentially unchanged. The Union and the Welfare Plan will continue to act as lessees of space in the Property under current leases, with the identity of the lessor changed from the Apprenticeship Plan to the Pension Plan. The Pension Plan will no longer lease space since it will own the Property.

5. The Plans' motivation for entering into the proposed transaction stems from the changing needs of the Plans and the Union. In previous years, the Property was utilized as an apprenticeship training school by the Apprenticeship Plan. These services are now provided at other locations. The Apprenticeship Plan thus has little need for controlling real estate at this location. In contrast, the Pension Plan and the Union both have increasing needs for office space. In order to free the Apprenticeship Plan to concentrate on the performance of services for its participants, to simplify accounting procedures with respect to office sharing arrangements, and to reflect the actual current patterns of use of the Property, the Plans' have determined it to be in their best interests to have the Apprenticeship Plan sell the Property to the Pension Plan. While the Plans believe that they could continue to share space pursuant to PTEs 76–1 and 77–10,[2] the Plans believe it is in their best interests to centralize ownership in the Pension Plan. In so doing, the number of leases can be reduced, the Apprenticeship Plan can be freed from its role as landlord, and the number of transactions involving transfers of rent from the Plans or the Union to a landlord Plan minimized.

6. Union Labor Life Insurance Company, through its Director of Real Estate Investments, Mr. David S. Glasner, has acted as an independent fiduciary for the Pension Plan with respect to the proposed transaction. Mr. Glasner has reviewed the proposed transaction and determined that it is appropriate for the Pension Plan and in the Pension Plan's best interests. While there are numerous alternative locations which the Pension Plan could acquire or lease for the purpose of conducting its business, Mr. Glasner states that the Property is clearly the most suitable. The Property is adjacent to a condominium unit owned by the Pension Plan which it utilizes for administrative purposes. The Pension Plan is in need of additional working space, and acquisition of the Property will save the Pension Plan significant relocation costs and eliminate potential business disruptions. In view of these factors, as well as having reviewed the appraisal prepared by Mr. Bulthuis and considered that the Property will represent a small percentage of the assets of the Pension Plan (approximately 0.66 percent), it is Mr. Glasner's opinion that the proposed acquisition is appropriate for the Pension Plan and in the best interests of its participants and beneficiaries.

7. In summary, the applicants represent that the proposed transaction satisfies the criteria contained in section 408(a) of the Act because: (a) The sale is a one-time transaction for cash, and no commissions or other expenses will be paid in connection with the transaction; (b) the Property represents less than 1% of the assets of the Pension Plan; (c) the purchase price for the Property was determined by an appraisal performed by Mr. Bulthuis, a qualified independent appraiser; and (d) the trustees of the Apprenticeship Plan and Mr. Glasner of Union Labor Life Insurance Company, the independent fiduciary for the Pension Plan, have determined that the proposed transaction is appropriate for their respective Plans and in the best interest of the Plans' participants and beneficiaries.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[1] In this proposed exemption, the Department expresses no opinion as to whether the leases have been exempt under PTEs 76–1 and 77-10.

[2] See footnote 1, above.

H. Weiss & Company, Incorporated Defined Benefit Pension Plan (The Plan) Located in New York, New York [Application No. D–10402]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975 (c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of a certain condominium unit (the Property) located in New York, New York, to Hanna Weiss, a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(A) All terms of the transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The sale is a one-time transaction for cash;

(C) The Plan pays no commissions nor other expenses relating to the sale;

(D) The purchase price is the greater of: (1) The fair market value of the Property as determined by a qualified, independent appraiser, or (2) the original acquisition price;[3]

(E) Before the transaction is consummated, the Plan has received rental payments of no less than the Property's fair market rental value for each month of the Plan's ownership of the Property during which it was occupied by Hanna Weiss, a party in interest with respect to the Plan; and

(F) Within 60 days of the publication in the **Federal Register** of a notice granting the exemption proposed herein, if granted, Weiss makes final payment to the Internal Revenue Service of any remaining unpaid excise taxes which are applicable under section 4975(a) of the Code by reason of the Plan's rental of the Property to a party in interest.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with five (5) participants and total assets of $479,934 as of September 30, 1995. As of the same date, the present value of accrued benefits under the Plan was

[3] The original acquisition cost is determined as follows: (original purchase price + aggregate real estate taxes + aggregate condominium association fees) − aggregate rental income = original acquisition cost.

$466,384. The Plan is sponsored by H. Weiss & Company, Incorporated (the Company), an Ohio Corporation, with its principal office in New York, which is engaged in the business of gold wholesaling. The Company is in the process of terminating the Plan. The Plan's address is 579 Fifth Avenue, Suite 840, New York, New York. Ms. Hanna Weiss (Weiss) is the Plan trustee and the sole shareholder of the Company. It is represented that Weiss makes investment decisions for the Plan.

2. Among the assets of the Plan is the Property, a condomimium unit in Trump Parc, a Trump Corporation development located at 106 Central Park South in New York City. The Plan purchased the Property for $190,000 on March 28, 1988, in a one-time transaction for cash, from Park South Associates, an unrelated party.[4]

3. After the Plan purchased the Property, Weiss in her capacity as Plan trustee attempted to rent the Property. Weiss listed the Property for rental with the Trump Corporation (Trump), which owns and leases similar units in the Trump Parc development. Weiss secured a tenant (Tenant) through Trump for September 1, 1988 and the Property was continuously occupied by the Tenant until May 31, 1989 at a monthly rental rate of $1,300. During June and July of 1989 the Tenant failed to remit the full amount of the rent and made payments of $650.00 per month. At the end of July of 1989, the Tenant vacated the Property and it was not rented for August, September and October of 1989. It is represented that Weiss was unable to find another unrelated person to rent the Property after July of 1989, and therefore she decided to rent the Property.

On November 1, 1989, Weiss entered into a rental arrangement (Rental Arrangement) with the Plan and began to occupy the Property and pay rent to the Plan at a monthly rental rate of $1,300. Weiss presently continues to rent the Property and the rent has never been increased during her occupancy. From November 1, 1989 through November 30, 1996, Weiss paid $110,700 in rent to the Plan.

4. Between March 28, 1988, the date on which the Property was purchased, and November 30, 1996, the Plan collected a total of $123,500 in income attributable to the rental of the Property. During the same period, the Plan paid real estate taxes of $20,242.92, and condominium associate fees of $27,984.54 on the Property. In this regard, the Plan recognized net rental income of $75,272.54.

5. Weiss represents that after she was advised by the Plan's actuary that the Rental Arrangement may constitute a prohibited transaction under the Act, she met with legal counsel to discuss the alternatives available to address the issue. Weiss determined that the Plan should liquidate the Property. Weiss is proposing to purchase the Property from the Plan and is requesting an exemption for the purchase transaction under the terms and conditions described herein.

Weiss proposes to purchase the Property from the Plan in a one-time transaction for cash. It is represented that Weiss will pay the greater of: (a) The Property's fair market value on the date of the sale, or (b) the Plan's original acquisition cost. For purposes of the sale, the original acquisition cost is determined as follows: (original purchase price + aggregate real estate taxes + aggregate condominium association fees) − aggregate rental income = original acquisition cost.

6. The Property was appraised by Lewis Tonks (Tonks), an independent real estate appraiser certified by the State of New York, on August 15, 1996. Tonks relied on the comparable sales method and estimates that the fair market value of the Property is $155,000. In the appraisal, Tonks indicates that the fair market value of the Property would be $165,000 if the Property was not obsolete because it did not have a kitchen. It is represented that Weiss removed the kitchen from the Property in 1990, at her own expense. Weiss represents that fair market value of the Property for the purposes of the sale will be no less than $165,000.

7. Weiss states that she recently became aware that she may have paid less that fair market rental value for the rental of the Property, during the entire period of her occupancy. Weiss sought an assessment of the Property's fair market rental value, on March 24, 1997, in order to establish that the Plan received rent equal to fair market value over the period that she has rented the Property. The assessment (Assessment) was performed by Nancy Packes (Packes) of Feathered Nest, a New York based residential brokerage company. It is represented that Feathered Nest is Manhattan's largest rental company, and it produces an extensive report on Manhattan rental values which has been published in the New York Times and is relied upon by real estate professional, developers and financial institutions. Packes is a real estate broker licenced by the State of New York and the president of Feathered Nest. Packes states that during the period of 1989 through 1996 the Property should have rented for between $1,400 and $1,600 a month. Weiss represents that she will remit to the Plan the difference between the fair market rent and the rent actually paid, plus reasonable interest. As a condition of this exemption proposed herein, Weiss is required to pay the Plan the difference between the rent actually paid through the sale date and the total rents due with interest.

8. The Department is not proposing exemptive relief for Weiss' rental of the Property from the Plan. Weiss recognizes that her rental of the Property since November of 1989 constitutes a prohibited transaction under the Act and Code for which no exemptive relief is proposed herein. Weiss represents that on or about March 13, 1997, she paid the Internal Revenue Service (the Service) all applicable excise taxes arising under section 4975(a) of the Code through December 31, 1996. Weiss has agreed that within 60 days of the publication in the **Federal Register** of a notice granting the exemption proposed herein, she will make final payment to the Service of any remaining unpaid excise taxes applicable under section 4975(a) of the Code by reason of the Rental Arrangement through the date of the sale.

9. Weiss represents that the sale transaction will occur as soon as possible after the publication in the **Federal Register** of a notice granting the exemption proposed herein, if granted. Weiss represents that proposed transaction is favorable to the Plan because the sale will be a one-time cash transaction and the Plan will incur no expenses as a result of the sale. In addition, it is represented the sale is in the best interests of the participants and beneficiaries because the Plan is presently in the process of terminating and the sale will provide liquidity to the Plan allowing it to pay benefits.

10. In summary, the applicant represents that the proposed transaction satisfies the 408(a) of the Act for the following reasons:(a) The transaction will enable the termination of an ongoing prohibited transaction, the Rental Arrangement; (b) the Plan will receive cash for the Property in the amount of no less than its original acquisition cost and no less than its fair market value as of the sale date; (c) the sale will be a one-time cash transaction and the Plan will incur no expenses

[4] The Department notes that the decisions to acquire and hold the Property are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 of the Act which may have arisen as a result of the acquisition and holding of the Property.

related to the sale; (d) as a part of the transaction, the Plan will receive the difference between the rents actually paid under the Rental Arrangement and the rents due, with interest, in accordance with the Assessment; and (e) Weiss will have paid all applicable excise taxes under section 4975(a) of the Code with respect to the Rental Arrangement which remain unpaid at the time of the sale transaction.

For Further Information Contact: Ms. Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Martin D. Ross Individual Retirement Account (the IRA) Located in Boca Raton, Florida

[Application No. D–10451]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the March 4, 1996 sale by the IRA of certain debentures (the Debentures) to Mr. Martin D. Ross (Mr. Ross), a disqualified person with respect to the IRA, provided the following conditions were satisfied: (1) The sale of the Debentures by the IRA was a one-time transaction for cash; (2) the IRA received no less than the fair market value of the Debentures as of the time of the sale; and (3) as soon as Mr. Ross became aware that the transaction was prohibited, he reversed the transaction.[5]

Effective Date: If the proposed exemption is granted, the exemption will be effective March 4, 1996.

Summary of Facts and Representations

1. Mr. Ross is the only participant in the IRA, and has sole investment responsibility under the IRA. His wife, Bonnie P. Ross, is his currently designated beneficiary. The IRA is sponsored by Mesirow Financial, Inc. (Mesirow) of Chicago, Illinois. The total value of assets of the IRA as of December 31, 1996 was approximately $704,000.

2. The Debentures were originally purchased by the IRA on April 7, 1994 at their fair market value of $200,000. In early March, 1996, the Debentures, which were 7% convertible subordinate debentures of BLC Financial Services, Inc. (BLC), accounted for almost 50% of the IRA's assets. Mr. Ross wished to diversify the IRA's assets and instructed Mr. Berkson, his broker at Mesirow, to sell the Debentures at their fair market value to his personal account at Mesirow. The applicant represents that had Mr. Ross been aware that such a sale was a prohibited transaction under section 4975 of the Code, he would not have instructed the sale of the Debentures to himself.

3. However, on March 4, 1996, Mr. Ross sold the Debentures from the IRA to his personal account for the fair market value of the Debentures, $200,000. The fair market value of the Debentures, $200,000, was based on a letter from BLC to Mesirow dated February 27, 1996. The applicant represents that the parties first became aware in late 1996 that the sale was a prohibited transaction. In mid-December, 1996, Mesirow's compliance department distributed a memorandum from the New York Stock Exchange (NYSE) outlining the requirements for ''sales'' between related parties, and Mr. Berkson asked the compliance department whether the sale from the IRA to Mr. Ross met the requirements for a ''sale'' under the NYSE's rules, not knowing that the sale was a prohibited transaction. When Mesirow's compliance department became aware of the March 4, 1996 sale, it determined that the sale was a prohibited transaction.

4. The Debentures were converted into 740,742 shares of BLC common stock (the Stock), and Mr. Ross received the Stock on June 13, 1996. On December 31, 1996, the fair market value of the Stock was about $509,000. Therefore, the appreciation in the value of the Stock occurred between March 4, 1996 and December 31, 1996.

5. When Mr. Ross learned on December 29, 1996, that the March 4, 1996 sale of the Debentures by the IRA was a prohibited transaction, he immediately instructed Mr. Berkson to cancel the March 4, 1996 transaction. At this point, Mesirow reversed the transaction. The applicant represents that this December 29, 1996 reversal was a ''correction'' of the March 4, 1996 prohibited transaction within the meaning of Treas. Reg. Section 53.4941(e)–1(c), and therefore does not constitute a separate prohibited transaction.[6] The applicant represents that since the sale of the Debentures on March 4, 1996 by the IRA was for their fair market value, and the December 29, 1996 cancellation reversed the transaction in its entirety, there was no intent to benefit the IRA or Mr. Ross by canceling the transaction. The applicant states that Mr. Ross did not cancel the March 4, 1996 transaction because the Stock had appreciated, but rather because he was informed that the March 4 sale had been a prohibited transaction.

6. In summary, the applicant represents that the subject transaction satisfied the criteria contained in section 4975(c)(2) of the Code because: (a) The March 4, 1996 sale was a one-time transaction for cash; (b) the IRA received no less than the fair market value of the Debentures as of the time of the sale; (c) as soon as Mr. Ross became aware that the transaction was prohibited, he reversed the transaction; and (d) Mr. Ross is the only participant in his IRA, and he determined that the subject transaction (and its subsequent cancellation) were appropriate for and in the best interest of his IRA, and he desired that the transactions be consummated with respect to his IRA.

Notice to Interested Persons: Because Mr. Ross is the only participant in his IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days after publication of this notice in the **Federal Register**.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the

[5] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[6] The Department expresses no opinion herein as to whether the December 29, 1996 sale of the Stock by Mr. Ross to the IRA constituted a correction within the meaning of Treas. Reg. section 53.4941(e)–1(c).

employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of July, 1996.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–19130 Filed 7–18–97; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–096]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681–0001; telephone (757) 864–9260.

NASA Case No. LAR 14417–1: Catalytic Oxidation Using Permeation Membranes;

NASA Case No. LAR 14581–3–SB: Method and Apparatus for Evaluating Multilayer Objects for Imperfections;

NASA Case No. LAR 14734–2–SB: Temperature Regulatory for Actively Cooled Structures;

NASA Case No. LAR 15094–3: Carbon-Carbon Cylinder Block;

NASA Case No. LAR 15105–3: Ho:Tu:LuAG: A New Laser Material;

NASA Case No. LAR 15146–1: A Method for Improving the Working Efficiency of Propellers and Screws (Mobius Strip);

NASA Case No. LAR 15215–1: A Bluebell Nozzle for Improving the Mixing of Exhaust Jets with Ambient Air;

NASA Case No. LAR 15272–2–CU: Reflective Self-Metallizing Polyimide Films;

NASA Case No. LAR 15381–1–SB: Method for Single Layer Thickness Gauging Using Flux Focusing Eddy-Current Probe;

NASA Case No. LAR 15431–1: Long Distance Atomic Mass Detection;

NASA Case No. LAR 15518–1: Corrugated Separate Flow Co-Annular Nozzle;

NASA Case No. LAR 15525–1–CU: Solid State Carbon Monoxide Sensor;

NASA Case No. LAR 15526–2–SB: Novel Polyimide Fibers;

NASA Case No. LAR 15534–2: Poly (Arylene Ether)S with Lower Melt Viscosity

Dated: July 14, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–19020 Filed 7–18–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–097)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that New Century Pharmaceuticals, Inc., of Huntsville, Alabama, has applied for an exclusive license to practice the invention described and claimed in NASA Case No. MFS–28989–1, entitled ''Protein Crystal Growth Apparatus for Microgravity,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Marshall Space Flight Center.

DATES: Responses to this notice must be received by September 19, 1997.

FOR FURTHER INFORMATION CONTACT: Robert L. Board, Patent Counsel, Marshall Space Flight Center, Mail Code CC01, Huntsville, Alabama 35812, telephone (205) 544–0021, fax (205) 544–0258.

Dated: July 14, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–19021 Filed 7–18–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities (1193).

Date and Time: August 12–13, 1997; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Rooms 1150, 1105.01, 1120, 1280 on the 12th, and 1150 on the 13th.

Contact Person: Harry Hedges, Program Director and Virginia Eaton, Program Director, CISE/OCDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 306–1980.

Type of Meeting: Closed.

Purpose of Meeting: to provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE POWRE proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 15, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–19103 Filed 7–18–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture & Industrial Innovation; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L 92–463, as

amended). During the period August 6 through September 24, 1997, the Special Emphasis Panel in Design manufacturing and Industrial Innovation (1194) will be holding panel meetings to review and evaluate Small Business Innovation research proposals. The dates, types of proposals, contact person and room numbers are as follows:

August 6th

Topic 21—Design Manufacture and Industrial Innovation (8 panels), Dr. M. Leu Topic Program Officer, Ritchie Coryell SBIR Program Manager, Rooms 310, 320, 340, 365, 370, 380, 580, and 410.

August 7th

Topic 16—Computer and Computation Research, Dr. Tripathy, Dr. Anger Topic Program Officers, Dr. Sara Nerlove SBIR Program Manager, Room 310.

August 11th

Topic 23—Hazardous Mitigation, Dr. S. Liu, Topic Program Officer, Dr. G. Patrick Johnson, SBIR Program Manager, Room: 310.

August 14th

Topic 21—Design Manufacture and Industrial Innovation, Dr. Kesh Narayanan, Topic Program Officer, Ritchie Coryell, SBIR Program Manager, (Panel will be held at the University of Texas—Austin).

August 18th

Topic 8—Ocean Sciences, Dr. Rodger Baier Topic Program Officer, Ritchie Coryell SBIR, Program Manager, Room 310.

August 19 & 20th

Topic 3—ElectroCeramics, Dr. Lise Schioler Topic Program Officer, Darryl Gorman SBIR, Program Manager, Room 320.

August 22th

Topic 3—Polymers, Dr. Andrew Lovinger Topic Program Officer, Darryl Gorman SBIR Program Manager, Room 380.

August 25th

Topic 23—Dynamic Systems and Control, Dr. D. Garg Topic Program Officer, Dr. G. Patrick Johnson, SBIR Program Manager, Room 530.

August 26–27th

Topic 3—Structural Ceramics, Dr. Lise Schioler Topic Program Officer, Darryl Gorman SBIR Program Manager, Room 320.

August 28th

- Topic 23–d—Tribology, Dr. J. Larsen-Basse Topic Program Officer, Dr. Patrick Johnson SBIR Program Manager, Room 330 and 340.
- Topic 21 Design Manufacture and Industrial Innovation, Dr. George Hazelrigg and Dr. Lawrence Seiford Topic Program Officers and Ritchie Coryell, SBIR Program Manager, Room 530.

September 3rd

Topic 3—Optical/Photonic Materials, Dr. Lise Schioler Program Officer, Darryl Gorman, SBIR Program Manager, Room 320.

September 8 & 9th

Topic 3—Liquid Crystals, Dr. Lise Schioler, Topic Program Officer, Darryl Gorman, SBIR Program Manager, Room 320.

September 9th

- Topic 23—Materials Structures & Systems, Dr. K. Chong Topic Program Officer, Dr. G. Patrick Johnson, SBIR Program Manager, Room 360.
- Topic 23Bridge Engineering, Dr. K. Chong Topic Program Officer, Dr. G. Patrick Johnson, SBIR Program Manager, Room 365.

September 10th

- Topic 23—Bridge Engineering, Dr. K. Chong Topic Program Officer, Dr. G. Patrick Johnson, SBIR Program Manager, Room 365.
- Topic 23—Materials, Structures, & Systems, Dr. K. Chong Topic Program Officer, Dr. G. Patrick Johnson, SBIR Program Manager, Room 370.

September 11 and 12th (5 panels)

Topic 25—Education & Human Resources, Mr. James LIghtborne, Program Coordinator, Dr. Sara Nerlove, SBIR Program Manager, Rooms 320, 330, 365, 370, 880.

September 15 & 16th (4 panels)

Topic 20—Electrical and Communication system, Dr. K. Baheti, Topic Program Officer and Mr. Tony Centodocati SBIR Program Manager, Rooms: 320, 330, 365, 370.

September 17th

- Topic 22—Thermal, Dr. Emery, Topic Program Officer, Dr. Joseph Hennessey, SBIR Program Manager, Room 320.
- Topic 9—Polar Sciences, Dr. Charles Myers, Topic Program Officer, Mr. Ritchie Coryell, SBIR Program Manager, Room 330.
- Topic 24—Bioengineeing, Dr. George Vermont, Topic Program Officer, Dr. Bruce Hamilton SBIR Program Manager, Room 365.
- Topic 3—Electronic Materials, Dr. Lise Schioler, Topic Program Officer, Mr. Darryl Gorman, SBIR Program Manager, Room 370.

September 18 & 19th

- Topic 20—Electrical and Communication Systems, Dr. K. Baheti Topic Program Officer, Mr. Tony Centodocati, SBIR Program Manager, Room 320 & 330.

September 18th (3 panels)

- Topic 19—Information, Robotics, and Intelligent Systems, Dr. Gary Strong, Topic Program Officer, Dr. Sara Nerlove, SBIR Program Manager, Room 360, 365, 370.
- Topic 22—Chemical and Transport Systems, Dr. Maria Burka, Topic Program Officer, Dr. Joseph Hennessey, SBIR Program Manager, Room 530.

September 19th

- Topic 13—Biological Infrastructure, Dr. Karl Koehler, Topic Program Officer, Dr. Bruce Hamilton, SBIR Program Manager, Room 370.
- Topic 22—Fluids and Particulates, Dr. M. Roco and Dr. Roger Arndt, Topic Program Officers and Dr. Joseph Hennessey, SBIR Program Manager, Room 530.

September 23, 24 & 26th

Topic 26—Next Generation Vehicles, Dr. Paul Werbos, Topic Program Officer, Cheryl Albus, SBIR Program Manager, Room 320.

September 23 & 24th (3 panels)

Topic 2—Chemistry, Dr. Joseph Reed, Topic Program Officer, Dr. Joseph Hennessey, SBIR Program Manager, Room 330, 365, 370.

Times: 8:30 to 5:00 p.m. each day.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, Va (unless noted).

Type of Meetings: Closed.

SBIR Program Contact Person: Dr. Cheryl Albus, Program Analyst, DMII, Room 590, National Science Foundation, 4201 Wilson Blvd., Arlington, Va. telephone (703) 306–1390.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Small Business Innovative Research (SBIR) Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 15, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–19102 Filed 7–18–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear Corporation; Three Mile Island Nuclear Generating Station, Unit 1; Exemption

I

GPU Nuclear Corporation (GPU or the licensee) is the holder of Facility Operating License No. DPR–50 for the Three Mile Island Nuclear Generating Station, Unit 1 (TMI–1 or the facility). The facility consists of one pressurized water reactor located at the licensee's site in Dauphin County, Pennsylvania. The license provides, among other things, that it is subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission or NRC) now and hereafter in effect.

II

Section III.G.2 to Appendix R of 10 CFR part 50 specifies the fire protection requirements for redundant trains of systems necessary to achieve and maintain safe shutdown conditions

when the redundant trains are located within the same fire area. Subsection III.G.2.c requires that automatic fire suppression systems shall be installed in fire areas where redundant circuits required for safe shutdown are separated by fire barriers having a 1-hour rating and have fire detectors installed. By letter dated August 16, 1996, supplemented by letters dated August 28, 1996, and January 3, 1997, the licensee requested an exemption from the requirements of Section III.G.2.c of Appendix R, to the extent that it requires the installation of automatic fire suppression systems. The exemption was requested for fire areas CB–FA–2b, CB–FA–2c, CB–FA–2d, CB–FA–2e, CB–FA–2f, CB–FA–2g, CB–FA–3a, and CB–FA–3b, and fire zone FH–FZ–5 at TMI–1. The licensee is seeking this exemption in accordance with the provisions of 10 CFR 50.12.

The licensee's request encompasses eight fire areas and one fire zone where Thermo-Lag fire barrier systems were installed on electrical raceways to protect circuits required for safe shutdown. The Thermo-Lag barriers were originally installed to provide 3-hour separation between redundant circuits located in the same fire area. As part of the licensee's review of installed Thermo-Lag fire barriers at TMI–1, the licensee identified locations that do not support a 3-hour rating.

The licensee requested the exemption after determining that installation of fire suppression systems in the affected areas was not a viable alternative for meeting the regulatory requirements of Section III.G.2.c. The licensee stated that installation of an automatic suppression system is not desirable because of the potential for electrical equipment damage from a water suppression system and because of personnel hazard concerns from a carbon dioxide suppression system. Halon gas suppression systems cannot be used because of environmental considerations. The licensee determined that modification of the existing Thermo-Lag fire barrier envelopes within the affected fire areas to achieve a 3-hour rating, and thereby eliminating the regulatory requirement for fire suppression systems, represented a substantial hardship without a significant increase in the level of protection provided.

In lieu of installing automatic fire suppression systems, the licensee proposed installing area-wide automatic fire detection systems in each of the affected areas and establishing a minimum 1-hour fire rating for the existing Thermo-Lag fire barriers.

III

The NRC staff has completed its safety evaluation of the licensee's request for exemption from certain requirements of Section III.G.2.c of Appendix R. The staff's review included an evaluation of the fire hazards, the fire protection features and the safe shutdown circuits present in each of the affected fire areas.

The licensee has administrative controls in place for transient combustibles and work in the plant in accordance with Section III.K of Appendix R as documented in an NRC Safety Evaluation dated June 4, 1984. These controls require, in part, that total in-situ plus allowable transient fire loads (or cumulative load) in a given fire area/zone be half of that which would challenge the lowest rated fire barrier in the zone. These limits are documented in licensee procedures that are referenced in and implemented by the licensee's Fire Protection Program.

The licensee completed an evaluation of the Thermo-Lag fire barriers which are the subject in this exemption request in Topical Report #904, ''TMI 1 Evaluation of Thermo-Lag Fire Barriers,'' dated July 10, 1996, and provided in a letter dated August 28, 1996. The licensee found that the subject Thermo-Lag barriers either currently have a fire rating of 1-hour or more (in accordance with an American Society for Testing and Materials (ASTM) E–119 fire exposure test) or the licensee has committed to upgrade the existing barriers to achieve a 1-hour rating.

For a postulated fire in areas CB-FA–2b, CB-FA–2c, CB-FA–2d, CB-FA–2e, B–FA–2f, CB–FA–2g, CB–FA–3a, and CB–FA–3b, the loss of redundant trains of several different safe shutdown circuits, including reactor make-up and supporting functions, RCS pressure control, steam generator pressure and level functions, source range monitoring, electrical power system function, non-nuclear instrumentation/integrated control system (NNI/ICS) cabinets, and reactor coolant pump (RCP) thermal barrier cooling functions, could occur. These circuits must be maintained functional and free from fire damage to assure shutdown of the plant.

Fires in these eight fire areas are postulated to be slowly developing cable fires, with possible ignition sources, including electrical switchgear, fan motors, or heater controllers. Exposure of the protected envelopes to fire could be expected in some of the fire areas, should a fire occur. Some of the envelopes are in close proximity to heavily loaded cable trays, which could contribute to a postulated fire. The fire loadings for these fire areas range from low to moderate.

The licensee has committed to augmenting the existing detection systems in the eight fire areas listed above with area-wide early warning fire detection systems. The systems to be installed are designed to detect invisible molecules generated during the precombustion phases of an incipient fire and to provide active and continuous sampling of the air. The systems operate independently of air movement and are much more sensitive than conventional ionization detection.

If a fire were to occur in a given fire area, detection by the proposed area-wide detection system would most likely be rapid. The existing heating, ventilation, and air conditioning (HVAC) smoke detection systems would isolate—5-room ventilation upon detecting smoke in the area. Indication of fire would be received in the control room, and if necessary, the fire brigade would be dispatched. The fire brigade response time to any of the fire areas upon receipt of an alarm has been conservatively estimated at 15 minutes. Manual firefighting equipment (hand-held fire extinguishers and hose stations) is available in, or adjacent to, all of the fire areas. Manual suppression could be brought to bear on a fire within any of these fire areas within 15 minutes.

For fire areas CB–FA–2b, CB–FA–2c, CB–FA–2d, CB–FA–2e, CB–FA–2f, CB–FA–2g, CB–FA–3a, and CB–FA–3b, the exposure threat of the Thermo-Lag protected circuits is low due to the proximity of the Thermo-Lag envelopes to intervening combustibles. Therefore, a 1-hour barrier coupled with an area-wide early warning fire detection system and a rapid fire brigade response meets the defense-in-depth principle. There is reasonable assurance that a fire in any of these fire areas will not adversely affect the ability to achieve and maintain safe shutdown.

The staff does not believe the same assurance has been provided for fire zone FH–FZ–5. The Thermo-Lag protected envelope in fire zone FH–FZ–5 passes directly over switchgear and is in close proximity to cable trays which present a combustible hazard. The combustible loading in this zone is higher than the other eight fire areas, and the area-wide detection is not available on all elevations of this fire zone. Given these factors, there is no reasonable assurance that a fire would not damage cables in the protected envelope. There is only one Thermo-Lag envelope in this zone, made up of protected conduit. The staff does not believe an undue hardship exists with

respect to upgrading this envelope to a 3-hour fire rating.

On the basis of the NRC staff evaluations discussed above, and contingent on the installation of area-wide fire detection systems, upgrading the existing Thermo-Lag fire barriers to ensure a minimum 1-hour fire rating, and continued implementation of the administrative controls previously discussed, the staff has concluded that an exemption from the technical requirements of Section III.G.2.c of Appendix R, to the extent that it requires the installation of automatic fire suppression systems, should be granted for fire areas CB–FA–2b, CB–FA–2c, CB–FA–2d, CB–FA–2e, CB–FA–2f, CB–FA–2g, CB–FA–3a, and CB–FA–3b. The staff has concluded that the licensee's exemption request for fire zone FH–FZ–5 should be denied.

IV

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensee in the letter dated August 16, 1996, supplemented by letters dated August 28, 1996, and January 3, 1997, for fire areas CB–FA–2b, CB–FA–2c, CB–FA–2d, CB–FA–2e, CB–FA–2f, CB–FA–2g, CB–FA–3a, and CB–FA–3b, is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances are present in that application of the regulation is not necessary to achieve the underlying purpose of the rule, which is to establish fire protection features such that the ability to perform safe shutdown functions in the event of a fire is maintained.

Therefore, contingent on the installation of an area-wide fire detection system in the affected fire areas and upgrading the existing Thermo-Lag fire barriers within the affected fire areas to ensure a minimum 1-hour fire rating, and continued implementation of the administrative controls discussed above, the Commission hereby grants GPU Nuclear Corporation an exemption from the technical requirements of Section III.G.2.c of Appendix R, to the extent that it requires the installation of automatic fire suppression systems, for fire areas CB–FA–2b, CB–FA–2c, CB–FA–2d, CB–FA–2e, CB–FA–2f, CB–FA–2g, CB–FA–3a, and CB–FA–3b, at TMI–1. The request for exemption for fire zone FH–FZ–5, included by the licensee in the same submittal, is denied.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (62 FR 37082).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 11th day of July 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–19063 Filed 7–18–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company; Diablo Canyon Power Plant, Unit Nos. 1 and 2; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Pacific Gas and Electric Company (the licensee) to withdraw its January 17, 1996, as supplemented by letter dated July 17, 1996, application for proposed amendment to Facility Operating License Nos. DPR–80 and DPR–82 for the Diablo Canyon Power Plant. Unit Nos. 1 and 2, located in San Luis Obispo County, California.

The proposed amendment would have relocated selected technical specifications (TS) in accordance with the Commission's Final Policy Statement (10 CFR 50.36) for relocation of current TS that do not meet any of the screening criteria for retention. These TS would have been relocated to the Diablo Canyon Power Plant Equipment Control Guidelines. This change would also create TS 6.8.4.j, ''Explosive Gas and Storage Tank Radioactivity Monitoring Program.''

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 10, 1996 (61 FR 15991). However, by letter dated July 2, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 17, 1996, as supplemented by letter dated July 17, 1996, and the licensee's letter dated July 2, 1997, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the local public document room located at California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland this 15th day of July 1997.

For the Nuclear Regulatory Commission.

Steven D. Bloom,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–19061 Filed 7–18–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22749: File No. 812–10648]

Hotchkis and Wiley Variable Trust, et al.

July 14, 1997.

AGENCY: The Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an exemption pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Hotchkis and Wiley Variable Trust (the ''Trust'') and Merrill Lynch Asset Management, L.P. (''MLAM'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) granting exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary to permit shares of the Trust and shares of any other investment company or portfolio that is designed to fund insurance products and for which Hotchkis and Wiley (''H&W'') may serve in the future, as investment adviser, administrator, manager, principal underwriter, or sponsor (''Future Trusts,'' together with Trust, ''Trusts'') to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies and by qualified pension and retirement plans (''Qualified Plans'' or ''Plans'') outside of the separate account context.

FILING DATE: This application was filed on May 9, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be

received by the Commission by 5:30 p.m. on August 8, 1997, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Lawrence A. Rogers, Esq., Merrill Lynch Asset Management, L.P., 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the 1940 Act as an open-end, management investment company. The Trust currently consists of three separate portfolios (each, a ''Portfolio''), each of which has its own investment objective or objectives, and policies.

2. H&W, an operating division of MLAM, serves as the investment adviser to the Trust. MLAM is a limited partnership, the general partner of which is Princeton Services, Inc. and the limited partner of which is Merrill Lynch & Co., Inc. MLAM is registered with the Commission as an investment adviser pursuant to the Investment Advisers Act of 1940.

3. Upon effectiveness of the Trust's registration statement, shares of each Portfolio will be offered to insurance companies as investment options for their separate accounts supporting variable annuity contracts (''Current Participating Insurance Companies'').

4. Applicants state that, upon the granting of the exemptive relief requested by the Application, the Trust intends to offer shares representing interests in each Portfolio, and any future Portfolios (each, a ''Future Portfolio,'' together with Portfolio ''Portfolios''), to separate accounts of insurance companies, including both the Current Participating Insurance Companies and other insurance companies (''Other Insurance Companies'') to serve as the investment vehicle for variable annuity contracts and variable life insurance contracts (collectively, ''Variable Contracts''). The Current Participating Insurance Companies and Other Insurance Companies which elect to purchase shares of one or more Portfolios are collectively referred to herein as ''Participating Insurance Companies.'' The Participating Insurance Companies will establish their own separate accounts (''Separate Accounts'') and design their own Variable Contracts. Applicants also propose that the Portfolios offer and sell their shares directly to Qualified Plans outside of the separate account context.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trusts to be offered and sold to, and held by: (1) both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company (''mixed funding''); (2) separate accounts of unaffiliated life insurance companies (including both variable annuity separate accounts and variable life insurance separate accounts) (''shared funding''); and (3) trustees of Qualified Plans.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. These exemptions are available only if the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurer. Thus, the exemptions provided by Rule 6e–2 are not available if a scheduled premium variable life insurance separate account owns shares of an underlying fund that also offers its shares to a variable annuity separate account or a flexible premium variable life insurance separate account of the same insurance company, or to an unaffiliated life insurance company. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying fund that also offers its shares to Qualified Plans.

3. Rule 6e–3(T)(b)(15) provides similar partial exemptions in connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust. These exemptions, however, are available only if all the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contacts or flexible premium variable life insurance contracts or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Thus, the exemptions provided by Rule 6e–3(T)(b)(15) are available if the underlying fund is engaged in mixed funding, but are not available if the fund is engaged in shared funding or if the fund sells its shares to Qualified Plans.

4. Applicants state that current tax law permits the Trust to increase its asset base through the sale of its shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying Variable Contracts, such as those in each Portfolio. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department (the ''Regulations''), adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of a qualified pension or retirement plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued

through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

5. The promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Regulations. Applicants state that, given the then-current tax law, the sale of shares of the same investment company to both the separate accounts of insurers and to Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(5) and 6e–3(T)(b)(15).

6. Section 9(a)(3) of the 1940 Act provides, among other things, that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a) (1) or (2) of the 1940 Act. Rules 6e–2(b)(15) (i) and (ii) and Rule 6e–3(T)(b)(15) (i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

7. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants state that it is unnecessary to apply Section 9(a) to individuals in various unaffiliated Participating Insurance Companies (or affiliated companies of Participating Insurance Companies) that may utilize the Trusts as the funding medium for Variable Contracts. According to Applicants, there is no regulatory purpose in extending the Section 9(a) monitoring requirements because of mixed or shared funding. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management or administration of the Trusts. Moreover, those individuals who participate in the management or administration of the Trusts will remain the same regardless of which Separate Accounts or Qualified Plans use the Trusts. Applicants argue that applying the monitoring requirements of Section 9(a) because of investment by other insurers' separate accounts would be unjustified and would not serve any regulatory purpose.

8. Applicants also state that in the case of Qualified Plans, the Plans, unlike the Separate Accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of any of the Trusts by virtue of its shareholders.

Pass-Through Voting

9. Rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming that the limitations on mixed and shared funding imposed by the 1940 Act and the rules promulgated thereunder are observed.

10. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the Participating Insurance Companies the right to disregard voting instructions of contract owners. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) each provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T) under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) each provide that the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in the underlying investment company's investment policies, principal underwriter, or any investment adviser (subject to the provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T) under the 1940 Act). Applicants represent that these rights do not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard voting instructions of contract owners only with respect to certain specified items. Applicants also note that the potential for disagreement among Separate Accounts is limited by the requirements in Rules 6e–2 and 6e–3(T) that a Participating Insurance Company's disregard of voting instructions be reasonable and based on specific good faith determinations.

11. Applicants further represent that the offer and sale of Portfolio shares to Qualified Plans will not have any impact on the relief requested in this regard. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Under Section 403(a) of ERISA, shares of a fund sold to a Qualified Plan must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

12. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

13. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract owners and Plan investors with respect to voting of the respective Portfolio's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with

respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

14. Some Qualified Plans, however, may provide participants with the right to give voting instructions. Applicants note that there is no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage variable contract owners. Applicants, therefore, submit that the purchase of shares of the Portfolios by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

15. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

16. Applicants submit that shared funding by unaffiliated insurers, in this respect, is no different that the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential for differences in state regulatory requirements. Applicants state that the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the Portfolios. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Portfolio.

17. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. Applicants assert that this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

18. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner's voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the relevant Portfolio's election, to withdraw its Separate Account's investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in the Portfolios.

19. Applicants submit that there is no reason why the investment policies of the Portfolios would or should be materially different from what these policies would or should be if the Portfolios funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Each Portfolio will be managed to attempt to achieve the investment objective or objectives of such Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

20. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. A Portfolio supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the relevant Portfolio. Mixed and shared funding will broaden the base of contract owners which will facilitate the establishment of additional portfolios serving diverse goals.

21. Applicants do not believe that the sale of the shares of the Portfolios to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

22. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with Regulations, adequately diversified.

23. Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The Regulations, however, contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817–5(f)(3)(iii)). Thus, the Regulations specifically permit ''qualified pension or retirement plans'' and separate accounts to invest in the same portfolio of an underlying fund. For this reason, Applicants assert that neither the Code, nor the Regulations, nor the Revenue Rulings thereunder, present any inherent conflicts of interest.

24. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or a

Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Portfolio at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Plan.

25. Applicants state that it is possible to provide an equitable means of giving voting rights to contract owners in the Separate Accounts and to Qualified Plans. In connection with any meeting of shareholders, the Trusts will inform each shareholder, including each Separate Account and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the relevant Portfolio. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Trust. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Trusts would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

26. Applicants submit that the ability of the Portfolios to sell their shares directly to Qualified Plans does not create a ''senior security'' as such term is defined under Section 18(g) of the 1940 Act ''Senior security'' is defined under Section 18(g) of the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts only have rights with respect to their respective shares of the Portfolio and any Future Portfolio. They only can redeem such shares at net asset value. No shareholder of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

27. Applicants assert that there are no conflicts between the contract owners of the Separate Accounts and participants under the Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers.

28. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Portfolios and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

29. Applicants also assert that there is no greater potential for material irreconcilable conflicts arising between the interest of participants in the Qualified Plans and contract owners of the Separate Accounts from future changes in the federal tax laws than that which already exist between variable annuity contract owners and variable life insurance contract owners.

30. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Use of a Portfolio as a common investment media for variable contracts would reduce or eliminate these concerns. Mixed and shared funding also should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of MLAM and its operating division H&W, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a Portfolio, thereby promoting economics of scale, by permitting increased safety through greater diversification, or by making the addition of new Portfolios more feasible. Applicants assert that making the Portfolios available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants also assert that the sale of shares of the Portfolios to Qualified Plans in addition to the Separate Accounts will result in an increased amount of assets available for investment by such Portfolios. This may benefit variable contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new Portfolios more feasible.

31. Applicants see no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. As noted above, Applicants assert that mixed and shared funding will have any adverse Federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of each Trust will consist of persons who are not ''interested persons'' of such Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board;(b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any

should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable Federal or State insurance tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, H&W, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Portfolio (collectively, the ''Participants'') will report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the relevant Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trusts, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of a Board, or a majority of the disinterested trustees of such Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Portfolio and reinvesting such assets in a different investment medium, including another Portfolio, or in the case of insurance company participants submitting the question as to whether such separation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners or life insurance contract owners of one or more Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Trust, to withdraw such insurer's Separate Account's investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Trust, to withdraw its investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Trusts, and these responsibilities will be carried out with a view only to the interests of contract owners and Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will any Trust or H&W be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any variable contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding medium for the Plan if: (a) A majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes such decision without a Plan participant vote.

5. A Board's determination of the existence of a material irreconciliable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all contract owners as required by the 1940 Act.Accordingly, each such Participant, where applicable, will vote shares of the applicable Portfolio held in its Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Portfolio calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges as provided in the application will be a contractual obligation of all Participating Insurance Companies under their agreement with Trust governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has no received timely voting instructions as well as shares it owns in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

7. Each Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, and, in particular, each Trust will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Trust will act in accordance with the Commission's interpretation of the

requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

8. The Trusts will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Trust will disclose in its prospectus that: (a) Shares of such Trust may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Trust and the interests of Qualified Plans investing in such Trust may conflict; and (c) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

9. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from those terms and conditions associated with the exemptive relief requested in the application, then the Trusts and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

10. The Participants, at least annually, will submit to the Board of each Trust such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in the application, and said reports, materials, and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

11. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the relevant Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

12. The Trusts will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Plan executes an agreement with the relevant Trust governing participation in such Portfolio. A Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of any Portfolio.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the pubic interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19030 Filed 7–18–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 21, 1997.

A closed meeting will be held on Thursday, July 24, 1997, at 3:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the mattes may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, July 24, 1997, at 3:00 p.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: July 17, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–19196 Filed 7–17–97; 11:53 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38839; File No. SR–CBOE–97–10]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to Minimum Sizes for Closing Transactions, Exercises, and Responses to Requests for Quotes in FLEX Equity Options

July 15, 1997.

I. Introduction

On February 21, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to amend certain rules pertaining to FLEX Equity Options.

Notice of the proposal was published for comment and appeared in the **Federal Register** on May 16, 1997.[3] No comment letters were received on the proposed rule change, although the CBOE submitted a letter with additional information in support of its proposal.[4] This order approves the Exchange's proposal.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 38607 (May 9, 1997), 62 FR 27083.

[4] *See* Letter from William J. Barclay, Vice President, Strategic Planning and International Development, CBOE, to Sharon Lawson, Senior Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated April 21, 1997 (''CBOE Letter'').

II. Description of the Proposal

The purpose of the proposed rule change is to reduce from 100 contracts to 25 contracts the minimum value size of closing transactions in and exercises of FLEX Equity Options, and to make a comparable reduction in the minimum value size of FLEX Equity Quotes in response to a Request for Quotes.

Currently, Rule 24A.4(a)(4)(iii) imposes a 100 contract minimum on all transactions in FLEX Equity Options unless the transaction is for the entire remaining position in the account. According to the CBOE, based on its experience to date with FLEX Equity Options, it appears that the existing 100 contract minimums are too large to accommodate the needs of certain firms and their customers.[5] These firms may purchase 100 or more FLEX Equity Options in an opening transaction for a single firm account in which more than one of the firm's clients have an interest. If one of these clients wants to redeem its investment in the account, the firm likely will want to engage in a closing or exercise transaction in order to reduce the account's position in those FLEX Equity Options by the number being redeemed. Thus, if the redeeming client's interest is less than 100 FLEX Equity Options and does not represent the total remaining position in the account, Rule 24A.4(a)(4)(iii) as it stands presently, prevents the firm from closing or exercising positions of this size. The CBOE states that this places its market at a competitive disadvantage to the over-the-counter (''OTC'') customized equity market where no such limitation exists.[6]

The Exchange believes that the proposed rule change to Rule 24A.4(4)(iii) would remedy the situation described above, by permitting an order to close or exercise as few as 25 FLEX Equity Option contracts. The corresponding change to Rule 24A.4(a)(iv), which governs the minimum size for FLEX Equity Quotes that may be entered in response to Requests for Quotes, is necessary in order to provide the liquidity needed to facilitate the execution of closing orders between 25 and 99 FLEX Equity Option contracts that would be permitted by the proposed amendment to Rule 24A.4(4)(iii).[7]

The Exchange notes that the Exchange would issue a circular that (1) describes the new rule; and (2) reminds all members and member firms of their continued responsibility to insure that FLEX Equity Options are utilized only by sophisticated investors with the necessary financial resources to sustain the possible losses arising from transactions in the requisite FLEX Equity Options class size.[8]

The Exchange believes by providing firms and their customers greater flexibility to trade FLEX Equity options by lowering from 100 to 25 the minimum number of contracts required for a closing transaction, for exercises, and for FLEX Quotes responsive to a Request for Quotes, the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Securities Exchange Act of 1934 by removing impediments to and perfecting the mechanism of a free and open market in securities and otherwise serving to protect investors and the public interest.

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, the requirements of Section 6(b)(5) of the Act.[9] Further, for the reasons discussed below, the Commission believes that consistent with 6(b)(5) of the Act, the proposal should facilitate transactions in securities in FLEX Equity Options consistent with investor protection and the public interest.[10]

The Commission believes that the Exchange's proposal to reduce from 100 contracts to 25 contracts the minimum value size of closing transactions in and exercises of FLEX Equity Options, and to make a comparable reduction in the minimum value size of FLEX Equity Quotes in response to a Request for Quotes reasonably addresses the Exchange's desire to meet the demands of sophisticated investors, portfolio managers and other institutional investors who may want to use FLEX Equity Options, but find the minimum size requirements for closing transactions too restrictive for their investment needs and may therefore choose to use the OTC market. As previously noted by the Commission, the benefits of the Exchanges' FLEX options market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of The Options Clearing Corporation for all contracts traded on the Exchange.[11]

The Commission notes that market participants wanting to execute an opening transaction in a particular series of FLEX Equity Options will still have to meet the 250 or 100 minimum contract requirement.[12] This should help to ensure that transactions in FLEX Equity Options remain of substantial size and, therefore, the product is geared to an institutional, rather than a retail, market. In originally approving FLEX Equity Options, the Commission stated that the minimum value sizes for opening transactions in FLEX Equity Options are designed to appeal to institutional investors, and it is unlikely that most retail investors would be able to engage in options transactions at that size.[13]

The Commission notes that, in approving the proposal, adequate surveillance guidelines should be in place to ensure that only sophisticated investors with the necessary financial resources to sustain the possible losses arising from transactions in the requisite FLEX Equity Options class size are utilizing this product. The Commission's staff has reviewed CBOE's surveillance program and believes it provides a reasonable framework in which to monitor such investor open interest.

The Commission requests, however, that the Exchange provide a report to the Commission's Division of Market Regulation describing the nature of investor participation (*i.e.*, retail vs. institutional) in FLEX Equity Options for one year from the implementation date for the rule change.[14] If the

[5] The Exchange notes that the existing customer base for FLEX Equity Options includes both institutional investors, in particular mutual funds, money managers and insurance companies, and high net worth individuals who meet the ''sophisticated investor'' criteria applied to various clients by Exchange member firms. *See* CBOE Letter, *supra* note 4.

[6] *Id.*

[7] The Commission notes that the minimum size for a opening transaction in a request for quotes is 250 contracts for any FLEX series in which there is no open interest, and 100 contracts in any currently opened FLEX series. *See* CBOE Rule 24A.4(a)(4) (ii) and (iii).

[8] *See* CBOE Letter, *supra* note 4.

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* Securities Exchange Act Release No. 36841 (February 14, 1996) (''Original FLEX Equity Option Approval Order'').

[12] *See supra* note 7.

[13] *See* Original FLEX Equity Option Approval Order, *supra* note 11.

[14] The Commission notes that the CBOE had previously committed to providing the Commission with a report on the usage of FLEX Equity Options after the first year of trading. Because that report is due shortly and, the changes adopted herein could potentially change the nature of investor

Continued

Exchange determines in the interim that the proposed rule change has resulted in a pattern of retail investor participation in FLEX Equity Options, it should notify the Commission's Division of Market Regulation to determine if the minimum closing transaction sizes should be restored to the original levels.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (File No. SR–CBOE–97–10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19031 Filed 1–18–97; 8:45 am]

BILLING CODE 8010–01–M

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participation, the Commission requests that the Exchange update its report one year from the implementation date for this rule change.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30,3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38837; File No. SR–CBOE–97–24]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to a Reduction of the Quorum Requirements in Uncontested Elections

July 14, 1997.

I. Introduction

On May 21, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''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 the CBOE's Constitution to reduce the quorum required in uncontested elections. On June 4, 1997, the CBOE submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change was published for comment in the **Federal Register** on June 13, 1997.[4] No comments were received on the proposal. This Order approves the proposal.

II. Description of the Proposal

The Exchange conducts an annual election and special meetings of its membership.[5] Currently, at all meetings of Exchange members, including elections, a majority of the membership entitled to vote constitutes a quorum. The Exchange is proposing to amend Section 3.6 of the Constitution to reduce the quorum requirement, in uncontested elections only, from a majority to one-third of the members entitled to vote.[6] Uncontested elections are elections in which each candidate is running for office unopposed. If any candidate for office is opposed, the entire election would be considered contested, and would require a majority for a quorum.

The Exchange is also making a change to Section 3.7 of the Constitution to clarify that this Section governs voting by members on issues other than elections. The quorum requirement will remain a majority of the members entitled to vote on issues arising pursuant to Section 3.7.

III. Discussion

After careful review, 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.[7] Specifically, the Commission believes that the proposal, as amended, is consistent with and furthers the objectives of Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that reducing the quorum required in uncontested elections should improve the efficiency of the CBOE's election process. A quorum requirement of one-third of the members entitled to vote should demand less of the CBOE's resources than the current majority requirement which, at times, has required considerable Exchange staff time and resources. The Commission believes that the proposed rule change should maximize the use of Exchange resources.

In addition, the Commission notes that the existing quorum requirement will be reduced only for uncontested elections. The Commission believes that Exchange members should be encouraged strongly to vote in contested elections and therefore, it would be inappropriate to reduce the quorum requirement for contested elections. The Commission further believes that in circumstances in which even one nominated candidate is opposed, the more rigid quorum requirement is appropriate to ensure that the Exchange's membership is compelled to consider carefully the candidates.

Finally, the Commission notes that the proposed rule was overwhelmingly approved by the Exchange's membership at the CBOE's most recent Annual Election Meeting, held on December 11, 1996. The membership's approval of the proposal indicates that CBOE's members expect the proposed reduction of the quorum requirement in uncontested elections will not affect adversely either the operations of the Exchange or the membership's interests.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–97–24), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19032 Filed 7–18–97; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Debora E. Barnes, Senior Attorney, CBOE, to Debra Flynn, Attorney, Division of Market Regulation, SEC, dated June 3, 1997. In Amendment No. 1, the CBOE replaced all references to ''Constitution'' change with ''Rule'' change, clarified the definition of ''uncontested elections'' by deleting the phrase ''for example,'' and clarified the language in Sections 3.6 and 3.7 of the Constitution.

[4] *See* Securities Exchange Act Release No. 38723 (June 6, 1997), 62 FR 32393 (June 13, 1997).

[5] At annual election meetings, the CBOE membership votes for a slate of candidates proposed by the Nominating Committee for expiring terms and vacancies on the Board of Directors and certain other Exchange Committees, such as the Nominating and Modified Trading System Committees.

[6] In connection with the proposed amendment to the Constitution, the Election Committee stated that its policy under the reduced quorum proposal, if approved, would be to collect ballots and proxies in-person for three trading sessions prior to any meeting at which a vote would be conducted. Any change to this Election Committee policy would need to be approved by the Board of Directors and submitted to the Commission pursuant to Rule 19b–4.

[7] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38828; File No. SR–NYSE–97–12]

Self-Regulatory Organizations; the New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments to the Exchange's Allocation Policy and Procedures

July 9, 1997.

I. Introduction

On April 16, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''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 the Exchange's Allocation Policy and Procedures.

The proposed rule change was published for comment in Securities Exchange Act Release No. 38669 (May 22, 1997), 62 FR 29170 (May 29, 1997). No comments were received on the proposal.

II. Background

The Exchange's Allocation Policy and Procedures govern the allocation of equity securities to NYSE specialist units. The Allocation Committee has sole responsibility for the allocation of securities to specialist units pursuant to Board-delegated authority, and is overseen by the Quality of Markets Committee of the Board of Directors. The Allocation Committee renders decisions based upon the allocation criteria specified in the Allocation Policy.

In its proposal, the NYSE states that the intent of the Exchange's Allocation Policy and Procedures is: (1) To ensure that securities are allocated in an equitable and fair manner and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between a specialist unit and a security; and (4) to contribute to the strength of the specialist system. In September 1987, the Quality of Markets Committee (''QOMC'') appointed the first Allocation Review Committee (''ARC'') to undertake a comprehensive review of the Exchange's then-existing allocation procedures which had been in effect since 1976. ARC's recommendations were filed with the SEC in 1988 and approved in 1990.[3] In April 1991, the QOMC determined that the Allocation Policy and Procedures should be re-examined and appointed a new committee, ARC II, to do so. The Committee's recommendations were subsequently filed with the Commission, and approved in 1993 as a one-year pilot.[4] In August 1994, the Exchange filed for and subsequently received permanent approval of that pilot.[5] In accordance with the Exchange's commitment to preserve the integrity of the existing allocation system while refining the allocation policy as necessary, ARC III convened in November 1993. The Committee's recommendations were filed with the Commission, and approved in September 1994.[6] In December 1995, the QOMC appointed ARC IV to continue to review the allocation process. The Committee made several recommendations with respect to the Allocation Policy and Procedures. Several of these recommendations were submitted by the Exchange for immediate effectiveness in March 1997 for a seven-month pilot period.[7] Additional recommendations of ARC IV are contained in this filing.

III. Description of Proposal

The NYSE proposes to amend Part IV, Allocation Criteria, of its Allocation Policy and Procedures with respect to the Specialist Performance Evaluation Questionnaire (''SPEQ), objective measures of performance, allocation applications, and disciplinary and cautionary data.

With respect to the Exchange's SPEQ,[8] the NYSE proposes that in considering whether a stock will be assigned to a particular specialist unit, the Allocation Committee shall give 25% weight to the results of the SPEQ. Currently, the policy only requires the Allocation Committee to consider no more than 25% of the SPEQ results.

With respect to the objective measures of performance used by the Allocation committee in considering whether to assign a stock to a particular unit, the NYSE proposes to add two criteria, capital utilization and near neighbor analysis. Capital utilization measures the degree to which the specialist unit uses its own capital in relation to the total dollar value of trading in the unit's stocks, while the near neighbor analysis measures specialist performance and market quality by comparing performance in a stock to performance of stocks that have similar market characteristics. The Commission had previously approved the use of these criteria in allocation decisions, but these criteria had never been codified into the actual language of the allocation policy and procedures.[9]

With respect to allocation applications, the NYSE proposes that in their applications for the allocation of a listing company's stock, specialist units describe all pertinent factors as to why they believe they should be allocated the stock, which shall include how the unit will allocate resources (staff and/or capital) to accommodate this new issue and what new resources, if any, the specialist unit will meet to acquire to service this stock. The NYSE proposes to delete the language requiring a description of the specialist unit's capital base.

With respect to the reporting of disciplinary actions, the NYSE proposes to amend its allocation policy and procedures such that enforcement actions would be reported to the Allocation Committee when an enforcement case is authorized, rather than when the stipulation is signed or charges are issued, as is currently required. Moreover, if formal disciplinary action is ultimately taken, the item would remain in the file for 12 months after a Hearing panel decision is final, rather than six months, as is currently required. In addition, the current policy interpretation that summary fines, not just cautionary letters, for market maintenance are reported for 12 months, would be codified.

The NYSE also proposes to amend Part V, Policy Notes, of its Allocation Policy and Procedures with respect to mergers of listed and unlisted companies, targeted stock, allocation ''freeze'' policy, allocation ''sunset''

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 27803 (Mar. 14, 1990), 55 FR 10740 (Mar. 22, 1990) (order approving File No. SR–NYSE–88–32).

[4] Securities Exchange Act Release No. 33121 (Oct. 29, 1993), 58 FR 59085, (Nov. 5, 1993) (order approving File No. SR–NYSE–92–15).

[5] Securities Exchange Act Release No. 34906 (Oct. 27, 1994), 59 FR 55142 (Nov. 3, 1994) (order approving File No. SR–NYSE–94–30).

[6] Securities Exchange Act Release No. 34626 (Sept. 1, 1994), 59 FR 46457 (Sept. 8, 1994) (order approving File No. SR–NYSE–94–18)

[7] Securities Exchange Act Release No. 38373 (Mar. 7, 1997), 62 FR 13421 (Mar 20, 1997) (notice of filing and immediate effectiveness of File No. SR–NYSE–97–04).

[8] The SPEQ is a quarterly survey on specialist performance completed by eligible floor brokers (*i.e.*, any floor broker with at least one year of experience). The SPEQ consists of 21 questions and requires floor brokers to rate, and provide written comments on, the performance of specialist units with whom they deal frequently.

[9] Securities Exchange Act Release No. 38158 (Jan. 10, 1997), 62 FR 2704 (Jan. 17, 1997).

policy, and criteria for applicants that are not currently specialists.

With respect to mergers of listed and unlisted companies, the NYSE proposes to amend its allocation policy and procedures to allow a company that results from the merger between a listed company and an unlisted company to remain registered with the specialist unit that had traded the listed company. Under the proposal, however, if the unlisted company is determined to be the survivor-in-fact, the unlisted company may request that the Allocation Committee reallocate the stock of the unlisted company. In this case, all specialist units would be invited to apply, except that the Allocation Committee shall honor the unlisted company's request not to be allocated to the specialist unit that had traded the listed company's stock. Currently, companies resulting from mergers of listed and unlisted companies must remain registered with the specialist for the listed company regardless of whether the unlisted company is the survivor-in-fact.

With respect to targeted stock, the NYSE proposes that when such a security is ''uncoupled'' and becomes an independently entity, the targeted stock would remain registered with the current specialist in the listed company. Under the proposal, however, the listed company may request that the Allocation Committee reallocate the targeted stock of the listed company. In this case, all specialist units would be invited to apply, except that the Allocation Committee shall honor the listed company's request that the targeted stock not be allocated to the specialist unit that had traded the target stock. In its filing, the NYSE notes that there is no current policy for allocating targeted stock.

The NYSE proposes to codify into its Allocation Policy and Procedures its allocation freeze policy, which provides that a specialist firm may not apply to be allocated a stock following reallocation of a stock or voluntary withdrawal of registration in a stock as a result of an Exchange disciplinary proceeding. Specifically, in the event that a specialist unit: (i) loses its registration in a specialty stock as a result of proceedings under Exchange Rules 103A, 475 or 476; or (ii) voluntarily withdraws its registration in a specialty stock as a result of possible proceedings under those rules, the specialist unit would be ineligible to apply for future allocations for the six month period immediately following the reassignment of the security. Following this initial six month period, a second six month period will begin during which a specialist until may apply for new listings, provided that the unit demonstrates to the Exchange relevant efforts taken to resolve the circumstances that triggered the prohibition. Under the allocation freeze policy, the determination as to whether a unit may apply for new listings will be made by Exchange staff, in consultation with the Floor Directors. The factors the Exchange will consider will vary depending on the specialist unit's particular situation, but may include whether the specialist unit has: Implemented more stringent supervision and new procedures; enhanced back-office staff; attained appropriate dealer participation; changed professional staff; and supplied additional manpower and experience.

With respect to the allocation ''sunset'' policy, the NYSE proposes that allocation decisions remain effective with respect to any initial public offering companies that list within three months. Under the proposal, if a listing company does not list within three months, the matter shall be referred again to the Allocation Committee and applications invited from all specialist units. The NYSE notes that previously it had followed a one-year sunset policy.

With respect to the criteria for applicants that are not currently specialists, the NYSE proposes to add a provision requiring that the Allocation Committee consider, in addition to capital or operational problems, any action taken or warning issued within the past 12 months by any regulatory or self-regulatory organization against the unit or any of its participants with respect to any regulatory or disciplinary matter. Currently, the policy only requires consideration of those disciplinary matters or warnings related to any Floor-related activity.

IV. 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).[10] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. Further, the Commission finds that the proposal also is consistent with Section 11(b) of the Act[11] and Rule 11b–1[12] thereunder, which allow exchanges to promulgate rules relating to specialists to ensure fair and orderly rules relating to specialists to ensure fair and orderly markets.

Specialists play a crucial role in providing stability, liquidity and continuity to the trading of securities. Among the obligations imposed upon the specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.[13] To ensure that specialists fulfill these obligations, it is important that the Exchange develop and maintain stock allocation procedures and policies that provide specialists with an initiative to strive for optimal performance.

The Commission believes that the Exchange's proposal to amend Part IV, Allocation Criteria, of its Allocation Policy and Procedures is consistent with the Act for the reasons set forth below.

As described above, the proposal will require the Allocation Committee to give 25% weight to the results of the SPEQ in determining whether to allocate a stock to a particular specialist unit. Under the current Allocation Policy, the SPEQ is to be given no more than 25% weight in allocation decisions. The Commission believes that this change will provide certainty to the Allocation Committee on what portion of its decision should be based on the SPEQ and will ensure that allocation decisions are based in sufficient part on specialist performance. In this regard, the Commission continues to believe that performance, as measured by the objective criteria, should be the primary consideration of the Allocation Committee.

Although the SPEQ remains a useful tool to measure performance, as noted above, the Commission believes that objective measures of performance should play an important role in allocation decisions. In particular, the Commission has previously stated its belief that objective performance measures can identify poor market making performance that otherwise may not be reflected in a specialist unit's SPEQ survey results.[14] In this regard, the Commission believes it is appropriate to codify into NYSE's Allocation Policy and Procedures capital utilization and near neighbor analysis as objective measures of performance to be considered by the

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 240.11b–1.

[13] *See* 17 CFR 240.11b–1; NYSE Rule 104.

[14] Securities Exchange Act Release No. 33369 (Dec. 22, 1993), 58 FR 69431 (Dec. 30, 1993).

Allocation Committee in making their allocation decisions.[15] Specifically, the Commission has previously stated its belief that these quality market measures identify aspects of market making that are directly relevant to the specialist's maintenance of fair and orderly markets. The Commission continues to believe that the near neighbor analysis and capitalization measures could assist the Allocation Committee in allocating stocks to specialists who commit their own capital to maintain stable and liquid markets and, thus, believes codification of such measures into the NYSE's Allocation Policy and Procedures is appropriate.

By requiring specialist units to include in their applications for the allocation of a listing company's stock a description of how the specialist unit will allocate resources (staff and/or capital) to accommodate this new issue and what new resources, if any, the specialist unit will need to acquire to service this stock, the Commission believes that the proposal will provide the Allocation Committee with the necessary information to better determine which specialist unit is best equipped to handle trading of a particular stock. Moreover, by requiring that enforcement actions against specialists be reported to the Allocation Committee when an enforcement case is authorized, rather than later when the stipulation is signed or charges are issued, the proposal should ensure that relevant information about enforcement matters considered on a timely basis by the Allocation Committee. Similarly, by requiring that records of formal disciplinary action be retained for 12 months, rather than the current six months, after a Hearing Panel decision is final, the proposal should enhance the allocation process by providing the Allocation Committee with relevant information over a longer period of time.

The Commission believes that the Exchange's proposal to amend Part V, Policy Notes, of its Allocation Policy and Procedures also is consistent with the Act for the reasons set forth below.

The Commission believes that the NYSE's proposal to allow a company, resulting from a merger between a listed company and an unlisted company, to request that the Allocation Committee reallocate the stock of the unlisted company so long as the unlisted company is determined to be the survivor-in-fact is appropriate because the merged company is more analogous to a new company that has never been listed. The proposal also requires the Allocation Committee to honor the unlisted company's request the Allocation Committee to honor the unlisted company's request not to be allocated to the specialist unit that had traded the listed company's stock. This is also currently permitted in situations involving spin-offs, listings of related companies, and relistings. Although barring the original specialist unit from receiving the listing does raises some concerns about ensuring that all specialist units will be allowed to compete for the allocation on an equal basis, the Commission believes that there may be legitimate reasons why an unlisted company may believe it is more appropriate to be allocated to a new specialist unit rather than one that had dealings with the former listed company. Accordingly, the Commission finds this provision is reasonable under the Act. For the same reasons, the Commission believes that the NYSE's proposal to allow a listing company, whose targeted stock becomes listed separately, the request that the Allocation Committee reallocate the targeted stock and refrain from allocating the targeted stock to the specialist unit that had traded the targeted stock is reasonable.

The Commission also believes that by codifying its allocation freeze policy, which provides that a specialist unit may not apply to be allocated a stock following reallocation of a stock or voluntary withdrawal of registration in a stock as a result of an Exchange disciplinary proceeding, the proposal provides an incentive to specialists to improve their performance or maintain superior performance while also ensuring that only those units performing well and likely to make good markets in a particular stock will receive allocations.

The Commission also believes that the NYSE's allocation sunset policy, requiring allocation decisions to remain effective for three months with respect to any initial public offering (''IPO'') listing and, in the event a listing company does not list within three months, requiring that the matter be referred again to the Allocation Committee, with applications invited from all specialist units, is appropriate. The Commission recognizes that, after three months, the specialist unit assigned to make a market in the initial public offering listing company may no longer have the resources to make the best market and it would be prudent for the Allocation Committee to reevaluate its allocation decision. The prior policy of waiting one full year before an IPO was reallocated to another unit was, in the Commission's view, too long and did not allow the Allocation Committee to take into account changes in the unit that may have occurred during the one year.

The Commission also believes that in considering the allocation application of an applicant that is not currently a specialist, the NYSE's proposal to add a provision requiring that the Allocation Committee consider, in addition to capital or operational problems, any action taken or warning issued within the past 12 months by any regulatory or self-regulatory organization against the unit or any of its participants will help to strengthen the allocation policy and ensure that only the best units are allocated stocks. Currently, the policy only requires consideration of those disciplinary matters or warnings related to any Floor-related activity. The Commission believes that this expansion to include any regulatory or disciplinary matters will ensure the quality of specialists assigned to make markets in NYSE-listed stocks.

In summary, the Commission believes that the Exchange's Allocation Policy and Procedures can serve as an effective incentive for specialist units to maintain high levels of performance and market quality in order to be considered for, and ultimately awarded, additional listings. This in turn can benefit the execution of public orders and promote competition among the exchanges. In this regard, the Commission believes that the NYSE's proposals related to its Allocation Policy and Procedures help to further these purposes. The Commission will continue to support the NYSE's efforts to develop a meaningful and effective allocation policy and procedures that encourage improved specialist performance and market quality.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSE–97–12) is approved.

For the Commission, by the Division of market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19072 Filed 7–18–97; 8:45 am]

BILLING CODE 8010–01–M

[15] The Commission previously approved the consideration of specialist near neighbor analysis and capital utilization by the Allocation Committee. Release No. 38158, *supra* note 9. Today, the Commission is merely approving the codification of such measures into the NYSE's Allocation Policy and Procedures.

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on February 28, 1997 [FR 62, page 9150).

DATES: Comments must be submitted on or before August 20, 1997.

FOR FURTHER INFORMATION CONTACT: Michael P. Ferris, Director, Office of Costs and Rates, Maritime Administration, Washington, DC 20590, Tel. (202) 366–2324, and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION:

Title: Title of Collection: Determination of Fair and Reasonable Rates for the Carriage of Bulk Preference Cargoes (46 CFR part 382).

OMB Control Number: 2133–0514.

Type of Request: Extension of currently approved information collection.

Form(s): None.

Affected Public: U.S.-flag vessels are owned and operated by U.S. citizens under the U.S.-flag. The vessels consist of tug/barges, dry bulk vessels, break bulk liner vessels, LASH, and tankers.

Abstract: Two different types of data are required: Vessel Operating Costs and Capital Costs—Part 382 requires U.S.-flag vessel Operators to submit this data to MARAD on an annual basis. The costs are used by MARAD in determining fair and reasonable guideline rates for the carriage of preference cargoes on U.S.-flag vessels. Voyage costs and voyage days—(Post Voyage Report)— This information is required to be filed by a U.S.-flag operator after the completion of a cargo preference voyage.

Need and Use of the Information: The information collected is used by MARAD to calculate fair and reasonable rates for U.S.-flag vessels engaged in the carriage of preference cargoes. If the information is not collected, the fair and reasonable rates could be inaccurate thus leading to a lack of adequate protection of the government's financial interest in obtaining the lowest possible U.S.-flag cost for shipping government cargoes.

Annual Burden: 500 hours—This rule would not impose any unfunded mandates.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments: Send all comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

Issued in Washington, DC, on July 16, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–19117 Filed 7–18–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: United States Coast Guard, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 15, 1997 (FR 62, page 26845).

DATES: Comments must be submitted on or before August 20, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

United States Coast Guard

Title: Financial Responsibility for Water Pollution Vessels.

OMB No.: 2115–0545.

Type of Request: Extension of a currently approved collection.

Form(s): CG5585, CG5586, CG5586–1, CG5586–2, CG5586–3, CG5586–4, CG5586–5.

Affected Public: Operators or Owners of vessels over 300 gross tons.

Abstract: The collection of information requires operators of vessels over 300 gross tons to submit to the Coast Guard evidence of their financial responsibility to meet the maximum amount of liability in case of an oil spill or hazardous substances.

Need for Information: Under 22 U.S.C. 2716 and 42 U.S.C. 9608, the Coast Guard has the authority to ensure that those persons directly subject to these rules are in compliance with the provisions.

Frequency: On occasion.

Burden Estimate: The estimated burden is 2,162 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention USCG Desk Officer.

Comments are invited on: The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; 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; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on July 16, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–19118 Filed 7–18–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending July 11, 1997

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–97–2701.

Date Filed: July 10, 1997.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 ME–AFR 0006 dated June 17, 1997
Middle East-Africa Resos r1–20

PTC2 ME–AFR 0007 dated June 17, 1997
Minutes

PTC2 ME–AFR Fares 0004 dated July 4, 1997
Tables

Intended effective date: October 1, 1997

r–1—001a
r–2—002
r–3—008z
r–4—015v
r–5—042f
r–6—052f
r–7—062f
r–8—071m
r–9—072p
r–10—076p
r–11—076r
r–12—078hh
r–13—081cc
r–14—087kk
r–15—087w
r–16—090u
r–17—091cc
r–18—092ee
r–19—092LL
r–20—093ff

Docket Number: OST–97–2702 .

Date Filed: July 10, 1997.

Parties: Members of the International Air Transport Association.

Subject:

PTC12 USA–ER 0028 dated July 8, 1997
USA-Europe Resos r1–4

Intended effective date: August 15, 1997

r–1—002f
r–2—073qq
r–3—072ss
r–4—075ss

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–19116 Filed 7–18–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–39]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 11, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C., on July 15, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 28696.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 25.857(e) and 25.1447(c)(1).

Description of Relief Sought/ Disposition: To permit the accommodation of animal-handler supernumeraries in the aft portion of the main deck Class E cargo compartment of DC–10 and MD–11 cargo aircraft, to attend to live-animal cargo. *Grant, June 26, 1997, Exemption No. 6652.*

Docket No.: 25974.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 91.203.

Description of Relief Sought/ Disposition: To permit ATA-member airlines to operate certain U.S.-registered aircraft on a temporary basis following the incidental loss or mutilation of a Certificate of Airworthiness, Aircraft Registration, or both. *Grant, July 3, 1997, Exemption No. 5318E.*

Docket No.: 19634.

Petitioner: Douglas Aircraft Company.

Sections of the FAR Affected: 14 CFR 121.310(d)(4).

Description of Relief Sought/ Disposition: To permit operators of McDonnell Douglas DC–8 aircraft to operate these aircraft in passenger-carrying operations without a cockpit control device for each emergency light, subject to certain conditions. *Grant, July 3, 1997, Exemption No. 3055I.*

Docket No.: 27251.

Petitioner: Bonanza/Baron Pilot Proficiency Programs, Inc. and American Bonanza Society/American Safety Foundation.

Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).

Description of Relief Sought/ Disposition: To permit BPPP and ABS/ ASF flight instructors to provide recurrent flight training and simulated instrument flight training in BeechBaron, Bonanza, and Travel Air type aircraft equipped with a functioning throwover control wheel for the purpose of meeting recency of experience requirements contained in 14 CFR 61.56 (a), (c), and (e), and 61.57 (e)(1) and (e)(2), subject to certain conditions and limitations. *Grant, July 8, 1997, Exemption No. 5733C.*

Docket No: 28905.

Petitioner: Petroleum Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a).

Descriptions of Relief Sought/ Disposition: To permit Petroleum Helicopters, Inc., to place three Bell 214ST helicopters (Registration Nos. N59805, N59806, and N6957Y, Serial Nos. 28139, 28140, and 28141, respectively) on its Operations Specification and operate those helicopters in nonscheduled operations under part 135 without the digital flight data recorder required by § 135.152.

Grant, July 10, 1997, Exemption No. 6641A.

[FR Doc. 97–19108 Filed 7–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of National Parks Overflights Working Group Meetings

ACTION: Notice.

SUMMARY: The National Park Service (NPS) and Federal Aviation Administration (FAA) announce the dates for the National Parks Overflights Working Group (NPOWG) meeting in August. The NPOWG will meet August 4–5 in Denver, Colorado. This meeting will be open to the public. This notice serves to inform the public of the meeting dates for the working group.

DATES AND LOCATIONS: The NPOWG will meet August 4 and 5, beginning at 9 a.m., in conference rooms in the Sheraton Denver West, 360 Union Blvd., Denver, Colorado, telephone: (303) 987–2000.

FOR FURTHER INFORMATION CONTACT: Carla Mattix, Office of the Solicitor, U.S. Department of the Interior, 1849 C St., NW., Washington, DC 20240, telephone: (202) 208–7957, or Linda Williams, Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave., Washington, DC 20591, telephone: (202) 367–9685.

SUPPLEMENTARY INFORMATION:

Background

By notice in the **Federal Register** on June 6, 1997, the NPS and FAA announced the meeting dates for the NPOWG. The working group is established to recommend a notice of proposed rulemaking which would define the process to reduce or prevent the adverse effects of commercial sightseeing flights over the National Parks where deemed necessary. The working group held sessions on May 20 and 21; June 11, 12, 13; and July 8 and 9, 1997, in Washington, DC.

The overflights working group is composed of nine members representing a balance of air tour operators, both fixed and rotary wing; general aviation users; other commercial aviation interests; national tour associations; environmental groups; and Native Americans. Co-chairs for the working group have been selected by the Department of Transportation (DOT) and the Department of Interior (DOI). DOT and DOI representatives act as advisors to the membership, but will not be active members of the working group. A facilitator provides focus for the group.

Unless extended, the working group is scheduled to terminate 100 days from the date of its initial meeting. The group will make its final recommendation to the ARAC and NPS Advisory Board at the end of that 100 days. The ARAC and NPS Advisory Board will review the recommendations of the working group and report to the NPS and FAA. Progress or status reports form the working group are expected every 21 days. NPS and FAA anticipate that the final product of the NPOWG will be a recommended notice of proposed rulemaking.

Meeting Location and Protocol

Contrary to the original **Federal Register** notice, the August meeting will be open to the public. In keeping with the organizational protocols developed by the working group, the following rules apply:

Only working group members (or their alternates when filling in for a member) have the privilege of sitting at the negotiating table and of speaking from the floor during the negotiations without working group approval, except: any member may call upon another individual to elaborate on a relevant point, the NPS and FAA advisors to the working group have the full right to the floor and may raise and address appropriate points, and any person attending working group meetings may address the working group if time permits and may file statements with the working group for its consideration.

The final report of the NPOWG will be made available to the public when it is reported to the Advisory Board and ARAC. In addition, both agencies envision that public meetings will be held following the publication of a notice of proposed rulemaking on the issues regarding overflights of the national parks.

Issued in Washington, DC on July 14, 1997.

Joseph A. Hawkins,

Director of Rulemaking.

[FR Doc. 97–19041 Filed 7–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Special Committee 165; Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–165 meeting to be held August 7–8, 1997, starting at 9:30 a.m. on August 7, The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

This plenary meeting will be preceded by a meeting of SC–165 Working Group (WG)–3, AMSS System/Service Criteria, which will include a visit to the Iridium Master Control Facility located near Reston, VA.

The plenary agenda will be as follows:

(1) Welcome and Introductions;
(2) Review and Approval of the Summary of the Previous Meeting;
(3) Chairman's Remarks;
(4) Overview of New Developments Relevant to AMSS and SC–165:
a. Required Communications Performance (SC–169/WG–2);
b. AMCP WG–A on AMSS;
c. AMS(R)S Spectrum Issues;
d. AEEC 741 and 761 Characteristics;
e. Industry, Users, Government;
(5) Review of Working Group Activities:
a. WG–1 (AMSS Avionics Equipment MOPS);
b. WG–3 (System/Service Performance Criteria);
c. WG–5 (AMS(R)S Satcom Voice);
(6) Consideration of Next-Generation AMSS Activities;
(7) Other Business;
(8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availably. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca/org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 14, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–19110 Filed 7–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Abilene Regional Airport, Abilene, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Abilene Regional Airport under the provisions of the Aviaition Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 20, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Forth Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David M. Wright, Director of Finance, City of Abilene, at the following address: Mr. David M. Wright, Director of Finance, City of Abilene, P.O. Box 60, 55 Walnut, Abilene, Texas 79604.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Abilene Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 27, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 24, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1998.

Proposed charge expiration date: September 1, 2005.

Total estimated PFC revenue: $1,210,647.00.

PFC application number: 97–01–C–00–ABI.

Brief description of proposed projects:

Projects To Impose and Use PFC's

Apron Reconstruction, Overlay Access Road and Install Perimeter Fencing (Phase 1);

Emergency Generator, Elevator, Airport Entrance Signage, and PAPI;

Overlay and Mark Runway 17L/35R;

Airfield Guidance Sign System;

Overlay Taxiway D;

Groove Runway 17L/35R;

Rehabilitate Runway 17R/35L, Taxiway C lighting, and Security Fencing, (Phase 2);

Overlay Runway 4–22, Security Fencing (Phase 3);

Terminal Renovation and Expansion; and

PFC Administrative Costs.

Proposed class or classes of air carriers to be exempted from collecting PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Abilene Regional Airport.

Issued in Forth Worth, Texas on June 30, 1997.

Edward N. Agnew,

Acting Manager, Airports Division.

[FR Doc. 97–19044 Filed 7–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In June 1997, there were five applications approved. Additionally, two approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Flathead Municipal Airport Authority, Kalispell, Montana.

Application Number: 97–02–C–00–FCA.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Net PFC Revenue Approved in This Decision: $8,217,803.

Earliest Charge Effective Date: November 1, 1999.

Estimated Charge Expiration Date: June 1, 2020.

Class of Air Carriers Not Required to Collect PFC's: Air taxi operators.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at the Glacier Park International Airport.

Brief Description of Projects Approved for Collection and Use: Terminal area expansion—building construction. Terminal area expansion—site work and road work.

Decision Date: June 3, 1997.

For Further Information Contact: David P. Gabbert, Helena Airports District Office, (406) 449–5271.

Public Agency: Palm Beach County Department of Airports, West Palm Beach, Florida.

Application Number: 97–03–U–00–PBI.

Application Type: Use PFC revenue.

PFC Level: $3.00

Total PFC Revenue Approved for Use in This Decision: $13,605,792.

Charge Effective Date: April 1, 1994.

Estimated Charge Expiration Date: July 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use: Acquire land in Part 150 Noise Compatibility Plan (1997). Acquire land in Part 150 Noise Compatibility Plan (1998). Acquire land in Part 150 Noise Compatibility Plan (1999). Connector to Palm Beach International Airport. Part 150 Noise Compatibility study.

Decision Date: June 11, 1997.

For Further Information Contact: Bart Vernace, Orlando Airports District Office, (407) 812–6331.

Public Agency: City of Durango and County of La Plata, Durango, Colorado.

Application Number: 97–02–C–00–DRO.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Net PFC Revenue Approved in This Decision: $606,983.

Earliest Charge Effective Date: August 1, 1997.

Estimated Charge Expiration Date: March 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Relocate County Road 309–A.
Grading and drainage for taxiway A extension including taxiway A6.
Rehabilitate and widen taxiway A including taxiway A and A5.
Pave, mark, and light taxiway A extension.
Snow removal equipment.

Decision Date: June 24, 1997.

For Further Information Contact: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Connecticut Department of Transportation, Bureau of Aviation and Ports, Windsor Locks, Connecticut.

Application Number: 97–06–I–00–BDL.

Application Type: Impose a PFC.

PFC Level: $3.00.

Total Net PFC Revenue Approved in This Decision: $12,602,000.

Earliest Charge Effective Date: September 1, 1997.

Estimated Charge Expiration Date: April 1, 1999.

Class of Air Carriers Not Required To Collect PFC's: On-demand air taxi/commercial operators who (1) do not enplane or deplane passengers at the main terminal buildings and (2) enplane less than 500 passengers per year at Bradley International Airport (BDL).

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at BDL.

Brief Description of Projects Approved for Collection Only: Construct new fire station #1; Construct glycol collection facility.

Decision Date: June 24, 1997.

For Further Information Contact: Priscilla A. Scott, New England Region Airports Division, (617) 238–7614.

Public Agency: Los Angeles Department of Airports, Ontario, California.

Application Number: 95–02–U–00–ONT.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue Approved for Use in this Decision: $33,148,439.

Charge Effective Date: June 1, 1993.

Charge Expiration Date: December 1, 1996.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use: Ontario terminal development program.

Decision Date: June 27, 1997.

For Further Information Contact: John Milligan, Western Pacific Region Airports Division, (310) 725–3621.

AMENDMENTS TO PFC APPROVALS

Amendment number, city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge expiration date	Amended estimated charge expiration date
96–04–C–01–MCO, Orlando, Florida.	5/29/97	$89,092,000	$91,117,000	12/1/98	12/1/98
96–04–C–02–MCO, Orlando, Florida.	5/29/97	91,117,000	93,592,000	12/1/98	3/1/98

Issued in Washington, DC, on July 11, 1997.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 97–19109 Filed 7–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33390]

Roaring Fork Railroad Holding Authority; Acquisition and Operation Exemption; Southern Pacific Transportation Company

The Roaring Fork Railroad Holding Authority (RFRHA), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate Southern Pacific Transportation Company's (SP) line, known as the Aspen Branch, between milepost 360.22 near Glenwood Springs and milepost 393.66 near Woody Creek, in Garfield, Eagle and Pitkin Counties, CO, a distance of approximately 33.44 miles.[1]

The transaction was to be consummated on or after June 30, 1997, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33390, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Charles H. Montange, 426 NW 162d Street, Seattle, WA 98177.

Decided: July 10, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–19088 Filed 7–18–97; 8:45 am]

BILLING CODE 4915–00–P

[1] On June 27, 1997, a petition to stay the notice of exemption filed by the Phillips Company (Phillips) was denied by the Board in Roaring Fork Railroad Holding Authority—Acquisition and Operation Exemption—Southern Pacific Transportation Company, STB Finance Docket No. 33390 (STB served June 27, 1997). Phillips' subsequent petition for an emergency stay filed with the United States Court of Appeals for the 10th Circuit was denied by the Court. The Phillips Company v. Surface Transportation Board, No. 97–9536 (10th Cir., June 27, 1997). Phillips' petition for review of the notice of exemption remains pending before that court.

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

July 15, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be

addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0770.

Regulation Project Number: FI–182–78 NPRM.

Type of Review: Extension.

Title: Transfers of Securities Under Certain Agreements.

Description: Section 1058 of the Internal Revenue Code provides tax-free treatment for security lending transactions. A written agreement is necessary to verify the existence of such lending agreement. Lenders of securities are affected.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 11,742.

Estimated Burden Hours Per Respondent: 50 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 9,871 hours.

OMB Number: 1545–0996.

Regulation Project Number: EE–113–82 NPRM.

Type of Review: Extension.

Title: Required Distributions from Qualified Plans and Individual Retirement Plans.

Description: The regulations provide rules regarding the minimum distribution requirements applicable to section 403(b) contracts and accounts. Such minimum distribution rules do not apply to benefits accrued before January 1, 1987.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 8,400.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,400 hours.

OMB Number: 1545–1359.

Regulation Project Number: INTL–978–86 NPRM.

Type of Review: Extension.

Title: Information Reporting by Passport and Permanent Residence Applicants.

Description: The regulations require applicants for passports and permanent residence status to report certain tax information on the applications. The regulations are intended to give the Service notice of non-filers and of persons with foreign source income not subject to normal withholding, and to notify such persons of their duty to file U.S. tax returns.

Respondents: Individuals or households.

Estimated Number of Respondents:

Passport Applicants: 5,000,000.

Permanent Residence Applicants: 500,000.

Estimated Burden Hours Per Respondent:

Passport Applicants: 6 minutes.

Permanent Residence Applicants: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 750,000 hours.

OMB Number: 1545–1442.

Regulation Project Number: PS–79–93 Final.

Type of Review: Extension.

Title: Grantor Trust Reporting Requirements.

Description: The information required by these regulations is used by the Internal Revenue Service to ensure that items of income, deduction, and credit of a trust treated as owned by the grantor or another person are properly reported.

Respondents: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 1,840,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 920,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–19069 Filed 7–18–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

July 11, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1059.

Form Number: IRS Forms 7018 and 7018–A.

Type of Review: Revision.

Title: Employer's Order Blank for Forms (7018); and Employer's Order Blank for 1998 Forms (7018–A).

Description: Forms 7018 and 7018–A allow taxpayers who must file information returns a systematic way to order information tax forms materials.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,668,000.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 83,400 hours.

OMB Number: 1545–1163.

Form Number: IRS Form 8822.

Type of Review: Revision.

Title: Change of Address.

Description: This form is used by taxpayers to inform IRS of their change of address. IRS will use the information to update the taxpayer's address of record.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1,500,000.

Estimated Burden Hours Per Respondent: 16 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 387,501 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–19070 Filed 7–18–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission of OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: On November 4, 1996, the OCC, the Board, and the FDIC (the agencies) requested public comment for 60 days on a proposed change in the method by which banks file their quarterly Reports of Condition and Income (Call Reports), which are currently approved collections of information. Under that proposal, the agencies would no longer accept Call Reports that banks file directly with the agencies in hard copy (paper) form. Instead, the only Call Reports that the agencies would accept would be those filed electronically or on computer diskette with the agencies' electronic collection agent. A bank could either file its reports directly with the agent or contract with another party for the conversion of its reports from hard copy (paper) to automated form and the filing of the reports with the agent. After considering the comments the agencies received, the Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, adopted certain modifications to the proposed change in filing method.

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Comments are invited on: (a) Whether the proposed revisions to the following collections of information are necessary for the proper performance of the agencies's functions, including whether the information has practical utility; (b) the accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or startup costs and costs of operational, maintenance, and purchase of services to provide information.

DATES: Comments must be submitted on or before August 20, 1997.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Written comments should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Third Floor, Washington, D.C. 20219; Attention: OMB Control No. 1557–0081 (FAX number (202) 874–5274; Internet address: Regs.comments@occ.treas.gov). Comments will be available for inspection and photocopying at the OCC's Public Reference Room, 250 E Street, S.W., Washington, D.C. 20219, between 9:00 a.m. and 5:00 p.m. on business days. Appointments for inspection of comments can be made by calling (202) 874–5043.

Board: Written comments should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C.20551, Attention: OMB Control No. 7100–0036, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules regarding Availability of Information, 12 CFR 261.8(a).

FDIC: Written comments should be sent to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, Attention: OMB Control No. 3064–0052. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. (Fax number: 202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of an agency's submission to OMB for review and approval under the Paperwork Reduction Act of 1995 may be requested from the agency clearance officer whose name appears below.

OCC: John Ference, OCC Clearance Officer, or Jessie Gates (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

Board: Mary M. McLaughlin, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users only, Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Request for OMB approval to extend, with a revision to the filing method, the following currently approved collections of information:

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: FFIEC 031, 032, 033, 034.[1]

Frequency of Response: Quarterly.

For OCC

OMB Number: 1557–0081.

Affected Public: National Banks.

Estimated Number of Respondents: 2,800 national banks.

Estimated Time per Response: 39.92 burden hours.

[1] The FFIEC 031 report form is filed by banks with domestic and foreign offices. The FFIEC 032 report form is filed by banks with domestic offices only and total assets of $300 million or more. The FFIEC 033 report form is filed by banks with domestic offices only and total assets of $100 million or more but less than $300 million. The FFIEC 034 report form is filed by banks with domestic offices only and total assets of less than $100 million.

Estimated Total Annual Burden: 447,132 burden hours.

For Board

OMB Number: 7100–0036.

Affected Public: State Member Banks.

Estimated Number of Respondents: 1,002 state member banks.

Estimated Time per Response: 45.80 burden hours.

Estimated Total Annual Burden: 183,566 burden hours.

For FDIC

OMB Number: 3064–0052.

Affected Public: Insured State Nonmember Commercial and Savings Banks.

Estimated Number of Respondents: 6,374 insured state nonmember banks.

Estimated Time per Response: 29.67 burden hours.

Estimated Total Annual Burden: 756,511 burden hours.

The estimated time per response is an average which varies by agency because of differences in the composition of the banks under each agency's supervision (e.g., size distribution of banks, types of activities in which they are engaged, and number of banks with foreign offices). The time per response for a bank is estimated to range from 15 to 400 hours, depending on individual circumstances.

General Description of Report: This information collection is mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). Except for select sensitive items, this information collection is not given confidential treatment. Small businesses (i.e., small banks) are affected.

Abstract: Call Reports are filed quarterly with the agencies for their use in monitoring the condition and performance of reporting banks and the industry as a whole. Call Reports also are used to calculate banks' deposit insurance and Financing Corporation assessments and for monetary policy and other public policy purposes.

Current Actions: Under the auspices of the FFIEC, the agencies originally proposed that they would no longer accept Call Reports filed directly with them in hard copy (paper) form. The agencies proposed that the only Call Reports that they would accept would be those that are filed electronically or on computer diskette with the agencies' electronic collection agent, Electronic Data systems Corporation (EDS). A bank could either file its reports electronically or on computer diskette directly with EDS or arrange for a third party to convert its reports from hard copy (paper) form to automated form and then file them with EDS. The agencies proposed to phase out their acceptance of paper Call Report forms as of the June 30, September 30, And December 31, 1997, report dates based on bank size. After considering the comments, the FFIEC approved certain modifications to the proposed change in filing method for Call Reports. The comments on the initial proposal and the changes made in response thereto are discussed below.

Type of Review: Revision.

On November 4, 1996, the agencies jointly published a notice soliciting comment for 60 days on a proposal to no longer accept Call Reports filed directly with them in paper form (61 FR 56737). The notice described the change in filing method that the agencies, with the approval of the FFIEC, were proposing to implement in three phases for their currently approved Call Report information collections. beginning with the reports for June 30, 1997.

In response to this notice, the agencies collectively received 24 comment letters, 17 from small banking organizations and 7 from trade groups, including the American Bankers Association (ABA), America's Community Bankers (ACB), the Independent Bankers Association of America (IBAA), and 4 state bankers associations (Illinois, Missouri, and 2 in Wisconsin).

All but three of the bank commenters opposed the proposal. The one bank that supported the proposal (Which has $125 million in assets) indicated that it already purchases and uses Call Report preparation software, is satisfied with its ease of use, and would not be unduly burdened by having to file electronically. Two other banks (with $70 and $30 million in assets) requested only that the implementation dates be delayed to give them more time to prepare for the change in filing method. The remaining banking organizations objected to the proposal because of the cost of purchasing Call Report preparation software, the time to learn how to use the software, and similar expense-related reasons. However, none of these bankers' comments acknowledged that the proposal contained an alternative which would not require them to purchase Call Report software, i.e, the agencies stated in the proposal that individual banks would be permitted to continue completing their reports on paper, provided that such a bank arranged for a third party, such as one of the Call Report software vendors, to convert the bank data from paper to electronic form.

Of the trade groups, ACB supported the proposal, noting that the Office of Thrift Supervision (OTS) already requires savings associations to file their Thrift Financial Reports electronically (although OTS provides the necessary software directly to each savings association). The ABA stated that it no longer opposes mandatory electronic submission of Call Reports. In this regard, the ABA indicated that several of the bankers they consulted about the proposal ''have reported that by switching to Call Report software they have decreased the amount of time their cashiers and other bank personnel spend on preparing the Call Report. As a result, they believe that the benefits that they have obtained by using the software have outweighed the initial costs and annual fees for maintaining the software.'' However, the ABA recommended that the FFIEC and the agencies should streamline the Call Report before making electronic filing mandatory. The ABA also stated that bankers were concerned that the agencies would find it easier to make unnecessary changes and add unnecessary items to the Call Report if the report had to be filed electronically. The IBAA stated that ''[t]he majority of community banks providing comments to the IBAA do not foresee any problems complying with'' an electronic filing requirement. The IBAA added that ''in the long run filing electronically should make the Call Report preparation and banking agencies' review processes more efficient and less burdensome for banks.'' The IBAA noted, however, that some community banks strongly believe the benefits do not outweigh the costs. The IBAA urged the agencies to explore ways to reduce the cost of the proposal to banks not currently filing electronically.

The concerns raised by the state bankers associations were similar to those of other commenters, although the Illinois Bankers Association stated that ''paperwork for this quarterly report requirement * * * will be reduced with electronic filing'' and that ''the banking industry supports this proposal.'' Concerns expressed by these trade groups (including the Illinois Bankers Association) generally dealt with the costs that will be incurred by some banks, training on the use of Call Report software, and the amount of lead time until the effective date.

In developing the proposed change in filing method for Call Reports, the FFIEC and the agencies recognized that some banks, especially smaller banks with limited experience with personal computers, would be concerned about the costs associated with purchasing

computer software [2] and filing their reports electronically or on computer diskette with EDS, the agencies' collection agent. Thus, the proposal stated that the agencies would permit banks to continue completing their reports on paper. However, a bank preferring to take this approach would need to arrange for a third party to convert its completed Call Report from paper to electronic form. The proposal indicated that banks could contract with a Call Report software vendor or some other party for this data conversion. Despite the proposal's inclusion of this alternative, few of the commenters who objected to the proposed requirement that bank Call Reports be filed with EDS in an automated from acknowledged that the proposal contained the paper-based alternative which would enable them to file indirectly with EDS and avoid incurring Call Report software and other computer-related costs.

The FFIEC and the agencies continue to be cognizant of the cost considerations raised by several of the commenters. Nevertheless, the agencies believe that, after the initial adjustment period, the benefits to bankers from using Call Report software to prepare their reports compare favorably with the costs. This view is consistent with the previously cited comments by the ABA and IBAA. However, notwithstanding the benefits to both banks and the agencies from the use of Call Report software (discussed below), the agencies are retaining the paper-based filing alternative that they had proposed. Furthermore, to make it simpler for those banks choosing to prepare their reports in paper form, the FFIEC and the agencies will permit banks to contract directly from EDS, the agencies' electronic collection agent, to convert their paper reports to automated form. Banks may also contract with any other party (such as Call Report software vendor) for the conversation and electronic filing of their reports as originally proposed. When one of these parties converts a bank's data to automated form by keypunching or some other means, the bank would continue to be responsible for the accuracy of the data in its report. In addition, banks must ensure that EDS receives their completed Call Reports in automated form not later than 30 days after the Call Report date in accordance with existing Call Report submission standards.

With respect to the benefits of Call Report software and electronic filing, the agencies have provided the software companies with a significant number of edits that the agencies normally use for validating the Call Report information submitted to them each quarter. As a result, while each bank is responsible for the quality of its Call Report data, a bank using a commercial software package can correct errors identified by the software package prior to filing the Call Report, and provide better quality data to the agencies. This procedure saves a bank time by reducing agency inquiries for data correction after the Call Report has been filed. The commercial software also provides immediate confirmation to a bank that files electronically that EDS has received its Call Report. In addition, electronic submission translates into lower costs for the agencies and for the insurance funds administered by the FDIC. Thus, because the use of Call Report software and the electronic submission of reports promotes the accuracy of and speeds the receipt and processing of Call Reports data, the FFIEC and the agencies may in the future propose to discontinue or otherwise modify the paper-based filing alternative.

As proposed, the agencies would have required banks with assets of $50 million or more as of June 30, 1996, to file, or arrange for a third party to file, their Call Reports electronically or on computer diskette with EDS beginning with the reports for June 30, 1997. The requirement would have applied to banks with assets of $25 million or more beginning as of the September 30, 1997, report date. For all other banks, the requirement was scheduled to take effect with the reports for December 31, 1997. In response to requests from commenters for additional time to prepare for this change in filing method, the FFIEC has decided to adjust the implementation schedule. Accordingly, the revised timetable is as follows:

- For banks with assets of $50 million or more, the requirement would not take effect as of the September 30, 1997, report date.
- For all other banks, the requirements would take effect as of the December 31, 1997, report date.

The FFIEC believes it is appropriate to fully implement the change in filing method during the final two quarters of the 1997 reporting year when no other changes to the Call Report are being introduced. Because any revisions to the reporting requirements for the Call Report itself normally take effect in the first quarter of the year, delaying the final phase of the electronic filing timetable until the March 31, 1998, report date, might result in the smallest banks having to contend with reporting new or revised types of information in the Call Report in the same quarter that they are, for the first time, using Call Report software or arranging for a third party to convert their Call Report data from paper to electronic form.

Moreover, the FFIEC does not believe that delaying electronic filing until after the FFIEC and the agencies have streamlined the Call Report in accordance with the mandate in Section 307 of the Riegle Community Development and Regulatory Improvement Act of 1994, as suggested by the ABA, is warranted. The FFIEC and the agencies remain committed to achieving the goals that Congress set for them in Section 307 in an orderly and well thought out manner. After considering the comments received, the Agencies believe that the benefits of using software to prepare the Call Report in its current form outweighs the costs. Accordingly, the FFIEC sees no reason to postpone the date when the agencies receive all Call Reports in electronic form their collection agent beyond the filing period for the year-end 1997 reports.

The ABA expressed concern that an electronic filing requirement would make it easier for the agencies to make unnecessary changes to the Call Report. Revisions to the Call Report requirements remain subject to the Paperwork Reduction Act of 1995, which requires the agencies to issue proposed reporting changes for public comment, consider the comments received, and submit the final changes to OMB for review and approval. Therefore, the implementation of electronic filing for Call Report will not make it simpler for the agencies or the FFIEC to change the Call Report.

One banker stated that he prepares his bank's Call Report using spreadsheet software of his own design and that this method is less costly for his bank than purchasing Call Report software from a software vender. He recommended that the agencies, in conjunction with EDS, develop a method that would enable banks that want to use internally-developed spreadsheets to transmit their spreadsheets to the agencies' electronic collection agent. The FFIEC and the agencies considered this suggestion, but concluded that having the agencies

[2] Call Report preparation software is available from:

DBI Financial Systems, Inc., P.O. Box 1249, Cannon Beach, Oregon 97110, Telephone: (800) 774–3279.

DPSC Software, Inc., 23501 Park Sorrento, Suite 105, Calabasas, California 91302, Telephone: (800) 825–3772.

Information Technology, Inc., 1345 Old Cheney Road, Lincoln, Nebraska 68512, Telephone: (402) 423–2682.

Sheshunoff Information Services Inc., P.O. Box 13203 Capitol Station, Austin, Texas 78711–3203, Telephone: (800) 505–8333.

design an additional electronic filing method would not be feasible and practicable. As the proposal noted, banks wishing to file electronically already have as an alternative to purchasing software the option of developing a spreadsheet or some other software program. In this regard, the agencies have for nearly 10 years permitted any bank to design its own Call Report preparation software, obtain information from the electronic collection agent about the features necessary for the bank to electronically transmit its Call Report and add these features to its software, and complete a certification process with the collection agent to ensure that the bank's software can successfully transmit the bank's Call Report data file. Furthermore, because a bank that uses internally-developed spreadsheet software to assist in the preparation of its Call Report would currently submit its completed report on the paper report forms, the proposal's previously mentioned paper-based alternative also would be available to the bank

Finally, the Illinois Bankers Association mentioned that some bankers had questioned the security of the electronic transmission process and the potential for transmission errors that could render the Call Report data inaccurate. In this regard, EDS, the banking agencies' electronic collection agent, has established procedures to ensure that the electronically transmitted Call Report files are secure and that the data remains confidential. When a bank transmits its completed Call Report to EDS, it does so over a private packet-switching network. An individual bank's data file is transmitted to EDS in ''packets,'' which means that the complete file is broken into smaller files that are sent individually. This procedure adds security because a bank's Call Report data is never on the private network as a single complete file. In addition, EDS's private network is highly reliable because it is designed to reroute or ''switch'' transmission traffic when necessary to avoid transmission errors. Once a bank's multiple ''packets'' of Call Report data have been received by EDS, the packets are reassembled into the bank's Call Report data file and stored in secure, remote directories that deny access to unauthorized users because they employ appropriate usercode and password security. Before EDS makes its periodic transmissions of Call Report data files of the banking agencies, the files to be transmitted are reformatted into a bulk file format which is compressed and bears little resemblance to the original Call Report files. EDS then transmits the Call Report bulk data file over its private network to the Board's private network. Because these networks use private lines, they are protected from dial access by unauthorized users.

(This signature page pertains to the joint notice and request for comment, ''submission for OMB review; comment request'')

Dated: July 15, 1997.

Karen Solomon,

Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, July 7, 1997.

William W. Wiles,

Secretary of the Board.

(This signature page pertains to the joint notice and request for comment, ''agency information collection activities: submission for OMB review; comment request'')

Dated at Washington, D.C., this 3rd day of July, 1997.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary (Operations).

[FR Doc. 97–19115 Filed 7–18–97; 8:45 am]

BILLING CODE 4810–33–M, 6210–01–M, 6714–01–M

Corrections

Federal Register
Vol. 62, No. 139
Monday, July 21, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-144-004]

K.N. Wattenberg Transmission Ltd. Liability Co.; Notice of Tariff Filing

July 7, 1997.

Correction

In notice document 97–18166 appearing on page 37215 in the issue of Friday, July 11, 1997, make the following corrections:

On page 37215, in the third column:

a. The Docket No. and the date of the document should be set forth above.

b. In the first line of the document, ''July 7, 1997'' should read ''July 1, 1997''.

c. In the second complete paragraph, in the last line, ''RP-97-114-002'' should read ''RP-97-144-002''.

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4248-N-01]

Fiscal Year 1997 Portfolio Reengineering Demonstration Program Request for Qualifications

Correction

In notice document 97–18780 beginning on page 38109 in the issue of Wednesday, July 16, 1997, make the following correction:

On page 38110, in the third column under *D. Proposal Deadline*, in the fourth line, ''August 3, 1997'' should read ''August 13, 1997''.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ917-AZA28350]

Notice of Proposed Exchange of Lands in Gila, La Paz, Pinal and Mohave Counties, AZ

Correction

In notice document 97–16283 beginning on page 33671 in the issue of Friday, June 20, 1997, make the following corrections:

1. On page 33671, in the third column, in the *Mineral Estate Only* land description:

(a) In the eighth line, ''Sec. 35, W½MW¼'' should read ''Sec. 35, W½NW¼.'';

(b) In the tenth line, ''E½ME¼, SW¼ME¼,'' should read ''E½NE¼, SW¼NE¼,'';

(c) In the 19th line, after ''inclusive,'' insert ''E½NE¼, SW¼NE¼, SE¼NW¼,'';

2. On the same page, in the same column, in the *Surface and Mineral Estate* land description:

(a) In the 21st line, ''Sec. 17, E½SW¼SE¼MW¼'' should read ''Sec. 17, E½SW¼,SE¼NW¼'';

(b) In the 24th line, ''N½SE¼SW¼MW¼;'' should read ''N½SE¼SW¼NW¼;'';

(c) In the ninth line from the bottom, before ''E½;'' insert a comma;

(d) In the seventh line from the bottom, before ''SW¼.'' insert a comma.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38607; File No. SR-CBOE-97-10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Minimum Sizes for Closing Transactions, Exercises, and Responses to Requests for Quotes in FLEX Equity Options

Correction

In notice document 97–12886 beginning on page 27083 in the issue of Friday, May 16, 1997, make the following correction:

On page 27084, in the second column, the authorizing signature should read:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38608; File No. SR-NASD-97-17]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Fees Charged for the Nasdaq Level 1 Service

Correction

In notice document 97–12894 beginning on page 27095 in the issue of Friday May 16, 1997, make the following correction:

On page 27096, in the second column, the authorizing signature should read:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38642; File No. SR-PSE-96-41]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc. Establishing a 1:02 p.m. Closing Time for Equity Options Trading

Correction

In notice document 97–13459 beginning on page 28095 in the issue of Thursday, May 22, 1997, make the following correction:

On page 28096, in the second column, the authorizing signature should read:

Jonathan G. Katz,

Secretary.

BILLING CODE 1505-01-D

federal register

Monday
July 21, 1997

Part II

Nuclear Regulatory Commission

10 CFR Part 20, et al.

Radiological Criteria for License Termination; Final Rule

Radiological Criteria for License Termination: Uranium Recovery Facilities; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 40, 50, 51, 70 and 72

RIN 3150–AD65

Radiological Criteria for License Termination

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations regarding decommissioning of licensed facilities to provide specific radiological criteria for the decommissioning of lands and structures. The final rule is intended to provide a clear and consistent regulatory basis for determining the extent to which lands and structures can be considered to be decommissioned. The final rule will result in more efficient and consistent licensing actions related to the numerous and complex site decommissioning activities anticipated in the future.

EFFECTIVE DATE: This regulation becomes effective on August 20, 1997. However, licensees may defer rule implementation until August 20, 1998.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Trottier, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–6232, e-mail CAT1@nrc.gov; Frank Cardile, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–6185; e-mail FPC@nrc.gov; Dr. Carl Feldman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–6194, e-mail CXF@nrc.gov; or Christine M. Daily, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–6026, e-mail CXD@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Background
III. Overview of Public Comments
IV. Summary of Public Comments, Responses to Comments, and Changes From Proposed Rule
A. Overall license termination approach and criteria for unrestricted use (proposed rule §§ 20.1402 and 20.1404).
1. Proposed rule content.
2. Criteria for unrestricted use, including total effective dose equivalent, as low as reasonably achievable, and decommissioning objective.
3. General comments on the dose criterion.
4. Average member of the critical group.
B. Criteria for restricted use (proposed rule §§ 20.1402(d) and 20.1405).
1. Proposed rule content.
2. Comments on acceptability of restricted use for decommissioned sites.
3. Response.
4. Summary of rule revisions on restricted use.
C. Alternate criteria for license termination.
1. Codifying provisions for certain facilities that the proposed rule suggested exempting.
2. Exclusion of uranium/thorium mills proposed in § 20.1401(a).
3. Other exemptions.
D. Groundwater protection criteria (proposed rule § 20.1403).
1. Proposed rule content.
2. Use of Environmental Protection Agency drinking water standards in NRC's regulation.
E. Public participation (proposed rule §§ 20.1406 and 20.1407).
1. Proposed rule content.
2. General requirements on notification and solicitation of comments (proposed rule § 20.1406(a)).
3. Additional requirements on public participation (including those for restricted use, for alternate criteria, and for use of site-specific advisory boards (proposed rule § 20.1406(b)).
4. Specific questions on functioning of site-specific advisory boards.
F. Other procedural and technical issues.
1. State and NRC compatibility.
2. Grandfathering sites with previously approved plans (proposed rule § 20.1401(b)).
3. Finality of decommissioning and future site reopening (proposed rule § 20.1401(c)).
4. Minimization of contamination (proposed rule §§ 20.1401(d) and 20.1408).
5. Provisions for readily removable residual radioactivity.
6. Separate standard for radon.
7. Calculation of total effective dose equivalent over 1000 years to demonstrate compliance with dose standard.
G. Other comments.
1. Definitions (proposed rule § 20.1003).
2. Need for regulatory guidance.
3. Need for flexibility.
4. Consistency with NRC's timeliness rule.
5. Comments from power reactor decommissioning rulemaking.
6. Mixed waste, hazardous waste, and naturally occurring and accelerator-produced radioactive material.
7. Recycle.
8. The rulemaking process.
V. Agreement State Compatibility
VI. Relationship Between the Generic Environmental Impact Statement and Site-Specific Decommissioning Actions
VII. Final Generic Environmental Impact Statement: Availability
VIII. Paperwork Reduction Act Statement
IX. Regulatory Analysis
X. Regulatory Flexibility Certification
XI. Backfit Analysis
XII. Small Business Regulatory Enforcement Fairness Act

I. Introduction

The Nuclear Regulatory Commission is amending its regulations regarding decommissioning of licensed facilities to provide specific radiological criteria for the decommissioning of lands and structures. This action is necessary to ensure that decommissioning will be carried out without undue impact on public health and safety and the environment.

These criteria apply to the decommissioning of licensed facilities and facilities subject to the NRC's jurisdiction. The Commission will apply these criteria in determining the adequacy of remediation of residual radioactivity resulting from the possession or use of source, byproduct, and special nuclear material. The criteria apply to decommissioning of nuclear facilities that operate through their normal lifetime and to those that may be shut down prematurely.

The intent of this rulemaking is to provide a clear and consistent regulatory basis for determining the extent to which lands and structures must be remediated before decommissioning of a site can be considered complete and the license terminated. The Commission believes that inclusion of criteria in the regulations will result in more efficient and consistent licensing actions related to the numerous and frequently complex site remediation activities anticipated in the future. The Commission has reassessed residual contamination levels contained in existing guidance based on changes in basic radiation protection standards, improvements in remediation and radiation detection technologies, decommissioning experience, public comments received on rule drafts and public comments presented at workshops held as part of the rulemaking effort and public comments received on the proposed rule.

The NRC has previously applied site release criteria for decommissioning on a site-specific basis using existing guidance. Although site-specific situations will still occur, the Commission believes that codifying radiological criteria for decommissioning in the regulations will allow the NRC to more effectively carry out its function of protecting public health and the environment at decommissioned sites by providing for more efficient use of NRC and licensee resources, consistent application across all types of licenses, and a predictable basis for decommissioning planning.

II. Background

On August 22, 1994 (59 FR 43200), the NRC published a proposed rule for comment in the **Federal Register** to amend 10 CFR part 20 of its regulations ''Standards for Protection Against Radiation'' to include radiological criteria for license termination. The public comment period closed on January 20, 1995. Comments received on the proposed rule were summarized in NUREG/CR–6353. A workshop was held on December 6–8, 1994, to solicit additional comments related to site-specific advisory boards as described in the proposed rule. Comments received during that workshop were summarized in NUREG/CR 6307 [1]. A workshop was also held on September 29, 1995, to specifically discuss methods for implementing the rule. Additionally, communication with the public on the proposed rule was maintained through the Electronic Bulletin Board system.

III. Overview of Public Comments

Over 100 organizations and individuals submitted comments on the proposed rule. The commenters represented a variety of interests. Comments were received from Federal and State agencies, electric utility licensees, material and fuel cycle licensees, citizen and environmental groups, industry groups, native American organizations, and individuals. The commenters offered from 1 to over 50 specific comments and represented a diversity of views. The commenters addressed a wide range of issues concerning all parts of the rule. The reaction to the rule in general and to specific provisions of the rule was varied. Viewpoints were expressed both in support of and in disagreement with nearly every provision of the rule.

IV. Summary of Public Comments, Responses to Comments, and Changes From Proposed Rule

The following sections describe the principal public comments received on the proposed rule (organized according to the major subject areas and sections of the proposed rule), present NRC responses to those comments, and explain principal changes to the proposed rule (where they occur) in response to those comments. The comments are organized according to the following major subject areas and sections of the proposed rule and are presented in the following subsections:

(a) Overall license termination approach (unrestricted use, restricted use, exemptions, and alternate criteria), and specific issues on criteria for unrestricted use (including total effective dose equivalent (TEDE), as low as is reasonably achievable (ALARA), objective of decommissioning, average member of critical group);

(b) Specific issues on criteria for restricted use (bases for using restricted use, reliance on institutional controls, 1 mSv (100 mrem) TEDE cap, engineered barriers, financial assurance);

(c) Specific issues on exemptions and alternate criteria for license termination (facilities with large volumes of low level wastes, uranium and thorium mills, exemptions);

(d) Groundwater protection criteria (use of Environmental Protection Agency (EPA) drinking water standards of 40 CFR 141 in NRC's regulation);

(e) Public participation (means of notification, site-specific advisory boards (SSABs));

(f) Other procedural and technical issues (state compatibility, grandfathering, finality, minimization of contamination, readily removable residual radioactivity, radon, calculation of TEDE over 1000 years to demonstrate compliance with dose standard); and

(g) Other comments (definitions, regulatory guidance; timeliness rule; wastes; recycle; rulemaking process).

The comments received from both public comment and the workshops have been factored into the Commission's decisionmaking on the final rule and into the technical basis for guidance documents implementing the final rule. The description of changes to the final rule made as a result of the comments in each of the major subject areas follows each comment/response section.

A. Overall License Termination Approach and Criteria for Unrestricted Use (Proposed Rule §§ 20.1402 and 20.1404)

A.1 Proposed Rule Content

The proposed rule (§ 20.1402(d)) presented an overall approach for license termination involving either of two basic methods, i.e., unrestricted use or restricted use of sites after license termination. The proposed rule indicated that unrestricted use was generally preferred, but that restricted use was also permitted because it was recognized that there may be cases where achieving unrestricted use would not be reasonable.

Specific requirements for use of each of these two basic methods were presented in the proposed rule. The preamble to the proposed rule also indicated that there may be certain licensees that would seek exemptions from the decommissioning criteria of the proposed rule, although it did not codify this exemption path.

Section IV.A.2 reviews in detail the development of unrestricted use criteria; and, in doing so it also indicates, in general, how the overall approach for license termination has been reexamined to consider public comments. Specific issues and requirements regarding other areas, specifically restricted use, exemptions, and alternate criteria, are discussed in more detail in Sections IV.B and IV.C of this preamble.

Section 20.1402(a) of the proposed rule indicated that the objective of decommissioning is to reduce residual radioactivity in structures, soils, groundwater, and other media at the site so that the concentration of each radionuclide that could contribute to residual radioactivity is indistinguishable from the background radiation concentration for that nuclide. Section 20.1402(a) further noted that, as a practical matter, it would be extremely difficult to demonstrate that such an objective had been met and that a site release limit for unrestricted use was being proposed.

Section 20.1404 of the proposed rule indicated that a site would be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in TEDE to an average member of the critical group of 0.15 mSv/y (15 mrem/y) and has been reduced to levels that are ALARA.

Section 20.1402(d) of the proposed rule indicated that release for unrestricted use of a facility is the preferred approach but that the alternative of release for restricted use would also be allowed if its use were justified (see Section IV.B).

A.2 Criteria for Unrestricted Use, Including TEDE, ALARA, and Decommissioning Objective

A.2.1 Comments. Some commenters (including EPA) agreed that 0.15 mSv/y (15 mrem/y) is an acceptable criterion because it is attainable, provides a margin of safety, and isn't unjustifiably costly. The Department of Energy (DOE) agreed that 0.15 mSv/y (15 mrem/y) could be acceptable if reasonable scenarios were considered although it preferred 0.25 mSv or 0.3 mSv/y (25 or 30 mrem/y) with ALARA. However, most commenters did not agree with the

[1] Copies of NUREGS may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

0.15 mSv/y (15 mrem/y) criterion. Some opposed 0.15 mSv/y (15 mrem/y) as being too high and preferred alternatives that reduced the contamination level to lower levels, including preexisting background. The majority of commenters opposed 0.15 mSv/y (15 mrem/y) as being too low and gave alternatives that generally included increasing the limit to 0.25, 0.3, 0.5, or 1 mSv/y (25, 30, 50, or 100 mrem/y) with further reduction based on ALARA. The categories of reasons given by commenters opposing 0.15 mSv/y (15 mrem/y) as either too high or too low included potential health impacts or the lack of demonstrable health effects at these levels, consistency with national and international standards, effect of multiple sources, consistency with other NRC/EPA regulations, analysis of costs vs. benefits, ability to measure, effect on disposal capacity, effect on sites with naturally occurring radioactive material (NORM), and responsibility for cleanup of sites.

The proposed rule indicated that licensees would be expected to demonstrate that doses are ALARA below the proposed 0.15 mSv/y (15 mrem/y) dose criterion. Some commenters endorsed ALARA analyses in specific cases to determine if doses should be reduced below 0.15 mSv/y (15 mrem/y) and recommended that a value of 0.03 (or less) mSv/y (3 (or less) mrem/y) be the ALARA objective. Some of these commenters also requested that the NRC explicitly mandate that technical and economic analyses be performed. Other commenters indicated that ALARA principles and analyses should not be required to determine if cleanup should be performed to reduce doses below 0.15 mSv/y (15 mrem/y) because the costs are large in comparison with the small reduction in risk. Several commenters indicated, alternatively, that ALARA should be allowed above 0.15 mSv/y (15 mrem/y) and that the rule should allow ALARA analyses to be used to permit a licensee to release its site at a value higher than 0.15 mSv/y (15 mrem/y) (up to 1 mSv/y (100 mrem/y)) if ALARA calculations support this alternative. Another commenter disagreed and recommended that ALARA analyses be applied only to demonstrate if additional cleanup is required below 0.15 mSv/y (15 mrem/y). Some commenters stated that guidance should be provided describing how ALARA should be achieved, how doses would be quantified, how models and parameters would be selected, what $/person-rem value would be used, how nonradiological risks would be considered, how net risks would be evaluated, how flexibility would be incorporated, what degree of simplification of complex models would be incorporated, and what final criteria would be used.

The proposed rule also contained, in § 20.1402(a), a decommissioning objective of reducing residual radioactivity to levels that are indistinguishable from background. Section 20.1402(a) further noted that such an objective may be difficult to meet as a practical matter. Many commenters opposed establishment of the decommissioning objective because it is arbitrary, serves no purpose for industrial sites, is costly and a waste of resources, is unlikely to be achieved, and cannot be measured. Some commenters supported establishing the proposed objective because it is reasonable from a health standpoint. Others suggested alternative objectives such as ALARA or using a dose that is indistinguishable from the variation in background.

A.2.2 Response. The preamble to the proposed rule described three broad considerations as providing the overall rationale for the proposed rule's approach to license termination. The first two considerations were related to health and safety, i.e., level of risk and need for a constraint or margin of safety below the 1 mSv/y (100 mrem/y) public dose limit of 10 CFR part 20 to account for the potential effect of multiple sources of radiation exposure. The third consideration was related to practicality and reasonableness of costs. The preamble to the proposed rule noted that the risk implied by use of the proposed 0.15 mSv/y (15 mrem/y) dose is comparable to other standards and practices of EPA and NRC for areas of unrestricted access in the vicinity of facilities, and that the proposed 0.15 mSv/y (15 mrem/y) standard provides a substantial margin of safety (constraint) for a single source below the 1 mSv/y (100 mrem/y) public dose limit in 10 CFR part 20 to account for the potential exposure of a member of the public to other sources. This ''constraint'' approach was noted as being consistent with generic constraint recommendations made by national and international scientific bodies such as the International Commission on Radiation Protection (ICRP) and the National Council on Radiation Protection and Measurements (NCRP). Requirements related to ALARA, the decommissioning objective, and restricted use were included in the rule based on the NRC staff analysis in the Draft Generic Environmental Impact Statement (GEIS) (NUREG–1496) that showed that the costs of reducing exposures to, or in some cases below, a 0.15 mSv/y (15 mrem/y) criterion would not generally be unduly burdensome for most licensees, although in those cases where the costs would present an unreasonable burden, release of the site with restrictions placed on its use would provide an alternative means for achieving the same level of protection. Achieving levels of less than 0.15 mSv/y (15 mrem/y), including achieving the decommissioning objective, was generally seen as not cost-effective because increasingly larger volumes of concrete and soil would have to be removed at a greater net risk due to deaths from transportation accidents and because more difficult survey measurements would have to be made with little net benefit in dose reduction.

The NRC considered alternatives suggested in public comments and reexamined the rationale of the proposed rule. A summary of that reexamination, along with a description of particular comments on the rationale, is contained in the following subsections.

A.2.2.1 Level of risk and consistency with other EPA/NRC standards. Some commenters criticized the health risk associated with a 0.15 mSv/y (15 mrem/y) limit as too high thereby providing inadequate public protection. In particular, they objected to the NRC's reliance on ICRP and NCRP because recent research (including findings in the aftermath of the 1986 Chernobyl accident and in the 1990 report on Biological Effects of Ionizing Radiation (the BEIR V report)) showed risks to be higher than ICRP or NCRP indicated, or suggested other sources for limits, including a British standard and a National Academy of Sciences statement on radiation safety. Commenters also indicated that 0.15 mSv/y (15 mrem/y) was too high because it is higher than other NRC or EPA standards such as those for operating reactors.

The majority of commenters criticized 0.15 mSv/y (15 mrem/y) as too low for reasons which included that it is far below the level at which health effects have been observed in studies, that the risks associated with other EPA and NRC standards (including 10 CFR parts 20, 60 and 61, 40 CFR parts 190 and 191, and EPA's radon action level) are higher, and that it is based on the linear non-threshold theory which is not appropriate for setting such standards. These commenters also criticized the relationship of the risks implied by this rule to those implied by standards for chemical hazards.

In general, many commenters stated that the NRC should work closely with

the EPA in developing its decommissioning regulations to assure that there are no conflicting or duplicate requirements and that the acceptable risk levels and associated requirements developed by the two agencies are compatible or the same. DOE noted that a nonuniform approach could significantly impact the DOE environmental restoration program and that NRC/EPA regulations will have an impact beyond NRC licensees. There was some commenter disagreement as to whether EPA or NRC should take the lead in issuance of exposure standards. In its comments on the NRC's proposed rulemaking, the EPA supported the 0.15 mSv/y (15 mrem/y) limit.

In response, the NRC has considered recent information and recommendations in ICRP Publication 60 and NCRP No. 116. These documents are developed by recognized experts in the fields of radiation protection and health effects and contain reviews of current significant research in radiation health effects. The NCRP is a nonprofit corporation chartered by the U.S. Congress to develop and disseminate information and recommendations about protection against radiation and to cooperate with the ICRP and other national and international organizations with regard to these recommendations. The ICRP has continued to update and revise its estimates of health effects of radiation since its inception in 1928. In its deliberations, ICRP maintains relationships with United Nations health and labor organizations.

In addition, the NRC evaluated the proposed Federal Radiation Protection Guidance for Exposure of the General Public (FRG) as published for comment on December 23, 1994 (59 FR 66414), in which the EPA, under its charter, made recommendations to the President of the United States concerning recommended practices for protection of the public and workers from exposure to radiation.

Recent recommendations contained in ICRP 60, NCRP No. 116, and the proposed FRG are essentially similar. Use of these sources for formulating basic radiation protection standards is consistent with NRC's general approach regarding risk decisions as is noted in the preamble to issuance of 10 CFR part 20 on May 21, 1991 (56 FR 23360). The NRC considers it reasonable and appropriate to use the findings of these bodies in developing criteria for license termination to apply to its licensees.

The ICRP and NCRP and EPA have reviewed current, significant studies made by other health research bodies, such as the National Academy of Sciences-National Research Council's Committee on the Biological Effects of Ionizing Radiation (BEIR) and the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR), and have developed recommendations regarding limitations on exposure to radiation. In particular, the BEIR Committee conducted major reviews of the scientific data on health risks of low levels of ionizing radiation in 1972, 1980, 1988, and 1990, and similar reviews were published by UNSCEAR in 1977, 1982, 1986, and 1988. As noted in the proposed FRG, these studies have provided more certainty about radiation risks at high doses and dose rates. Using that information and assumptions of linearity with low dose/dose rate reduction factors, BEIR V contains updated risk factors.

Concerning recent information from the Chernobyl accident noted by a commenter, there are still ongoing studies of the effects of the accident. A report published by the principal international organization studying health effects from the accident, the Organization for Economic Co-operation and Development (OECD), entitled ''Chernobyl: Ten Years On; Radiological and Health Impact,'' summarized the findings regarding health impacts by noting that scientific and medical observation of the population has not revealed any increase in cancers or other radiation induced disease that could be attributable to the Chernobyl accident. The only area where an increase was noted was for thyroid cancer. However, these effects most likely resulted from the release of short-lived radioiodine from the accident and the affinity of the thyroid gland for iodine. Similar effects would not be applicable in decommissioning because radioactive iodine is not expected to be a significant contaminant. The report further notes that, while studies continue on long term effects, it is unlikely that the exposure to contaminants in the environment will lead to discernible radiation effects in the general population. Thus, this research does not appear to indicate that the findings of the ICRP and NCRP will be shown to underestimate risks.

Specifically with regard to the risk level, some of the commenters stated that the risk of fatal cancers from 0.15 mSv/y (15 mrem/y) is too high in comparison with risk goals in the range 1×10^{-4} to 1×10^{-6} used by EPA in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) regulations. Other commenters disagreed and stated that precedents from earlier NRC rulemakings support a level of risk significantly greater than that and more appropriately in a range of 1×10^{-2} to 1×10^{-3} (e.g., the level of lifetime risk corresponding to the 1 mSv/y (100 mrem/y) public dose limit of 10 CFR Part 20, that is NRC's basic standard for public safety, is about 1.5×10^{-3}). Several of these commenters also criticized 0.15 mSv/y (15 mrem/y) as too low because the linear non-threshold model overestimates the risk and should not be used in the analysis. In response to comments on the risk level, constant exposure over a 30-year time period to dose levels of about 0.15–0.25 mSv/y (15–25 mrem/y), results in an estimated lifetime risk of fatal cancer of about 2.3×10^{-4} to 3.8×10^{-4} which is at the upper end of the acceptable risk range suggested by EPA in their comments on NRC's proposed rule but lower than that in NRC's public dose limits.[2] These estimates are based on use of the linear non-threshold model for calculating risk estimates. In response to specific comments on use of the linear non-threshold model in estimating risk, use of the linear non-threshold model for estimating incremental health effects per radiation dose incurred is considered a reasonable assumption for regulatory purposes by international and national scientific bodies such as ICRP and NCRP. The principal international and national radiological protection criteria, including the NRC's, are based on this assumption as a measure of conservatism. NRC's policy regarding use of the linear non-threshold model was stated in the preamble to the issuance of 10 CFR part 20 (56 FR 23360; May 21, 1991) noting that the assumptions regarding a linear non-threshold dose effect model are appropriate for formulating radiation protection standards. Although this matter continues to be the subject of further consideration at this time, there is not sufficient evidence to convince the NRC to alter its policy as part of this rulemaking.

To provide some perspective on the conservatism of considering dose criteria in the range of 0.15–0.25 mSv/

[2] The risks are estimated assuming a risk coefficient of 5×10^{-4} per rem and a 30-year lifetime exposure that is used by EPA in estimating risk from contaminated sites based on the assumption that it is unlikely that an individual will continue to live or work in the same area for more than 30 years. Such an estimate is seen as providing a conservative estimate of potential risk because land use patterns are generally such that persons living at or near a site will not continuously receive the limiting dose, and, for most of the facilities covered by this rule, the TEDE is controlled by relatively short-lived nuclides of half-lives of 30 years or less for which the effect of radioactive decay will, over time, reduce the risk significantly (e.g., at reactors where much of the contamination is from Co-60 with a half-life of 5.3 years).

y (15–25 mrem/y), it should be noted that, as described in the Final GEIS (NUREG–1496) prepared in support of this rulemaking, these levels are small when compared to the average level of natural background radiation in the United States (about 3 mSv/y (300 mrem/y)) and the variation of this natural background across the United States. In addition, although as noted above NRC is not altering its policy regarding use of the linear non-threshold model as part of this rulemaking, there is uncertainty associated with estimating risks at such dose levels. This uncertainty occurs because evidence of radiation dose health effects has only been observed at high dose levels (200 mSv (20,000 mrem) and above) and significant uncertainty in risk estimation is introduced when extrapolating to the very low dose levels being considered in this rulemaking. The health effects resulting from even a dose of 1 mSv (100 mrem) are uncertain. The BEIR Committee stated in its 1990 report (BEIR V) that ''Studies of populations chronically exposed to low-level radiation, such as those residing in regions of elevated natural background radiation, have not shown consistent or conclusive evidence of an associated increase in the risk of cancer.''

The risk associated with a dose criterion in the range of about 0.15–0.25 mSv/y (15–25 mrem/y) is generally consistent with the risk levels permitted in the performance objectives for low-level waste facilities in 10 CFR 61.41, and for fuel cycle facilities and for spent fuel and high level waste in EPA's 40 CFR 190 and 191. In addition, doses in the range of 0.15–0.25 mSv/y (15–25 mrem/y) are comparable to current NRC practices for decommissioning of reactors and certain materials facilities and fuel cycle facilities. Specifically, reactors have been decommissioned in accordance with Regulatory Guide 1.86 and with an NRC license termination letter to Stanford University (April 21, 1982, Docket No. 50–141). Materials facilities have been released in accordance with the levels for external radiation for beta/gamma exposure in NRC's Policy and Guidance Directive FC 83–23. In addition, a dose criterion in the range of 0.15–0.25 mSv/y (15–25 mrem/y) is generally at the low end of the range of values estimated for Option 1 of the 1981 Branch Technical Position (BTP) for sites with uranium and thorium and used for Ra-226 in 10 CFR 40, Appendix A, for uranium mill contamination.

A.2.2.2 Effect of multiple sources and margin of safety below 1 mSv/y (100 mrem/y). Some commenters suggested that 0.15 mSv/y (15 mrem/y) is too low and indicated that the NRC limit was inconsistent with ICRP and NCRP especially with regard to considerations of multiple sources of exposure, and that it would be unusual for an individual to be exposed to multiple sources approaching the 1 mSv/y (100 mrem/y) limit. These commenters suggested that 25–30 percent of 1 mSv (100 mrem) is an adequate margin to account for multiple sources.

In response, and by way of background, it is noted that the NCRP in its publication No. 116 (Chapter 15) recommends that, for continuous exposure, the effective dose to members of the public not exceed 1 mSv/y (100 mrem/y) from all man-made sources, other than medical and not including natural background sources. Similarly, ICRP, in Table 6 of ICRP Publication 60, recommends a limit of 1 mSv/y (100 mrem/y) as the dose limit for the public, and recommendation No. 3 of the draft EPA Federal Radiation Protection Guidance (FRG) indicates that the combined radiation doses incurred in any single year from all sources of exposure (excluding medical and natural background) should not normally exceed 1 mSv (100 mrem) and that continued or chronic exposure of an individual over substantial portions of a lifetime at or near 1 mSv/y (100 mrem/y) should be avoided. Consistent with these bodies, the NRC issued 10 CFR part 20 (56 FR 23360) in 1991 that established a public dose limit of 1 mSv/y (100 mrem/y) in 10 CFR 20.1301.

These national and international bodies also note and agree that, although the limit for the public dose should be 1 mSv/y (100 mrem/y) from all man-made sources combined, it would seem appropriate that the amount that a person would receive from a single source should be further reduced to be a fraction of the limit to account for the possibility that an individual may be exposed to more than one source of man-made radioactivity, thus limiting the potential that an individual would receive a dose at the public dose limit. Recommendations from these bodies, as well as from the NRC's Advisory Committee on Nuclear Waste (ACNW), regarding what the fraction from a source should be are:

(a) NCRP No. 116, Chapter 15, notes that no single source or set of sources under one's control should result in an individual being exposed to more than 0.25 mSv/y (25 mrem/y). This fraction was presented as a simple alternative to having a site operator (where a site could expose individuals to levels greater than 0.25 mSv/y (25 mrem/y)) investigate all man-made exposures that an individual at the site would be exposed to so as to demonstrate that the total dose does not exceed 1 mSv/y (100 mrem/y). The clear implication in this simple alternative is that, if individual sources are constrained to 0.25 mSv/y (25 mrem/y), NCRP believes it likely, given the low potential for multiple exposures, that the public dose limits will be met. Further reductions considering ALARA would still be considered by NCRP No. 116.

(b) ICRP 60, Section 5.5.1, in discussing the principles of constraints and limits, notes that it is appropriate to select dose constraints applied to each source to allow for contributions from other sources so as to maintain doses below the 1 mSv/y (100 mrem/y) limit. ICRP 60 does not contain numerical guidance on dose constraints for particular practices, but notes that cumulative exposures to individuals from existing sources near 1 mSv/y (100 mrem/y) are rarely a problem primarily because of the widespread use of source-related dose constraints.

Further explanation of the fundamental concepts of ICRP 60 are contained in the paper, ''The ICRP Principles of Radiological Protection and Their Application to Setting Limits and Constraints for the Public from Radiation Sources,'' by Professor Roger Clarke, Chairman of the ICRP (January 12, 1995; a copy is available in the file for this rulemaking in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC). The paper notes that the constraint approach derives from the optimization principle of radiation protection in which, for any source, individual doses should be ALARA and also be constrained by restrictions on doses to individuals (i.e., dose constraints). The paper further notes that a constraint is an individual related criterion applied to a single source to ensure that the overall dose limits are not exceeded, and that a dose constraint would therefore be set at a fraction of the dose limit as a boundary on the optimization of that source. Based on the principles presented in the paper, the constraint recommended in the paper for a decommissioned site is 0.3 mSv/y (30 mrem/y) and that further optimization through the ALARA principle is appropriate. As is the case for NCRP No. 116, the implication of the paper and ICRP 60 is that the constraint level is a boundary on the dose from this source and is sufficient to assure that members of the public are not exposed to levels in excess of the public dose limit. The rationale for this is expressed in Section 5.5.1 of ICRP 60 where it is noted that the critical group

is not normally exposed to the constraint level from more than one source although it may be exposed to some dose level less than the constraint level from more than one source.

(c) The proposed FRG in recommendation No. 4 indicates that individual sources should have ''authorized limits'' set at a fraction of the 1 mSv/y (100 mrem/y) limit for all sources combined. The draft FRG notes that the basis for this recommendation is the various categories of activities using radiation that can lead to exposure to members of the public, and also notes the need for broad assumptions about future activities involving radiation use.

The draft FRG does not recommend a level for any one source although it does note that setting such a fraction will necessarily be a broad judgment based on a general observation of the characteristics of existing activities, projections for continuing those activities in the future, and the potential for other uses in the future that can be identified now. Thus, the draft FRG notes that, in the case of authorized limits for broad categories of sources, the judgments will often necessarily be broad and may lead to somewhat higher values, with further implementation of the ALARA process left to management of individual sources within a category. The draft FRG does not indicate how this judgment is to be made although it cites authorized standards for certain sources that currently exist, including 40 CFR part 190 for the nuclear fuel cycle, Appendix I to 10 CFR part 50 for power reactors, 10 CFR part 61, and 40 CFR part 141. All of these set authorized fractions at 25 percent or less of the 1 mSv/y (100 mrem/y) public dose limit. NRC, in its comments on EPA's draft FRG, questioned what was the appropriate fraction of the public dose limit in 10 CFR part 20 that should be used in setting constraints that would become ''authorized'' limits.

(d) In its review of how the principles and recommendations of the ICRP, NCRP, and FRG are relevant to the proposed NRC rule, NRC's Advisory Committee on Nuclear Waste (ACNW) noted that 0.15 mSv/y (15 mrem/y) represented an unnecessarily conservative fraction of the 1 mSv/y (100 mrem/y) annual limit. The ACNW agreed that the need to partition the annual recommended dose limit among several sources to which a person is likely to be exposed appears justifiable and noted that no explicit guidance from the various national and international bodies on this subject exists. ACNW stated that a constraint of 25 percent or 30 percent of the 1 mSv/y (100 mrem/y) limit appears more justified and appropriate based on the likelihood that no more than 3 or 4 separate regulated sources will affect the critical group at any instance. ACNW further noted that the selection of 0.15 mSv/y (15 mrem/y), that represents about 1/7 of the annual limit, assumes that a person will encounter a simultaneous dose from seven different regulated sources and that this appears to them to be unjustified, particularly because the ALARA principle accompanies all such NRC regulatory actions.

The recommendations of the previously cited organizations can be summarized as suggesting that a constraint value should be set as part of the process of optimizing the dose from a particular source and that this constraint value should be set as a boundary value below which further optimization or ALARA principles should be employed. The recommendations also appear to suggest that setting a source constraint of 25–33 percent of the annual dose limit of 1 mSv/y (100 mrem/y) is appropriate and adequate to ensure that the dose limit is met, and do not tend to lend support to 0.15 mSv/y (15 mrem/y) as the appropriate fraction to which to constrain the dose from an individual source because it is not likely that a critical group will be exposed to as many as seven sources. Thus, the recommendations appear to indicate that the constraint value should be set using a more reasonable approach.

In discussing the bases for the 0.15 mSv/y (15 mrem/y) dose criterion in the proposed rule, the Commission noted in the preamble (at 59 FR 43219; August 22, 1994) that 0.15 mSv/y (15 mrem/y) would provide a ''substantial'' margin of safety and be appropriate for decommissioned facilities. As part of its review of the public comments, the Commission considered the recommendations of the standards-setting bodies previously cited. Further, in making a judgment on the appropriate value of the fraction, the Commission also considered principles of optimization, numbers and types of sources, potential for exposure of critical groups to more than one source at the constraint value, and assumptions regarding the manner in which a critical group would be exposed. NRC reviewed the assumptions of the Draft and Final GEIS regarding exposure pathways and also NUREG/CR–5512 upon which the Draft and Final GEIS are based. NUREG/CR–5512 provides an analysis of exposure pathways for critical groups at decommissioned facilities. The principal limiting scenarios include: (a) Full time residence and farming at a decommissioned site, (b) exposure while working in a decommissioned building, and (c) renovation of a newly decommissioned building. These principal limiting exposure scenarios are intended to overestimate dose and also tend to be somewhat mutually exclusive; i.e., a person living near a decommissioned nuclear facility would only receive a dose near the constraint level if his living pattern includes full-time residency and farming at the site. This living pattern would make it difficult for the member of this critical group to also be a member of the critical group from other licensed or decommissioned sources. Conversely, a person having less residency than a full time farmer (e.g., apartment dweller, homeowner who works away from the site) might receive doses from other sources but would receive less than the constraint value from the decommissioned site because the exposure time and the number of pathways would be reduced. Thus, given the assumptions regarding living patterns made in evaluating compliance with the constraint level, it is difficult to envision an individual receiving levels approaching constraint levels from more than one licensed or decommissioned source. It is also likely that individuals at a decommissioned site will actually be exposed to doses substantially below the constraint level because of ALARA considerations and because of the nature of the cleanup process itself, i.e., the process of scabbling of concrete removes a layer of concrete which likely contains a large fraction of the remaining radioactivity, and the process of soil excavation is a gross removal process that is also likely to remove large fractions of the radioactivity. For example, the Final GEIS indicates that, for the reference cases analyzed, removal of a layer of concrete by scabbling will result in doses at levels from 2 to more than 10 times lower than a constraint value. In addition to consideration of decommissioned sources, it is also difficult to envision that an individual could come in contact with more than a few other sources as part of normal living patterns. For example, the NCRP in NCRP No. 93, ''Ionizing Radiation Exposure of the Population of the United States,'' September 1987, reviewed likely radiation exposures to the public from consumer products, air emissions, and fuel cycle facilities (including nuclear power plants) and found that, in general, exposure to the public is a small fraction of 1 mSv/y (a few mrem/y). Recent experience on

nuclear power plant emissions and dose commitments (NUREG/CR–2850) tends to support the conclusions of NCRP No. 93 about power plant exposures.

NRC's generic evaluation of uses of and doses from various sources, including decommissioned sources, supplemented by the recommendations of the standards setting bodies and advisory committee noted above, suggests that the substantial added margin of safety provided by the 0.15 mSv/y (15 mrem/y) value may be too restrictive for its intended purpose of constraining doses from this category of sources in establishing an appropriate boundary constraint. Rather, the evaluation leads NRC to conclude that 25 percent of the public dose limit is a sufficient and ample fraction to use as the limitation for decommissioned sources.

Thus, the Commission concludes that a generic dose constraint or limitation for decommissioning sources of 0.25 mSv/y (25 mrem/y) for unrestricted release of a site is reasonable from the standpoint of providing a sufficient and ample margin of safety for protection of public health and safety. It is recognized that this conclusion reflects a judgment regarding the likelihood of individuals being exposed to multiple sources with cumulative doses approaching 1 mSv/y (100 mrem/y) rather than an analysis based on probability distributions for such exposures. However, considering the kinds of occupancy time typically assumed for the average member of the critical group at a site, it is highly unlikely that individuals could realistically be expected to experience exposures to other sources with a cumulative effect approaching 1 mSv/y (100 mrem/y).

A.2.2.3 Cost and practicality of standard. Comments received on cost and practicality were analyzed to determine whether such an analysis can provide additional information related to the criteria of this rule. This analysis includes how, and to what level, ALARA efforts should be made, how the proposed decommissioning objective of returning a site to background should be applied, and what provisions should there be (e.g., restricted use) for sites where it is unreasonable or unwise to attain the unrestricted dose criterion.

Some commenters criticized the proposed rule for including considerations of cost-effectiveness, objecting to using cost in decisionmaking. Other commenters criticized the rule because, although they favored use of cost-benefit analyses in decisionmaking, they believed that the cost-benefit analysis in the draft GEIS and draft Regulatory Analysis (RA) was inadequate to justify a 0.15 mSv/y (15 mrem/y) dose criterion because it used an improper approach (i.e., combining the building and soil analysis). They also believed that it underestimated the amount of contamination at reference facilities, as well as the costs of remediation and final site closeout surveys.

The Commission considered the concerns of commenters who criticized inclusion of cost as a consideration in decisionmaking. NRC methods and policy regarding cost considerations are stated in NUREG/BR–0058, Rev. 2, and call for preparation of an appropriate regulatory analysis in support of regulatory decisions. NUREG/BR–0058 does note that costs cannot be considered for regulatory actions necessary to ensure adequate protection of the health and safety of the public; however, it further notes that costs can be a factor in those cases where there may be more than one way to reach a level of adequate protection. Thus, the analysis in the GEIS and RA was prepared in support of the rulemaking to provide additional information to decisionmakers about the rule criteria being considered.

The Commission has also considered the concerns of those commenters that criticized the analysis of costs and risks as incomplete and inadequate and reviewed information submitted in support of those comments. In general, some of the major comments suggested, and provided data on, the following:

(a) Additional data from actual decommissionings should be included that would consider variations in site contamination characteristics, including the concentration and volume of contamination and the profile of the contamination with depth;

(b) Reevaluation of remediation and survey costs should be conducted, including consideration of variation in waste burial charges, remediation methods, and survey procedures;

(c) Separate analyses of the cost-effectiveness of soil removal and building removal should be performed. A commenter illustrated that separate analyses would clarify differences between costs and impacts of cleanup of soils and structures that were not obvious in the Draft GEIS. Commenters also suggested deleting the ''knee-in-curve'' approach as not clearly illustrating the information regarding costs and impacts for cleanup of both soils and structures; and

(d) Potential alternative uses of the site lands and facilities should be considered to provide a higher level of realism in the dose estimates. These alternative uses can result in variations in direct exposure and ingestion pathways and in the number of persons exposed and thus the collective exposure and net health effects.

Based on the comments and information received, additional information has been added to the GEIS. Data on contamination submitted by the commenters were reviewed, compared with other existing data, including that in the Draft GEIS, and incorporated into the Final GEIS as appropriate. The Final GEIS thus considers additional soil contamination data as well as soil and building contamination comparable to that in the draft GEIS. It also considers the range of disposal costs and survey methods and costs presented in the Draft GEIS, as well as those suggested in the comments. The Commission agrees with the commenters that consideration of soil and buildings separately can provide added information. Thus the Final GEIS has used the analysis of the Draft GEIS, that contained the data for performing separate analyses, and has presented the data more clearly in revised tables. In addition, the ''knee-in-curve'' figures, that provided general information about behavior of costs and impacts associated with cleanup, have been replaced with a simpler set of tables similar to the presentation in the Draft Regulatory Analysis, in Tables 6.1 and 6.2. In response to comments suggesting that the Final GEIS consider more realistic post decommissioning uses, the Final GEIS considers a range of possible uses, including residential farming, denser residential use, industrial/office use, and higher building occupancy rates.

Given the range of possible parameters, scenarios, and site-specific situations, the Final GEIS concludes, in a manner similar to the Draft GEIS, that there is a wide range of cost-benefit results among the different facilities and within facility types and that there is no unique algorithm that decisively produces an ALARA result for all facilities. Despite these difficulties, the Final GEIS and RA provide the following results that can be helpful for gaining insight in making decisions regarding ALARA, the decommissioning objective, and whether restricted use should be permitted:

(a) *Achieving, as an objective of ALARA, reduction to preexisting background.* The objective of returning a site to preexisting background conditions is consistent with the concept of returning a site to the radiological condition that existed before its use. However, the question of whether this objective, as a goal of ALARA, should be codified by rule depends on a variety of factors,

including cost, practicality (e.g., measurability) of achieving the objective, and the type of facility involved.

As noted in Section 7.3.1 of the Draft GEIS, decommissioning is expected to be relatively easy for a certain class of non-fuel-cycle nuclear facilities (i.e., those that use either sealed radioactive sources or small amounts of short-lived nuclides), because there is usually no residual radioactive contamination to be cleaned up and disposed of, or, if there is any, it should be localized or it can be quickly reduced to low levels by radioactive decay. Decommissioning operations will generally consist of disposing of a sealed source or allowing licensed short-lived nuclides to decay in storage, submitting Form NRC–314, and demonstrating (either through radiation survey or other means such as calculation of reduction of the contamination level by radioactive decay) compliance with the requirements for license termination. Because contamination at these facilities is expected to be negligible or to decay to negligible levels in a short time, achieving an objective of returning these facilities to background would not appear to be an unreasonable objective of ALARA.

However, in general, for those nuclear facilities where contamination exists in soils and/or structures, the Final GEIS analysis shows, in a manner similar to the Draft GEIS, that achieving an ALARA decommissioning objective of ''return to a preexisting background'' is not reasonable as it may result in net detriment or because cost cannot be justified because detriments and costs associated with remediation and surveys tend to increase significantly at low levels, while risk reduction from radiation exposure from criteria near background is marginal.

(b) *ALARA analysis for soil contamination.* Soil contamination can exist onsite at nuclear facilities because of a variety of reasons including spills or leaks, deposition from airborne effluents, or burial or placement of system byproducts or other waste materials in onsite soils. The level of soil contamination for the large majority of NRC-licensed facilities (>6000) is either zero or minimal (it is expected that the large majority of Agreement State licensees would have similar contamination). Certain facilities (e.g., power reactors, fuel facilities, industrial facilities) may have greater soil contamination, and certain of these facilities have been identified as having extensive soil contamination (albeit generally at relatively low levels) and have been placed in the Site Decommissioning Management Plan (SDMP) (see NUREG–1444, October 1993). These sites warrant specific NRC attention regarding their decommissioning.

For the generic scenarios considered, the results of the Final GEIS evaluation indicate that there is a wide range of possible cost-benefit ratios. Nevertheless, there appears to be a strong indication that removing and transporting soil to waste burial facilities to achieve exposure levels at the site at or below a 0.25 mSv/y (25 mrem/y) unrestricted use dose criterion is generally not cost-effective when evaluated using NRC's regulatory analysis framework presented in NUREG/BR–0058 and NUREG–1530. Further, even for a range of cleanup levels at or above a 0.25 mSv/y (25 mrem/y) criterion, there can also be cases where costs are unreasonable in comparison to benefits realized.

(c) *ALARA analysis for structures containing contamination.* Building floors and walls at nuclear facilities can be contaminated for a variety of reasons, including system leaks, spills, tracking, and activation. The large majority of NRC licensed facilities have zero or limited building contamination. Generally, contamination does not penetrate the surface of concrete and can be readily removed by water jets or concrete scabbling. If the building is reused for some new industrial, office, or other use after license termination, persons can be in direct contact with the decommissioned floors and walls.

For the range of generic situations considered, the results of the Final GEIS evaluation indicate that there is a wide range of possible cost-benefit ratios. It appears that cleanup of concrete to levels at or below 0.25 mSv/y (25 mrem/y) can be cost effective, depending on the number of individuals projected to be occupying a building, when using the decisionmaking guidelines of NUREG/CR–0058 and NUREG–1530.

A.2.3 Conclusions regarding overall approach to license termination and unrestricted dose criterion. Based on the above discussion, the Commission has concluded that the overall license termination approach of this final rule should include:

- An unrestricted use dose criterion of 0.25 mSv/y (25 mrem/y) applicable on a generic basis without site-specific analysis;
- Considerations regarding ALARA, including the decommissioning objective;
- A tiered approach of unrestricted use and allowing restricted use if certain provisions are met; and
- Codifying alternate criteria in the rule to alleviate the need for exemptions in certain difficult site-specific circumstances.

The reasons for these conclusions are discussed in the following subsections.

A.2.3.1 An unrestricted use dose criterion of 0.25 mSv/y (25 mrem/y) applicable on a generic basis without site-specific analysis. For the reasons described above, the Commission is establishing a dose of 0.25 mSv/y (25 mrem/y) as an acceptable criterion for release of any site for unrestricted use without further analysis of the potential for exposures from other man-made sources excluding medical. The Commission concludes that a generic dose constraint or limitation for decommissioning sources of 0.25 mSv/y (25 mrem/y) for unrestricted use of a site appears reasonable from the standpoint of providing a sufficient and ample margin of safety in protection of public health and safety. This conclusion reflects the Commission's judgment that the likelihood of individuals being exposed to multiple sources with cumulative doses approaching 1 mSv/y (100 mrem/y) is quite small. This conclusion is based on consideration of the kinds of occupancy times generally expected for the average member of the critical group at typical decommissioned sites and the low probability that individuals could realistically be expected to experience significant exposures to other sources, particularly with a cumulative effect approaching 1 mSv/y (100 mrem/y). In view of these perspectives, the Commission believes that a generic dose criterion of 0.25 mSv/y (25 mrem/y) provides a sufficient and ample, although not necessary, margin to protect the public.

A.2.3.2 Considerations regarding ALARA, including the decommissioning objective. The ICRP, NCRP, and draft FRG all suggest that, in addition to setting a constraint value for an individual source, achievement of exposures that are ALARA should continue to be considered as a means of optimization. For this reason and because the generic analysis of the Final GEIS tends to indicate that achieving doses below 0.25 mSv/y (25 mrem/y) may be ALARA for some cases, the rule continues to require an ALARA evaluation below the unrestricted dose criterion.

It would be useful if the analyses in the Final GEIS could have arrived at a value of ALARA for all facilities or classes of facilities so that no further estimate of ALARA would be needed in site-specific cases. However, it was not feasible for the Commission to use the

results of the Final GEIS to determine a generic optimum ALARA dose because of the variety of possible scenarios, assumptions, parameters, and site-specific conditions that could exist. Nevertheless, the Final GEIS does contain information about certain trends in impacts and costs of decommissioning that can be useful in preparation of regulatory guidance supporting site-specific ALARA provisions. In particular, it is clear from the Final GEIS that removal of soil to achieve dose levels below the 0.25 mSv/y (25 mrem/y) dose criterion is generally unlikely to be cost-effective, whereas it may be for concrete in certain cases. It is also clear that removal of soil or concrete to ''pre-existing background'' levels is generally not cost effective.

Thus, for those facilities where soil or building contamination exists, it would be extremely difficult to demonstrate that an objective of return to background had been achieved. Therefore it is concluded, as was previously done in the proposed rule, that for these sites use of the unrestricted dose criterion with appropriate ALARA considerations would be appropriate. For restricted use, the Final GEIS suggests that although removal of soil to achieve dose levels below 0.25 mSv/y (25 mrem/y) may not be cost-effective, other simple and less costly measures to restrict the use of the site such as fencing or barrier plantings may be cost-effective and should be considered as part of the ALARA process. For groundwater contamination, as discussed later in Section IV.D, ALARA considerations should consider the situation where populations use groundwater plumes from a facility as drinking water.

In actual situations, it is likely that, even if no specific analysis of ALARA were required for soil and concrete removal, the actual dose will be reduced to below 0.25 mSv/y (25 mrem/y) because of the nature of the removal process. For example, the process of scabbling of concrete removes a layer of concrete that likely contains a large fraction of the remaining radioactivity, and the process of soil excavation is a gross removal process that also is likely to remove large fractions of the radioactivity.

To clarify the concept of ALARA, the regulatory guidance to be prepared will refer to the existing requirements of §§ 20.1003 and 20.1101 where ALARA is defined to include considerations of the state of technology, economics of improvement in relation to the state of technology, economics of improvements in relation to benefits to the public health and safety, and other societal and socio-economic considerations. Although preparation of guidance is in a preliminary stage, it is anticipated that this guidance would likely indicate that ALARA during decommissioning should include typical good practice efforts (e.g., floor and wall washing, removal of readily removable radioactivity in buildings or in soil areas), as well as ALARA analyses for buildings to levels less than 0.25 mSv/y (25 mrem/y) based on the number of individuals projected to be occupying the building, but that an ALARA analysis below 0.25 mSv/y (25 mrem/y) for soil removal would not need to be done. It is expected that use of the dose criterion of the final rule and the regulatory guidance on ALARA would achieve consistency with current practices where it is cost-effective to do so.

The Commission also believes that, in any ALARA analysis conducted to support decisions about site cleanup, all reasonably expected benefits and detriments resulting from the cleanup activities should be taken into consideration in balancing costs and benefits. An example of such a detriment would be transportation deaths that might occur as contaminated waste is transported away from the site.

A.2.3.3 Tiered approach of unrestricted use and allowing restricted use if certain provisions are met. It appears reasonable to retain the basic structure presented in the proposed rule and allow for both unrestricted and restricted use of sites. Allowance of restricted use is appropriate because there can be situations where restricting site use can provide protection of public health and safety by reducing the TEDE to 0.25 mSv/y (25 mrem/y) in a more reasonable and cost-effective manner than unrestricted use. This protection is afforded by limiting the time period that an individual spends onsite or by restricting agricultural or drinking water use. For many facilities, the time period needed for restrictions can be fairly short; i.e., long enough to allow radioactive decay to reduce radioactivity to levels that permit release for unrestricted use. For example, at reactors, manufacturing facilities, or broad scope licensees, where the principal contaminants can have half-lives of 5–30 years (e.g., Co-60, Cs-137), restricting site use for about 10–60 years can result in achieving unrestricted use levels. Thus, it continues to be appropriate to allow restricted use if accompanied by provisions that ensure the restrictions remain in place to achieve a dose of 0.25 mSv/y (25 mrem/y). Considerations for assuring that restrictions remain in place and that public health and safety is protected are discussed further in Section IV.B. In addition, because restricting site use can affect the local community, Sections IV.B and IV.E indicate that licensees should seek advice from such affected parties and, in seeking that advice, provide for: (1) Participation by representatives of a broad cross section of community interests, (2) an opportunity for a comprehensive, collective discussion on the issues, and (3) a publicly available summary of the results of all such discussions.

A.2.3.4 Codifying alternate site-specific criteria in the rule to alleviate the need for exemptions in special circumstances. The preamble to the proposed rule recognized that there could be certain difficult sites presenting unique decommissioning problems where licensees would seek exemptions from the rule's requirements. However, as noted in Section IV.C below, because the Commission finds that it would be preferable to deal with those facilities under the aegis of a rule rather than as exemptions, the Commission has included in its final rule a provision under which the Commission may terminate a license using alternate criteria in certain specific cases. In allowing such a provision, it is nevertheless the Commission's judgment that: (1) It is generally preferable for sites to reduce doses to 0.25 mSv/y (25 mrem/y) due to the uncertainty over the number of sources where nuclides may be present for a long time-frame; (2) the large majority of sites can reduce doses to less than 0.25 mSv/y (25 mrem/y) through restricting site use; and (3) permitting large numbers of licensees to propose alternate criteria is not advisable because it would be contrary to one of the goals of this rulemaking to achieve more efficient and consistent licensing actions. Therefore, the Commission has limited the conditions under which a licensee could apply for alternate criteria and expects that its use would be rare. A licensee proposing to terminate a license at a site-specific level above 0.25 mSv/y (25 mrem/y) would be required to:

(a) Provide assurance that public health and safety would continue to be protected by means of a complete and comprehensive analysis of possible sources of exposure so that it is unlikely that the dose from all potential man-made sources combined, other than medical, would exceed the 1 mSv/y (100 mrem/y) public dose limit of 10 CFR part 20;

(b) Employ, to the extent practical, restrictions on site use for minimizing exposures at the site using the provisions for restricted use outlined in Section IV.B, below; and

(c) Reduce doses to ALARA levels.

(d) Seek advice from affected parties regarding this approach and, in seeking such advice, provide for: (1) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning, (2) an opportunity for a comprehensive, collective discussion on the issues, and (3) a publicly available summary of the results of all such discussions, and

(e) Obtain the specific approval of the Commission. The Commission will make its decision on allowing use of alternate criteria in specific cases only after consideration of the NRC staff's recommendations that will address any comments provided by the Environmental Protection Agency and any public comments submitted regarding the decommissioning or license termination plan.

A description of these circumstances and potential resolutions on a site-specific basis, short of exempting a facility from this rule, appears in Section IV.C.

If license termination still cannot be met even under alternate criteria, it may be necessary for the site (or a portion thereof) to be kept under license in order to ensure that exposures to the public are appropriately monitored. The evaluation of the maintenance of a site or a portion thereof under a continued license is outside the scope of this rulemaking because this rule contains provisions addressing radiological criteria that apply to termination of a license.

A.2.4 Summary of rule revisions on unrestricted use and plans for implementation. The final rule has been modified to indicate that the dose criterion for unrestricted use is 0.25 mSv/y (25 mrem/y). Requirements that a licensee consider how the ALARA requirements of 10 CFR part 20 can be applied to achieve a dose below the dose criterion have been retained.

Regulatory guidance is planned on how to meet these existing ALARA requirements. In addition, to assist in implementing the dose criterion, regulatory guidance will also be issued to provide clear guidance to licensees on how to demonstrate compliance with the dose criterion by using either:

(a) Screening analyses that use relatively simple approaches for demonstrating compliance; or

(b) Site-specific modeling for more complex sites and contamination. Regulatory guidance will also be issued to provide clear guidance on statistical tests and survey methods available to licensees for demonstrating compliance.

The Commission is retaining the distinguishable from background provision in the final rule to allow release of sites when residual contamination, if any, cannot be distinguished from background on a statistical basis using proper survey techniques. In particular, at the levels of the dose criterion, concentrations of uranium and thorium in soil are extremely low and may not be distinguishable from background on a statistical basis even when using proper survey techniques.

A.3 General Comments on the Dose Criterion

A.3.1 Comments. Comments were received on the 0.15 mSv/y (15 mrem/y) dose criterion that questioned its effect on disposal capacity, the relationship to naturally occurring radioactive material (NORM), and the issue of fixing the responsibility for cleanup.

A.3.2 Response. Some commenters were concerned about the effect of 0.15 mSv/y (15 mrem/y) criterion on disposal capacity. As noted in Section IV.A.2.2, several of the assumptions, models, and approaches in the GEIS and Regulatory Analysis have been revised to include additional data and alternate waste disposal costs. A complete discussion of these revisions and analysis of disposal capacity is in the Final GEIS and the Regulatory Analysis.

Some commenters questioned the relationship of this rule to NORM. In response, the criteria of this rule apply to residual radioactivity from activities under a licensee's control and not to naturally occurring background radiation. Issues related to NRC-licensed sites containing materials that occur in nature are discussed in Sections IV.B and IV.C.

There is a wide variety of sites containing NORM subject to EPA jurisdiction and not licensed by the NRC. The extent to which criteria in this rule would apply to these sites would be based on a separate evaluation although certain aspects of the rule, for example control of sites with restrictions imposed, could be similar. For further discussion, see also Section IV.G.6.

With regard to responsibility for cleanup, several commenters stated that the 0.15 mSv/y (15 mrem/y) limit is too high because licensees should have to clean up contamination that they created. Because these are final licensing actions before releasing the site to the public, they stated that only a lower criterion such as return to background would adequately protect the public. In response, the NRC agrees with the need to fix responsibility for decommissioning of licensed sites. The planning and financial assurance requirements adopted June 27, 1988 (53 FR 24018), recognized the responsibility of licensees to plan for the cleanup of their sites and to provide adequate financial assurance for that cleanup. Similarly in this regulation, licensees are not permitted to release a facility for unrestricted or restricted public use unless the dose criteria stipulated in the rule have been satisfied. As noted in the Final GEIS, further cleanup to levels such as background is not generally reasonable because it results in very little additional health benefit with very large costs incurred and could result in an increase in the overall risk associated with cleanup of a particular site when all factors (e.g., estimated fatalities due to transportation accidents during transport of radioactive wastes) are considered. Therefore, for the reasons discussed in Section IV.A.2.2, the criteria in the final rule are considered appropriate to protect public health and safety and to permit release of the sites and termination of license.

A.4 Average Member of the Critical Group

A.4.1 Comment. Some commenters agreed with provisions of the rule that would apply the dose limit to an average member of the critical group rather than to the ''reasonably maximally exposed (RME) individual'' because it is consistent with ICRP and provides an appropriate protection standard. Other commenters objected to use of ''an average member of the critical group.'' These commenters favored applying the dose limit to the most exposed person rather than to an average person. They asserted that this would be consistent with the approach used for other licensed activities and environmental protection.

A.4.2 Response. Section 20.1003 of the proposed rule defined the term ''critical group'' as the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances. For example, if a site were released for unrestricted use, the critical group would be the group of individuals reasonably expected to be the most highly exposed considering all reasonable potential future uses of the site. As noted in the preamble to the proposed rule (at 59 FR 43218; August 22, 1994), NUREG/CR– 5512 defines the critical group as an individual or relatively homogeneously exposed

group expected to receive the highest exposure within the assumptions of a particular scenario and the dosimetric methods of 10 CFR part 20. The average member of the critical group is an individual who is assumed to represent the most likely exposure scenario based on prudently conservative exposure assumptions and parameter values within model calculations. For example, the critical group for the building occupancy scenario can be the group of regular employees working in a building that has been decontaminated. If a site were converted to residential use, the critical group could be persons whose occupations involve resident farming at the site, not an average of all residents on the site.

Although the terms ''critical group'' and ''average member'' are new terms in NRC regulations, they are consistent with ICRP practice of defining and using a critical group when assessing individual public dose from low levels of radioactivity similar to those expected from a decommissioned site. ICRP recommends that such analyses should consider exposure to individuals representative of those expected to receive the highest dose using cautious but reasonable assumptions. This approach has been adopted in the proposed FRG and is also consistent with the recommendations of the National Academy of Sciences on the Yucca Mountain Standards (August 1995).

A.4.3 Summary of rule revisions. Based on this discussion, the proposed rule has not been changed.

B. Criteria for Restricted Use (Proposed Rule §§ 20.1402(d) and 20.1405)

B.1 Proposed Rule Content

As described in the proposed rulemaking and restated in Section IV.A.2.2, there are potential situations under which termination of a license under restricted conditions could be used in the decommissioning of a site. Proposed § 20.1405 indicated that a site would be considered acceptable for license termination under restricted conditions if the licensee:

(1) Made provisions for institutional controls that provide reasonable assurance that the TEDE to the average member of the critical group would not exceed the unrestricted use dose criterion;

(2) Reduced residual radioactivity at the site so that, if the controls were no longer in effect, there is reasonable assurance that the TEDE would not exceed 1 mSv/y (100 mrem/y);

(3) Demonstrated that complying with the unrestricted use dose criterion would be prohibitively expensive, result in net public or environmental harm, or not be technically achievable;

(4) Obtained advice on the restrictions from the affected community by convening a site-specific advisory board, and;

(5) Provided financial assurance to ensure the controls remain in place.

B.2 Comments on Acceptability of Restricted Use for Decommissioned Sites

A variety of comments was received on the restricted use option. The major comment categories are listed below. Although the comment categories address somewhat separate issues, they are listed and answered together to develop a unified response on the issue of restricted use.

B.2.1 The general concept of restricted use. Some commenters agreed with the proposal to permit restricted use of decommissioned sites because it may be financially impractical to reach unrestricted levels, especially if health and safety considerations do not warrant it and because restricted release allows realistic land uses to be considered. Some commenters opposed the concept of any planned restricted release of decommissioned sites because of concerns over the durability and effectiveness of institutional controls, and because license termination should be a final action with full licensee responsibility for site disposition and cleanup costs previously considered.

B.2.2 The need for licensees to demonstrate that restricted use is appropriate for their sites. In allowing restricted use, the proposed rule would have required licensees to demonstrate the appropriateness of restricting site use for their particular situation by showing that it would be ''prohibitively expensive,'' ''technically unachievable,'' or cause ''net public or environmental harm'' to achieve unrestricted use (proposed § 20.1405(a)). Some commenters supported the restricted use of sites but indicated that the proposed requirements for demonstrating its appropriateness were unreasonably restrictive. These commenters stated that the provisions in proposed § 20.1405(a) were structured so narrowly that few sites would be able to qualify for license termination under restricted conditions. Commenters stated that these terms should be explained, deleted, or replaced with a less onerous requirement allowing restricted use if justified by an ALARA analysis or if there were continued ownership and industrial use of the site.

B.2.3 The durability of institutional controls. Several commenters opposed or expressed concern about the ability of institutional controls to provide needed protection of public health and safety at decommissioned sites because they cannot be enforced indefinitely into the future and can be struck down or become ineffective. Other commenters favored reliance on more flexible institutional controls and recommended that the rule should not assume that they will eventually fail. Approaches for using institutional controls were suggested including Federal Government ownership of sites or legislative solutions for complex sites similar to the National Waste Policy Act (NWPA) of 1982.

B.2.4 The 1 mSv/y (100 mrem/y) cap if institutional controls fail. Some commenters stated that the proposed 1 mSv/y (100 mrem/y) restriction is unreasonably low when used to assess the worst case scenario. They recommended that the rule should not stipulate that a licensee must assume that all institutional controls will eventually fail. Alternatively, they recommended that a 5 mSv/y (500 mrem/y) backup limit be allowed if restrictions such as institutional controls or engineered features fail. The commenters believed that a 5 mSv/y (500 mrem/y) limit is consistent with other regulations, since residential use of an industrial site is unlikely, and failure of controls is speculative. Several commenters objected to the last sentence of proposed § 20.1405(d), that stated that licensees may not assume any benefits from an earthen cover, other earthen barriers, or engineered controls in complying with the 1 mSv/y (100 mrem/y) cap unless specifically authorized by the Commission and recommended that the sentence be deleted. Some commenters recommended that the rule specify the extent to which licensees may take credit for engineered barriers. Other commenters stated that 1 mSv/y (100 mrem/y) is too high and that a lower value (e.g., 0.15, 0.3, 0.5, 0.75 mSv/y (15, 30, 50, or 75 mrem/y)) should be applied because institutional controls are uncertain, concerns over health effects would exist, and doses in excess of 40 CFR Part 190 are unreasonable. Some commenters agreed with establishing a maximum TEDE of 1 mSv/y (100 mrem/y) in the event institutional controls are no longer in effect.

B.2.5 Financial assurance for restricted use. Some commenters questioned the need for financial assurance provisions and suggested that more flexibility be provided for

licensees. Other commenters questioned whether the financial assurance provisions were adequate. One commenter stated that there should be more detail on financial assurance provided in the rule.

B.3 Response

B.3.1 The general concept of restricted use. Current NRC regulations pertaining to decommissioning, issued on June 27, 1988 (53 FR 24018), do not contain provisions for release of a facility for restricted use but limit a licensee's options in decommissioning to release of a facility for unrestricted use. Experience with decommissioning of facilities since 1988 has indicated that for certain facilities, achieving unrestricted use might not be appropriate because there may be net public or environmental harm in achieving unrestricted use, or because expected future use of the site would likely preclude unrestricted use, or because the cost of site cleanup and waste disposal to achieve unrestricted use is excessive compared to achieving the same dose criterion by restricting use of the site and eliminating exposure pathways. The input received from the rulemaking workshops held from January through May 1993 confirmed this experience and indicated that restricted use of a facility, if properly designed and if proper controls were in place, was a reasonable means for terminating licenses at certain facilities.

Current NRC-licensed sites that might request restricted use are largely industrial sites. It is reasonable for them to remain industrial because of their locations and previous siting considerations. Nevertheless, there may be instances where, if a site had high cultural value, such considerations would be presented as part of the public input that is part of the process of restricted use (see Section IV.E) and could be considered as a socioeconomic effect under the ALARA process.

The proposed rule thus provided for both unrestricted and restricted use of sites. Both the Draft and Final GEIS provide discussions of the environmental impact of decommissioning for the reference sites and of the costs related to decommissioning. From this it may be concluded that release of certain facilities for restricted use is an appropriate option assuming the presence of the specific provisions described below to ensure that appropriate controls are in place so that the restrictions on use remain in effect.

B.3.2 The need for licensees to demonstrate that restricted use is appropriate for their sites. As described in Section IV.B.3.1, the proposed rule allowed restricted use because release of a site under restricted conditions can be an appropriate method of decommissioning from both health and safety, and cost-benefit bases, especially for certain facilities with soil contamination. Nevertheless it did so under the philosophy (stated in § 20.1402(d)) that, in general, termination of a license for unrestricted use is preferable because it requires no additional precautions or limitations on use of the site after licensing control ceases, in particular for those sites with long-lived nuclides. In addition, there may be societal or economic benefits related to future value of the unrestricted use of the land to the community. Thus, § 20.1405(a) of the proposed rule stated the provisions the NRC would consider in evaluating a request for termination of a site under restricted conditions, including that it is ''prohibitively expensive'' or there is ''net public or environmental harm'' in achieving unrestricted release.

The Commission continues to believe that unrestricted use is generally preferable for the reasons noted. However, the NRC has reexamined the provisions for allowing restricted use because of the potential benefits. In explaining the provision of ''prohibitive'' cost, the proposed rule noted (at 59 FR 43220) that costs to achieve unrestricted use may be ''excessive,'' indicating that this means there may be situations where removal and disposal of large quantities of material is simply ''not reasonable'' from a cost standpoint. Consistent with this, the proposed rule noted in § 20.1402(d) that the Commission expected licensees to make every reasonable effort to achieve unrestricted release. The specific cost that would be considered excessive, not reasonable, or prohibitive was not included in the proposed rule. This value depends on costs of unrestricted and restricted use, and on an evaluation of these alternatives using the regulatory analysis framework presented in NUREG/BR–0058 and NUREG–1530. NUREG/BR–0058 provides a decisionmaking tool for deciding between regulatory alternatives. As noted in the discussion below, restricted use with appropriate institutional controls (accompanied by sufficient provisions for ensuring their effectiveness) can provide protection of public health and safety because the dose level will be reduced to the same 0.25 mSv/y (25 mrem/y) criterion as for unrestricted use. Thus, use of the guidelines in NUREG/BR–0058 is appropriate for determining whether restricted use should be permitted. Therefore, the Commission has modified the rule to incorporate an ALARA standard rather than prohibitive costs as the basis for selecting restricted use. To support a request for restricted use, a licensee would perform an ALARA analysis of the risks and benefits of all viable alternatives and include consideration of any detriments. This could include estimated fatalities from transportation accidents that might occur as the result of transport of wastes from cleanup activities, and societal and socioeconomic considerations such as the potential value to the community of unrestricted use of the land.

The proposed rule also noted that because the net public or environmental damage through removal, transport, and disposal of materials could be larger than the benefit in dose reduction at the site, it may be more reasonable for the material to remain onsite. The Final GEIS illustrates when it may be inappropriate, when considering such relative impacts, to completely remediate a site to an unrestricted level that assumes activities such as farming or residence, and then, as would be the case for a number of currently licensed sites, actually employ a commercial or industrial use that would eliminate significant pathways of exposure. Specific examples include reactors or other materials facilities where the dose is controlled by relatively short-lived nuclides (e.g., Co-60 and Cs-137 with half-lives of 5.3 and 30 years, respectively) that will decay to unrestricted dose levels in a finite time period of institutional control (e.g., about 10–60 years). For these facilities, there may be net public or environmental harm from removing and transporting soil to achieve unrestricted use compared to restricting use for a period of time associated with a reasonable decay period (see the Final GEIS, Chapter 6). Thus, the consideration of potential detriments from cleanup activities and the possibility of net harm have been retained in the final rule. Both terms, net public harm and net environmental harm, are retained in the final rule to indicate that a licensee's evaluation should consider the radiological and nonradiological impacts of decommissioning on persons who may be impacted, as well as the potential impact on ecological systems from decommissioning activities.

B.3.3 The durability of institutional controls. As described in Sections IV.B.3.1 and IV.B.3.2, use of restrictions that employ institutional controls appears appropriate in specific

situations. However, an important question raised in the public comments relates to the durability of institutional controls, i.e., whether the controls provide reasonable assurance that the exposure will be limited to the dose criterion in the rule over the periods in question.

For many types of decommissioned sites released under restricted conditions where potential doses to an individual are caused by relatively short-lived nuclides, the radiation exposure that could potentially be received were controls to fail will gradually decrease to below the unrestricted dose criterion so the restrictions on use would no longer be necessary. Examples of facilities with nuclides of this type include reactors or materials facilities for which the principal dose contributing nuclides after decommissioning are Co-60 or Cs-137 (half-lives 5.3 and 30 years, respectively), or other similarly short-lived nuclides. The Commission has considered the effectiveness of institutional controls for up to 100 years in similar contexts such as low-level waste disposal sites. Because decommissioned facilities will have minimal contamination compared to large volumes buried at low-level disposal sites, the Commission believes that institutional controls using relatively simple deed restrictions can provide reasonable assurance that the TEDE will be below the 0.25 mSv/y (25 mrem/y) dose criterion with restrictions in place.

In a limited number of cases, in particular those involving large quantities of uranium and thorium contamination, the presence of long-lived nuclides at decommissioned sites will continue the potential for radiation exposure beyond the 100-year period. More stringent institutional controls will be required in these situations, such as legally enforceable deed restrictions and/or controls backed up by State and local government control or ownership, engineered barriers, and Federal ownership, as appropriate. Federal control is authorized under Section 151(b) of the National Waste Policy Act (NWPA). Requiring absolute proof that such controls would endure over long periods of time would be difficult, and the Commission does not intend to require this of licensees. Rather, institutional controls should be established by the licensee with the objective of lasting 1000 years to be consistent with the time-frame used for calculations (and discussed in Section IV.F.7). Having done this, the licensee would be expected to demonstrate that the institutional controls could reasonably be expected to be effective into the foreseeable future.

To provide added assurance that the public will be protected, the final rule incorporates provisions (§ 20.1405(c)) for financial assurance to ensure that the controls remain in place and are effective over the period needed. With these provisions, the Commission believes that the use of reliable institutional controls is appropriate and that these controls will provide a high level of assurance that doses will not exceed the dose criterion for unrestricted use.

Although the Commission believes that failure of active and passive institutional controls with the appropriate provisions in place will be rare, it recognizes that it is not possible to preclude the failure of controls. Therefore, in the proposed rule, the Commission included a requirement that remediation be conducted so that there would be a maximum value (''cap'') on the TEDE from residual radioactivity if the institutional controls were no longer effective in limiting the possible scenarios or pathways of exposure. The cap included in the proposed rule was 1 mSv/y (100 mrem/y), which is the public dose limit codified in 10 CFR part 20. Public comments on the proposed rule suggested other values for the cap, both higher than and lower than the proposed value. The analysis of those comments, and their potential effect on the institutional controls used, is discussed in Section IV.B.3.4.

The Commission believes, based on the discussion in this section on the viability of controls and on the provisions for financial assurance and for a ''cap,'' described in Sections IV.B.3.4 and IV.B.3.5, that the provision for restricted use and institutional controls will provide a high level of assurance that public health and safety will be protected. Licensees seeking restricted use will be required to demonstrate, to NRC's satisfaction, that the institutional controls they propose are comparable to those discussed above, are legally enforceable, and are backed by financial assurance. Licensees will also be required to demonstrate that the cap will be met. The Commission believes that the provision for restricted use should be retained in the final rule.

B.3.4 The 1 mSv/y (100 mrem/y) cap if institutional controls fail. A ''cap'' of 1 mSv/y (100 mrem/y), corresponding to the public dose limit, was proposed in § 20.1405(d) of the proposed rule. Various possible ''cap'' values were suggested by the commenters, both lower than (e.g., values such as 0.15, 0.3, or 0.85 Sv/y (15, 30, or 85 mrem/y)) or higher than the proposed cap.

The Commission has reviewed the comments suggesting that the specific cap value be set at levels other than 1 mSv/y (100 mrem/y). The rationale for setting the cap at 1 mSv/y (100 mrem/y) presented in the proposed rule (at 59 FR 43221) was that the value of the cap coincides with NRC's public dose limit of 10 CFR Part 20. This value was premised on the assumption that circumstances could develop in which the restrictions might no longer be effective in limiting the exposure scenarios or pathways. Although this occurrence need not be assumed for planning purposes, a safety net is needed to prevent exposures in excess of the public dose limits. A cap using the public dose limits would provide an additional level of protection in the unlikely event that restrictions were not effective. Although, as noted in Section IV.A.2, the Commission has used a fraction of the public dose limit in setting the 0.25 mSv/y (25 mrem/y) dose limit for decommissioning, it indicated in the proposed rule that, in the case of the ''cap'' or ''safety net,'' it did not believe that fractionation, i.e., setting a cap value less than 1 mSv/y (100 mrem/y), would be necessary because:

(a) The 1 mSv/y (100 mrem/y) cap is less than values suggested in the proposed FRG for members of the public in unusual circumstances and less than values used for other types of facilities where some type of institutional control is used;

(b) The Commission believes that failure of all site restrictions at decommissioned sites is a highly unlikely event; and

(c) Radioactive decay for relatively short-lived nuclides (e.g., Co-60 and Cs-137), that are the principal dose contributing contaminants at the large majority of NRC licensed facilities, will actually reduce the dose level over a period of time for most sites that will provide an additional margin of safety equivalent to fractionation of the limit.

The rationale for setting a cap value at 1 mSv/y (100 mrem/y) continues to appear appropriate. In addition, setting a cap at a lower value does not appear warranted because: (1) It appears arbitrary to assume that the same person would be an average member of the critical group both near a facility where there was failure of controls and near another decommissioned facility; and (2) the failure of restrictions would be infrequent and therefore it is likely that the overall lifetime risk to the critical group would still be maintained at levels comparable to unrestricted use

while providing a more cost-effective use of resources.

Although the Commission did not fractionate the cap, it did include in the proposed rule, and continues to include in the final rule, a provision that would require exposures to be below the cap to a degree that is ALARA. The purpose of this requirement is that licensees would not simply leave behind contamination corresponding to the value of the cap but would evaluate the level below the cap that is cost effective and reduce the contamination to that level. This will provide a requirement that will effectively fractionate the doses and result in doses not dissimilar from those suggested by the commenters if it is cost-effective to do so. This approach is consistent with the current requirements in 10 CFR part 20.

Based on its experience with sites with difficult contamination issues, in particular those sites treated in NRC's SDMP, and as described in the Final GEIS, the Commission anticipates that there may be sites where compliance with the 1 mSv/y (100 mrem/y) cap could cause impacts resulting from cleanup to that level (e.g., estimated industrial or traffic fatalities associated with removing or transporting waste) that exceed the benefits of averting radiation exposure (thus causing a net detriment to public health or the environment) or that diminish the net benefit to where costs of cleanup would be prohibitive compared to the net benefit. Although the NRC recognizes that it is always the licensee's responsibility to clean up the contamination that it has caused, the appropriate course of action should not result in net public or environmental harm from a cleanup, and it is not clear that it is beneficial if resources are spent in a manner prohibitive in relation to other benefits which could be achieved, or if a licensee is put into a financial position where it cannot continue to perform the cleanup safely.

Although a cap higher than 1 mSv/y (100 mrem/y) would result in using a value in excess of the public dose limit in § 20.1301(a), existing requirements in § 20.1301(c) permit levels up to values of 5 mSv/y (500 mrem/y), provided that a licensee would apply to the Commission for permission to operate at that level, submit reasons why it is necessary, and indicate procedures to maintain doses ALARA. The proposed FRG, Recommendation No. 4, states that the dose from all sources should not exceed 1 mSv/y (100 mrem/y) although it may be exceeded temporarily in unusual situations that are not expected to recur.

Based on this existing requirement, the Commission has incorporated a specific provision in the final rule under which a licensee could propose exceeding the 1 mSv/y (100 mrem/y) cap in unusual site-specific circumstances if, in addition to the normal provisions of restricted use, it also met the following additional stringent provisions:

(a) A licensee would have to demonstrate that it cannot meet the 1 mSv/y (100 mrem/y) cap because of net public or environmental harm or prohibitive costs by means of a site-specific evaluation of the issues associated with complying with the 1 mSv/y (100 mrem/y) cap. The NRC expects that only a very few facilities (e.g., sites with soil contaminated with naturally occurring radionuclides in small radioactivity levels but large volumes, certain SDMP sites) could provide sufficient rationale for seeking a higher cap. Although the proposed rule contained a reference to the use of prohibitive cost, it did not quantify or define these costs beyond noting that they would be excessive or unreasonable. The Commission believes it appropriate to consider a prohibitive cost to be one that would be an order of magnitude greater than that contained as part of the decisionmaking guidelines in NUREG/BR–0058, although a lower factor may be appropriate in specific situations when a licensee could become financially incapable of carrying out decommissioning safely;

(b) Under these circumstances, the licensee would be required to reduce contamination so doses would be no greater than the 5 mSv/y (500 mrem/y) value currently contained in § 20.1301(a). Also, the actual dose level to which the licensee would have to clean the site would be less than that value based on an ALARA evaluation of the site. This provision is consistent with existing requirements in § 20.1301(c) that permit levels up to values of 5 mSv/y (500 mrem/y) for specific cases;

(c) Durable institutional controls must be in place. These controls could include significant engineered barriers and/or State, local, or Federal Government control of sites or maintenance of site deed restrictions so that site access is controlled. Under Section 151(b) of the NWPA of 1982, the DOE has already been authorized to take possession of waste disposal sites in certain situations. A similar provision in Section 151(c) was used as the vehicle to transfer custody of the Amax site from Amax to DOE;

(d) A licensee would make provisions for a verification of the continued effectiveness of institutional controls at the site every 5 years after license termination to ensure that the institutional controls are in place and the restrictions are working, and that there is financial assurance to reestablish controls if the recheck indicates otherwise. This 5-year recheck is consistent with 10 CFR Part 20 and also with the FRG, Recommendation No. 4, that states that in some unusual situations the 1 mSv/y (100 mrem/y) may be exceeded temporarily in situations that are not anticipated to recur. It is also consistent with the approach for institutional controls used in CERCLA that allows for release of sites without a cap providing there is continuous checking on the status of the controls.

The NRC would retain the authority to take appropriate action in those unusual situations when both the 5 mSv/y (500 mrem/y) cap was in effect and the controls had failed. This action might include oversight of actions needed to reinstate the controls and any necessary cleanup and/or monitoring actions.

B.3.5 Financial assurance. As a second provision for ensuring that the institutional controls provide protection of public health and safety, financial assurance requirements were included to ensure that funds will be available to enable an independent third party, including a governmental custodian of a site, to implement and ensure continued effectiveness of institutional controls. Some commenters questioned whether these provisions were necessary while others questioned whether they went far enough. In response, the Commission continues to believe the proposed provisions are reasonable and adequate for their purpose. The provisions are consistent with financial assurance requirements currently in 10 CFR Parts 30, 40, 50, 61, 70, and 72 which call for financial assurance to provide funds for decommissioning in cases when licensees might otherwise be financially unable to remediate a site. Reference to an independent third party is necessary in the regulations because after the license is terminated, the licensee may no longer be the party ensuring the effectiveness of the controls. Because the purpose of this provision is to provide broad requirements for financial assurance necessary to ensure that the controls continue to limit the dose, more specific details are not included in the rule. The level of detail in the rule is similar to that in other similar NRC regulations on financial assurance. As requested by a commenter, the funding provisions include a trust fund (or similar funding mechanism) for

surveillance and enforcement of the institutional controls. The financial assurance requirements must be in place before the license is terminated and be flexible enough to allow for the necessary site-specific details.

B.4 Summary of Rule Revisions on Restricted Use

Based on the discussions above, restricted use has been retained in the final rule. Based on its analyses in the Final GEIS and its experiences with actual decommissioned sites, the Commission recognizes that, although unrestricted use is generally preferred, restricted use (when properly designed in accordance with the rule's provisions discussed in Section IV.B.3) can provide a cost-effective alternative to unrestricted use for some facilities and maintain the dose to the average member of the pertinent critical group at the same level. Thus, the Commission has replaced the prohibitively expensive provision for justifying restricted use with a reasonable cost provision. The net harm provision remains the same. The general cap value has been retained at 1 mSv/y (100 mrem/y) as has the requirement that licensees reduce the actual level of contamination to levels as far below the cap as is ALARA, where appropriate. The rule has been modified to allow for exceeding the 1 mSv/y (100 mrem/y) cap in site-specific situations and under specific provisions. No change has been made to the financial assurance provisions of the rule.

A number of comments were also received on public participation aspects of restricting site use. The final rule will require that licensees proposing to decommission by restricting use of a site shall seek advice from individuals and institutions in the community who may be affected by the decommissioning and that, in seeking that advice, the licensee shall provide for: (1) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning; (2) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and (3) a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues. The details of the comments received and the rationale for the public participation aspects of the final rule are discussed in Section IV.E.

C. Alternate Criteria for License Termination

C.1 Codifying Provisions for Certain Facilities That the Proposed Rule Suggested Exempting

C.1.1 Proposed rule content. The preamble to the proposed rule noted that there were several existing licensed sites where public health and the environment may best be protected by use of alternate criteria, although these situations were not codified in the proposed rule; rather, it was thought that these facilities might seek exemptions (under § 20.2301) from the criteria of this rule.

C.1.2 Comments. Some commenters recommended that the rule should not apply to any facility that possesses large volumes of low-level contaminated wastes (including SDMP sites) and should provide a specific exemption or exemption procedures for the ''tens'' of existing facilities for which application of the proposed criteria is inappropriate and too restrictive. Commenters suggested that guidance is needed on sites that should be turned over to the Federal Government after license termination and sites that should be kept under license. Commenters also recommended that NRC ask Congress to amend the NWPA of 1982 to allow Federal ownership of extensively contaminated sites. Other commenters objected to exempting facilities from the proposed radiological criteria and stated that the rule should cover all decommissioning cases.

C.1.3 Response. For the very large majority of NRC-licensed sites, the Commission believes that the 0.25 mSv/y (25 mrem/y) unrestricted and restricted use dose criterion in the rule is an appropriate and achievable criterion for decommissioning.

However the Commission is concerned about the possible presence of certain difficult sites presenting unique decommissioning problems. Licensees of these sites who would have sought exemptions to the proposed rule's criteria would have had to follow processes similar to the other facilities covered by the rule. In addition, licensing efficiency, consistency of application of requirements, and oversight of these facilities can best be achieved by codifying application of criteria to all facilities. Therefore, the Commission believes that it is preferable to codify provisions for these facilities under the aegis of the rule rather than requiring licensees to seek an exemption process outside the rule as was contemplated in the proposed rulemaking.

In addition, as discussed in Section IV.A, the Commission has concluded that for any site where the 0.25 mSv/y (25 mrem/y) dose criterion is met, there will be a very low likelihood that individuals who use the site will be exposed to multiple man-made sources combined, excluding medical, with cumulative doses approaching 1 mSv/y (100 mrem/y). Thus, the discussion in Section IV.A of this notice establishes this level as a sufficient and ample, but not necessary, margin of safety.

Based on these considerations, the Commission has included in the final rule a provision under which the Commission may terminate a license using alternate criteria in its final rule. The Commission expects the use of alternate criteria to be confined to rare situations. Therefore, for the reasons previously listed in Section A.2.3.4, the Commission has limited the conditions under which a licensee would apply to the NRC for, or be granted use of, alternate criteria to unusual site-specific circumstances subject to the following provisions:

(a) A licensee must provide assurance that, for the site under consideration, it is unlikely that the dose to an average member of the critical group for that site from all potential man-made sources combined, other than medical, would exceed the 1 mSv/y (100 mrem/y) public dose limit of 10 CFR Part 20. The Commission envisions that a licensee proposing to use alternate criteria will have to provide a complete and comprehensive analysis that would build upon generic considerations such as those discussed in Section IV.A.2, and also include site-specific considerations. To guide the Commission in its review of such analyses, the NRC is continuing to develop generic information on the potential for exposure to radioactivity from various sources, including decommissioned sources, to supplement currently available knowledge, and is planning to make this information publicly available through publication of a NUREG report. Site-specific factors that the Commission might review in such cases could include soil and aquifer characteristics, the nature of the critical groups likely to use the site, the detailed nature of the contamination patterns at the site, and the characteristics of residual radionuclides remaining at the site, including considerations related to whether the nuclides are long-lived or short-lived;

(b) A licensee will employ, to the extent practical, restrictions on site use for minimizing exposure at the site using the provisions for restricted use

outlined in IV.B, above, and in § 20.1403;

(c) A licensee will indicate that a comprehensive analysis had been performed of the risks and benefits of all viable alternatives and consideration of any detriments, such as transportation fatalities that might occur as the result of cleanup activities, to reduce the residual radioactivity at the site to levels that are ALARA;

(d) A licensee will seek advice from affected parties regarding this approach. In seeking such advice, the licensee will provide for: (1) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning; (2) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and (3) a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues (the rationale for these public participation aspects are discussed in more detail in Section IV.E); and

(e) A licensee will obtain the specific approval of the Commission for the use of alternate criteria. The Commission will make its decision after consideration of the NRC staff's recommendations that will address any comments provided by the Environmental Protection Agency and any public comments submitted regarding the decommissioning or license termination plan.

If the license termination conditions under alternate criteria cannot be met, it may be necessary for the site (or portion thereof) to be kept under license to ensure that exposures to the public are appropriately monitored. The evaluation of maintenance of a site or a portion of that site under continued license is outside the scope of this rulemaking because this rule contains provisions, including radiological criteria, that apply to termination of a license.

With regard to the comment on the NWPA, it should be noted that Section 151(b) of the NWPA already authorizes ownership by the U.S. Department of Energy, if NRC makes certain determinations. Therefore, no further legislation is needed to grant this authority. The rule language has been clarified to ensure that this authority may be implemented by NRC and DOE.

C.1.4 Summary of revisions to rule on codifying provisions for certain facilities. The rule has been modified to include the use of alternate criteria in specialized circumstances and under the provisions described above.

C.2 Exclusion of Uranium/Thorium Mills Proposed in § 20.1401(a)

C.2.1 Proposed rule content. The proposed rule stated that, for uranium mills, the criteria of the rule apply to the facility but do not apply to the disposal of uranium mill tailings or to soil cleanup. The proposed rule referred to 10 CFR Part 40, Appendix A, where criteria already exist (§ 20.1401(a)).

C.2.2 Comments. Comments on the proposed rule generally agreed with the exclusion for disposal of mill tailings and soil cleanup. Commenters also recommended that the rule exempt conventional thorium and uranium mill facilities and in situ leach (ISL) (specifically uranium solution extraction) facilities from the scope of coverage because they stated that the decommissioning of these sites is covered by Appendix A to 10 CFR part 40 and 40 CFR part 192.

C.2.3 Response. Currently, there are regulations applicable to remediation of both inactive tailings sites, including vicinity properties, and active uranium and thorium mills. Under the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, as amended, EPA has the authority to set cleanup standards for uranium mills and, based on that authority, issued regulations in 40 CFR part 192 which contain remediation criteria for these facilities. NRC's regulations in 10 CFR part 40, Appendix A, apply to the decommissioning of its licensed facilities and conform to EPA's standards for uranium mills. At ISLs, the decommissioning activities are similar to those at uranium mills and consist mainly of the cleanup of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act of 1954, as amended.

Thus, applicable cleanup standards already exist for soil cleanup of radium in 10 CFR part 40, Appendix A, Criterion 6(6). Radium is the main contaminant at mills in the large areas (20–400 hectares (50 to 1000 acres) for uranium mills) where windblown contamination from the tailings pile has occurred, and at ISLs (in holding ponds). These standards require that the concentration of radium in those large areas not exceed the background level by more than 0.19 Bq/gm (5 pCi/gm) in the first 15 cm (6 inches) of soil, and 0.56 Bq/gm (15 pCi/gm) for every 15 cm (6 inches) below the first 15 cm (6 inches). Cleanup of radium to these concentrations would generally result in doses higher than the unrestricted use dose criterion of this rulemaking, although, in actual practice, cleanup of uranium mill tailings results in radium levels lower than the 10 CFR part 40 standards, and radium is usually removed to background levels during cleanup of uranium and thorium to the levels in existing NRC guidance documents.

However, in other mill and ISL site areas proximate to locations where radium contamination exists (e.g., under the mill building, in a yellow cake storage area, under/around an ore pad, and at ISLs in soils where spray irrigation has occurred as a means of disposal), uranium or thorium would be the radionuclide of concern. A difficulty in applying 10 CFR part 40, Appendix A, as a standard for uranium and thorium, is that it does not have any cleanup standards for soil contamination from radionuclides other than radium. Application of the decommissioning dose criterion of the final rule to these areas (while retaining the 10 CFR 40, Appendix A, standard for radium) would result in a situation where the cleanup standard of that small portion of the mill site would be lower than the standard for the large windblown tailings areas where radium is the nuclide of concern. This would result in situations of differing criteria being applied across essentially the same areas and would be a problem for contamination existing both in uranium mill soils and buildings.

The Commission has considered the most appropriate means to address requirements for cleanup at uranium and thorium mills and ISLs (collectively referred to as UR facilities) for unrestricted release of the site other than tailings disposal and reclamation subject to the requirements of 10 CFR part 40, Appendix A. One way would be to include criteria for UR facilities as part of this rulemaking. However, as noted above, there are complexities associated with decommissioning of these unique facilities which could cause practical problems in applying the standards of this rulemaking to UR facilities. Therefore, the Commission has decided to exclude UR facilities from the scope of this rulemaking.

To allow for full consideration by the Commission and affected parties of the issues associated with decommissioning UR facilities and of the regulatory options listed above, the Commission is publishing a separate notice in this **Federal Register** reopening the comment period to specifically request additional comment on the regulatory options for decommissioning criteria for UR facilities. The Commission is not reopening the comment period for any other issue discussed in this **Federal**

Register notice. In the interim, the Commission will continue its current practices for decommissioning UR facilities.

C.2.4 Summary of rule revisions for uranium/thorium mills. The Commission is excluding uranium/thorium mills from the scope of this rulemaking and is publishing a separate notice requesting additional comment on the specific standard for license termination of UR facilities.

C.3 Other Exemptions

C.3.1 Comments. Commenters suggested certain other exemptions be specifically provided for in the rule including:

(1) Licensees that possess and hold only sealed sources or limited quantities; and

(2) Radioactive waste materials disposed of in accordance with NRC regulations in formerly used §§ 20.302 and 20.304 because ALARA was applied on a site-specific basis for these facilities.

Other commenters disagreed and stated that all such waste must be decommissioned. In addition, there were commenters who stated that exemption procedures should be spelled out.

C.3.2 Response. No exemption from the rule for sealed source or limited quantity users is necessary. Under provisions of 10 CFR Parts 30, 40, and 70, §§ 30.36(c)(1)(v), 40.42(c)(1)(v), and 70.38(c)(1)(v), the licensee could provide assurance that building or soil contamination has never occurred or demonstrate that the level of radioactive material contamination in the facility conforms with screening criteria.

With regard to burials, as discussed in the preamble to the proposed rule, the determination of whether the licensee meets the radiological criteria of the final rule includes consideration of all residual radioactivity at the site, including burials made in conformance with 10 CFR part 20 (both existing § 20.2002 and formerly used §§ 20.302 and 20.304). This is consistent with prior Commission statements made in the preamble to the 1988 rulemaking on general requirements for decommissioning (53 FR 24018; June 27, 1988) and in promulgation of the final rule on timeliness of decommissioning (59 FR 36026; July 15, 1994). More recent past burials (1981 to present) were frequently made in conformance with guidelines defined in ''Onsite Disposal of Radioactive Waste,'' NUREG–1101, Volumes 1 through 3. This guidance was based on a maximum annual whole body or critical organ dose of 0.25 mSv (25 mrem). Although numerically similar to the existing low-level waste disposal criteria in 10 CFR part 61, the Commission believes that, as a whole, the regulations applicable to low-level waste disposal sites are much more restrictive than those applicable to onsite burials. The pathway parameters on which NUREG–1101 is based may not be comparable to those used to define the rule's unrestricted release criteria. Nevertheless, case-by-case analysis of the potential radiological impacts could indicate that leaving the burials in place could be consistent with unrestricted or restricted release of the affected site. For past burials that have involved long-lived nuclides, site-specific modeling may also justify leaving these burials in place. Thus, the Commission sees no reason to specifically exempt these burials from consideration under this final rule but would continue to require an analysis of site-specific overall impacts and costs in deciding whether or not exhumation of previous buried waste is necessary for specific sites. In addition, the general exemption provisions of 10 CFR part 20 are available to consider unique past burials on a case-by-case basis.

With regard to specific provisions in the rule for exemptions, the Commission is not convinced that a significant number of exemptions to the unrestricted or restricted use provisions of the final rule will be necessary. The Commission believes that the options in this rule for release under alternate criteria and the flexibility contained in the rule including the use of realistic site-specific screening and modeling provide licensees with sufficient latitude.

D. Groundwater Protection Criteria (Proposed Rule § 20.1403)

D.1 Proposed Rule Content

The proposed rule (§ 20.1403(d)) indicated that a licensee must demonstrate a reasonable expectation that residual radioactivity from the site will not cause the level of radioactivity in groundwater that is a current or potential source of drinking water to exceed the limits specified in 40 CFR part 141. This groundwater requirement would have been in addition to the proposed dose criterion for unrestricted use and was included as part of the proposed rule on EPA's recommendation. The preamble to the proposed rule solicited responses to three specific questions on this proposal, including whether a separate standard was appropriate as a supplement to an overall radiological dose criterion that applies to all exposure pathways.

D.2 Use of EPA Drinking Water Standards in NRC Rule

D.2.1 Comments. A number of commenters disagreed with the inclusion of a separate groundwater requirement. In response to the specific questions asked, many of these commenters stated that a separate requirement for groundwater was not necessary if the rule included an all-pathways standard. A commenter also noted that application of Maximum Contaminant Levels (MCLs) to groundwater was inappropriate because the MCLs of EPA's drinking water standards were based on outdated dosimetry (ICRP2) and were applicable to public water systems rather than to groundwater directly. Other commenters supported establishing a separate groundwater requirement as being consistent with the EPA standard.

D.2.2 Response. As noted in Section IV.D.1, the NRC's proposed rule included separate requirements for groundwater protection. The NRC staff has reviewed the public comments on its proposed rule, including the EPA comments supporting the separate requirement, has reviewed the bases and rationale for a separate groundwater standard, and has conducted further technical analyses of groundwater protection in the Final GEIS.

As described in some detail in Section IV.A.2.2, there were three broad considerations that provided the overall rationale for the proposed rule's contents. The first two considerations were related to the health and safety aspects, and the third was related to cost and practicality aspects. As was done in Section IV.A.2.2, regarding the establishment of unrestricted and restricted dose criteria, this section reexamines these three considerations in the context of determining appropriate groundwater cleanup requirements for decommissioning.

With regard to the first two considerations, as described in Section IV.A.2.2, above, this final rule contains acceptable criteria (including the dose criterion for unrestricted use, and provisions for ALARA, restricted use, and alternate site-specific criteria) to protect the public from radiation from all of the pathways that they could be exposed to from a decommissioned facility (e.g., direct exposure to radiation, ingestion of food, inhalation of dust, and drinking water). The bases used in selecting the dose criterion for this final rule are stated in Section IV.A.2.

The dose criterion codified in § 20.1402 of this final rule limits the amount of radiation that a person can

potentially receive from all possible sources at a decommissioned facility. Therefore, it is an ''all-pathways'' standard. Examples of these pathways include:

(a) Direct exposure to radiation from material on the soil surface;

(b) Eating food grown in the soil and eating fish from surface waters;

(c) Inhalation of dust from soil surfaces; and

(d) Drinking water obtained from the groundwater.

Because equivalent doses received through any pathways of exposure would involve equivalent risks to the person exposed, NRC concludes the following with regard to the need to set a separate standard for groundwater:

(a) There is no reason from the standpoint of protection of public health and safety to have a separate, lower dose criterion for one of the pathways (e.g., drinking water) as long as, when combined, the dose from all the pathways doesn't exceed the total dose standard established in the rule;

(b) A standard imposed on a single pathway, such as drinking water, may have been appropriate in the past for site cleanups when a dose-based standard for decommissioning did not exist. It may also be appropriate for chemical contamination when no total limit on exposure exists. However, NRC's final rule on decommissioning would issue an overall TEDE criterion for all radionuclides combined and for all pathways of exposure combined, including drinking water, thus removing the need for a single-pathway standard for groundwater. This is a more uniform method for protecting public health and safety than was contained in NRC's proposed rule that set separate requirements using the MCLs contained in 40 CFR part 141. This is because the MCL requirements do not cover all radionuclides and do not provide a consistent risk standard for different radionuclides as will be provided by adoption of a single dose criterion in the final rule. In addition, the MCLs are based on a modeling approach that has not been updated to reflect current understandings of the uptake and doses resulting from ingestion of radionuclides through drinking water.

The Commission agrees with the commenters that exposures from drinking contaminated groundwater need to be controlled; with the EPA's groundwater protection principles contained in the document ''Protecting the Nation's Groundwater: EPA Strategy for the 1990's,'' 212–1024 (July 1991); and with the EPA position that the environmental integrity of the nation's groundwater resources needs to be protected. Nonetheless, it is the Commission's position that protection of public health and safety is fully afforded by limiting exposure to persons from all potential sources of radioactive material by means of a TEDE at a decommissioned facility. There is, therefore, no compelling reason to impose a separate limit on dose from the drinking water pathway, and the rule has been modified to delete a separate groundwater standard. To make clear NRC's concern over the importance of protecting this resource as a source of potential public exposure, the rule has also been modified to include a direct reference to the groundwater pathway in the all-pathways unrestricted use dose criterion in § 20.1402.

In actual situations, based on typical operational practices of most nuclear facilities and on the behavior of radionuclides in the environment for the very large majority of sites, concentrations of radionuclides in the groundwater will be well below the dose criterion of this final rule and would be either below or only marginally above the MCLs codified in 40 CFR Part 141 as referenced in the proposed NRC rule. For example, because the large majority of NRC licensees either use sealed sources or have very short-lived radionuclides, it is highly unlikely that contamination from these facilities would reach the groundwater. Even for facilities like reactors or certain industrial facilities, whose major contaminants are relatively short-lived nuclides like Co-60 or Cs-137, the migration of these nuclides through soil is so slow that it precludes groundwater contamination of any significance. In addition, it is not anticipated that decommissioned nuclear facilities will be located near enough to public water treatment facilities so that treatment facilities would be affected by the potential groundwater contamination from decommissioned facilities.

As further described in Section IV.A.2, the Commission is basing its decision on analyses in the Final GEIS, that consider cost and practicality factors, to provide additional information regarding decisions on issues such as achieving ALARA levels below the dose criterion of § 20.1402 and allowing restricted use. These analyses also consider how these issues relate to groundwater cleanup, including how, and to what level, ALARA efforts should be made, and if, and in what manner, restrictions on use should be considered. The analysis of impacts to populations and the cost of remediating those impacts is particularly important for groundwater because this resource can be used in a variety of public uses away from the site being decommissioned. The Final GEIS draws from NRC's experience and the public comments regarding contaminated sites. In particular, considerations with regard to groundwater remediation include potential remediation methods such as removal of soil to preclude prospective contamination, pump and treat processes for the cleanup of existing groundwater contamination, and the supply of alternate sources of drinking water, as well as a consideration of administrative costs associated with predicting and measuring levels of contaminated groundwater.

Because of the range of possible parameters, scenarios, and site-specific situations, Section IV.A.2 notes that the analyses in the Final GEIS indicate that there is a wide range of cost-benefit results and there is no unique algorithm that is a decisive ALARA result for all facilities. This finding is especially true for groundwater contamination where the behavior of radionuclides in soil and in the aquifer is highly site-specific; much more so than in concrete. The results of the overall considerations of Section IV.A.2 for all pathways would be applicable to the groundwater component. As pointed out in Section IV.A.2.3.2, it is intended that the regulatory guidance to be developed to support the final rule will provide guidance on these considerations. Although preparation of this guidance is in a preliminary stage, it is anticipated that this guidance would likely indicate that reducing doses to values less than the dose criterion of 0.25 mSv (25 mrem/y) is generally not likely to be cost-effective when evaluated using NRC's regulatory analysis framework presented in NUREG/BR–0058 and NUREG–1530, although there may be ALARA considerations for sites with a relatively large population obtaining all their drinking water from the site plume.

D.2.3 Summary of rule revisions on groundwater and plans for implementation. Based on the above, the Commission concludes that application of a separate groundwater protection limit, in addition to the all pathways dose limit, is not necessary or justified and has deleted this requirement from its final rule.

As noted above, regulatory guidance to be prepared in support of the final rule will likely describe site-specific conditions under which an ALARA analysis could identify the need to consider reducing the dose below the unrestricted use dose criterion (e.g., large existing population deriving its

drinking water from a downstream supply using a downstream plume).

E. Public Participation (Proposed Rule §§ 20.1406 and 20.1407)

E.1 Proposed Rule Content

The proposed rule included a general requirement in § 20.1406(a) that upon receipt of a decommissioning plan or proposal for restricted use from a licensee, the NRC must notify and solicit comments from local and State governments and Indian nations in the vicinity of the site and publish a notice in a forum that is readily accessible to persons in the site vicinity to solicit comments from affected parties.

The proposed rule also contained additional requirements, in §§ 20.1406(b) and 20.1407, for decommissionings when the licensee does not propose to achieve unrestricted release (i.e., instead restrict site use after license termination). In those cases, the licensee would be required to convene a site-specific advisory board (SSAB) for the purpose of obtaining advice from affected parties on the decommissioning. The Commission envisioned that the advice obtained would address issues as to whether:

(a) There are ways to achieve unrestricted release that would not be prohibitively expensive or cause net public or environmental harm;

(b) Institutional controls proposed by the licensee will provide reasonable assurance that the TEDE does not exceed the dose criterion, will be enforceable, and will not impose an undue burden on affected parties; and

(c) There is sufficient financial assurance to maintain the institutional controls.

Public comments received on the general requirements related to notification and solicitation are discussed in Section IV.E.2. Comments received on the additional requirements on public participation for restricted use are discussed in Section IV.E.3.

E.2 General Requirements on Notification and Solicitation of Comments (Proposed Rule § 20.1406(a))

E.2.1 Comments. Several commenters supported the public notification requirements in proposed § 20.1406(a). Other commenters stated that the proposed notification requirements exceeded requirements of the Administrative Procedures Act (APA) and that NRC has not demonstrated a health and safety need for these requirements. Suggestions for public participation offered by some commenters included that the public not only be informed but be able to participate effectively in all decommissioning cases, not just those related to SSABs. Other specific comments addressed the type and timing of the notification, meetings to be held, who should bear the cost of public participation, the availability of licensee documents, NRC's role, and the need for exemptions.

E.2.2 Response. A variety of comments have been provided on this issue during all phases of this rulemaking from the earliest workshops through comments on the NRC staff draft rule (February 2, 1994; 59 FR 4868) and the proposed rule, and in a workshop on public participation aspects of the rule held in December 1994. Comments provided in these forums have been similar to those noted above. A common theme of the December 1994 workshop was that there are many approaches for involving the public in the decommissioning process. Participants generally favored exploration of site-specific alternatives as opposed to generally mandated processes, like SSABs. Many commenters suggested that there was merit to having a public participation plan developed by the licensee in cooperation with interested parties so the public's participation could be tailored to the needs of the community and the licensee.

The Commission agrees that public participation can be an important component for informing and involving the public. The Commission recognizes the potential benefit for all decommissionings and site releases of significant community concern to keep the public informed and educated about the status of decommissioning at a particular site and to elicit public concerns about the decommissioning process at that site. Based on the comments received and on a consideration of current Commission practices, the general provisions in § 20.1405 that provide for notification of the public and government entities and solicitation of comment have not been modified although a specific reference to notifying and soliciting comments from the EPA has been added to § 20.1405. The reason that the general provisions of § 20.1405(a) have not been modified in response to the public comments received is because existing Commission policies and practices, coupled with the provisions of this rule and a recent rulemaking on power reactor decommissioning, appear reasonable by providing for public participation in the decommissioning and site release process. Specifically in the case of power reactors, as is noted in the preamble to the separate final rule entitled ''Decommissioning of Nuclear Power Reactors'' that was published on July 29, 1996 (61 FR 39278), the Commission has held public meetings and informal hearings for plants undergoing decommissioning, even though limited formal requirements exist for this type of involvement. To codify those activities, that rule requires a public meeting to be held at the time of submittal of a reactor licensee's Post-Shutdown Decommissioning Activities Report (PSDAR) and requires that this meeting be noticed in a local public forum and held in the vicinity of the facility. The PSDAR must also be made available for public review and comment. In addition, a licensee is required to hold a public meeting on the License Termination Plan (LTP), that for power reactors now replaces the decommissioning plan, in the vicinity of the facility following notice of the meeting in a local public forum. The LTP is also required to be made available for public comment with full hearing rights under Subpart G or L of 10 CFR 2.1201, depending on the disposition of the spent fuel.

Similarly, for materials facilities involving significant decommissioning efforts, the Commission has implemented efforts to inform and involve the public in the process. These efforts were intended to provide early and meaningful opportunities for public involvement in the decommissioning process. For example, the NRC staff has initiated public information meetings at the Parks Township shallow land disposal area and the Sequoyah Fuels Corporation facility and conducted public information roundtables at various sites. Stakeholder representatives are routinely invited to participate in roundtable discussions and information exchanges on the status and issues associated with the decommissioning project. These initiatives are consistent with the NRC staff's public responsiveness plan in NUREG/BR–0199. Where appropriate, the Commission plans to use these public involvement mechanisms and other public information meetings and involvement efforts, such as community information boards, at other facilities in the future on a site-specific basis to address specific needs that exist in affected communities.

Based on these considerations, current practices and procedures and existing rule provisions are appropriate to provide for public participation in the decommissioning and license termination process and to provide sufficient flexibility to accommodate different situations, and therefore the general requirements of § 20.1405 on

notification and solicitation of comments have been retained. Sections 20.1405 (a) and (b) provide for the notification of specific government entities and the public in the vicinity of the site when a licensee submits a LTP or decommissioning plan for any of the license termination approaches described in Section IV.A.2.3 or specifically proposes to use restricted use (see Section IV.B) or alternate criteria (see Section IV.C). The NRC will review public comments gathered by the licensee prior to final NRC actions on the licensee's request for license termination. A specific reference has been added in § 20.1405(a) to provide for specific notification and solicitation of comment from EPA where the licensee proposes to use alternate criteria. To the extent that EPA has an interest in commenting on proposed decommissionings other than those under alternate criteria, EPA comments would be considered under the general notice and comment provisions of § 20.1405.

Specific additional requirements for public participation in cases where restricted use or alternate criteria are proposed by a licensee are discussed further in Section IV.E.3.

E.2.3 Summary of rule revisions on general requirements on public participation and notifications. No overall changes were made to the provisions for public notification in the final rule, except to include specific reference to notifying and soliciting comments from the EPA where the licensee proposes to use alternate criteria for license termination.

E.3 Additional Requirements on Public Participation (Including Those for Restricted Use, for Alternate Criteria, and for Use of SSABs) (Proposed Rule § 20.1406(b))

E.3.1 Comments. Comments were specifically submitted on the requirement in § 20.1406(b) for the use of SSABs. These comments were submitted both in response to the proposed rule, as well as in connection with the NRC workshop on SSABs held on December 6–8, 1994 (see NUREG/CR–6307 for a summary of the workshop).

Some commenters supported the proposed requirement in § 20.1406(b) that would require licensees to convene a SSAB for restricted release of a site. Other commenters objected to the use of a SSAB in each case involving a restricted release of a site. These commenters expressed concern that use of SSABs was inconsistent with the timeliness rule or that exemptions or other relief from the timeliness rule would be needed; that a need for SSABs has not been demonstrated; and that SSABs are inconsistent with Federal Advisory Committee Act, Administrative Procedures Act, and Atomic Energy Act requirements. Commenters suggested alternatives to mandatory SSABs, such as addressing the need for a board in a public participation plan or providing more flexibility in deciding when to use SSABs. Some commenters indicated that use of SSABs should be extended to the unrestricted use of sites.

E.3.2 Response. One of the major issues raised by the comments and in the workshop discussions on the SSAB was the advisability of mandating a specific public involvement mechanism such as a SSAB as opposed to establishing broad performance criteria that would allow the licensee flexibility in selecting the appropriate public involvement mechanism for a particular site. There was general agreement that flexibility was always desirable, in establishing meaningful performance criteria. However, it should be emphasized that some of those who supported the use of performance criteria did so only in the context of the expansion of the scope of licensee public involvement requirements, including an SSAB, to cover facilities beyond the restricted use category. An additional issue of concern to commenters was whether it was more appropriate for the licensee to establish the SSAB, as contemplated by the proposed rule, or whether the Commission should establish the SSAB. The resolution of this issue depends not only on the objectives that the Commission believes will be served by an SSAB, but also on what the Commission's broader responsibilities are in the public involvement area. This, in turn, relates to another issue raised by the commenters: the scope and duration of a SSAB's responsibilities.

In proposing a requirement for obtaining advice from affected parties on restricted use, the Commission's objective is to involve diverse community interests directly with the licensee in the development of the LTP or decommissioning plan for a proposed restricted use decommissioning. Community concerns, as well as community-based knowledge on the appropriate selection of institutional controls, risk issues, and economic development, can be potentially useful in the development of the LTP or decommissioning plan. For Commission and licensee resources to be used efficiently, the Commission believes that this type of information should be considered and incorporated as appropriate into the LTP or decommissioning plan before the plan is submitted to the NRC for review. The licensee is the appropriate entity to accomplish this.

In considering a requirement to convene a SSAB or similar group, the Commission has considered alternatives regarding the most effective way to ensure that the licensee considers the diversity of views in the community. Small group discussions can be a more effective mechanism than written comments or large public meetings for articulating the exact nature of community concerns, determining how much agreement or disagreement there is on a particular issue, and facilitating the development of acceptable solutions to issues. Also, the type of close interaction resulting from a small group discussion could serve the licensee well in developing a credible relationship with the community in which it is operating.

Use of public participation methods is consistent with a variety of initiatives being undertaken both within NRC and at other Federal agencies regarding stakeholder involvement in the decommissioning process. Examples of community involvement at NRC-licensed sites being decommissioned under the SDMP are described above in Section IV.E.2.2. Similarly, several Federal agencies (including EPA, DOE, the Department of Defense (DOD)) that make up the Federal Facilities Environmental Restoration Dialogue Committee, in their evaluation of the cleanup of Federal facilities, have prepared a set of ''Principles for Environmental Cleanup of Federal Facilities,'' dated August 2, 1995. Principle No. 14 notes the need for agencies to provide for involvement of public stakeholders from affected communities in facility cleanup decisionmaking. It also notes that rather than being an impediment, meaningful stakeholder involvement has, in many instances, resulted in significant cleanup cost reductions.

The Commission envisions that a process for obtaining advice from affected interests would provide the opportunity for public involvement in the important issues related to restricted use of a site similar to those described in Section IV.E.2.2. In particular, one of the important issues would likely be the unavailability of the site for full unrestricted public use. In its deliberations on the rule, the Commission has envisioned that the following should occur:

(1) The licensee would present information to, and seek advice from, affected parties on the provisions for

limiting the dose to meet the criteria in the rule (e.g., limiting use to commercial/industrial use with elimination of the resident pathway), how the restrictions would be enforced (e.g., use of deed restrictions, engineered barriers, State or Federal control or ownership), the effect on the community, and the adequacy of the level of financial assurance (e.g., sufficient funds for maintenance of the deed or of fencing). In seeking such advice, a broad cross section of the affected parties in the community would be involved and there would be opportunity for a comprehensive discussion of the issues by those parties. The information presented would be similar to that which the rule would require the licensee to prepare and submit to NRC to demonstrate the appropriateness and safety aspects of the restrictions on site use.

As an example, in the specific case where the nuclides involved are relatively short-lived (e.g., Co-60 and Cs-137), as discussed in Section IV.B.3, calculations could demonstrate that it is preferable to restrict use of the site for a finite time period to allow for radioactive decay than it is to ship large quantities of soil. These calculations would also show the length of time that the restrictions would need to remain in force to allow for radioactive decay to reduce residual levels below the unrestricted dose criterion. In addition, these calculations could show that restricting the site to industrial use through deed restrictions during this time period would eliminate or decrease certain pathways and limit the dose to less than the 0.25 mSv/y (25 mrem/y) dose criteria in the rule. Finally, such an analysis could indicate that continued use of the site for an industrial purpose similar to its currently existing use should not adversely impact the community. Consideration of community advice on appropriate institutional controls for controlling access to the site during this decay period would provide the licensee with useful information in developing the necessary institutional controls. As part of the process of public participation, the licensee would make public a summary of the advice received and the results of the discussions on that advice.

For more complex cases where large volumes of uranium/thorium contamination would remain under a form of restricted use, the long-lived nature of these nuclides would result in the restrictions having to remain in force in the community for a long period of time. The information presented by the licensee would be similar to that for shorter-lived nuclides, including the rationale for how use of restrictions can eliminate exposure pathways (e.g., for uranium, elimination of the resident farmer pathway greatly reduces the dose because most of the dose received from uranium is through the agricultural pathway); the nature of the institutional controls expected to restrict use over extended time periods (e.g., deed restrictions, engineered barriers such as fencing, restricted cells, etc., and/or government control of the restricted area); and other special provisions such as periodic rechecks of the restricted area and the continued effectiveness of institutional controls (see Section IV.B.3). As discussed previously in Section IV.E.2.2, because community involvement already exists either formally or informally at a number of complex sites, this provision would not change the situation at these sites significantly.

(2) Following solicitation of advice from affected parties, the licensee will include the recommendations from these parties in the LTP or decommissioning plan and indicate how those recommendations were addressed along with the technical basis for addressing them. The technical basis for dealing with the recommendations would presumably derive from the presentation made to the affected parties described above and is the type of analysis that would be necessary to demonstrate to the NRC the acceptability of restricted use provisions.

Based on the above, it appears reasonable to retain the requirement for sites to seek advice from individuals and institutions in the community who may be affected by the decommissioning where restricted use is proposed. In retaining this requirement, the Commission has decided to modify the rule to include general provisions that require that such advice be sought on the fundamental performance objective of institutional controls, namely that they function to provide reasonable assurance that the TEDE does not exceed the dose criteria of the rule, that they are enforceable, and that they will not impose undue burdens on the local community. This general provision replaces the specific reference contained in the proposed rule (§ 20.1406(b)) that advice must be obtained by convening a SSAB. The rationale for this modification derives from the discussion above on site flexibility, protecting public health and safety, and ensuring community involvement. Specifically, it is anticipated that these requirements will contain the beneficial provisions of ensuring timely and meaningful opportunity for advice from affected parties to be considered and will allow licensees additional flexibility in determining the best methods for obtaining that advice based on site-specific considerations. For example, there may be situations where the creation of a SSAB may not be appropriate as in cases where an existing organization is already in place to assume this role, or where it is clear that the community is willing to rely on local government institutions to interact with the licensee. Appropriate mechanisms for seeking advice from affected parties could include a public meeting or series of meetings, a specific process for obtaining written or computerized public comment by internet or web-site means, or by convening small groups such as a SSAB. Any of these processes would result in an opportunity for a comprehensive, collective discussion of the issues by the affected parties. All of these approaches have been used in prior decommissionings.

To ensure that there will continue to be significant opportunity for public involvement in the decommissioning process, the modified final rule has retained the principal objectives of an SSAB from § 20.1407 of the proposed rule, namely that a licensee seeking community advice on the proposed restricted use will provide for: (1) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning; (2) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and (3) a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

Advice sought from affected parties in the manner noted above would be considered in development of the LTP or decommissioning plan, and the NRC will review public comments gathered by the licensee prior to final NRC action on the licensee's request for license termination.

As discussed in Section IV.C, the Commission included requirements for consideration of alternate criteria for certain difficult sites because inclusion of such requirements is preferable to having these facilities apply for exemptions. To ensure that there is full public participation in any decision regarding such sites, licensees will be required to seek advice regarding this approach from affected parties in the same manner as described above for restricted use and described in detail in

Section IV.C.3. In addition, use of alternate criteria will only be considered by the Commission after review of the NRC staff's recommendations that fully address any comments provided by the public and EPA regarding the decommissioning or license termination plan.

E.3.3 Summary of rule revisions on SSABs. Specific text referring to SSABs has been replaced with a requirement that licensees seek community involvement and advice on any plans for restricted use or alternate criteria for decommissioning through a variety of methods. This requirement includes provisions for specifically how that advice is to be sought and documented in the LTP or decommissioning plan. Regulatory guidance is planned which will include criteria for establishing and using the processes for seeking such advice, including establishing SSABs, and for delineating those situations in which an SSAB may not be appropriate. The guidance will discuss that the expected starting point in providing an opportunity for public involvement is the establishment of an SSAB; however, the provisions of the rule provide licensees the flexibility to use other approaches where appropriate.

E.4 Specific Questions on Functioning of SSABs

E.4.1 Comments. A number of comments were received on the functioning of SSABs including their responsibilities, membership, independence and support, meetings, and results.

(1) Some commenters recommended that SSABs should be given responsibilities beyond those specified in proposed § 20.1407(a). Other commenters stated that the rule should restrict SSAB activities to a specific mission which is advisory only and nontechnical.

(2) With regard to membership in SSABs, a number of comments recommended specifically how the SSAB and its membership should be constituted. Some commenters stated that many of the proposed SSAB issues that are listed appear to require specialized expertise that members of the general public might not have. Some commenters questioned whether NRC and other Government agencies should be prohibited from participating in SSABs because of conflict of interest questions. Other commenters stated that the NRC should be officially represented on the SSAB.

(3) With regard to independence of and support for SSABs, some comments received stated that an SSAB should be selected and operated independently of the licensee. One commenter stated that the SSAB would be unique as presently proposed because it does not appear to be accountable to its employer. Comments were received regarding how SSAB costs would be contained and how they would be paid, including costs of technical consultants to the SSAB or independent SSAB labs and experts.

(4) With regard to SSAB meetings and records, comments were provided concerning frequency, advertisement and openness of meetings, and access to licensee official documents, both those that are part of the public docket and those that contain proprietary or other confidential information;

(5) With regard to use of SSAB results, comments were received concerning the actions expected to be taken by the licensee and the NRC on the advice or comments of the SSAB. These actions include a licensee's analysis of SSAB recommendations, the need to obtain the SSAB's consensus on aspects of the decommissioning plan, and the effect on time restraints of submitting a decommissioning plan reconciling SSAB advice.

E.4.2 Response. Based on the discussion in Section IV.E.3.2 regarding the need to explore site-specific alternatives as opposed to generally mandated SSABs, the rule contains broad provisions for obtaining community advice and recommendations through such bodies. The purpose of the requirements on public involvement is to obtain meaningful public input into preparation of the plan for decommissioning the site when restrictions on future use or proposals for alternate criteria are planned. To allow for flexibility, Section IV.E.3.2 indicates that the final rule has been modified to establish general requirements for obtaining such advice while retaining the principal objectives of an SSAB from § 20.1407(b)–(f) of the proposed rule. The details, such as specific issues of size, membership, responsibilities, administration, meetings, and records requested in these comments are more appropriately contained in regulatory guidance. With regard to issues of funding public involvement, reasonable efforts towards obtaining advice from affected parties should be undertaken by the licensee, such as sponsoring and holding community meetings and distributing information at those meetings regarding the rationale for and nature of the restricted use. Examples of these meetings are those held for reactor facilities and those held for several SDMP sites, for example the Cushing site.

E.4.3 Summary of rule revisions on functioning of SSABs. As noted in Sections E.3.2 and E.4.2 above, the principal objectives of SSABs have been retained in § 20.1403(d) which replaces the detailed provisions in proposed § 20.1407 (b) through (f) of the proposed rule. The guidance that the NRC develops to implement the final rule will include additional guidance on seeking advice from affected parties, including establishing and using SSABs.

F. Other Procedural and Technical Issues

F.1 State and NRC Compatibility

F.1.1 Comments. Some commenters stated that States should have the authority to demand stricter radiation protection standards than the Federal Government. Some commenters recommended that States not be allowed to set less strict conditions. Other commenters stated that radiological criteria should be an area of strict compatibility and States should not be permitted to impose more stringent standards. Specific comments raised included questions as to which standard would apply if there was a conflict, whether a State would need NRC approval to require more strict standards, application of ALARA provisions, who should pay for costs if more strict State standards are applied, exemptions, and grandfathering provisions similar to those in Section IV.F.2.

F.1.2 Response. The proposed rule did not propose a compatibility determination because the Commission was in the process of developing a compatibility policy. Instead, comments were requested on compatibility and the comments received were divided on this issue.

The current compatibility policy categorizes rules into four ''divisions.'' Division 1 rules are those that Agreement States must adopt, essentially verbatim, into their regulations. These rules include provisions that form the basic language of radiation protection and include technical definitions and basic radiation protection standards such as public dose limits, occupational exposure limits and effluent release limits. Division 2 rules address basic principles of radiation safety and regulatory functions. Although Agreement States must address these principles in their regulations, the use of language identical to that in NRC rules is not necessary if the underlying principles are the same. Also, the Agreement States

may adopt requirements more stringent than NRC rules.

Because the dose criterion in the rule is not a ''standard'' in the sense of the public dose limits of 10 CFR part 20 but is a constraint within the public dose limit that provides a sufficient and ample margin of safety below the limit, it is reasonable that the rule would be a Division 2 level of compatibility under the current policy. This means the Agreement States would be required to adopt the regulation but would have significant flexibility in language, and would be allowed to adopt more stringent requirements.

The Commission has not yet approved a new final policy on compatibility that revises the current policy, although it is currently considering the implementing procedures for this policy (SECY–96–213 dated October 3, 1996). Until the new policy becomes effective, NRC will continue to apply the current Agreement State compatibility policy.

F.2. Grandfathering Sites With Previously Approved Plans (Proposed Rule 20.1401(b))

F.2.1 Proposed rule contents. Section 20.1401(b) of the proposed rule indicated that the criteria do not apply to sites already covered by a decommissioning plan approved by the Commission before the effective date of the final rule and in accordance with the criteria identified in the SDMP Action Plan of April 16, 1992 (57 FR 13389).

F.2.2 Comments. Some commenters supported the provision of grandfathering sites covered by a decommissioning plan approved by the Commission (and suggested extending it to plans under review) because it is consistent with previous NRC statements in the SDMP Action Plan. Some commenters suggested that criteria other than those in the SDMP Action Plan should also be used for grandfathering. Other commenters opposed grandfathering because criteria used in those cases would be different than those in the rule.

Commenters recommended that the rule address how the criteria would apply to portions of sites. Some commenters recommended that the grandfathering provision cover an NRC-approved decommissioning plan even if it is for a portion of a site.

F.2.3 Response. The Commission continues to believe that sites being decommissioned under previously approved decommissioning plans should be grandfathered from the provisions of the final rule. Similarly provisions should apply to licensees whose decommissioning plans are in the final stages of preparation or of NRC review. From a health and safety perspective, the NRC believes the criteria identified in the SDMP Action Plan are reasonably consistent with the final rule's dose criteria. The contamination levels defined in the SDMP Action Plan are within the range of measurable values that could be derived through the site-specific screening and modeling approaches defined in guidance supporting this final rule. The Commission believes the grandfathering approach will facilitate the timeliness of decommissioning and ensure licensees that resources spent to develop and implement a decommissioning plan are justified.

With regard to criteria other than the SDMP Action Plan, the grandfathering provision in the proposed rule was conditioned on the license being terminated in accordance with the criteria identified in the SDMP Action Plan, because those criteria are consistent with the final rule. However, the grandfathering provision does not extend to any former decommissioning actions in general because that would not provide assurance that such actions were adequate to protect the public. As part of its overall upgrading of its oversight of decommissioning actions, NRC has conducted a systematic review of a large number of license terminations to identify sites with significant contamination and has identified a number of sites warranting additional NRC attention. Broadening the grandfathering exclusion in the rule would not be consistent with the objectives of this comprehensive agency review and is not supported by existing information and experience.

The NRC staff anticipates that grandfathering would occur as follows:

(1) Licensees would have up to 12 months after the effective date of the rule to submit sufficient LTPs or decommissioning plans (if required) in accordance with the SDMP Action Plan criteria;

(2) The NRC staff would have up to 24 months after the effective date of the rule to approve those plans;

(3) Any plan submitted after 12 months or approved after 24 months of the effective date would have to be consistent with the new rule; and

(4) There would be provisions for day-for-day extension if an EIS is required in the submittal; i.e., if development of an EIS is required before NRC can reach a decision regarding the decommissioning, then the 12-month window for submitting an LTP or decommissioning plan would be extended by the same number of days required for the Commission to issue a record of decision.

In submitting the decommissioning plan for the licensed activities that are to cease on portions of sites, the licensee must identify the areas associated with the ceased operations. These areas must be remediated to achieve acceptable radiological criteria for release, either those in the final rule or previous acceptance criteria that would achieve comparable protection as the criteria in the final rule. The area for continuing licensed operations could continue to contain radioactivity above the radiological criteria. When the continuing operations cease, the radiological criteria of the final rule would then be required to be met for the portion of the site for which operations had most recently ceased. The decision on grandfathering previously released portions of the site depends on whether the criteria previously used are still acceptable (e.g., part of the SDMP Action Plan) and whether it can be demonstrated that these areas have not been affected by the continued operations. NRC intends to develop comprehensive guidance on how licensees should address previously released portions of licensed sites in demonstrating compliance with the dose criteria.

Not all licensees are required to submit decommissioning plans, and instead, may submit appropriate documentation including a report of the results of the radiation survey of the premises (see for example, 10 CFR 30.36). Because the rationale discussed above applies in general to all facilities, these grandfathering provisions apply to all licensees, independent of the type of documentation for license termination that has received NRC approval.

An aspect of grandfathering is those sites that were not previously licensed but are discovered to have radioactivity levels that are licensable or are in excess of the levels presented here as appropriate for unrestricted site use. These cases have arisen as part of the SDMP and are described in NUREG–1444. It is intended that the criteria of this rule will also apply, as appropriate, to residual radioactivity at sites that were not previously licensed.

F.2.4 Summary of rule revisions on grandfathering. The final rule has retained the grandfathering provision. However, it has been modified to include facilities whose plans are in the final stages of decommissioning plan preparation and decision.

F.3 Finality of Decommissioning and Future Site Reopening (Proposed Rule § 20.1401(c))

F.3.1 Proposed rule contents. Proposed § 20.1401(c) stated that after a site has been decommissioned and the license terminated in accord with the criteria of the proposed rule, the Commission will require additional cleanup only if, based on new information, it determined that residual radioactivity remaining at the site could result in significant public risk.

F.3.2 Comments. Some commenters stated that decommissioning a nuclear facility and releasing a site should be accomplished as a final regulatory action unless new information indicates there is a significant health and safety risk and net benefit to future cleanup. These commenters cited financial reasonableness, the low risk associated with the criteria, and the incentive to complete decommissioning. Other commenters stated that they did not agree that these actions should be final and that the site should be cleaned up to account for mistakes, discovery of contamination, or new health findings. It was noted that the terms ''significant public risk'' and ''new information'' used in proposed § 20.1401(c) needed to be explained and appropriately defined.

F.3.3 Response. The wording of final § 20.1401(c) states that the Commission will require additional cleanup only if, based on new information, it determines that residual radioactivity remaining at the site could result in significant public risk. The low level of estimated risk associated with the final rule's dose criteria, coupled with the conservatisms in the methodologies that convert these dose criteria to levels of measurable contamination in the environment, should minimize the likelihood that new information, including errors during the decommissioning processes, would significantly impact the protection of public health and safety or the environment.

The Commission believes the fundamental reason for requiring additional cleanup would hinge on the public risk associated with the remaining radioactivity at the site. The existence of additional contamination or noncompliance with the decommissioning plan at a level in excess of the dose criteria but less than the public dose limits in 10 CFR Part 20 would not, by themselves, be sufficient to invalidate the finality provision. Therefore, the wording of § 20.1401(c) captures the fundamental issue.

The Commission believes the terms ''significant public risk'' and ''new information,'' as used in § 20.1401(c), do not require specific definition or clarification. The reason lies in the fact that under the provisions of the rule, a licensee is allowed to demonstrate compliance with the dose criteria through use of several screening and modeling approaches. Each approach has a degree of conservatism associated with the relationship of the measurable level of a contaminant in the environment to the final rule's dose criterion. Because of the surveys required of the licensee and confirmatory surveys routinely performed by NRC, the chances of previously unidentified contamination being discovered would be expected to be small. Also, contamination that would pose a significant public risk above the levels implied by the dose criterion is expected to be smaller still.

Another possibility is that ongoing studies will lead to the conclusion that an increased risk associated with a given exposure to radiation exists. Although such an increase can occur as indicated by the continuing studies of Japanese atomic bomb survivors, the Commission believes that demographic studies of populations exposed to differing background exposure levels provide a defensible bound on the magnitude of any increase in the dose to risk conversion factor. Taken alone, any such increase would not be expected to affect finality decisions.

Thus, because any challenge to finality is likely to involve some unexpected combination of factors, the Commission believes that attempting to specifically define what constitutes ''new information'' or ''significant public risk'' is ill-advised because the determination would be made on a case-by-case basis.

As noted in Sections IV.A and IV.D, there are issues that have been raised by EPA regarding the acceptability of the unrestricted dose criterion as well as the inclusion of a separate groundwater standard. These issues were raised during the public comment period as well as during a public meeting held April 21, 1997 to explore differences between NRC and EPA on certain issues in the final rule. As noted in those sections, EPA has indicated that it preferred a 0.15 mSv/y (15 mrem/y) TEDE dose criterion for unrestricted use and inclusion of a separate groundwater standard as were proposed in NRC's proposed rule. At the April 21, 1997 meeting, EPA also indicated that it had concerns with inclusion of alternate criteria and with certain public participation aspects of the rule. For the reasons described in some detail in Sections IV.A, IV.C, IV.D, and IV.E, the Commission has included in the final rule a 0.25 mSv/y (25 mrem/y) dose criterion which would apply to all exposure pathways including groundwater, an alternate criteria provision for certain difficult cases to reduce the need for requests for exemptions, and provisions for substantive participation by the public, including EPA.

As described in some detail in Sections IV.A–IV.E, the Commission believes that the overall approach to license termination in this final rule (that includes unrestricted and restricted use dose criteria, alternate criteria, and ALARA considerations) protects public health and safety, and that the approach to drinking water protection in the final rule provides an appropriate and more consistent level of protection of public health and safety than use of MCLs. In addition, as is further described in those sections, it is anticipated that in the large majority of situations the combination of ALARA considerations, the nature of the concrete and soil removal processes, the use of restrictions on site use where appropriate, and the effects of radionuclide decay and transport mechanisms in the environment will result in the large majority of NRC licensees meeting the criteria preferred by EPA. Those sections also clearly indicate that alternate criteria will be confined to rare situations and require specific Commission approval of the license termination in those cases. In addition, the Commission believes that the provisions of the final rule as described in Section IV.E provide for a substantive level of public involvement in the decommissioning process.

Thus the Commission believes that the criteria of this final rule provides protection comparable to that preferred by EPA and that therefore it would be reasonable for EPA to find NRC's rule sufficiently protective.

Licensees should be aware that if they terminate a license using the criteria of this rule, there is some potential that the license termination may be revisited as part of an EPA proceeding, although such an action would not seem reasonable for the same reasons that site cleanups noted above would not be revisited, i.e., it is not believed that significant public risk would be determined to exist.

F.3.4 Summary of rule revisions on finality. Based on this discussion, the rule has not been changed with regard to the finality issue.

F.4 Minimization of Contamination (Proposed Rule §§ 20.1401(d) and 20.1408)

F.4.1 Proposed rule contents. Proposed § 20.1401(d) indicated that applicants for licenses, other than renewals, would be required to describe in the application process how facility design and procedures for operation will minimize contamination of the facility and the environment, facilitate eventual decommissioning, and minimize the generation of radioactive waste.

F.4.2 Comments. Some commenters recommended that the requirements for describing facility design and procedures for waste minimization should apply to all license applicants and not only to applicants for new licenses. One commenter recommended that the rule remain as proposed and not apply to renewal licenses.

F.4.3 Response. The intent of this provision is to emphasize to a license applicant the importance, in an early stage of planning, for facilities to be designed and operated in a way that would minimize the amount of radioactive contamination generated at the site during its operating lifetime and would minimize the generation of radioactive waste during decontamination. Applicants and existing licensees, including those making license renewals, are already required by 10 CFR part 20 to have radiation protection programs aimed towards reducing exposure and minimizing waste. In particular, § 20.1101(a) requires development and implementation of a radiation protection plan commensurate with the scope and extent of licensed activities and sufficient to ensure compliance with the provisions of 10 CFR part 20. Section 20.1101(b) requires licensees to use, to the extent practicable, procedures and engineered controls to achieve public doses that are ALARA. In addition, lessons learned and documented in reports such as NUREG–1444 have focused attention on the need to minimize and control waste generation during operations as part of development of the required radiation protection plans. Furthermore, the financial assurance requirements issued in the January 27, 1988 (53 FR 24018), rule on planning for decommissioning require licensees to provide adequate funding for decommissioning. These funding requirements create great incentive to minimize contamination and the amount of funds set aside and expended on cleanup.

Thus, current requirements require both applicants and existing licensees, including renewals, to minimize contamination. Specific minimization requirements contained in the proposed rule are directed towards those making application for a new license because it is more likely that consideration of design and operational aspects that would reduce dose and minimize waste can be cost-effective at that time compared to such considerations during the license renewal stage where the existing design and previous operations may be major constraints. The Commission continues to believe that the emphasis should continue to be directed at such new designs and, therefore, the requirement for minimization has been retained as proposed.

F.4.4 Summary of rule revisions on minimization of contamination. The requirement in the proposed rule for imposition of the requirement on applicants for new licenses has been retained in the final rule in § 20.1406 but has not been further extended.

F.5 Provisions for Readily Removable Residual Radioactivity

F.5.1 Proposed rule contents. Proposed § 20.1403(c) indicated that licensees are to take reasonable steps to remove all readily removable residual radioactivity from the site.

F.5.2 Comments. Some commenters recommended either deletion, modification, or clarification of the provision for readily removable residual radioactivity.

F.5.3 Response. The provision for removal of ''readily removable'' residual radioactivity was intended to provide guidance on what materials should be removed even if the removal would have little effect on dose. The intent of this provision is to define the basic remedies that are a matter of ''good practice'' such as common housekeeping techniques (e.g., washing with moderate amounts of detergent and water) that do not generate large volumes of radioactive waste requiring subsequent disposal. As noted in the preamble to the proposed rule, removal of this material is considered a necessary and reasonable step toward ensuring that doses to the public from residual radioactivity are ALARA. These considerations should be considered as part of an ALARA evaluation for planning decommissioning activities in a licensee's radiation protection program as required by § 20.1101(b).

F.5.4 Summary of rule revisions for readily removable radioactivity. Because there is no purpose in duplicating an already existing requirement for ALARA, the specific provision regarding ''readily removable'' has been deleted from the final rule.

F.6 Separate Standard for Radon

F.6.1 Proposed rule contents. Proposed § 20.1404(a) did not contain a separate standard for radon.

F.6.2 Comments. Some commenters indicated that the rule should specifically include reference to radon whereas other commenters stated that the rule should not include standards for radon or expressed concerns about the complications introduced by these considerations and the fact that background radon levels are so high.

F.6.3 Response. Radon is a radioactive gas formed by the radioactive decay of radium. Radium is a member of the naturally-occurring uranium-238 radioactive decay chain. Radionuclides from this decay chain are found in natural background in various concentrations in most soils and rocks. Estimation of radon dose is a consideration for this rulemaking only at those very few facilities which have been contaminated with radium as a result of licensed activities.

Following the approach taken in the proposed rule, this final rule includes radiological criteria for residual radioactivity that is distinguishable from background. Because of natural transport of radon gas in outdoor areas due to diffusion and air currents, doses from exposure to radon in outside areas due to radium in the soil are negligible. Within buildings, wide variation in local concentrations of naturally occurring indoor radon, well in excess of the 0.25 mSv/y (25 mrem/y) dose criterion discussed in Section IV.A, have been observed in all regions of the United States. The dominant factor in determining indoor radon levels are the design features of any structures at a site where radium is present in the soil. Certain structural features, including energy saving measures that reduce air exchange with the outside, can have the effect of trapping radon gas within a building, thus allowing buildup of radon to elevated levels. In addition, indoor radon levels can vary significantly over time due to seasonal changes and the rate of air flow in rooms.

Another variable in radon levels is introduced by the use of radon mitigation techniques in buildings which can have the effect of reducing radon levels by deliberate venting of the gas to outside areas. In many parts of the country, local building codes have been enacted for the purpose of reducing radon levels in homes, in particular in areas where there are high levels of naturally occurring radium and radon.

The variations in radon levels described above make it very difficult to distinguish between naturally occurring radon and radon resulting from licensed material. In addition, it is impractical to predict prospective doses from exposure to indoor radon due to problems in predicting the design features of future building construction. Because of these variations and the limitation of measurement techniques, the Commission believes that it is not practical for licensees to distinguish between radon from licensed activities at a dose comparable to a 0.25 mSv/y (25 mrem/y) dose criterion and radon which occurs naturally. Therefore, in implementing the final rule, licensees will not be expected to demonstrate that radon from licensed activities is indistinguishable from background on a site-specific basis. Instead this may be considered to have been demonstrated on a generic basis when radium, the principal precursor to radon, meets the requirements for unrestricted release, without including doses from the radon pathway.

In some instances it may not be reasonable to achieve levels of residual concentrations of radon precursors within the limit for unrestricted use. As discussed in Section IV.B for cases such as these, restricting site use by use of institutional controls could be considered by a licensee as a means to limit the doses from precursors by limiting access to the site. Under the restricted use provisions of the rule, these doses are required to be further reduced based on ALARA principles. In developing guidance on the application of ALARA in such cases, the Commission will also consider the practicality of requiring as part of controls the use of radon mitigation techniques in existing or future structures.

F.6.4 Summary of rule revisions. No change to the final rule has been made.

F.7 Calculation of TEDE Over 1000 Years to Demonstrate Compliance With Dose Standard (Proposed Rule § 20.1403(a))

F.7.1 Proposed rule contents. Proposed § 20.1403(a) stated that when calculating the TEDE, the licensee shall base estimates on the TEDE expected within the first 1000 years after decommissioning.

F.7.2 Comments. Some commenters objected to the proposed 1000-year time frame for calculating dose and wanted it lengthened to better predict health effects over the hazardous life of each isotope. Other commenters wanted the proposed 1000-year time frame shortened because it is inconsistent with 10 CFR part 40, Appendix A, and 10 CFR part 61 that use times of 200–500 years.

F.7.3 Response. As previously discussed in the preamble to the proposed rule, the Commission believes use of 1000 years in its calculation of maximum dose is reasonable based on the nature of the levels of radioactivity at decommissioned sites and the potential for changes in the physical characteristics at the site over long periods of time. Unlike analyses of situations where large quantities of long-lived radioactive material may be involved (e.g., a high-level waste repository) and where distant future calculations may provide some insight into consequences, in the analysis for decommissioning, where the consequences of exposure to residual radioactivity at levels near background are small and peak doses for radionuclides of interest in decommissioning occur within 1000 years, long term modeling thousands of years into the future of doses that are near background may be virtually meaningless. In 10 CFR part 40, Appendix A makes reference to both a 200-year and 1000-year time frame. 10 CFR part 61 references the design of a physical barrier rather than a calculation of exposure.

F.7.4 Summary of rule revisions. This provision has been retained in § 20.1401(d) of the final rule.

G. Other Comments

G.1 Definitions (Proposed Rule § 20.1003)

G.1.1 Comments. There were comments on several definitions in § 20.1003 of the proposed rule including the following:

(1) With regard to the definition of background radiation, several commenters opposed defining ''background radiation'' in terms of currently existing levels and proposed defining it at the level existing when human beings and other organisms evolved; i.e., man-made sources of radiation should not be considered to be a part of ''background radiation.'' One commenter suggested that the term ''naturally occurring radioactive material,'' that is used in the definition of ''background radiation,'' should also be defined. This commenter also suggested that the word ''like,'' that precedes ''Chernobyl,'' should be replaced with the words ''such as'' to clearly indicate that an example is being provided.

(2) With regard to the definition of decommissioning, several commenters recommended that license termination not be specified in the definition of decommissioning because it is a separate issue from decommissioning. Some commenters stated that licenses should be terminated only when sites are given unrestricted release and that restricted use should not be permitted or included in the definition.

(3) Other comments were also received requesting clarification of other definitions contained in the rule, including inclusion of radon in the definition of background and the definitions of critical group, restricted use, release of portions of sites, indistinguishable from background, readily removable radioactivity, and SSABs.

G.1.2 Response. The only modification that the proposed rule made to the existing definition of background in 10 CFR part 20 was the inclusion of the phrase ''or from past nuclear accidents like Chernobyl that contribute to background radiation and are not under the control of the licensee.'' The reason for this modification was to further clarify the existing requirement regarding sources of radiation and radionuclides that can be excluded from licensee evaluation. After review of the comments, the Commission continues to believe that the inclusion in background of global fallout from weapons testing and accidents such as Chernobyl is appropriate. No compelling reason was presented that would indicate that remediation should include material over that the licensee has no control and that is present at comparable levels in the environment both on and offsite.

The existing definition of decommissioning in 10 CFR parts 30, 40, 50, 70, and 72 was incorporated into the regulations on June 27, 1988 (53 FR 24018). The Commission continues to believe that ''decommissioning'' is a term for a process which ultimately leads to termination of an NRC license for unrestricted use. The only change to the existing definition made by the proposed rule would be adding ''release of property under restricted conditions'' to the process of termination of the license. In response to commenters who disagreed with permitting restricted use, Section IV.B contains a detailed review of issues on acceptability of restricted use. Based on that review, the final rule continues to permit restricted use. Therefore, the definition in the proposed rule is not changed.

The remaining comments on definitions reflect specific technical concerns regarding use of the terms rather than the definition itself. These concerns are discussed in detail in the responses to the technical issues

addressed in Sections IV.A through IV.F.

G.1.3 Summary of rule revisions. The only change to § 20.1003 is a change in the wording of the definition of background to replace the word ''like'' with the words ''such as'' before ''Chernobyl'' as suggested by a commenter.

G.2 Need for Regulatory Guidance

G.2.1 Comments. Commenters requested that additional regulatory guidance be provided on a number of subjects including decommissioning planning for sites and portions of sites, methods for demonstrating compliance with the dose criteria and with ALARA, means for complying with restricted use provisions (including SSAB operations), and contents of a public participation plan. Specific comments were received regarding need for guidance on modeling (including methods for translating contamination levels to dose) and surveys (including measurement of contamination at low levels), and clarification of several terms.

G.2.2 Response. Regulatory guidance is being developed in the areas requested. Regulatory guidance being prepared on dose calculations and surveys for radiological criteria for decommissioning describes acceptable survey methods that licensees can use. This guidance describes methods that licensees can use to convert site contamination to dose for the purpose of compliance with the rule criteria and for estimating ALARA. The guidance is the further development of NUREG–1500 issued with the proposed rule and presents an approach for assessing dose coupled with the ability to incorporate site-specific parameters. Further guidance on public participation and restricted use is also being considered to support this rule.

G.3 Need for Flexibility

G.3.1 Comments. Commenters indicated that it is important to provide flexibility in compliance with rule requirements by use of site-specific conditions, ALARA, and exemptions in implementation of the criteria.

G.3.2 Response. Use of site-specific conditions, especially in calculation of acceptable contamination levels based on site-specific parameters, contamination levels and volumes, and usage of the site, is permitted in complying with the regulations. This will be discussed more fully in the regulatory guidance. Furthermore, the final rule provides for establishing alternate license termination criteria based on site-specific considerations.

G.4 Consistency With NRC's Timeliness Rule

G.4.1 Comments. Some commenters indicated that the rule is inconsistent with NRC's timeliness rule (59 FR 36026; July 15, 1994).

G.4.2 Response. The timeliness rule requires licensees to notify the Commission promptly when a decision is made to permanently cease principal activities or whenever principal activities have ceased for 24 months. Further, it requires licensees to complete decommissioning within 24 months. The Commission may approve an alternate schedule to complete decommissioning provided sufficient justification is provided by the licensee.

Although this rule includes options for license termination or transfer to another entity, licensees will still be expected to initiate and complete decommissioning in a timely manner. If a licensee intends to use the restricted release option, the licensee is expected to promptly assess its site characteristics, submit a decommissioning plan if required, provide financial assurance, and include appropriate public participation in its decisionmaking. Because the requirements allow licensees 12 months to submit this information to the Commission, sufficient time should be available. The Commission may grant additional time if the licensee demonstrates that the relief is not detrimental to the public health and safety and is in the public interest. If a licensee is unable to demonstrate that release of a site would not prevent a member of the public from receiving a dose in excess of the public dose limit, the site would not be released but would be transferred to a Government entity or maintained under license. These cases are expected to be rare and will be handled on a case-by-case basis.

G.5 Comments From Power Reactor Decommissioning Rulemaking

G.5.1 Comments. Comments were received on the power reactor decommissioning rule that was recently finalized and published on July 29, 1996 (61 FR 39278), requesting that the Commission consider the elimination of the environmental review requirement at the license termination stage (§ 50.82(a)(9)(ii)(G) and § 51.53(b)) for decommissioning to unrestricted release conditions. In response, the Commission indicated that it would consider these comments in the rulemaking on radiological criteria for decommissioning.

G.5.2 Response. The Commission has considered the elimination of the supplemental environmental review requirement for a licensee that intends to decommission to unrestricted release conditions as required in this final rule and has decided to continue to retain this requirement. The Commission considers this necessary for any particular site to determine if the generic analysis encompasses the range of environmental impacts at that particular site. The rationale for retaining this requirement was explained in the preamble to the proposed rule and has not changed.

G.6 Mixed Waste, Hazardous Waste, and Naturally Occurring and Accelerator-Produced Radioactive Material

G.6.1 Comments. Some commenters stated that the rule should address the cleanup of sites with mixed wastes. Other commenters recommended that NRC should not regulate any nonradioactive hazardous material beyond its authority. There was disagreement over whether NRC's approval of a licensee's decommissioning activities should be dependent on the licensee fulfilling other agencies' obligations, especially where accelerator produced materials may exist. Some commenters stated that the rule criteria are incompatible with naturally occurring and accelerator-produced radioactive material (NARM).

G.6.2 Response. The final rule on radiological criteria for decommissioning applies to residual radioactivity from all licensed and unlicensed sources used by the licensee but excludes background radiation. As such, the NRC or Agreement State, whether acting as the lead or cooperating agency in working with the licensee to ensure appropriate remediation of a contaminated site, would not release a site from its license unless the rule's radiological criteria were met.

NRC responsibility for license termination at a site with hazardous or mixed waste onsite is principally to determine that the radiological component of the mixed waste (e.g., contaminated soil) complies with the rule's radiological criteria. Other regulatory agencies are responsible for control of the hazardous constituents and must be notified and accept responsibility for appropriate management of the released site. The same approach would be followed in potentially releasing a site with groundwater contamination exceeding applicable maximum contaminant levels of nonradiological substances. Note that under the Uranium and Mill Tailings Recovery and Control Act

(UMTRCA), NRC is responsible for the regulation of certain nonradioactive hazardous materials.

With regard to NARM, NRC's legislative and regulatory authority extends to those materials and facilities under the Atomic Energy Act of 1954, as amended, and not to accelerator produced materials or naturally occurring radioactive material, except as it is defined as source material in 10 CFR part 40.4. Section IV.A, notes that, although some commenters questioned the relationship of this rule to NARM, the criteria of this rule apply to residual radioactivity from activities under a licensee's control and not to background radiation (that includes radiation from naturally occurring radioactive material (NORM)). There are a wide variety of sites containing NORM subject to EPA jurisdiction and not licensed by the NRC. The extent to which the criteria in this rule would apply to these sites would be based on a separate evaluation. However, the considerations and analyses done for this rulemaking in the Final GEIS and regulatory analysis regarding large fuel cycle and non-fuel-cycle facilities containing large quantities of naturally occurring nuclides such as uranium and thorium are appropriate for certain NORM sites, and the broad provisions of the rule (such as control of sites with restrictions imposed, use of alternate cap values, use of alternate criteria, and public participation aspects) may be useful in considerations regarding NORM sites.

G.7 Recycle

G.7.1 Comments. Commenters recommended that recycling of equipment or materials be addressed in more depth in the final rule. Several commenters stated that recycling of contaminated materials that results in increased exposures to members of the public is unacceptable. Other commenters favored establishment of criteria for recycled materials.

G.7.2 Response. The proposed rule did not specifically address the recycle of material or equipment decontaminated as a result of the decommissioning process. The Commission has a separate consideration underway of the issues related to cases when the licensee proposes to intentionally release material containing residual radioactivity that could become available for reuse or recycle.

Because current NRC regulations do not contain explicit radiological criteria for release of equipment and materials, release from licensed facilities is currently determined by NRC on a case-by-case basis using existing guidance and practices. Current practices include radiation surveys to document the absence of licensed radioactive material, general guidance for reactors contained in Regulatory Guide 1.86 or similar guidance issued for materials facilities, and site-specific technical specifications and license conditions. Although these criteria were not originally derived for the case of recycle, they have been applied for many years in a wide variety of contexts.

Continuation of the case-by-case procedure in the future may not be practical because of increased quantities of material expected from larger facility decommissionings. Also, interest in recycling slightly contaminated material is growing both in the United States and in other countries as a means of conserving resources by limiting the amount of new raw materials that are necessary to produce new products and equipment and by reducing the costs of disposing of large volumes of slightly contaminated material that may pose very small risks to the general public. Codifying criteria would allow NRC to more effectively deal with these issues. Regulatory action separate from this decommissioning action by NRC, that would provide clear, consistent criteria in this area, is being considered. Specifically, the NRC is cooperating with the EPA in developing the technical basis for a recycle rulemaking. At present, the EPA is developing its plans for such a rulemaking. The NRC will determine what course of action it will take regarding rulemaking related to recycle after consideration of EPA plans. Full opportunity for early public involvement and comment regarding that regulatory action is anticipated. Because of this background, no revision to this decommissioning rule to consider recycling is being made.

G.8 The Rulemaking Process

G.8.1 Comments. Several commenters expressed satisfaction with the enhanced rulemaking process undertaken by the NRC for the decommissioning rule. Of those commenters who opposed the proposed decommissioning standards for not being sufficiently restrictive, some were critical of the rulemaking process and suggested that the NRC had ignored their earlier participation. Other commenters expressed dissatisfaction with the proposed standards because they are overly restrictive. The DOE stated that it supported the NRC effort to issue the rule and the joint efforts of the EPA and the NRC to coordinate their respective rulemaking proceedings.

G.8.2 Response. The NRC has conducted what it considers to be an extensive effort at enhancing participation in the early stages of this rulemaking process through a series of workshops and environmental impact statement scoping meetings for affected interests that solicited public comment with regard to radiological criteria for decommissioning. The extent of these meetings was discussed in the preamble to the proposed rule.

The workshops and the scoping meetings were not designed to seek ''consensus'' in the sense that there is agreement on how each issue should be resolved, but rather to ensure that, with informed discussion, relevant issues have been identified and information exchanged on these issues.

Subsequent to the workshops and scoping meetings, the Commission developed the policies and requirements that were deemed appropriate for a rule on radiological criteria for decommissioning. Information and concepts developed in the workshops were factored into this process. For example, a number of themes from the workshops, such as consideration of restricted use options, increased public participation in the site decommissioning process, and a desire to return sites to levels indistinguishable from background, were considered during the rulemaking. The Commission also considered the approaches of scientific bodies such as the ICRP and NCRP, precedents of its other rulemakings with regard to radiation protection such as 10 CFR part 20, input from EPA regarding appropriate risk levels, technical input from NRC contractors regarding capability to measure at low radiation levels, and the costs and impacts of achieving alternate levels.

Preliminary conclusions regarding this effort were contained in the NRC staff's draft rule (59 FR 4868, February 2, 1994) that was sent to Agreement States, workshop participants, and other interested parties. The intent of this informal comment period in advance of a proposed rule was to provide an opportunity for interested parties to comment on the adequacy of the draft criteria.

Resolution of comments from the workshops and from circulation of the NRC staff draft was discussed in the preamble of the proposed rule published on August 22, 1994 (59 FR 43200). The preamble indicates the evolution of the NRC's approach to this rulemaking as a result of the workshops and the other activities noted above.

Clearly, there are a number of specific areas which remain difficult to resolve or on which to reach a ''consensus.'' These areas include the precise level of

permissible radiological criteria for decommissioning, restricted use as a means for terminating a license, and the extent of public participation. It is the NRC's consideration that the rulemaking process has allowed an airing of differing opinions with regard to these as well as other issues.

V. Agreement State Compatibility

The Commission has determined that this rule will be a Division 2 matter of compatibility. For the discussion on the basis for this determination, see Section IV.F.1.

VI. Relationship Between the Generic Environmental Impact Statement and Site-Specific Decommissioning Actions

The Generic Environmental Impact Statement (GEIS) prepared by the Commission on this rulemaking evaluates the environmental impacts associated with the remediation of several types of NRC-licensed facilities to a range of residual radioactivity levels. The Commission believes that the generic analysis will encompass the impacts that will occur in most Commission decisions to decommission an individual site where the licensee proposes to release the site for unrestricted use. Therefore, the Commission plans to rely on the GEIS to satisfy its obligations under the National Environmental Policy Act regarding individual decommissioning decisions that meet the 0.25 mSv/y (25 mrem/y) criterion for unrestricted use. However, the Commission will still initiate an environmental assessment regarding any particular site, for which a categorical exclusion is not applicable, to determine if the generic analysis encompasses the range of environmental impacts at that particular site.

The rule also provides for the termination of the license and the release of a site under restricted use conditions if the licensee can demonstrate that land use restrictions or other types of institutional controls will provide reasonable assurance that the 0.25 mSv/y (25 mrem/y) limit can be met. The types of controls and their contribution to providing reasonable assurance that the 0.25 mSv/y (25 mrem/y) limit can be met for a particular site will differ for each site in this category. Similarly, the rule also provides that termination of the license under alternate criteria will be considered by the Commission in certain site-specific situations that would also differ for each site in this category. Therefore, the environmental impacts for these cases cannot be analyzed on a generic basis and the Commission will conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or institutional controls are relied on by the licensee or where alternate criteria are proposed.

The GEIS indicates that the decommissioning for certain classes of licensees (e.g., licensees using only sealed sources) will not individually or cumulatively have a significant effect on the human environment. Therefore, the Commission is amending § 51.22 of the Commission's regulations to specify that the decommissioning of these types of licenses are actions eligible for categorical exclusion from the Commission's environmental review process.

VII. Final Generic Environmental Impact Statement: Availability

As required by the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, the NRC has prepared a final generic environmental impact statement (NUREG–1496) on this proposed rule.

The final generic environmental impact statement is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the final generic environmental impact statement (NUREG–1496) may be obtained by written request or telefax (301–415–2260) from: Office of Administration, Attention: Distribution and Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Background documents on the rulemaking, including the text of the final rule, the final GEIS, and the regulatory analysis, are also available for downloading and viewing on the NRC Enhanced Participatory Rulemaking on Radiological Criteria for Decommissioning Electronic Bulletin Board, 1–800–880–6091 (see 58 FR 37760 (July 13, 1993)). The bulletin board may be accessed using a personal computer, a modem, and most commonly available communications software packages. The communications software should have parity set to none, data bits to 8, and stop bits to 1 (N,8,1) and use ANSI or VT–100 terminal emulation. For more information call Ms. Christine Daily, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone (301) 415–6026; FAX (301) 415–5385.

VIII. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0014.

The public reporting burden for this collection of information is estimated to average 31.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on any aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011 and 3150–0093), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC 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.

IX. Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained by written request from the Radiation Protection and Health Effects Branch (RPHEB) Secretary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Background documents on the rulemaking, including the text of the final rule, the final GEIS, and the regulatory analysis are also available for downloading and viewing on the NRC Enhanced Participatory Rulemaking on Radiological Criteria for Decommissioning Electronic Bulletin Board (see Section VII, above).

X. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. Although the final rule would cover all 22,000

licensees regulated by the NRC and Agreement States, small entities covered by this rule are primarily licensees that possess and use only materials with short half-lives or materials only in sealed sources. Decommissioning efforts for these licensees are simple and require only that sealed sources are properly disposed of or that short-lived materials are allowed to decay. Complete details of the cost analysis are contained in the regulatory analysis.

XI. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and therefore, a backfit analysis is not required for this final rule because these amendments do not involve reactor operations and therefore do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

XII. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a ''major'' rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational and public dose limits, Occupational safety and health, Packaging and containers, Permissible doses, Radiation protection, Reporting and recordkeeping requirements, Respiratory protection, Special nuclear material, Source material, Surveys and monitoring, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Environmental regulations, assessments and reports, NEPA procedures, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR parts 20, 30, 40, 50, 51, 70, and 72.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

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

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (2 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 20.1003, the definition of *Background radiation* is revised and new definitions *Critical Group, Decommission, Distinguishable from background,* and *Residual radioactivity* are added in alphabetical order to read as follows:

§ 20.1003 Definitions.

* * * * *

Background radiation means radiation from cosmic sources; naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. ''*Background radiation*'' does not include radiation from source, byproduct, or special nuclear materials regulated by the Commission.

* * * * *

Critical Group means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

* * * * *

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

* * * * *

Distinguishable from background means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

* * * * *

Residual radioactivity means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR part 20.

* * * * *

3. In § 20.1009, paragraph (b) is revised to read as follows:

§ 20.1009 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 20.1003, 20.1101, 20.1202, 20.1203, 20.1204, 20.1206, 20.1208, 20.1301, 20.1302, 20.1403, 20.1404, 20.1406, 20.1501, 20.1601, 20.1703, 20.1901, 20.1902, 20.1904, 20.1905, 20.1906, 20.2002, 20.2004, 20.2006, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108,

20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 20.2205, 20.2206, 20.2301, and Appendices F and G to 10 CFR Part 20.

* * * * *

4. A new subpart E entitled ''Radiological Criteria for License Termination,'' is added to 10 CFR part 20 to read as follows:

Subpart E—Radiological Criteria for License Termination

Sec.
20.1401 General provisions and scope.
20.1402 Radiological criteria for unrestricted use.
20.1403 Criteria for license termination under restricted conditions.
20.1404 Alternate criteria for license termination.
20.1405 Public notification and public participation.
20.1406 Minimization of contamination.

§ 20.1401 General provisions and scope.

(a) The criteria in this subpart apply to the decommissioning of facilities licensed under parts 30, 40, 50, 60, 61, 70, and 72 of this chapter, as well as other facilities subject to the Commission's jurisdiction under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended. For high-level and low-level waste disposal facilities (10 CFR parts 60 and 61), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities. The criteria do not apply to uranium and thorium recovery facilities already subject to appendix A to 10 CFR part 40 or to uranium solution extraction facilities.

(b) The criteria in this subpart do not apply to sites which:

(1) Have been decommissioned prior to the effective date of the rule in accordance with criteria identified in the Site Decommissioning Management Plan (SDMP) Action Plan of April 16, 1992 (57 FR 13389);

(2) Have previously submitted and received Commission approval on a license termination plan (LTP) or decommissioning plan that is compatible with the SDMP Action Plan criteria; or

(3) Submit a sufficient LTP or decommissioning plan before August 20, 1998 and such LTP or decommissioning plan is approved by the Commission before August 20, 1999 and in accordance with the criteria identified in the SDMP Action Plan, except that if an EIS is required in the submittal, there will be a provision for day-for-day extension.

(c) After a site has been decommissioned and the license terminated in accordance with the criteria in this subpart, the Commission will require additional cleanup only if, based on new information, it determines that the criteria of this subpart were not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

(d) When calculating TEDE to the average member of the critical group the licensee shall determine the peak annual TEDE dose expected within the first 1000 years after decommissioning.

§ 20.1402 Radiological criteria for unrestricted use.

A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Determination of the levels which are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

§ 20.1403 Criteria for license termination under restricted conditions.

A site will be considered acceptable for license termination under restricted conditions if:

(a) The licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of § 20.1402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels which are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal;

(b) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) per year;

(c) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are—

(1) Funds placed into an account segregated from the licensee's assets and outside the licensee's administrative control as described in § 30.35(f)(1) of this chapter;

(2) Surety method, insurance, or other guarantee method as described in § 30.35(f)(2) of this chapter;

(3) A statement of intent in the case of Federal, State, or local Government licensees, as described in § 30.35(f)(4) of this chapter; or

(4) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(d) The licensee has submitted a decommissioning plan or License Termination Plan (LTP) to the Commission indicating the licensee's intent to decommission in accordance with §§ 30.36(d), 40.42(d), 50.82 (a) and (b), 70.38(d), or 72.54 of this chapter, and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the LTP or decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice.

(1) Licensees proposing to decommission by restricting use of the site shall seek advice from such affected parties regarding the following matters concerning the proposed decommissioning—

(i) Whether provisions for institutional controls proposed by the licensee;

(A) Will provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) TEDE per year;

(B) Will be enforceable; and

(C) Will not impose undue burdens on the local community or other affected parties.

(ii) Whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site;

(2) In seeking advice on the issues identified in § 20.1403(d)(1), the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) An opportunity for a comprehensive, collective discussion on

the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(e) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group is as low as reasonably achievable and would not exceed either—

(1) 100 mrem (1 mSv) per year; or

(2) 500 mrem (5 mSv) per year provided the licensee—

(i) Demonstrates that further reductions in residual radioactivity necessary to comply with the 100 mrem/y (1 mSv/y) value of paragraph (e)(1) of this section are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(ii) Makes provisions for durable institutional controls;

(iii) Provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every 5 years to assure that the institutional controls remain in place as necessary to meet the criteria of § 20.1403(b) and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in paragraph (c) of this section.

§ 20.1404 Alternate criteria for license termination.

(a) The Commission may terminate a license using alternate criteria greater than the dose criterion of §§ 20.1402, 20.1403(b), and 20.1403(d)(1)(i)(A), if the licensee—

(1) Provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the 1 mSv/y (100 mrem/y) limit of subpart D, by submitting an analysis of possible sources of exposure;

(2) Has employed to the extent practical restrictions on site use according to the provisions of § 20.1403 in minimizing exposures at the site; and

(3) Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal.

(4) Has submitted a decommissioning plan or License Termination Plan (LTP) to the Commission indicating the licensee's intent to decommission in accordance with §§ 30.36(d), 40.42(d), 50.82 (a) and (b), 70.38(d), or 72.54 of this chapter, and specifying that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan or LTP how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(b) The use of alternate criteria to terminate a license requires the approval of the Commission after consideration of the NRC staff's recommendations that will address any comments provided by the Environmental Protection Agency and any public comments submitted pursuant to § 20.1405.

§ 20.1405 Public notification and public participation.

Upon the receipt of an LTP or decommissioning plan from the licensee, or a proposal by the licensee for release of a site pursuant to §§ 20.1403 or 20.1404, or whenever the Commission deems such notice to be in the public interest, the Commission shall:

(a) Notify and solicit comments from:

(1) local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(2) the Environmental Protection Agency for cases where the licensee proposes to release a site pursuant to § 20.1404.

(b) Publish a notice in the **Federal Register** and in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

§ 20.1406 Minimization of contamination.

Applicants for licenses, other than renewals, after August 20, 1997, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste.

5. In § 20.2402, paragraph (b) is revised to read as follows:

§ 20.2402 Criminal penalties.

* * * * *

(b) The regulations in §§ 20.1001 through 20.2402 that are not issued under Sections 161b, 161i, or 161o for the purposes of Section 223 are as follows: §§ 20.1001, 20.1002, 20.1003, 20.1004, 20.1005, 20.1006, 20.1007, 20.1008, 20.1009, 20.1405, 20.1704, 20.1903, 20.1905, 20.2002, 20.2007, 20.2301, 20.2302, 20.2401, and 20.2402.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

6. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat 3123 (2 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

7. In § 30.4, the definition of *Decommission* is revised to read as follows:

§ 30.4 Definitions.

* * * * *

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

* * * * *

8. In § 30.35, paragraph (f)(5) is added and paragraph (g)(3)(iv) is revised to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(5) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(g) * * *

(3) * * *

(iv) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in 10 CFR part 20, subpart E, or apply for approval for disposal under 10 CFR 20.2002.

* * * * *

9. In § 30.36, the introductory text of paragraph (j)(2) and paragraph (k)(3) are revised to read as follows:

§ 30.36 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(j) * * *

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E. The licensee shall, as appropriate—

* * * * *

(k) * * *

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

10. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

11. In § 40.4, the definition of *Decommission* is revised to read as follows:

§ 40.4 Definitions.

* * * * *

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

* * * * *

12. In § 40.36, paragraph (e)(5) is added and paragraph (f)(3)(iv) is revised to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(e) * * *

(5) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(f) * * *

(3) * * *

(iv) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in 10 CFR part 20, subpart E, or apply for approval for disposal under 10 CFR 20.2002.

* * * * *

13. In § 40.42, the introductory text of paragraph (j)(2) and paragraph (k)(3) are revised to read as follows:

§ 40.42 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(j) * * *

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E. The licensee shall, as appropriate—

* * * * *

(k) * * *

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

14. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 is also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 82 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50–81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

15. In § 50.2, the definition of *Decommission* is revised to read as follows:

§ 50.2 Definitions.

* * * * *

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

* * * * *

16. In § 50.82, paragraphs (a)(11)(ii) and (b)(6)(ii) are revised to read as follows:

§ 50.82 Termination of license.

* * * * *

(a) * * *

(11) * * *

(ii) The terminal radiation survey and associated documentation demonstrates that the facility and site are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E.

(b) * * *

(6) * * *

(ii) The terminal radiation survey and associated documentation demonstrate that the facility and site are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

17. The authority citation for part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

18. In § 51.22, paragraph (c)(20) is added to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(c) * * *

(20) Decommissioning of sites where licensed operations have been limited to the use of—

(i) Small quantities of short-lived radioactive materials; or

(ii) Radioactive materials in sealed sources, provided there is no evidence of leakage of radioactive material from these sealed sources.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

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

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486 sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

20. In § 70.4, the definition of *Decommission* is revised to read as follows:

§ 70.4 Definitions.

* * * * *

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

* * * * *

21. In § 70.25, paragraph (f)(5) is added and paragraph (g)(3)(iv) is revised to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(5) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(g) * * *

(3) * * *

(iv) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in 10 CFR part 20, subpart E, or apply for approval for disposal under 10 CFR 20.2002.

* * * * *

22. In § 70.38, the introductory text of paragraph (j)(2) and paragraph (k)(3) are revised to read as follows:

§ 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(j) * * *

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E. The licensee shall, as appropriate—

* * * * *

(k) * * *

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

23. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100–203, 101

Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and Sec. 218(a) 96 Stat. 2252 (42 U.S.C. 10198).

24. In § 72.3, the definition of *Decommission* is revised to read as follows:

§ 72.3 Definitions.

* * * * *

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

* * * * *

25. In § 72.30, paragraph (c)(6) is added to read as follows:

§ 72.30 Financial assurance and recordkeeping for decommissioning.

* * * * *

(c) * * *

(6) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

* * * * *

26. In § 72.54, the introductory text of paragraph (l)(2) and paragraph (m)(2) are revised to read as follows:

§ 72.54 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(l) * * *

(2) Conduct a radiation survey of the premises where the licensed activities were conducted and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E. The licensee shall, as appropriate—

(m) * * *

(2)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E.

* * * * *

Dated at Rockville, Maryland, this 1st day of July 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–17752 Filed 7–18–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 40

RIN 3150–AD65

Radiological Criteria for License Termination: Uranium Recovery Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for additional comment on uranium recovery facilities.

SUMMARY: The NRC is requesting specific comment on radiological criteria for license termination for uranium recovery facilities. This action is intended to provide full consideration of the issues associated with the decommissioning of these facilities and the regulatory options for resolving these issues.

DATES: Submit comments by October 6, 1997. Comments received after this date will be considered if it is practicable to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Joseph J. Holonich, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–7238, e-mail JJH1@nrc.gov; Duane Schmidt, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–6919, e-mail DWS2@nrc.gov; or Frank Cardile, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–6185; e-mail FPC@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 22, 1994 (59 FR 43200), the NRC published a proposed rule for comment in the **Federal Register** to amend 10 CFR part 20 of its regulations ''Standards for Protection Against Radiation'' to include radiological criteria for license termination (referred to here as the ''cleanup rule''). The proposed cleanup rule included criteria for determining the adequacy of remediation of residual radioactivity resulting from the possession or use of source, byproduct, and special nuclear material. The scope of the proposed cleanup rule applied to the decommissioning of facilities licensed under 10 CFR parts 30, 40, 50, 60, 61, 70, and 72. Specifically with regard to uranium mills, the proposed cleanup rule stated that, for uranium mills, the criteria of the rule would apply to the facility but not to the disposal of uranium mill tailings or to soil cleanup. The proposed cleanup rule (§ 20.1401(a)) referred to 10 CFR part 40, Appendix A, where criteria for disposal of mill tailings and soil cleanup of radium already exist.

The public comment period for the proposed cleanup rule closed on January 20, 1995. Comments received on the proposed rule were summarized in NUREG/CR–6353. Comments on the criteria in the proposed rule were received from over 100 organizations and individuals representing a variety of interests. Viewpoints were expressed both in support of and in disagreement with nearly every provision of the rule. Specifically with regard to uranium mills, comments on the proposed rule generally agreed with the exclusion for disposal of mill tailings and soil cleanup. These commenters recommended that the rule also exempt conventional thorium and uranium mill facilities and in situ leach (ISL) (specifically uranium solution extraction) facilities from the scope of coverage because they stated that the decommissioning of these sites is covered by Appendix A to 10 CFR part 40 and 40 CFR part 192.

In responding to the comments on uranium mills during preparation of the final cleanup rule, the Commission considered appropriate regulatory options for addressing requirements for cleanup of soil, buildings, and groundwater at uranium and thorium mills and ISLs (collectively referred to as UR facilities) for unrestricted release of the site other than the tailings disposal and reclamation which are subject to the requirements of 10 CFR part 40, Appendix A.

In considering regulatory options for establishing radiological criteria for license termination of UR facilities, it is important to understand current regulations applicable to remediation of both inactive tailings sites, including vicinity properties, and active uranium and thorium mills. Under the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, as amended, EPA has the authority to set cleanup standards for uranium mills and, based on that authority, issued regulations in 40 CFR part 192 which contain remediation criteria for these facilities. NRC's regulations in 10 CFR part 40, Appendix A, apply to the decommissioning of its licensed facilities and conform to EPA's standards for uranium mills. At ISLs, the decommissioning activities are similar to those at uranium mills and consist mainly of the cleanup of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act of 1954, as amended.

Thus, applicable cleanup standards already exist for soil cleanup of radium in 10 CFR part 40, Appendix A, Criterion 6(6). Radium is the main contaminant at uranium mills in the large areas (20–400 hectares (50 to 1000 acres)) where windblown contamination from the tailings pile has occurred, and at ISLs (in holding ponds). These standards require that the concentration of radium in those large areas not exceed the background level by more than 0.19 Bq/gm (5 pCi/gm) in the first 15 cm (6 inches) of soil, and 0.56 Bq/gm (15 pCi/gm) for every 15 cm (6 inches) below the first 15 cm (6 inches). However, in other mill and ISL site areas proximate to locations where radium contamination exists (e.g., under the mill building, in a yellow cake storage area, under/around an ore pad, and at ISLs in soils where spray irrigation has occurred as a means of disposal), uranium or thorium would be the radionuclide of concern. Because 10 CFR part 40, Appendix A, does not codify cleanup criteria for soil contamination from radionuclides other than radium, it cannot be used as a standard for uranium and thorium cleanup, and existing NRC guidance documents are currently used to develop appropriate cleanup levels for these and other radionuclides. There is not a similar need to address codifying requirements for groundwater at UR facilities because 10 CFR 40, Appendix A, as adopted by NRC to conform to EPA regulations in 40 CFR 192, already specifies groundwater cleanup standards applicable to tailings impoundments and also specifies that standards at UR facilities for groundwater cleanup from sources other than the tailings impoundment can be determined on a site-specific basis.

Cleanup of radium to the concentration standards noted above would generally result in doses higher than the 0.25 mSv/yr (25 mrem/yr) unrestricted use dose criterion of the final cleanup rule. Calculations done by

EPA in support of 40 CFR part 192 indicated that the dose from radium, excluding radon, was approximately 0.6 mSv/yr (60 mrem/yr) (the final cleanup rule notes that doses from radon would be controlled by cleanup of radium which is the principal precursor to radon). In actual practice, cleanup of uranium mill tailings results in radium levels lower than the 10 CFR part 40 standards, and radium is usually removed to background levels during cleanup of uranium and thorium to the levels in existing NRC guidance documents.

As noted above, the Commission considered including criteria in the final cleanup rule for radionuclides other than radium (primarily uranium or thorium) that would be present in UR facility site areas proximate to locations where radium contamination exists (e.g., under the mill building, in a yellow cake storage area, under/around an ore pad, and at ISLs in soils where spray irrigation has occurred as a means of disposal). In this approach, the standard of the final cleanup rule would apply to radionuclides other than radium, while the 10 CFR 40, Appendix A, standard would continue to apply to radium. However, as discussed in the final cleanup rule, published in this issue of the **Federal Register**, there are unique technical and regulatory complexities associated with decommissioning of UR facilities which could cause practical problems in applying the standards of the final cleanup rule to UR facilities. In particular, under this approach, application of the dose criterion of the final cleanup rule to the areas noted above would result in a situation where the cleanup standard of that small portion of the mill site would be much lower than the standard for the large windblown tailings areas where radium is the nuclide of concern. This would result in situations of differing criteria being applied across similar areas. This problem would exist for contamination in both soils and buildings.

Thus, in preparing the final cleanup rule, the Commission decided to exclude UR facilities from the scope of the final rule to allow further consideration of the issues involved. To allow for full consideration by the Commission and affected parties of the issues associated with decommissioning of UR facilities, the Commission decided to publish this separate notice to specifically request additional comment on decommissioning criteria for UR facilities (the Commission did not reopen the comment period for any of the other issues discussed in the rulemaking for the final cleanup rule). In publishing the final cleanup rule, the Commission noted that, in the interim while comments are being requested, the Commission will continue its current practices for decommissioning UR facilities.

II. Discussion

As noted above, there is an existing standard for radium in soil at UR facilities, however, it does not apply to radionuclides other than radium at these facilities. A way to address this situation could be to establish a criterion whereby the dose from all radionuclides at UR facilities, including radium, is set at levels different from either the final cleanup rule or the standards in 10 CFR part 40. This would involve modifying the radium standards of 10 CFR part 40, Appendix A. However, a difficulty with this approach is that the radium cleanup standard of 10 CFR part 40, Appendix A, conforms to EPA's cleanup standard for uranium mills, and per UMTRCA, the authority to set such cleanup standards for uranium mills rests with EPA.

An approach for setting decommissioning criteria for UR facilities, which has been developed in response to the comments received on the proposed rule, would be to codify a dose objective for radionuclides other than radium in soil and buildings at UR sites consistent with the radium cleanup standard already in place for those sites in 10 CFR part 40, Appendix A, and 40 CFR part 192. Under this approach, UR facilities would use the dose from radium in existing 10 CFR part 40 as a benchmark for the cleanup of radionuclides other than radium. Thus, in this approach, the criterion for cleanup of radionuclides other than radium from buildings and soils could be set such that it resulted in a dose no greater than the dose resulting from cleanup of radium contaminated soil to the standard specified in Criterion 6(6) of 10 CFR part 40, Appendix A. Use of this approach would thus allow for consistent criteria to be applied across site areas.

III. Request for Additional Comments on Regulatory Options

The Commission is reopening the public comment period specifically to solicit additional comments on the specific standard that should be used for cleanup of radionuclides at UR facilities. Commenters are requested to provide input for addressing this issue, and specifically on the approach discussed above involving the use of the 10 CFR part 40, Appendix A, radium standard as a benchmark for the cleanup of other radionuclides. Based on the comments already received on the proposed rule, described in Section I, and on additional comments received in response to this request, the Commission will then be in a position to prepare a final rule which reflects additional consideration by the NRC and affected parties on the approach for setting a standard for UR facilities.

IV. Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld or connecting to the NRC interactive rulemaking web site, ''Rulemaking Forum.'' The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and Reg Guides for Comment subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct-dial telephone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using

NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

You may also access the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format), if your web browser supports that function.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–6215; e-mail CAG@nrc.gov.

Dated at Rockville, Maryland this 1st day of July, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–17753 Filed 7–18–97; 8:45 am]

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federal register

Monday
July 21, 1997

Part III

The President

Executive Order 13055—Coordination of United States Government International Exchanges and Training Programs

Federal Register
Vol. 62, No. 139
Monday, July 21, 1997

Presidential Documents

Title 3—

The President

Executive Order 13055 of July 15, 1997

Coordination of United States Government International Exchanges and Training Programs

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the coordination of United States Government International Exchanges and Training Programs, it is hereby ordered as follows:

Section 1. There is hereby established within the United States Information Agency a senior-level Interagency Working Group on United States Government-Sponsored International Exchanges and Training (''the Working Group''). The purpose of the Working Group is to recommend to the President measures for improving the coordination, efficiency, and effectiveness of United States Government-sponsored international exchanges and training. The Working Group shall establish a clearinghouse to improve data collection and analysis of international exchanges and training.

Sec. 2. The term ''Government-sponsored international exchanges and training'' shall mean the movement of people between countries to promote the sharing of ideas, to develop skills, and to foster mutual understanding and cooperation, financed wholly or in part, directly or indirectly, with United States Government funds.

Sec. 3. The Working Group shall consist of the Associate Director for Educational and Cultural Affairs of the United States Information Agency, who shall act as Chair, and a comparable senior representative appointed by the respective Secretary of each of the Departments of State, Defense, Education, and the Attorney General, by the Administrator of the United States Agency for International Development, and by heads of other interested executive departments and agencies. In addition, representatives of the National Security Council and the Director of the Office of Management and Budget shall participate in the Working Group at their discretion. The Working Group shall be supported by an interagency staff office established in the Bureau of Education and Cultural Affairs of the United States Information Agency.

Sec. 4. The Working Group shall have the following responsibilities:

(a) Collect, analyze, and report data provided by all United States Government departments and agencies conducting international exchanges and training programs;

(b) Promote greater understanding of and cooperation on, among concerned United States Government departments and agencies, common issues and challenges faced in conducting international exchanges and training programs, including through the establishment of a clearinghouse for information on international exchange and training activities in the governmental and nongovernmental sectors;

(c) In order to achieve the most efficient and cost-effective use of Federal resources, identify administrative and programmatic duplication and overlap of activities by the various United States Government agencies involved in Government-sponsored international exchange and training programs, and report thereon;

(d) No later than 1 year from the date of this order, develop initially and thereafter assess annually a coordinated strategy for all United States

Government-sponsored international exchange and training programs, and issue a report on such strategy;

(e) No later than 2 years from the date of this order, develop recommendations on performance measures for all United States Government-sponsored international exchange and training programs, and issue a report thereon; and

(f) Develop strategies for expanding public and private partnerships in, and leveraging private sector support for, United States Government-sponsored international exchange and training activities.

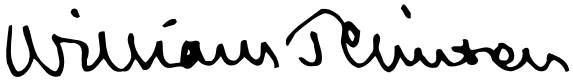
Sec. 5. All reports prepared by the Working Group pursuant to section 4 shall be made to the President, through the Director of the United States Information Agency.

Sec. 6. The Working Group shall meet on at least a quarterly basis.

Sec. 7. Any expenses incurred by a member of the Working Group in connection with such member's service on the Working Group shall be borne by the member's respective department or agency.

Sec. 8. If any member of the Working Group disagrees with respect to any matter in any report prepared pursuant to section 4, such member may prepare a statement setting forth the reasons for such disagreement and such statement shall be appended to, and considered a part of, the report.

Sec. 9. Nothing in this Executive order is intended to alter the authorities and responsibilities of the head of any department or agency.



THE WHITE HOUSE,
July 15, 1997.

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Reader Aids

Federal Register

Vol. 62, No. 139

Monday, July 21, 1997

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FEDERAL REGISTER PAGES AND DATES, JULY

35337–35658 1
35659–35946 2
35947–36198 3
36199–36446 7
36447–36644 8
36645–36964 9
36965–37124 10
37125–37484 11
37485–37706 14
37707–38014 15
38015–38202 16
38203–38420 17
38421–38896 18
38897–39100 21

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6641 (See Proclamation 7011) 35909
6763 (See Proclamation 7011) 35909
7011 35909

Executive Orders:
12721 (See EO 13054) 36965
12852 (Amended by EO 13053).....39945
13052 35659
13053 39945
13054 36965

Memorandums:
July 16, 1997 38421

5 CFR

890 38433
7201 36447

Proposed Rules:
880 35693

7 CFR

2 37485
300 36967
301 .....36645, 36976
318 36967
455 .....35661, 35662
456 35666
457 .....35662, 35666
946 36199
959 38203
981 .....37485, 37488
985 36646
1006 36650
1137 35947
1220 37488
1280 38897
1381 36651
1437 36978

Proposed Rules:
29 35452
301 37159
450 37000
457 37000
800 38488
920 .....36231, 36743
930 36020
981 36233
985 36236
1011 .....36022, 37524
1137 37524
1944 36467

8 CFR

316 36447

Proposed Rules:
204 38041

9 CFR

77 37125
78 38443
92 38445

Proposed Rules:
317 38220
381 38220

10 CFR

20 39058
30 39058
40 39058
50 39058
51 39058
70 39058
72 39058

Proposed Rules:
20 39093
40 39093
430 .....36024, 38222
451 36025

11 CFR

104 35670

12 CFR

338 36201
790 37126
902 35948

Proposed Rules:
9 36746
202 37166
226 38489
250 37744
303 37748
325 37748
326 37748
327 37748
346 37748
347 37748
351 37748
362 37748
611 38223
614 38223
620 38223
630 38223

13 CFR

123 35337

14 CFR

39 .....35670, 35950, 35951, 35953, 35956, 35957, 35959, 36448, 36652, 36978, 37127, 37128, 37130, 37707, 37710, 38015, 38017, 38204, 38206, 38445, 38447, 38898
71 .....35894, 38208, 38209, 38210, 38211, 38212, 38213
121 38362
125 38362
129 38362

135 38362
Proposed Rules:
25 ....37124, 38945
39 ....35696, 35698, 35700, 35702, 35704, 35706, 35708, 35709, 35711, 36240, 36747, 37170, 37778, 37788, 37798, 37808, 38491, 38493
71 ....35713, 37172
187 38008
401 36027
411 36027
413 36027
415 36027
417 36027
440 36028

15 CFR

922 ....35338, 36655
946 38901
Proposed Rules:
30 36242
922 37818

16 CFR

601 35586
1000 36450
1017 36450
Proposed Rules:
1700 38948

17 CFR

200 36450
228 36450
229 36450
230 36450
232 36450
239 ....35338, 36450
240 ....35338, 36450
249 35338
260 36450
269 35338
Proposed Rules:
202 38495
230 38495
232 ....36467, 38483
239 38495
240 36467
249 36467
270 38495
274 38495

18 CFR

35 36657
381 36981

19 CFR

101 37131
122 37131
201 38018
Proposed Rules:
101 37526
351 38948

20 CFR

404 38448
410 38448
416 ....36460, 38448
422 38448
Proposed Rules:
702 35715

21 CFR

165 36460
178 36982
510 38905
520 ....37711, 37712, 38905, 38906
522 ....37713, 38905, 38907
524 38907
814 38026
Proposed Rules:
Ch. I 36243
101 36749
872 38231
1308 37004

22 CFR

126 37133
201 38026

24 CFR

586 37478
Proposed Rules:
201 36194
202 36194
207 35716
251 35716
252 35716
255 35716
266 35716
950 35718
953 35718
955 35718
1000 35718
1003 35718
1005 35718
3500 38489

26 CFR

1 ....35673, 37490, 38027
31 37490
40 37490
54 35904
602 35904
Proposed Rules:
1 ....35752, 35755, 37818, 37819, 38197
301 ....37819, 38197

28 CFR

0 38028
17 36984
32 37713

29 CFR

1600 36447
1650 36447
1926 37134
2200 35961
2203 35961
2204 35961
2520 36205
2590 35904
4000 36993
4001 35342
4004 37717
4007 36663
4010 36993
4011 36993
4043 36993
4071 36993
4302 36993

30 CFR

256 36995
902 35342
946 35964
Proposed Rules:
202 38509
206 ....36030, 38509
211 38509
250 37819
935 ....36248, 38509

31 CFR

285 36205
Proposed Rules:
103 ....36475, 38511

32 CFR

176 35343
286 ....35351, 38197
706 37719

33 CFR

27 35385
100 ....35387, 35388, 35390, 35391
117 38908
144 35392
155 37134
165 ....35392, 35393, 35394, 35395, 35396, 35398, 335398, 35399, 35400, 35401, 35402, 35403, 35405, 35680, 35968, 37135, 38456
Proposed Rules:
84 36037
100 38042
110 38511
117 ....35453, 38043

34 CFR

222 35406
685 35602

37 CFR

201 35420
202 35420
203 35420

38 CFR

1 35969
3 ....35421, 35969, 35970
9 35969
21 35423
Proposed Rules:
19 36038
21 ....35454, 35464
36 37824

39 CFR

3001 35424

40 CFR

9 37720
50 ....38652, 38762, 38856
52 ....35441, 35681, 36212, 36214, 37136, 37138, 37494, 37506, 37510, 37722, 37724, 38213, 38457, 38909, 38912, 38915, 38918, 38919, 38922
53 38764
58 38764
60 36664
62 36995
63 ....36460, 37720
70 37514
81 ....35972, 38213
180 ....35683, 36665, 36671, 36678, 36684, 36691, 37516, 38464
185 38464
186 38464
268 37694
281 36698
300 ....35441, 35689, 35974, 36997, 37522
403 38406
721 ....35689, 35690
Proposed Rules:
52 ....35756, 36249, 37007, 37172, 37175, 37526, 37527, 37832, 38949, 38950, 38951
55 38047
60 36948
62 37008
63 38053
70 ....36039, 37533
80 37338
81 38237
82 36428
86 38053
131 38512
141 36100
142 36100
180 ....35760, 38513
186 35760
260 37183
261 37183
273 37183
300 38239
799 37833

42 CFR

67 37124

44 CFR

65 37727
67 37729
Proposed Rules:
67 37834

45 CFR

16 38217
74 38217
75 38217
95 38217
146 35904
148 35904
Proposed Rules:
Ch. XII 38241
1201 38241

46 CFR

109 35392
159 35392
160 35392
199 35392
296 37733

47 CFR

Ch. I 36216
1 ....37408, 38029, 38475
59 36998
64 35974
68 36463
73 ....36226, 36227, 36699, 36700, 36701, 36678, 36684, 36691, 37144, 37145, 37522, 38029, 38030, 38031, 38032, 38033, 38218
76 38029
Proposed Rules:
Ch. I 36752, 38244
20 38951
52 36476
68 36476
73 ....36250, 36756, 37008,

38053, 38054, 38245, 38246
80 37533

48 CFR

235 37146
243 37146
252 ....37146, 37147
552 38475
1514 37148
1515 37148
1535 38476
1552 ....37148, 38476
1803 36704
1804 36704
1807 36704
1809 36704
1813 36704
1815 36704
1816 36704
1819 36704
1822 36704
1824 36704
1825 36704
1827 36704
1832 36704
1836 36704
1837 36704
1839 36704
1842 ....36227, 37335
1844 36704
1845 36704
1852 36704
1853 36704
1870 36704

Proposed Rules:

4 36250
7 36250
8 36250
12 37874
14 37874
15 ....36250, 37874
16 36250
17 36250
19 37874
22 36250
27 36250
28 36250
31 ....35900, 36250
32 36250
33 37874
35 36250
42 36250
43 36250
44 36250
45 36250
46 35900
49 36250
51 36250
52 ....35900, 36250, 37847
53 ....36250, 37847
245 37185
252 37185
9903 37654

49 CFR

1 38478
173 37149
193 36465
355 37150
369 38034
372 38035
382 37150
383 37150
384 37150
389 37150
391 37150
392 37150
531 37153
1002 35692
1180 35692

Proposed Rules:

23 38952
26 38952
192 37008
195 37008
213 36138
385 36039
571 36251
594 37847
1002 36477
1181 36480
1182 ....36477, 36480
1186 36480
1187 36477
1188 ....36477, 36480

50 CFR

17 ....36481, 36482, 38932,
227 38479
285 ....35447, 36998, 38036, 38037, 38485, 38939
300 38037
648 ....36704, 36738, 37154, 37741, 38038
660 ....35450, 36228, 38942
678 38942
679 ....36018, 36739, 36740, 36741, 37157, 37523, 38039, 38943, 38944

Proposed Rules:

17 ....35762, 37852, 38953, 38958
25 38959
32 38959
285 ....36040, 36739, 36872
600 35468
622 35774
630 38246
679 37860

REMINDERS

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.

RULES GOING INTO EFFECT JULY 21, 1997

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Horses and horse products; limited ports of entry—

Dayton, OH; published 5-22-97

Dayton, OH; published 7-18-97

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Contact freezing of meat and meat products; liquid nitrogen use; published 5-22-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Fishing trip definition; correction; published 7-21-97

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):

Nuclear plant decommissioning trust fund guidelines (formation, organization, and operation); published 6-19-97

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Oregon; published 6-20-97

Hazardous waste program authorizations:

Utah; published 5-20-97

FEDERAL COMMUNICATIONS COMMISSION

Personal communications services:

Narrowband PCS—

Power and antenna height rules; published 5-20-97

Radio stations; table of assignments:

Alabama; published 6-13-97

Arkansas; published 6-13-97

Colorado; published 6-13-97

New Mexico; published 6-13-97

Oklahoma; published 6-13-97

Oregon; published 6-13-97

Wisconsin; published 6-13-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Enrofloxacin solution; published 7-21-97

Enrofloxacin tablets; published 7-21-97

Ivermectin; published 7-21-97

Medical devices:

Infant radiant warmer; reclassification from class III to class II; special controls; published 6-19-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

San Francisco lessingia; published 6-19-97

LABOR DEPARTMENT

Occupational Safety and Health Administration

Shipyard employment safety and health standards:

Personal protective equipment; effective date and reporting and recordkeeping requirements; published 6-20-97

LABOR DEPARTMENT

Wage and Hour Division

Service contracts for maintenance of public buildings; nondisplacement of qualified workers under certain contracts; published 5-22-97

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Planning and research:

Federal-aid highway systems changes; comment request; published 6-19-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Fruits, vegetables, and other products, fresh:

Apples; grade standards; comments due by 7-28-97; published 5-29-97

Milk marketing orders:

Tennessee Valley; comments due by 7-31-97; published 7-14-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Hog cholera and swine vesicular disease; disease status change—

Spain; comments due by 7-28-97; published 5-27-97

Plant-related quarantine, domestic:

Gypsy moth; comments due by 7-29-97; published 5-30-97

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Community and insured business programs; servicing loans and grants; comments due by 8-1-97; published 6-2-97

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Community and insured business programs; servicing loans and grants; comments due by 8-1-97; published 6-2-97

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:

Community and insured business programs; servicing loans and grants; comments due by 8-1-97; published 6-2-97

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Community and insured business programs; servicing loans and grants; comments due by 8-1-97; published 6-2-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pacific Ocean perch; comments due by 7-28-97; published 7-16-97

Northeastern United States fisheries—

Summer flounder; comments due by 8-1-97; published 6-2-97

Habitat conservation planning and incidental take permitting process; handbook availability; no surprises policy; comments due by 7-28-97; published 5-29-97

Magnuson-Stevens Fishery Conservation and Management Act; implementation:

Regional fishery management council members appointment; comments due by 7-31-97; published 7-1-97

Pacific Halibut Commission, International:

Pacific halibut fisheries—

Oregon sport fishery; comments due by 7-31-97; published 7-16-97

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Government property; comments due by 8-1-97; published 6-2-97

EDUCATION DEPARTMENT

Special education and rehabilitative services:

Individuals with Disabilities Education Act Amendments of 1997—

Programs implementation; advice and recommendations request; comments due by 7-28-97; published 6-27-97

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Energy conservation:

Renewable energy production incentive program; comments due by 7-31-97; published 6-10-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:

Light-duty vehicles and trucks; on-board diagnostics requirements; comments due by 7-28-97; published 5-28-97
Air programs:
Clean Air Act—
Special exemptions; Guam; comments due by 7-30-97; published 6-30-97
Air quality implementation plans; approval and promulgation; various States:
Indiana; comments due by 7-28-97; published 6-26-97
Missouri; comments due by 8-1-97; published 7-2-97
Tennessee; comments due by 8-1-97; published 7-2-97
Air quality planning purposes; designation of areas:
Nevada; comments due by 7-28-97; published 6-26-97
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 7-30-97; published 6-30-97
Toxic substances:
Significant new uses—
1-Aspartic acid, homopolymer and ammonium and potassium salts, etc.; comments due by 7-28-97; published 6-26-97
Butanamide, 2,2'-[3'dichloro[1,1'-biphenyl]-4,4'-diyl)bisazobis N-2,3-dihydro-2-oxo-1H-benximdazol-5-yl)-3-oxo; comments due by 7-28-97; published 6-26-97
Substituted phenol, etc.; comments due by 7-28-97; published 6-26-97
Water pollution control:
Clean Water Act and Safe Drinking Water Act—
Pollutant analysis test procedures; approval process streamlined; guidelines; correction; comments due by 8-1-97; published 6-26-97
Water quality standards—
Alaska; arsenic human health criteria; withdrawal; comments due by 8-1-97; published 7-18-97

EXECUTIVE OFFICE OF THE PRESIDENT
Central Intelligence Agency
Freedom of Information and Privacy Acts; implementation; comments due by 7-28-97; published 6-16-97

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Commercial mobile services—
Wireless services compatibility with enhanced 911 calling; comments due by 7-28-97; published 7-21-97
Competitive bidding procedures; comments due by 8-1-97; published 7-9-97
Radio stations; table of assignments:
Idaho; comments due by 7-31-97; published 5-21-97

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Government property; comments due by 8-1-97; published 6-2-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Hospital inpatient prospective payment systems and 1998 FY rates; comments due by 8-1-97; published 6-2-97
Mental Health Parity Act of 1996 and Newborns' and Mothers' Health Protection Act of 1996; implementation; comments due by 7-28-97; published 6-26-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Low income housing:
Housing assistance payments (Section 8)—
Fair market rent schedules for rental certificate, loan management, property disposition, moderate rehabilitation, and rental voucher programs; comments due by 7-29-97; published 4-30-97
Mortgage and loan insurance programs:
Direct endorsement mortgagees; delegation of insuring authority; comments due by 8-1-97; published 6-2-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Preble's meadow jumping mouse; comments due by 7-28-97; published 5-5-97
Habitat conservation planning and incidental take permitting process; handbook availability; no surprises policy; comments due by 7-28-97; published 5-29-97

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; geological and geophysical explorations; comments due by 7-29-97; published 5-28-97

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Environmental statements; availability, etc.:
Permanent program regulations, etc.; comments due by 8-1-97; published 5-30-97
Initial and permanent regulatory programs:
Surface coal mining and reclamation operations—
Valid existing rights (VER) definition and claims submission and processing procedures; comments due by 8-1-97; published 5-30-97

JUSTICE DEPARTMENT
Drug Enforcement Administration
Schedules of controlled substances:
Excluded veterinary anabolic steroid implant products; comments due by 7-29-97; published 5-30-97
Exempt anabolic steroid products; comments due by 7-29-97; published 5-30-97

LABOR DEPARTMENT
Employment Standards Administration
Longshore and Harbor Worker's Compensation Act:
Administration and procedure—
Civil penalties; comments due by 8-1-97; published 7-2-97

LABOR DEPARTMENT
Mine Safety and Health Administration
Metal and nonmetal and coal mine safety and health:
Occupational noise exposure; comments due by 8-1-97; published 6-13-97

LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards, etc.:
Ethylene oxide standard; meeting; comments due by 8-1-97; published 5-27-97

LABOR DEPARTMENT
Pension and Welfare Benefits Administration
Mental Health Parity Act of 1996 and Newborns' and Mothers' Health Protection Act of 1996; implementation; comments due by 7-28-97; published 6-26-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Government property; comments due by 8-1-97; published 6-2-97

NORTHEAST DAIRY COMPACT COMMISSION
Compact over-order price regulations; proceedings or petitions to modify or exempt; comments due by 7-30-97; published 6-30-97

NUCLEAR REGULATORY COMMISSION
Byproduct material; domestic licensing:
Funding by non-profit and non-bond issuing licenses; self guarantee; comments due by 7-29-97; published 4-30-97

SMALL BUSINESS ADMINISTRATION
Disaster loan programs:
Legal business entities engaged in agricultural enterprises and non-agricultural business ventures; comments due by 7-31-97; published 7-1-97

TRANSPORTATION DEPARTMENT
Coast Guard
Boating safety regulations; comments due by 7-28-97; published 5-28-97
Coast Guard Authorization Act of 1996; implementation:
International management code for safe operation of ships and pollution prevention; development of parallel U.S. requirements; comments due by 7-30-97; published 5-1-97
Drawbridge operations:
Maryland; comments due by 7-31-97; published 4-21-97

TRANSPORTATION DEPARTMENT
Disadvantaged business enterprises participation in

DOT financial assistance programs; comments due by 7-29-97; published 5-30-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus Industrie; comments due by 7-28-97; published 6-18-97

Bombardier; comments due by 7-28-97; published 5-28-97

British Aerospace; comments due by 7-28-97; published 6-17-97

Dornier; comments due by 7-28-97; published 6-17-97

Pratt & Whitney; comments due by 7-28-97; published 5-27-97

Puritan Bennett Aero Systems Co.; comments due by 7-28-97; published 5-29-97

Class E airspace; comments due by 7-28-97; published 6-11-97

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor carrier safety standards:

Parts and accessories necessary for safe operation—

General amendments; comments due by 7-28-97; published 6-12-97

Safety fitness procedures—

Rating methodology; comments due by 7-28-97; published 5-28-97

Rating methodology; comments due by 7-28-97; published 7-3-97

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Controls and displays, accessibility and visibility; Federal regulatory review; comments due by 7-31-97; published 6-16-97

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:

Hazardous materials transportation—

Non-specification open head fiber drum packaging; authority for shipping certain liquid hazardous materials extended; comments due by 8-1-97; published 6-2-97

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Small Business Job Protection Act of 1996; implementation:

Wine; small producers' tax credit and bond provisions; conforming changes; comments due by 8-1-97; published 6-2-97

TREASURY DEPARTMENT

Fiscal Service

Financial management services:

Indorsement and payment of checks drawn on United States Treasury; reissuance of procedural changes; comments due by 7-29-97; published 5-30-97

UNITED STATES INFORMATION AGENCY

Exchange visitor program:

Au pair programs; participation requirements; comments due by 7-28-97; published 6-27-97

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●**3** (1996 Compilation and Parts 100 and 101)	(869–032–00002–6)	20.00	[1] Jan. 1, 1997
●**4**	(869–032–00003–4)	7.00	Jan. 1, 1997
5 Parts:			
●1–699	(869–032–0004–2)	34.00	Jan. 1, 1997
●700–1199	(869–032–00005–1)	26.00	Jan. 1, 1997
●1200–End, 6 (6 Reserved)	(869–032–00006–9)	33.00	Jan. 1, 1997
7 Parts:			
●0–26	(869–032–00007–7)	26.00	Jan. 1, 1997
●27–52	(869–032–00008–5)	30.00	Jan. 1, 1997
●53–209	(869–032–00009–3)	22.00	Jan. 1, 1997
●210–299	(869–032–00010–7)	44.00	Jan. 1, 1997
●300–399	(869–032–00011–5)	22.00	Jan. 1, 1997
●400–699	(869–032–00012–3)	28.00	Jan. 1, 1997
●700–899	(869–032–00013–1)	31.00	Jan. 1, 1997
●900–999	(869–032–00014–0)	40.00	Jan. 1, 1997
●1000–1199	(869–032–00015–8)	45.00	Jan. 1, 1997
●1200–1499	(869–032–00016–6)	33.00	Jan. 1, 1997
●1500–1899	(869–032–00017–4)	53.00	Jan. 1, 1997
●1900–1939	(869–032–00018–2)	19.00	Jan. 1, 1997
●1940–1949	(869–032–00019–1)	40.00	Jan. 1, 1997
●1950–1999	(869–032–00020–4)	42.00	Jan. 1, 1997
●2000–End	(869–032–00021–2)	20.00	Jan. 1, 1997
●**8**	(869–032–00022–1)	30.00	Jan. 1, 1997
9 Parts:			
●1–199	(869–032–00023–9)	39.00	Jan. 1, 1997
●200–End	(869–032–00024–7)	33.00	Jan. 1, 1997
10 Parts:			
●0–50	(869–032–00025–5)	39.00	Jan. 1, 1997
●51–199	(869–032–00026–3)	31.00	Jan. 1, 1997
●200–499	(869–032–00027–1)	30.00	Jan. 1, 1997
●500–End	(869–032–00028–0)	42.00	Jan. 1, 1997
●**11**	(869–032–00029–8)	20.00	Jan. 1, 1997
12 Parts:			
●1–199	(869–032–00030–1)	16.00	Jan. 1, 1997
●200–219	(869–032–00031–0)	20.00	Jan. 1, 1997
●220–299	(869–032–00032–8)	34.00	Jan. 1, 1997
●300–499	(869–032–00033–6)	27.00	Jan. 1, 1997
●500–599	(869–032–00034–4)	24.00	Jan. 1, 1997
●600–End	(869–032–00035–2)	40.00	Jan. 1, 1997
●**13**	(869–032–00036–1)	23.00	Jan. 1, 1997
14 Parts:			
●1–59	(869–032–00037–9)	44.00	Jan. 1, 1997
●60–139	(869–032–00038–7)	38.00	Jan. 1, 1997
140–199	(869–032–00039–5)	16.00	Jan. 1, 1997
●200–1199	(869–032–00040–9)	30.00	Jan. 1, 1997
●1200–End	(869–032–00041–7)	21.00	Jan. 1, 1997
15 Parts:			
0–299	(869–032–00042–5)	21.00	Jan. 1, 1997
300–799	(869–032–00043–3)	32.00	Jan. 1, 1997
●800–End	(869–032–00044–1)	22.00	Jan. 1, 1997
16 Parts:			
●0–999	(869–032–00045–0)	30.00	Jan. 1, 1997
●1000–End	(869–032–00046–8)	34.00	Jan. 1, 1997
17 Parts:			
●1–199	(869–032–00048–4)	21.00	Apr. 1, 1997
●200–239	(869–028–00053–3)	25.00	Apr. 1, 1996
●240–End	(869–032–00050–6)	40.00	Apr. 1, 1997
18 Parts:			
●1–149	(869–028–00055–0)	17.00	Apr. 1, 1996
150–279	(869–028–00056–8)	12.00	Apr. 1, 1996
280–399	(869–028–00057–6)	13.00	Apr. 1, 1996
●400–End	(869–032–00052–2)	14.00	Apr. 1, 1997
19 Parts:			
●1–140	(869–032–00053–1)	33.00	Apr. 1, 1997
●141–199	(869–032–00054–9)	30.00	Apr. 1, 1997
●200–End	(869–032–00055–7)	16.00	Apr. 1, 1997
20 Parts:			
●1–399	(869–032–00056–5)	26.00	Apr. 1, 1997
●400–499	(869–032–00057–3)	46.00	Apr. 1, 1997
●500–End	(869–032–00058–1)	42.00	Apr. 1, 1997
21 Parts:			
●1–99	(869–032–00059–0)	21.00	Apr. 1, 1997
●100–169	(869–032–00060–3)	27.00	Apr. 1, 1997
●170–199	(869–032–00061–1)	28.00	Apr. 1, 1997
●200–299	(869–032–00062–0)	9.00	Apr. 1, 1997
●300–499	(869–028–00069–0)	50.00	Apr. 1, 1996
500–599	(869–032–00064–6)	28.00	Apr. 1, 1997
●600–799	(869–032–00065–4)	9.00	Apr. 1, 1997
●800–1299	(869–028–00072–0)	30.00	Apr. 1, 1996
●1300–End	(869–032–00067–1)	13.00	Apr. 1, 1997
22 Parts:			
1–299	(869–032–00068–9)	42.00	Apr. 1, 1997
●300–End	(869–032–00069–7)	31.00	Apr. 1, 1997
●**23**	(869–028–00076–2)	21.00	Apr. 1, 1996
24 Parts:			
*●0–199	(869–032–00071–9)	32.00	Apr. 1, 1997
200–499	(869–032–00072–7)	29.00	Apr. 1, 1997
500–699	(869–032–00073–5)	18.00	Apr. 1, 1997
●700–1699	(869–032–00074–3)	42.00	Apr.1, 1997
*●1700–End	(869–032–00075–1)	18.00	Apr. 1, 1997
●**25**	(869–032–00076–0)	42.00	May 1, 1997
26 Parts:			
●§§ 1.0-1–1.60	(869–032–00077–8)	21.00	Apr. 1, 1997
●§§ 1.61–1.169	(869–028–00086–0)	34.00	Apr. 1, 1996
●§§ 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	(869–032–00081–6)	39.00	Apr. 1, 1997
§§ 1.441-1.500	(869-032-00082-4)	22.00	Apr. 1, 1997
§§ 1.501–1.640	(869–032–00083–2)	28.00	Apr. 1, 1997
§§ 1.641–1.850	(869–032–00084–1)	33.00	Apr. 1, 1997
§§ 1.851–1.907	(869–028–00093–2)	26.00	Apr. 1, 1996
*§§ 1.908–1.1000	(869–032–00086–7)	34.00	Apr. 1, 1997
§§ 1.1001–1.1400	(869–032–00087–5)	35.00	Apr. 1, 1997
*§§ 1.1401–End	(869–032–00088–3)	45.00	Apr. 1, 1997
2–29	(869–032–00089–1)	36.00	Apr. 1, 1997
30–39	(869–032–00090–5)	25.00	Apr. 1, 1997
40–49	(869–032–00091–3)	17.00	Apr. 1, 1997
50–299	(869–032–00092–1)	18.00	Apr. 1, 1997
300–499	(869–032–00093–0)	33.00	Apr. 1, 1997
500–599	(869–032–00094–8)	6.00	[4] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–032–00095–3)	9.50	Apr. 1, 1997
27 Parts:			
*1–199	(869–032–00096–4)	48.00	Apr. 1, 1997
200–End	(869–032–00097–2)	17.00	Apr. 1, 1997
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
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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
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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	(869–028–00163–7)	32.00	Oct. 1, 1996
●400–429	(869–028–00164–5)	34.00	Oct. 1, 1996
●430–End	(869–028–00165–3)	44.00	Oct. 1, 1996
43 Parts:			
●1–999	(869–028–00166–1)	30.00	Oct. 1, 1996
●1000–end	(869–028–00167–0)	45.00	Oct. 1, 1996
●44	(869–028–00168–8)	31.00	Oct. 1, 1996
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	(869–028–00172–6)	36.00	Oct. 1, 1996
46 Parts:			
●1–40	(869–028–00173–4)	26.00	Oct. 1, 1996
●41–69	(869–028–00174–2)	21.00	Oct. 1, 1996
●70–89	(869–028–00175–1)	11.00	Oct. 1, 1996
●90–139	(869–028–00176–9)	26.00	Oct. 1, 1996
●140–155	(869–028–00177–7)	15.00	Oct. 1, 1996
●156–165	(869–028–00178–5)	20.00	Oct. 1, 1996
●166–199	(869–028–00179–3)	22.00	Oct. 1, 1996
●200–499	(869–028–00180–7)	21.00	Oct. 1, 1996
●500–End	(869–028–00181–5)	17.00	Oct. 1, 1996
47 Parts:			
●0–19	(869–028–00182–3)	35.00	Oct. 1, 1996
●20–39	(869–028–00183–1)	26.00	Oct. 1, 1996
●40–69	(869–028–00184–0)	18.00	Oct. 1, 1996
●70–79	(869–028–00185–8)	33.00	Oct. 1, 1996
●80–End	(869–028–00186–6)	39.00	Oct. 1, 1996
48 Chapters:			
●1 (Parts 1–51)	(869–028–00187–4)	45.00	Oct. 1, 1996
●1 (Parts 52–99)	(869–028–00188–2)	29.00	Oct. 1, 1996
●2 (Parts 201–251)	(869–028–00189–1)	22.00	Oct. 1, 1996
●2 (Parts 252–299)	(869–028–00190–4)	16.00	Oct. 1, 1996
●3–6	(869–028–00191–2)	30.00	Oct. 1, 1996
●7–14	(869–028–00192–1)	29.00	Oct. 1, 1996
●15–28	(869–028–00193–9)	38.00	Oct. 1, 1996
●29–End	(869–028–00194–7)	25.00	Oct. 1, 1996
49 Parts:			
●1–99	(869–028–00195–5)	32.00	Oct. 1, 1996
●100–185	(869–028–00196–3)	50.00	Oct. 1, 1996
●186–199	(869–028–00197–1)	14.00	Oct. 1, 1996
●200–399	(869–028–00198–0)	39.00	Oct. 1, 1996
●400–999	(869–028–00199–8)	49.00	Oct. 1, 1996
●1000–1199	(869–028–00200–5)	23.00	Oct. 1, 1996
●1200–End	(869–028–00201–3)	15.00	Oct. 1, 1996
50 Parts:			
●1–199	(869–028–00202–1)	34.00	Oct. 1, 1996
●200–599	(869–028–00203–0)	22.00	Oct. 1, 1996
●600–End	(869–028–00204–8)	26.00	Oct. 1, 1996
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[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, 1997. 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.