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Monday
March 9, 1998

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 96–007F]

RIN 0583–AC17

Use of Two Kinds of Poultry Without Label Change

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the poultry products inspection regulations by adding a provision to permit manufacturers of poultry products to interchange the amounts and kinds of poultry, within specified limits, in a product without requiring that each such formulation change have a separate label. The provision applies in situations where two kinds of poultry make up at least 70 percent of the poultry and poultry ingredients used in the product formulation and neither of the two kinds of poultry used constitute less than 30 percent of the poultry and poultry ingredients used. In these situations, one label with the word ''and'' instead of a comma between the names of each of the kinds of poultry in the ingredients statement, and in the product name, indicates to consumers that the order of predominance of the two kinds of poultry may be interchanged. This action is designed to provide consistent provisions for meat and poultry products.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Post, Director, Labeling and Compounds Review Division, Office of Policy, Program Development, and Evaluation, FSIS, (202) 418–8900.

SUPPLEMENTARY INFORMATION:

Background

FSIS, in response to a petition by Judith Quick and Associates dated March 25, 1995, published in the **Federal Register** on December 27, 1996, a proposed rule to amend the poultry products inspection regulations (61 FR 68167). FSIS proposed to permit the interchange of the amounts of two kinds of poultry within specific limits so that poultry product manufacturers would not have to modify the product label if they change the product formulation within those limits. When adopted, this change will make the poultry regulations and the meat regulations more consistent.

Presently, the Federal meat inspection regulations provide that when two red meat species comprise at least 70 percent of the meat and meat byproduct ingredients of a product formulation, and when neither of the two red meat species constitutes less than 30 percent of the total weight of the meat and meat byproducts used, the red meat species may be interchanged in the product formulation without a change being made in the label ingredients statement, provided that the word ''and'' in lieu of a comma is inserted between the declaration of the red meat species in the ingredients statement (9 CFR 317.2(f)(1)(v)). (Meat byproduct ingredients are any parts of a meat animal carcass that are capable of use as human food other than meat.) This provision for red meat was promulgated in response to an industry request to allow red meat processors to utilize different amounts of meat ingredients without having to develop and maintain a large inventory of labels with different ingredients statements. This flexibility of ingredients permits processors to utilize whatever species of red meat is least expensive at the time they are producing the product. At the time, USDA did not include poultry in the coverage of this provision because the poultry industry was not producing further processed poultry products using different poultry kinds on a very widespread scale. Conditions have changed in the poultry industry, however, and FSIS is now extending this labeling flexibility to poultry and poultry ingredients. (Poultry ingredients include such products as giblets, skin, or fat in excess of natural proportions and Mechanically Separated (Kind of Poultry))(MS(K)).

Discussion of the Effect of the Rule

Although the action that FSIS is announcing in this final rule is simple, it is easy to misunderstand. Section 381.118(f), which the Agency is adopting, applies to a poultry product in which, first, at least 70 percent of the poultry (e.g., chicken, turkey, chicken meat, turkey meat) and poultry ingredients (such as giblets, skin and fat in excess of natural proportions and mechanically separated (kind)) consists of two kinds of poultry, exclusive of poultry ingredients; and, second, when neither of the two kinds of poultry, exclusive of poultry ingredients, constitute less than 30 percent of the poultry and poultry ingredients.

As an example, let us consider a simplified product consisting of 29 percent chicken, 28 percent turkey, 22 percent mechanically separated chicken (i.e., a poultry ingredient), and 21 percent peas. The peas can be disregarded, since the rule applies only to the poultry and poultry ingredients. The chicken and turkey together comprise 57/79 of the total of the poultry and poultry ingredients. This is approximately 72 percent. Because the two kinds of poultry (chicken and turkey) are over 70%, the product meets the first requirement. The chicken is approximately 37 percent of the poultry and poultry ingredients and the turkey is approximately 35 percent. Hence, they both meet the second requirement of being greater than 30 percent of the poultry and poultry ingredients. Therefore, this product could be named ''Chicken and Turkey with Peas'' and the ingredient statement would read, in order of predominance as required: ''Chicken and turkey, mechanically separated chicken, and peas.''

As mentioned above, the poultry ingredients are included in the total amount of poultry and poultry ingredients. However, poultry ingredients must constitute no more than 30 percent of this amount, since 70 percent must be the two kinds of poultry. In addition, all the poultry ingredients must be listed separately in the ingredients statement, including the mechanically separated (kind) in accordance with the November 3, 1995, regulatory change in the poultry products inspection regulations (9 CFR 381.117(e)), (60 FR 55962).

In poultry products, the two kinds of poultry that are most often used are

chicken and turkey. Because chicken is generally less costly than turkey, the use and applicability of this rule by poultry processors is limited. But it will be useful in the management of stock on hand to assure that inventory is used in a rational manner without numerous label adjustments. It should also protect the integrity of labeling and assure the consumer of a reasonable standard of consistency in the product name and list of ingredients.

Comments

FSIS received seven comments in response to the proposed rule—two from industry members and five from trade associations. Overall, the comments were in full support of the flexibility provided by the proposal. However, all but one suggested changes that they thought would make the rule more effective.

Most of the comments agreed that the 70/30 flexibility permitted by this rule (denoted by the use of the word ''and'') was needed in the product name as well as the ingredients statement. Otherwise, they pointed out, no benefit would be achieved with this regulatory change.

The Agency agrees with the comments, and thus it has provided in § 381.118(f) for the use of ''and'' in the product's name as well as in the ingredient statement.

Several comments stated that mechanically separated (kind) (MS(K)) poultry (i.e., a poultry ingredient) should be permitted as part of the two kinds of poultry. One comment suggested that, at the time of the petition for this rule change, the standard of identity had not been established for MS(K). Therefore, the petitioner would not have had reason to request the explicit inclusion of MS(K) in the petition. Further, it was suggested that the exclusion of MS(K) would undermine the original intent of the petition and limit the application of this provision so severely that the goals of the petition would not be achieved. Several other comments wanted clarification in the final rule whether MS(K) was permitted as part of the two kinds of poultry.

The purpose of the rule is to make the meat and poultry regulations parallel with regard to this 70/30 provision. Inasmuch as mechanically separated (species) (MS(S)), the red meat food product equivalent to MS(K), cannot be used to fulfill the red ''meat'' requirements under current regulations, MS(K), a poultry food product, cannot be used to fulfill the ''poultry'' requirement. In the proposed rule, FSIS specifically used MS(K) as an example of ''poultry ingredients'' (December 13, 1996, 61 FR 68167, 68168). Because MS(K) is a poultry food product and not ''poultry,'' it cannot be used to fulfill the poultry kind requirement.

Many of the comments suggested that rule permit the use of kinds of poultry and red meat species so that both meat and poultry, e.g., ''beef and chicken'' could be used in the 70/30 combination. The original petitioner did not request the flexibility to vary the amounts of meat species *and* poultry kinds in a product. Thus, this request is outside the scope of the proposed rule and this final rulemaking. Furthermore, the Agency has no information as to consumer expectations for this suggested type of flexibility using both meat and poultry without requiring each formulation change to have a separate label. Lastly, this type of flexibility could affect the appropriateness of the meat or poultry inspection legend on the label and raise standard questions and requirements as to temperatures for specific meat and poultry products. Thus, this type of suggested flexibility will need to wait for further integration of the meat and poultry regulations.

Some commenters requested that the lower level of poultry kind be changed to 20 percent and some requested the change be expanded to 80 percent/20 percent flexibility. The 20 percent lower level suggestion was obtained from FSIS Policy Memos 029 and 030A entitled ''Labeling Poultry Products Containing Livestock Ingredients,'' and ''Labeling Meat Products Containing Poultry Ingredients,'' respectively. The purpose of the policy memos was to distinguish between when a ''species'' or ''kind'' identification is needed as part of the product name as opposed to being used as a product name qualifier. The use of 20 percent of one kind of poultry either in a 70/20 flexibility or in an 80 percent/20 percent flexibility, could disrupt the order of predominance of the ingredients in the ingredient statement and could confound consumer expectations, since the Agency has no data on that subject and none were submitted to support this change.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule. Executive Order 12866 and the Regulatory Flexibility Act.

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

The Administrator has made an initial determination that this rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The rule will provide flexibility in the amount and kinds of poultry that may be used in a formulation without having to change product labels.

Paperwork Requirements

Any paperwork requirements are approved under OMB Control No. 0583–0092.

List of Subjects in 9 CFR Part 381

Food labeling, Meat inspection, Poultry and poultry products.

For the reasons discussed in the preamble, part 381 of the poultry products inspection regulations (9 CFR 381) is amended as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

2. Section 381.118 is amended by adding a new paragraph (f) to read as follows:

§ 381.118 Ingredients statement.

* * * * *

(f) Establishments may interchange the identity of two kinds of poultry (e.g., chicken and turkey, chicken meat and turkey meat) used in a product formulation without changing the product's ingredient statement or product name under the following conditions:

(1)(i) The two kinds of poultry used must comprise at least 70 percent by weight of the poultry and the poultry ingredients [e.g. giblets, skin or fat in excess of natural proportions, or mechanically separated (kind)] used; and,

(ii) Neither of the two kinds of poultry used can be less than 30 percent by weight of the total poultry and poultry ingredients used;

(2) The word ''and'' in lieu of a comma must be shown between the declaration of the two kinds of poultry in the ingredients statement and in the product name.

Done at Washington, DC, on March 2, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–5987 Filed 3–6–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 575

[98–23]

RIN 1550–AB04

Mutual Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its mutual holding company regulations to permit a mutual holding company (MHC) to establish a subsidiary stock holding company that would hold all of the stock of a savings association subsidiary. The final rule permits the establishment of intermediate stock holding companies (SHCs) that will be subject to restrictions that are substantially similar to those currently applicable to MHCs.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: James H. Underwood, Special Counsel (202/906–7354), Dwight C. Smith, Deputy Chief Counsel (202/906–6990), Business Transactions Division, Chief Counsel's Office; Gary Masters, Financial Analyst (202/906–6729) Corporate Activities Division; Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

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I. Background of the Proposal

Responding to inquiries from MHCs and mutual savings associations concerning the formation of second-tier stock holding companies, OTS issued an Advance Notice of Proposed Rulemaking (ANPR) soliciting comment on issues raised by the existence of SHCs.[1] On June 5, 1997, OTS published a notice of proposed rulemaking (NPR) proposing to amend its regulations to permit the establishment and operation of federally chartered mid-tier holding companies.[2] The purpose of the proposed amendment was to enhance the organizational flexibility of the MHC structure and to enable MHCs to compete more effectively in the marketplace. Additionally, permitting the formation of SHCs will allow MHCs, through the SHCs, greater flexibility in structuring stock repurchase programs.

Under current 12 CFR part 575, a mutual savings association may reorganize into a MHC structure where the MHC owns at least a majority of the stock of a subsidiary savings association. Depositors of the mutual savings association continue to maintain a depositor-creditor relationship with the stock savings association subsidiary, while retaining their other indicia of ownership, *e.g.*, voting and liquidation rights, with the MHC. This structure permits the balance of the shares (up to 49.9%) of the stock savings association subsidiary to be sold to the public in one or more offerings when the MHC is formed, or later.

The final rule will permit the MHC to form an SHC to hold all of the shares of the stock savings association subsidiary. The SHC, like the stock savings association subsidiary under the current rule, will be required to issue at least a majority of its shares to the MHC and may issue up to 49.9% of its shares to the public. Under the final rule, the SHC will be required to hold 100% of the shares of the savings association subsidiary. The final rule, like the NPR, provides that the SHC structure may not be used to evade or frustrate the purposes of 12 CFR part 575 or related provisions of 12 CFR part 563b that govern mutual-to-stock conversions by savings associations. OTS' guiding principle with respect to MHC conversion rules is that the substantive and procedural limitations applicable to such transactions should mirror those for a mutual-to-stock conversion of a savings association. This is so insiders or minority shareholders do not get a windfall by achieving something (*e.g.*, a greater ownership interest) through an MHC reorganization and subsequent conversion to stock form that they cannot accomplish through a direct mutual-to-stock conversion of the savings association.

II. General Discussion of the Comments

Eleven commenters responded to the NPR proposal: one savings bank; one mutual holding company; two individuals; three trade groups; and four law firms. All but one of the commenters generally supported the concept of SHCs. The one commenter who did not support the formation of SHCs was opposed to any changes to OTS' rules governing mutual holding companies. Most of the commenters argued for greater flexibility and fewer restrictions on SHCs than set forth in the proposed rule. Two of the trade groups that commented, however, were generally supportive of the rule as proposed.

The final rule is substantially similar to the proposed rule. Specific comments addressing various sections are discussed in the description of the revisions to 12 CFR part 575 set forth below.

III. Analysis of Final Rule

A. Federal Charter and Bylaws for SHCs

OTS proposed that SHCs must be federally chartered. The final rule continues this requirement and defines a SHC as a mutual holding company for purposes of section 10(o) of the Home Owners' Loan Act (HOLA). As a MHC, the SHC is subject to the exclusive jurisdiction of OTS. OTS consistently has interpreted section 10(o) and its legislative history as demonstrating Congress' intent that section 10(o) expressly preempts state law with regard to the creation and regulation of MHCs.[3]

Two commenters questioned whether OTS has the statutory authority to charter SHCs. OTS believes that it has authority under section 10(o) to charter SHCs. Section 10(o)(10)(A) of HOLA defines a mutual holding company as ''a corporation organized as a holding company under [section 10(o) of HOLA].'' Given this broad definition, coupled with the explicit statutory revisions and legislative history expressing Congress' intent that OTS have exclusive authority to charter and regulate MHCs, OTS believes there is a clear statutory basis for OTS to charter a SHC as a mutual holding company.

As indicated in the preamble to the final rule adopting 12 CFR Part 575 in 1993, the mutual holding company provisions were amended by the Financial Institutions Reform, Recovery, And Enforcement Act of 1989, Public L. 101–73, 103 Stat. 183 (1989), to expressly provide that mutual holding companies would be chartered and subject to regulations prescribed by the

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[1] 61 FR 58144 (November 13, 1996).

[2] 62 FR 30778 (June 5, 1997).

[3] *See* 58 FR 44105, 44106–44107 (August 13, 1993) (discussion of OTS' exclusive authority to charter and regulate MHCs).

Director of OTS.[4] The explanatory statement offered at the mark-up of the legislation stated that the amendments ''would provide a clear regulatory framework for MHCs, and unquestionable regulatory authority to the [OTS] by providing that MHCs will be chartered by the [Director of OTS] and subject to OTS regulation.''[5] OTS believes that Congress has set forth a detailed statutory scheme that addresses virtually all of the material aspects of the establishment and corporate governance of a mutual holding company. Thus, it follows that Congress intended for OTS to occupy the field of mutual holding company regulation for savings associations and that requiring SHCs to be federally chartered is consistent with both the statute and Congressional intent.

Moreover, MHC structures are fundamentally different from traditional savings and loan and bank holding companies. Because of their unique hybrid structure—part mutual, part stock—OTS has attempted to ensure that the interests of the mutual members are not diminished or exploited in connection with the formation and operation of the MHC. OTS has been mindful that many MHCs do eventually convert to full stock form under OTS' mutual to stock conversion regulations. Thus, unlike a traditional state-chartered savings and loan holding company, a MHC is the corporate repository of the mutual members' economic and legal interests. OTS' policy has always been that a MHC and its subsidiaries may not take any action that would violate the substantive provisions and policies of the mutual to stock conversion regulations. Treating a SHC as a traditional state-chartered savings and loan holding company would substantially reduce OTS' ability to effectively protect the rights of the mutual members and ensure consistent treatment under the mutual to stock conversion regulations for members of MHCs and members of mutual savings associations that do not form MHCs.

The MHC statute clearly contemplates that the reorganizing savings association will be a directly owned subsidiary of a federally chartered mutual holding company. To permit a state-chartered corporation to control the reorganizing savings association is inconsistent with OTS' occupation of the field of MHC regulation, would diminish OTS' ability to regulate the corporate governance provisions of the intermediate holding company, and create potential conflicts between federal and state regulation. One commenter suggested that OTS could deal with any issues concerning corporate governance provisions by imposing conditions in connection with the approval of the application. OTS questions whether this proposed solution is viable. OTS believes that requiring a federal charter for a SHC is the best means of ensuring consistent and non-conflicting corporate governance provisions for the MHC, the SHC and their savings association subsidiary. This, in turn, would ensure that OTS has adequate authority to protect and balance the interests of all the parties involved in a MHC reorganization.

Requiring SHCs to be federally chartered is also consistent with the statutory requirement under section 10(o)(9) that authorizes the appointment of a trustee as receiver for a MHC that is in default or that has a savings association subsidiary that is in default. Under section 10(o)(9), a trustee has the authority to liquidate the assets of the MHC (and satisfy any liabilities) and distribute the net proceeds to the owners of the MHC or the Federal Deposit Insurance Corporation (''FDIC'') to the extent that the FDIC has suffered any loss as insurer of the savings association subsidiary. By requiring that the SHC be treated as a MHC and be federally chartered, OTS will have clear authority to seek the appointment of a trustee as receiver of a SHC whenever the parent MHC or its SHC or savings association subsidiary is in default. This will ensure that the receiver of the MHC has the maximum flexibility to liquidate the assets of the SHC to ensure that any losses to the FDIC as insurer are minimized.

One commenter argued that section 10(o)(4)(A) of HOLA is inconsistent with the idea that the SHC could be defined as a MHC under the statute. Section 10(o)(4)(A) provides that ''[p]ersons having ownership rights in the mutual association * * * shall have the same ownership rights with respect to the mutual holding company.'' OTS does not agree that this section is inconsistent with the proposal to authorize a federal charter for SHCs. Under the final rule, a SHC must always be controlled by a parent MHC. The members' interest referenced by section 10(o)(4)(A) will reside directly with the parent MHC. As the parent MHC is required to maintain a majority ownership interest in the SHC, the members will also indirectly maintain the same ownership rights in the SHC that they had in the mutual association. OTS believes that having the SHC directly controlled by the parent MHC is consistent with the language and intent of section 10(o)(4)(A) when viewed in the context of the entire statute. OTS also believes the addition of another holding company in the structure does not diminish the interest of the mutual associations' members.

One commenter stated that requiring SHCs to be federally chartered would create problems because of the lack of any developed body of corporate law for SHCs. As indicated in the proposal, OTS will follow the charter, bylaw, and corporate governance provisions that are currently applicable to federal stock savings associations. The corporate governance structure for federal savings associations has been in place over twenty years and the industry and industry counsel are familiar with this system. OTS believes that utilizing the existing corporate governance structure for federal savings associations as a model for SHCs will minimize the burden on SHCs because the existing structure is familiar.

B. Stock Holding Company Powers

Several commenters were in favor of granting unitary savings and loan holding company status to SHCs. They stated that they did not perceive any policy reasons, such as safety and soundness concerns, that support a different treatment for SHCs simply because they are controlled by a MHC. As indicated in the NPR, OTS believes that it is not appropriate to treat SHCs as unitary savings and loan holding companies under the mutual holding company statute. Congress chose to limit the activities of MHCs to those permitted for multiple savings and loan holding companies and bank holding companies when it authorized MHCs as part of the Competitive Equality Banking Act of 1987 (CEBA). Although the legislative history of CEBA does not indicate why, it is reasonable to assume that Congress was aware of the unique nature of mutual institutions and their relationship with these newly authorized holding companies and wished to limit the activities of MHCs to those more closely related to banking.

OTS believes that limiting the activities of a SHC to those permitted to the parent MHC is consistent with the statute. Therefore, the final rule does not authorize SHCs to engage in activities beyond those specified in section 10(o)(5) of the statute. OTS notes, however, that a SHC may utilize its authority under section 10(o)(5) and 12 CFR 575.10(a)(6) to acquire subsidiaries engaged in (i) any activity authorized under 12 CFR Part 559 or (ii)

[4] *Id*. Under the original MHC provisions adopted as part of the Competitive Equality Banking Act of 1987, it was unclear whether MHCs would be federally chartered or state-chartered entities.

[5] *Id*. at 44106.

activities approved for service corporations of state-chartered savings associations in the state where the SHC's savings association subsidiary has its home office.

C. Regulatory Restrictions on Stock Pledges, Dividend Waivers, Indemnification and Employment Contracts

The final rule adopts the provisions set forth in the NPR governing stock pledges, dividend waivers, indemnification, and employment contracts without any changes. Similar to the response to the ANPR, several commenters argued that it was unnecessary and inappropriate to impose the same restrictions on SHCs that currently apply to MHCs and their savings association subsidiaries. Several commenters, however, supported the rule as proposed. OTS, for the reasons stated in the NPR and discussed below, does not find the arguments of the commenters opposed to the proposed rule persuasive. As noted in the preamble to the NPR, OTS' intent is to increase the flexibility of the MHC structure without diminishing the safeguards Congress imposed in adopting the statute.

With respect to stock pledges, section 10(o)(8) requires that the pledging of a savings association's stock by its parent MHC increase the capital of the savings association. OTS believes this restriction should apply equally to both an MHC and an SHC. Applying this restriction to the SHC is consistent with the statute and will ensure that any borrowing using the savings association subsidiary's stock or the SHC's stock as collateral will directly benefit the FDIC-insured savings association.

Regarding dividend waivers, one commenter stated that no restrictions should apply to the SHC since it has no mutual members, and its board of directors has no fiduciary duties to such mutual members. OTS does not agree with this assertion. The same concerns that are present when dividends are paid by a savings association subsidiary to its minority stockholders but waived by the MHC are present when dividends are paid to minority stockholders of an SHC and waived by the parent MHC. In both cases, the board of directors of the MHC must approve a waiver of the dividend payments, and their fiduciary obligation is the same in each instance. It is important in either instance that the value of the waived dividends be retained for the benefit of the members of the MHC to prevent potential windfalls to the minority shareholders in a subsequent conversion of the MHC.

One commenter suggested that the SHC be permitted to issue two classes of voting stock with identical features except that one class would not have the right to receive any dividend payments. Under this scheme, the MHC would receive the class of shares without dividend rights while minority shareholders would receive the dividend-paying class. This proposal would have precisely the same impact as removing the dividend waiver restrictions that protect the interests of the MHC mutual members, a result that OTS rejects. If dividends could be paid only to the minority shareholders this would divert the earnings of the savings association to the minority shareholders at the expense of the MHC. For example, if a savings association subsidiary had 40% of its voting shares held by minority shareholders and earned a million dollars, it would be able to pay out $1,000,000 to its minority shareholders instead of the $400,000 permitted under the existing rules. In effect, the $600,000 that would normally be attributable to the parent MHC would be diverted to the minority stockholders.

The use of dual classes of stock is problematic for several additional reasons. First, it would purport to relieve the MHC's board of directors from its fiduciary obligation to determine that the proposed dual stock structure of the SHC is consistent with the interests of the mutual members of the MHC. Under current rules, the board of directors of the MHC must make an express determination that a waiver of dividends from the savings association subsidiary is consistent with the board's fiduciary duties to the members of the MHC. Use of the dual stock structure, in which the MHC would receive no dividends, would allow the MHC board effectively to approve a blanket dividend waiver without knowing the amounts that would be relinquished by the MHC or what consequences might flow from the MHC's inability to receive dividends in the future.

Dual classes of stock would also create an obvious conflict for the MHC board members who were also minority shareholders of the SHC. These board members would have substantial, personal economic incentives to maximize the payment of dividends, notwithstanding the loss in value to the majority stockholder, the MHC and the mutual members—to whom these directors owe a fiduciary duty. The dual stock structure would also permit the minority shareholders to argue that there should be no dilution of their ownership interests in the event of a conversion of the MHC since no dividend waivers would have occurred. OTS believes that this would completely elevate form over economic substance and grant an inappropriate windfall to the SHC's minority shareholders. For these reasons, no change was made to final rule regarding the treatment of waived dividends.

Another commenter argued that it was particularly inappropriate to impose any restrictions relating to indemnification or employment contracts on SHCs that are more stringent than those imposed on other savings and loan holding companies. Since OTS believes SHCs should be treated as MHCs for the reasons stated above, OTS has determined to impose the same indemnification and employment contract restrictions on SHCs that are currently imposed on MHCs. Thus, the final rule is adopted without any changes to the indemnification or employment contract provisions.

D. SHC Stock Issuances, Stock Repurchases, and Conversion of the MHC

Commenters generally supported the proposed rule on the issue of stock repurchases. Several commenters objected to OTS' interpretation that restricts SHCs (or savings association subsidiaries under the current rule) from issuing stock to complete a merger transaction without first offering the stock to mutual members on a priority basis. A commenter argued that it was inappropriate to continue to grant mutual members priority subscription rights where the shares were being issued in a stock-for-stock merger transaction. Commenters suggested that OTS should consider other factors, including management obtaining a fairness opinion, the value of the company being acquired, and whether the shares of the SHC are actively traded on NASDAQ or a stock exchange in determining whether to permit stock-for-stock mergers without priority subscription rights.

While OTS recognizes that there are reasonable arguments in favor of changing the current policy, OTS still believes that, on balance, mutual members should be granted a first priority subscription right for stock issued by a savings association subsidiary or an SHC. As stated in the NPR, OTS is aware that this may result in MHCs having less flexibility than a traditional savings and loan holding company. This is consistent with the fact that the MHC structure is a unique hybrid corporate structure, part mutual and part stock, that has both advantages and disadvantages. OTS also notes that this issue is not unique to SHCs. OTS'

interpretation of 12 CFR 575.7 on stock issuances also applies to issuances of stock by savings association subsidiaries that are not owned by an SHC.

For this reason and the other reasons cited above, OTS generally will continue to require that mutual members be granted a first priority subscription interest for stock issued by savings associations and SHCs. OTS notes, however, that Section 575.7(d)(6) currently provides that OTS may permit a non-conforming stock issuance where the applicant demonstrates that it would be more beneficial to the issuing savings association. Under this provision, the OTS believes that properly structured merger transactions that do not grant priority subscription rights may qualify for approval and OTS is willing to consider and approve such transactions on a case-by-case basis.

Most commenters generally supported permitting SHCs to engage in stock repurchases on the same basis as a savings association subsidiary of a MHC. The final rule provides that SHCs may not engage in stock repurchases during the three year period following issuance of the stock without the prior approval of OTS. This will permit OTS to evaluate the purpose and reasons for the stock repurchases on a case-by-case basis. OTS does not anticipate that it will permit repurchases in amounts greater than those that have generally been permitted under the mutual to stock conversion regulations.[6]

One commenter requested that OTS clarify that it would not impose stricter standards in reviewing stock repurchases by SHCs and savings association subsidiaries of MHCs than those imposed on savings associations converted under 12 CFR Part 563b. Another commenter requested that OTS revise 12 CFR 575.11(c) to add the additional safe-harbor purchases allowed under the mutual to stock conversion regulations.[7] OTS does not believe that it is necessary or appropriate to include these safe-harbor provisions for SHCs for the reasons discussed below. OTS also does not believe that it should impose a rigid or inflexible standard on stock repurchases by subsidiaries of MHCs.

MHCs, unlike a savings association undertaking a traditional mutual to stock conversion, have control over the amount of capital raised in a stock offering. Thus, MHCs should not be subject to the same pressures of finding appropriate investments for the new capital as fully converted savings associations. Since management has more control over the amount of capital raised by a MHC, OTS will consider this fact when reviewing requests for stock repurchases that occur during the three years following the issuance of the stock. Each request, however, will be reviewed on a case-by-case basis and a decision to grant or deny the request will be based upon all of the relevant facts presented in the request. OTS also notes that after the initial three-year period following issuance of the stock by a SHC, a SHC may engage in stock repurchases subject only to the restrictions that are applicable to savings associations generally.[8]

Upon further consideration of stock repurchase issues, OTS is revising 12 CFR 575.11(c) as proposed to restrict the ability of SHCs to engage in open-market repurchases during the three-year period following the issuance of the stock to fund employee stock benefit plans without obtaining the prior approval of OTS. Because of the potential amounts that may be involved in funding employee stock benefit plans (10% for stock option plans, 4% for management recognition plans, 8% for employee stock option plans, plus any amounts for other tax-qualified or non-tax-qualified plans), and OTS' desire to more closely monitor repurchases by a SHC that occur shortly after a stock issuance, the final rule eliminates this safe-harbor provision. This will also ensure that the stock repurchase provisions affecting employee stock benefit plans for SHCs are consistent with the provisions for converted savings associations under 12 CFR part 563b.

In the NPR, OTS stated its intention to permit SHCs that are formed subsequent to the initial MHC reorganization and stock issuance to ''tack on'' or include the period that the shares issued by the savings association were outstanding in calculating the three-year period that stock repurchases are restricted. All of the comments on this issue were favorable. One commenter requested that OTS make the ''tacking'' period an explicit part of section 575.11(c). OTS reiterates its intention to permit SHCs that are formed after an initial MHC reorganization to include the period that any minority shares of the savings association were outstanding in determining the applicability of the three-year repurchase restriction under 12 CFR 575.11(c) and the final rule has been revised to reflect this policy.

[6] *See* 12 CFR 563b.3(g) (1997).

[7] *See* 12 CFR 563b.3(g) (1997).

[8] *See* 12 CFR 563.134 (1997).

IV. Paperwork Reduction Act of 1995

The reporting and recordkeeping requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB Control No. 1550–0072. Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503 with copies to OTS, 1700 G Street, NW., Washington, DC 20552.

The reporting/recordkeeping requirements contained in this final rule are found at 12 CFR part 575. The information is needed by OTS in order to supervise savings associations and mutual holding companies and develop regulatory policy. The likely respondents/recordkeepers are OTS-regulated savings associations and mutual holding companies.

Records are to be maintained in accordance with normal and customary business practices as recommended by private counsel, accountants, etc., but no less than three years.

Respondents/recordkeepers are not required to respond to this collection of information unless the collection displays a currently valid OMB control number. The valid control number assigned to the collection of information in this final rule is displayed at 12 CFR 506.1(b).

V. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

VI. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this final rule will not have a significant impact on a substantial number of small entities. The final rule will create additional organizational flexibility for all savings associations that create mutual holding company structures.

VII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the

Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VIII. Effective Date

Section 553(d) of the Administrative Procedure Act generally requires an agency to publish a substantive rule at least 30 days before its effective date. Section 553(d) of the APA permits waiver of the 30-day delayed effective date requirement for, *inter alia*, good cause or where a rule relieves a restriction. Under the current rule, MHCs are not permitted to form SHCs. Waiver of the 30-day delayed effective date would relieve this restriction and permit MHCs to utilize this structure immediately upon the effective date. For this reason, OTS finds that the 30-day delayed effective date may be waived.

List of Subjects in 12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends chapter V, title 12, Code of Federal Regulations, as follows:

PART 575—MUTUAL HOLDING COMPANIES

1. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

2. Section 575.2 is amended by revising paragraphs (h) and (o) and adding paragraph (q) to read as follows:

§ 575.2 Definitions.

* * * * *

(h) The term *mutual holding company* means a mutual holding company organized under this part, and unless otherwise indicated, a subsidiary holding company controlled by a mutual holding company, organized under this part.

* * * * *

(o) The term *Stock Issuance Plan* means a plan, submitted pursuant to § 575.7 and containing the information required by § 575.8, providing for the issuance of stock by:

(1) A savings association subsidiary of a mutual holding company; or

(2) A subsidiary holding company.

* * * * *

(q) The term *subsidiary holding company* means a federally chartered stock holding company, controlled by a mutual holding company, that owns the stock of a savings association whose depositors have membership rights in the parent mutual holding company.

3. Section 575.6 is amended by redesignating paragraphs (c) through (i) as paragraphs (d) through (j) and adding a new paragraph (c) to read as follows:

§ 575.6 Contents of Reorganization Plans.

* * * * *

(c) If the reorganizing association proposes to form a subsidiary holding company, provide for the organization of a subsidiary holding company and attach and incorporate the proposed charter and bylaws of such subsidiary holding company.

* * * * *

4. Section 575.10 is amended by:

a. Removing, in the introductory text of paragraph (a)(2), the phrase ''the holding company'', and by adding in lieu thereof the phrase ''the parent mutual holding company';

b. Revising the first sentence of paragraph (a)(3);

c. Revising the first sentence of paragraph (a)(4);

d. Revising paragraph (a)(6)(i)(B); and

e. Revising the first sentence of paragraph (b)(1).

The revisions read as follows:

§ 575.10 Acquisition and disposition of savings associations, savings and loan holding companies, and other corporations by mutual holding companies.

(a) * * *

(3) *Mutual holding companies.* A mutual holding company that is not a subsidiary holding company may acquire control of another mutual holding company, including a subsidiary holding company, by merging with or into such company, provided the necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this chapter. * * *

(4) *Stock holding companies.* A mutual holding company may acquire control of a savings and loan holding company in the stock form that is not a subsidiary holding company, provided the necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this chapter. * * *

* * * * *

(6) * * *

(i) * * *

(B) It is lawful for the stock of such corporation to be purchased by a federal savings association under part 559 of this chapter or by a state savings association under the law of any state where any subsidiary savings association of the mutual holding company has its home office; and

* * * * *

(b) *Dispositions*—(1) A mutual holding company shall provide written notice to the OTS at least 30 days prior to the effective date of any direct or indirect transfer of any of the stock that it holds in a subsidiary holding company, a resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company, including stock transferred in connection with a pledge pursuant to § 575.11(b) or any transfer of all or a substantial portion of the assets or liabilities of any such subsidiary holding company or association. * * *

* * * * *

5. Section 575.11 is amended by:

a. Revising paragraph (b)(1) introductory text, redesignating existing paragraph (b)(1)(ii) as paragraph (b)(1)(iii), and adding a new paragraph (b)(1)(ii);

b. Revising paragraph (b)(2);

c. Revising the introductory text of paragraph (c) and paragraphs (c)(1) and (c)(3); and

d. Revising paragraph (e).

The revisions and addition read as follows:

§ 575.11 Operating restrictions.

* * * * *

(b) *Pledging stock*—(1) No mutual holding company may pledge the stock of its resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company (or its parent mutual holding company), unless the proceeds of the loan secured by the pledge are infused into the association whose stock is pledged. No mutual holding company may pledge the stock of its subsidiary holding company unless the proceeds of the loan secured by the pledge are infused into any savings association subsidiary of the subsidiary holding company that is a resulting association, an acquiree association, or a subsidiary savings association that was in the mutual form when acquired by the subsidiary holding company (or its parent mutual holding company). In the event the subsidiary holding company has more than one savings association subsidiary, the loan proceeds shall, unless otherwise approved by the OTS, be infused in equal amounts to each

savings association subsidiary. Any amount of the stock of such association or subsidiary holding company may be pledged for these purposes. Nothing in this paragraph (b)(1) shall be deemed to prohibit:

* * * * *

(ii) The payment of dividends from a subsidiary holding company to its mutual holding company parent to the extent otherwise permissible; or

* * * * *

(2) Within ten days after its pledge of stock pursuant to paragraph (b)(1) of this section, a mutual holding company shall provide written notice to the OTS regarding the terms of the transaction (including the amount of principal and interest, repayment terms, maturity date, the nature and amount of collateral, and the terms governing seizure of the collateral) and shall include in such notice a certification that the proceeds of the loan have been transferred to the subsidiary savings association whose stock (or the stock of its parent subsidiary holding company) has been pledged.

* * * * *

(c) *Restrictions on stock repurchases.* No subsidiary savings association of a mutual holding company that has any stockholders other than the association's mutual holding company and no subsidiary holding company that has any stockholders other than its parent mutual holding company shall repurchase any share of stock within three years of its date of issuance (which may include the time period the shares issued by the savings association were outstanding if the subsidiary holding company was formed after the initial issuance by the savings association), unless the repurchase:

(1) Is part of a general repurchase made on a pro rata basis pursuant to an offer approved by the OTS and made to all stockholders of the association or subsidiary holding company (except that the parent mutual holding company may be excluded from the repurchase with the OTS' approval);

* * * * *

(3) Is purchased in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan of the savings association (but not of a subsidiary holding company) in an amount reasonable and appropriate to fund such plan.

* * * * *

(e) *Restrictions on issuance of stock to insiders.* A subsidiary of a mutual holding company that is not a savings association or subsidiary holding company may issue stock to any insider, associate of an insider or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company or any subsidiary of the mutual holding company, provided that such persons or plans provide written notice to the OTS at least 30 days prior to the stock issuance. Subsidiary savings associations and subsidiary holding companies may issue stock to such persons only in accordance with § 575.7.

* * * * *

6. Section 575.12 is amended by:

a. Revising paragraph (a)(2);

b. Revising paragraphs (b)(1)(ii) and (b)(1)(iii); and

c. Revising paragraph (b)(2).

The revisions read as follows:

§ 575.12 Conversion or liquidation of mutual holding companies.

(a) * * *

(2) Exchange of savings association stock. Any stock issued pursuant to § 575.7 by a subsidiary savings association or subsidiary holding company of a mutual holding company to persons other than the parent mutual holding company may be exchanged for the stock issued by the parent mutual holding company in connection with the conversion of the parent mutual holding company to stock form. The parent mutual holding company and the subsidiary holding company or savings association must demonstrate to the satisfaction of the OTS that the basis for the exchange is fair and reasonable.

(b) * * * (1) * * *

(ii) The default of the parent mutual holding company or its subsidiary holding company; or

(iii) Foreclosure on any pledge by the mutual holding company of subsidiary savings association stock or subsidiary holding company stock pursuant to § 575.11(b).

(2) Except as provided in paragraph (b)(3) of this section, the net proceeds of any liquidation of any mutual holding company shall be transferred to the members of the mutual holding company or the stock holders of the subsidiary holding company in accordance with the charter of the mutual holding company or subsidiary holding company.

* * * * *

7. Section 575.14 is added to read as follows:

§ 575.14 Subsidiary holding companies.

(a) *Subsidiary holding companies.* A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its savings association subsidiary. The formation and operation of the subsidiary holding company may not be utilized as a means to evade or frustrate the purposes of this part 575 or part 563b of this chapter. The subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date, subject to the approval of the OTS.

(b) *Stock issuances.* For purposes of §§ 575.7 and 575.8, the subsidiary holding company shall be treated as a savings association issuing stock and shall be subject to the requirements of those sections. In the case of a stock issuance by a subsidiary holding company, the aggregate amount of outstanding common stock of the association owned or controlled by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance shall be less than 50% of the subsidiary holding company's total outstanding common stock.

(c) *Charters and bylaws for subsidiary holding companies*—(1) *Charters.* The charter of a subsidiary holding company shall be in the form set forth in this paragraph (c)(1) and may include any of the additional provisions permitted pursuant to paragraph (c)(2) of this section. The form of the charter is as follows:

Federal MHC Subsidiary Holding Company Charter

Section 1. Corporate title. The full corporate title of the MHC subsidiary holding company is XXX.

Section 2. Domicile. The domicile of the MHC subsidiary holding company shall be in the city of _____, in the state of _____.

Section 3. Duration. The duration of the MHC subsidiary holding company is perpetual.

Section 4. Purpose and powers. The purpose of the MHC subsidiary holding company is to pursue any or all of the lawful objectives of a federal mutual holding company chartered under section 10(o) of the Home Owners' Loan Act, 12 U.S.C. 1467a(o), and to exercise all of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision (''Office'').

Section 5. Capital stock. The total number of shares of all classes of the capital stock that the MHC subsidiary holding company has the authority to issue is _____, all of which shall be common stock of par [or if no par is specified then shares shall have a stated] value of _____ per share. The shares may be issued from time to time as authorized by the board of directors without the approval of its shareholders, except as

otherwise provided in this section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the MHC subsidiary holding company. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted to the MHC subsidiary holding company), labor, or services actually performed for the MHC subsidiary holding company, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the MHC subsidiary holding company, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the MHC subsidiary holding company that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the MHC subsidiary holding company, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons (except for shares issued to the parent mutual holding company) of the MHC subsidiary holding company other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors, unless the charter provides that there shall be no such cumulative voting. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the MHC subsidiary holding company, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the MHC subsidiary holding company, to receive the remaining assets of the MHC subsidiary holding company available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the MHC subsidiary holding company shall not be entitled to preemptive rights with respect to any shares of the MHC subsidiary holding company which may be issued.

Section 7. Directors. The MHC subsidiary holding company shall be under the direction of a board of directors. The authorized number of directors, as stated in the MHC subsidiary holding company's bylaws, shall not be fewer than five nor more than fifteen except when a greater or lesser number is approved by the Director of the Office, or his or her delegate.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is proposed by the board of directors of the MHC subsidiary holding company, approved by the shareholders by a majority of the votes eligible to be cast at a legal meeting, unless a higher vote is otherwise required, and approved or preapproved by the Office.

Attest: _____
Secretary of the Subsidiary Holding Company

By: _____
President or Chief Executive Officer of the Subsidiary Holding Company

Attest: _____
Secretary of the Office of Thrift Supervision

By: _____
Director of the Office of Thrift Supervision

Effective Date: _____

(2) *Charter amendments.* The rules and regulations set forth in § 552.4 of this chapter regarding charter amendments and reissuances of charters (including delegations and filing instructions) shall be applicable to subsidiary holding companies to the same extent as if the subsidiary holding companies were Federal stock savings associations, except that, with respect to the pre-approved charter amendments set forth in § 552.4 of this chapter, the reference to home office in § 552.4(b)(2) of this chapter shall be deemed to refer to the domicile of the subsidiary holding company and the requirements of § 545.95 of this chapter shall not apply to subsidiary holding companies.

(3) *Bylaws.* The rules and regulations set forth in § 552.5 of this chapter regarding bylaws (including their content, any amendments thereto, delegations, and filing instructions) shall be applicable to subsidiary holding companies to the same extent as if subsidiary holding companies were federal stock savings associations. The model bylaws for Federal stock savings associations set forth in the OTS Applications Processing Handbook shall also serve as the model bylaws for subsidiary holding companies, except that the term ''association'' each time it appears therein shall be replaced with the term ''Subsidiary Holding Company.''

(4) *Annual reports and books and records.* The rules and regulations set forth in §§ 552.10 and 552.11 of this chapter regarding annual reports to stockholders and maintaining books and records shall be applicable to subsidiary holding companies to the same extent as if subsidiary holding companies were federal stock savings associations.

Dated: March 3, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–5896 Filed 3–6–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–08; Amendment 39–10260; AD 97–26–17]

RIN 2120–AA64

Airworthiness Directives; Teledyne Continental Motors IO–360, TSIO–360, LTSIO–360, IO–520, LIO–520, TSIO–520, LTSIO–520 Series, and Rolls-Royce plc IO–360 and TSIO–360 Series Reciprocating Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to airworthiness directive (AD) 97–26–17 applicable to certain Teledyne Continental Motors (TCM) IO–520 and TSIO–520 engines that was published in the **Federal Register** on December 19, 1997 (62 FR 66502). The address information for the contact engineer in the **FOR FURTHER INFORMATION CONTACT** section and the manufacturer's telephone number in the **ADDRESSES** section and paragraph (f) of the Compliance Section is incorrect. This document corrects that information. In all other respects, the original document remains the same.

EFFECTIVE DATE: March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1895 Phoenix Blvd., One Crown Center, Suite 450, Atlanta, GA 30349, (770) 703–6096, fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Teledyne Continental Motors (TCM) IO–360, TSIO–360, LTSIO–360, IO–520 and TSIO–520 series reciprocating engines, was published in the **Federal Register** on December 19, 1997 (62 FR 66502). The following correction is needed:

On page 66502, in the second column, in the **ADDRESSES** section, ''telephone (334) 438–3411'' is corrected to read ''telephone (888) 826–5874''.

On page 66502, in the third column, in the **FOR FURTHER INFORMATION CONTACT** Section, ''Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Ave., Suite 2–160, College Park, GA 30337–2748; telephone (404) 305–7371, fax (404) 305–7348.'' is corrected to read ''Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1895 Phoenix Blvd., One Crown Center, Suite 450, Atlanta, GA 30349, (770) 703–6096, fax (770) 703–6097.''.

§ 39.13 [Corrected]

On page 66506, in the second column, in the Compliance section of AD 97–26–17, in paragraph (f), ''telephone (334) 438–3411'' is corrected to read ''telephone (888) 826–5874''.

Issued in Burlington, MA, on February 26, 1998.

Ronald L.Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–5798 Filed 3–6–98; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5, and 31

Fees for Applications for Contract Market Designation, Leverage Commodity Registration and Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission periodically adjusts fees charged for certain program services to assure that they accurately reflect current Commission costs. In this regard, the staff recently reviewed the Commission's actual costs of processing applications for contract market designation (17 CFR part 5, appendix B), audits of leverage transaction merchants (17 CFR part 31, appendix B) and registered futures association and exchange rule enforcement and financial reviews (17 CFR part 1, appendix B). The following fee schedule for fiscal year 1998 reflects the average annual actual costs to the Commission of providing those services during fiscal years 1995, 1996, and 1997. Accordingly, the Commission will charge the following fees: applications for contract market designation for a futures contract will be reduced from $8,300 to $7,900; contract market designation for an option contract will be reduced from $1,700 to $1,600; and contract markets that simultaneously submit designation applications for a futures contract and an option on that futures contract will be reduced from a combined fee of $9,000 to a combined fee of $8,500. In addition, the Commission is publishing the schedule of fees for registered futures association and exchange rule enforcement and financial reviews.

EFFECTIVE DATES: The Fee Schedule for Contract Market Designation is effective on March 9, 1998. Registered Futures Association and Exchange Rule Enforcement and Financial Review fees are due May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Gerald P. Smith, Special Assistant to the Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, 202–418–5160.

SUPPLEMENTARY INFORMATION: The Commission periodically reviews the actual costs of providing services for which fees are charged and adjusts these fees accordingly. In connection with its most recent review, the Commission has determined that fees for contract market designations should be adjusted. Also, this release announces the fiscal year 1998 schedule of fees for registered futures association and exchange rule enforcement and financial reviews and leverage commodity registration fees.

Background Information

I. Computation of Fees

The Commission has established fees for certain activities and functions it performs.[1] In calculating the actual cost of processing applications for contract market designation, registering leverage commodities, and performing registered futures association and exchange rule enforcement and financial reviews, the Commission takes into account personnel costs (direct costs) and benefits and administrative costs (overhead costs).

The Commission first determines personnel costs by extracting data from the agency's Management Accounting Structure Codes (MASC) system. Employees of the Commission record the time spent on each project under the MASC system. The Commission then adds an overhead factor that is made up of two components—benefits and general and administrative costs. Benefits, which include retirement, insurance and leave, are based on a government-wide standard established by the Office of Management and Budget. General and administrative costs include the Commission's costs for space, equipment, utilities, etc. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for prior fiscal years were 92% in 1995, 98% in 1996 and 91% in 1997.

Once the total personnel costs for each fee item (contract market designation, rule enforcement review, etc.) have been determined for each year, the overhead factor is applied and the costs for fiscal years 1995, 1996 and 1997 are averaged. This results in a calculation of the average annual cost over the three-year period.

II. Applications for Contract Market Designation

On August 23, 1983, the Commission established a fee for Contract Market Designation (48 FR 38214). The fee was based upon a three-year moving average of the actual costs expended and the number of contracts reviewed during that period of time. The formula for determining the fee was revised in 1985. At that time the overwhelming majority of designation applications was for futures contracts as opposed to option contracts. Therefore, the fee covered both futures and option designation applications. In fiscal year 1992, the Commission reviewed its data on the actual costs for reviewing designation applications for both futures and option contracts and determined that the costs for reviewing a futures contract designation application was much higher than the cost of reviewing an application for an option contract. It also determined that, when designation applications for both a futures contract and an option on that futures contract are submitted simultaneously, the cost for reviewing both together was lower than reviewing them individually. Based on that review, separate fees were established for futures, option and combined futures and option contracts.

The Commission staff reviewed the actual costs of processing applications for contract market designation for a futures contract for fiscal years 1995, 1996, and 1997 and found that the

[1] See Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

average cost over the three-year period was $7,939.48. The review of actual costs of processing applications for contract market designation for an option contract for fiscal years 1995, 1996 and 1997 revealed that the average costs over the same three-year period was $1,628.67. Accordingly, the Commission has determined that the fee for applications for contract market designation for a futures contract will be reduced to $7,900 and the fee for applications for contract market designation as an option contract will be reduced to $1,600 in accordance with the Commission's regulations (17 CFR part 5, Appendix B). In addition, the combined fee for contract markets simultaneously submitting designation applications for a futures contract and an option contract on that futures contract will be reduced to $8,500.

III. Leverage Commodity Registration

No new applications for leverage commodity registration have been received for approximately ten years. Accordingly, the Commission will not publish a fee for this service.

IV. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

Under the formula adopted in 1993 (58 FR 42643, August 11, 1993, which appears in 17 CFR Part I, Appendix B), the Commission calculates the rule enforcement and financial review fees based on its actual costs as well as actual exchange trading volume. The formula for calculating the rule enforcement and financial review fee is 0.5a + 0.5vt=current fee. In the formula, ''a'' equals the average annual costs, ''v'' equals the percentage of total volume across exchanges over the last three years and ''t'' equals the average annual cost for all exchanges.

To determine the fee, the staff first calculates actual costs for the last three fiscal years. The average annual costs for that time period for rule enforcement reviews and financial reviews for each exchange are as follows:

Exchange	FY 1995–1997 average annual costs for review services
Chicago Board of Trade	$292,692.79
Chicago Mercantile Exchange	202,687.56
New York Mercantile/COMEX Exchange	208,224.10
Coffee Sugar and Cocoa Exchange	75,516.41
New York Cotton/New York Futures Exchange	141,279.28
Kansas City Board of Trade	11,266.57
Minneapolis Grain Exchange	24,991.23
Philadelphia Board of Trade	624.35
Total	957,282.29

Then, the staff calculates the trading volume for the past three fiscal years to determine the cumulative volume for each exchange and its percentage of total volume across all exchanges during that same period. The trading volume figures for that period are as follows:

Exchange	FY 1995–1997 cumulative volume (# of contracts)	Percentage of total volume across all exchanges
Chicago Board of Trade	668,713,095	43.9419
Chicago Mercantile Exchange	558,542,483	36.7024
New York Mercantile/COMEX Exchange	229,833,443	15.1026
Coffee, Sugar and Cocoa Exchange	35,725,840	2.3476
New York Cotton/New York Futures Exchange	19,593,431	1.2875
Kansas City Board of Trade	6,190,142	0.4068
Minneapolis Grain Exchange	3,092,736	0.2032
Philadephia Board of Trade	121,721	0.0080
Total	1,521,812,891	100.00

Finally, the staff calculates the current fees by applying the appropriate exchange data to the formula. The following is an example of how the rule enforcement and financial review fees for exchanges are calculated:

The Minneapolis Grain Exchange (MGE) average annual cost is $24,991.23 and its percentage of total volume over the last three years is 0.2032. The annual average total cost for all exchanges during that same time period is $957,282.29. As a result, the MGE fee for fiscal 1997 is: (.5) ($24,991.23)+(.5) (.002032) ($957,282.79)=current fee or $12,495.62+$972.73=$13,468.35.

As stated in 1993 when the formula was adopted, if the calculated fee using this formula is higher than actual costs, the exchange pays actual costs. If the calculated fee using the formula is less than actual costs, the exchange pays the calculated fee. No exchange will pay more than actual costs. Also, if an exchange has no volume over the three-year period, it pays a flat 50% of actual costs.

The National Futures Association (NFA) is a registered futures association which is responsible for regulating the practices of its members. In its oversight role, the Commission performs rule enforcement and financial reviews of the NFA. The Commission's average annual cost for reviewing the National Futures Association during fiscal years 1995 through 1997 was $344,364.39. The National Futures Association will continue to be charged 100% of its actual costs.

Based upon this formula, the fees for all of the exchanges and the NFA for fiscal 1998 are as follows:

Exchange	FY 1998 fee
Chicago Board of Trade	$292,692.79
Chicago Mercantile Exchange	202,687.56
New York Mercantile/COMEX Exchange	176,399.35
Coffee, Sugar and Cocoa Exchange	48,994.71
New York Cotton/New York Futures Exchange	76,802.17
Kansas City Board of Trade	7,580.21
Minneapolis Grain Exchange	13,468.35
Philadephia Board of Trade	350.46
NFA	344,364.39
Total	1,163,339.99

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of rules on small businesses. The fees implemented in this release affect contract markets (also referred to as

''exchanges'') and registered futures associations. The Commission has previously determined that contract markets are not ''small entities'' for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Registered futures associations also are not considered ''small entities'' by the Commission. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Chairperson, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

Issued in Washington, D.C. on March 3, 1998, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–5881 Filed 3–6–98; 8:45 am]

BILLING CODE 6351–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4067a; FRL–5968–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO_X RACT Determinations for Individual Sources

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 volatile organic compounds (VOC) and nitrogen oxides (NO_X) reasonably available control technology (RACT) for six (6) major sources located in Pennsylvania. The intended effect of this action is to approve source-specific operating permits and compliance permits that establish the above-mentioned RACT requirements in accordance with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: This action is effective May 8, 1998, unless notice is received on or before April 8, 1998, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David Campbell, Air Protection Division, Mailcode 3AP11, 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 Protection 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; Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, (215) 566–2196, at the EPA Region III office or via e-mail at campbell.dave@epamail.epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On December 31, 1997, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). Each source subject to this rulemaking will be identified and discussed below. Any plan approvals and operating permits submitted coincidentally with those being approved in this document, and not identified below, will be addressed in a separate rulemaking action.

Pursuant to sections 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 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 sections 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The Pennsylvania submittals that are the subject of this document are meant to satisfy the RACT requirements for six (6) sources in Pennsylvania.

Summary of SIP Revision

The details of the RACT requirements for the source-specific operating and compliance permits can be found in the docket and accompanying technical support document (TSD) and will not be reiterated in this document. Briefly, EPA is approving a revision to the Pennsylvania SIP pertaining to the determination of RACT for six (6) major sources. Several of the operating permits contain conditions irrelevant to the determination of VOC or NO_X RACT. Consequently, these provisions are not being included in this approval for source-specific VOC or NO_X RACT.

RACT Determinations

The following table identifies the individual operating and compliance permits EPA is approving. The specific emission limitations and other RACT requirements for these sources are summarized in the accompanying technical support document, which is available upon further request, from the EPA Region III office listed in the **ADDRESSES** section of this document.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Operating permit (OP #), compliance permit (CP #)	Source type	''Major source'' pollutant
Allegro MicroSystems W.G. Inc	Montgomery	OP 46–0006	Semiconductor manufacturing	VOC
Hale Products, Inc	Montgomery	OP 46–0057	Foundry	VOC
Con-Lime	Centre	OP 14–0001	Lime manufacturing	NO_X
Coastal Aluminum Rolling Mills, Inc	Lycoming	OP 41–0007	Secondary metal processing	VOC
International Envelope Company	Chester	OP 15–0023	Printing	VOC

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES—Continued

Source	County	Operating permit (OP #), compliance permit (CP #)	Source type	"Major source" pollutant
Brown Printing Company	Montgomery	CP 46–0018	Printing	NO_X, VOC

EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the rule should adverse or critical comments be filed. This rule will be effective May 8, 1998, without further notice unless the Agency receives relevant adverse comments by April 8, 1998.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 8, 1998, and no further action will be taken on the proposed rule. If adverse comments are received that do not pertain to all paragraphs in this rule, those paragraphs not affected by the adverse comments will be finalized in the manner described here. Only those paragraphs that receive adverse comments will be withdrawn in the manner described here.

Final Action

EPA is approving five (5) operating permits and one (1) compliance permit as RACT for six (6) individual sources.

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).

C. Unfunded Mandates Act

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

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 May 8, 1998. Filing a petition for reconsideration by the Regional 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 to approve VOC and NO_X RACT determinations for a number of individual sources in Pennsylvania as a revision to the Commonwealth's SIP 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: February 3, 1998.

William T. Wisniewski,

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 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(130) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(130) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to VOC and NO_X RACT, submitted on December 31, 1997 by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) A December 31, 1997 letter submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations in the form of operating and compliance permits.

(B) Operating permits (OP), compliance permits (CP):

(*1*) Allegro MicroSystems W.G., Inc. (Montgomery County)—OP 46–0006, effective December 19, 1997, except for the expiration date and items Nos. 9, 13 and 14(D) relating to non-RACT provisions.

(*2*) Hale Products, Inc. (Montgomery County)—OP 46–0057, effective November 21, 1997, except for the expiration date.

(*3*) Con-Lime, Inc. (Centre County)—OP 14–0001, effective January 7, 1998, except for the expiration date and items (or portions thereof) Nos. 8, 9, 17, 18, 19, 20, 21, 22, 24, 25, and 28 relating to non-RACT provisions.

(*4*) Coastal Aluminum Rolling Mills, Inc. (Lycoming County)—OP 41–0007, effective November 21, 1997, except for the expiration date and items (or portions thereof) Nos. 9, 20, and 28 relating to non-RACT provisions.

(*5*) International Envelope Company (Chester County)—OP 15–0023, effective November 2, 1995, except for the expiration date.

(*6*) Brown Printing Company (Montgomery County)—CP 46–0018, effective September 26, 1996, except for the expiration date.

(ii) Additional material.

(A) Remainder of the Commonwealth of Pennsylvania's December 31, 1997 VOC and NO_X RACT SIP revision submittal.

[FR Doc. 98–5413 Filed 3–6–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA 25–1–7375a; FRL–5971–5]

Approval and Promulgation of Implementation Plans for Louisiana: General Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves a revision to the Louisiana State Implementation Plan (SIP) that contains section LAC 33:III.1405.B of the State general conformity rule and removes the conditional approval in 40 CFR 52.994(a). The EPA approved the Louisiana general conformity rule on September 13, 1996 (61 FR 48409) conditioned upon the State making certain revisions to LAC 33:III.1405.B. The State of Louisiana has fully satisfied the condition for approval with the revision submitted by the Governor on September 8, 1997.

The EPA is approving this SIP revision under sections 110(k) and 176 of the Clean Air Act (the Act). The rationale for the approval and other information are provided in this notice.

DATES: This action is effective on May 8, 1998, unless adverse or critical comments are received by April 8, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be mailed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the Region 6 address. Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Air Quality Division, Louisiana Department of Environmental Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810, Telephone: (504) 765–0219.

Documents which are incorporated by reference are available for public inspection at Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E., Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

I. Background

Conformity provisions first appeared in the Act, as amended, in 1977 (Public Law 95–95). Although these provisions did not define conformity, they provided that no Federal department could engage in, support in any way, or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP that has been approved or promulgated for the nonattainment or maintenance areas.

The 1990 Amendments of the Act expanded the scope and content of the conformity provisions by defining conformity to an implementation plan. Conformity is defined in section 176(c) of the Act as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Act requires EPA to promulgate criteria and procedures for determining conformity of all other Federal actions in the nonattainment or maintenance areas (actions other than those under Title 23 U.S.C. or the

Federal Transit Act) to a SIP. The criteria and procedures developed for this purpose are called ''general conformity'' rules. The rules pertaining to actions under Title 23 U.S.C. or the Federal Transit Act were published in a separate **Federal Register** notice on November 24, 1993 (see 58 FR 62188). The EPA published the final general conformity rules on November 30, 1993 (58 FR 63214) and codified them at 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The general conformity rules require the States and local air quality agencies (where applicable) to adopt and submit a general conformity SIP revision to the EPA not later than November 30, 1994.

The EPA conditionally approved the Louisiana general conformity rule on September 13, 1996 (61 FR 48409). At the time of initial review, section 1405.B of the State rule allowed the State administrative authority to approve changes to the emissions estimating methods and use of new or modified models in the air quality and conformity analyses. This is contrary to 40 CFR 51.859 of the EPA general conformity rule which requires use of the EPA approved procedures and models, and retains the EPA's approval authority for any deviation from the recommended provisions. In addition, section LAC 33:III.1411 of the State rule which contains identical requirements as EPA's 40 CFR 51.859, requires approval of the EPA Regional Administrator for use of the modified emissions estimating methods and models if they are deviations from the EPA's recommended procedures or models. The EPA could not approve this SIP revision unless this inconsistency was corrected in section 1405.B of the State's general conformity rule. The State was required to make this correction and submit a SIP revision within twelve months of the final approval date of the conditional approval action (September 15, 1997).

II. Evaluation of State's Submission

On September 8, 1997, the Governor of Louisiana submitted a SIP revision in compliance with the conditional approval action of the State general conformity rule. The State has adequately corrected the deficiency which was cited in the original action of September 13, 1996 (61 FR 48409) and has revised section 1405.B to achieve consistency with the Federal rule. This correction makes the entire State general conformity rule consistent with the Federal requirements in 40 CFR part 51, subpart W.

III. Final Action

The EPA is approving a revision to the Louisiana general conformity SIP, specifically LAC 33:III.1405.B, based on the Governor's submission of September 8, 1997, and rationale provided in this action. This correction makes the entire State general conformity rule consistent with the Federal requirements in 40 CFR part 51, subpart W. The State has undertaken appropriate public participation and interagency consultations during revision of LAC 33:III.1405.B at the local level.

The EPA is publishing this action without prior proposal because the EPA 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 May 8, 1998, unless adverse or critical comments concerning this action are submitted and postmarked by April 8, 1998. 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 concerning this action 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 on this action, the public is advised that this action will be effective May 8, 1998.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the 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, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental 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 EPA certifies that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Nothing in this action shall be construed as permitting, 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.

C. Unfunded Mandates

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

Through submission of this SIP or plan revision approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 176 of the Clean Air Act. The rules and commitments approved in this action may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, the EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, the EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal

governments in the aggregate or to the private sector.

D. Submission to Congress and the General Accounting Office

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

E. 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 May 8, 1998. Filing a petition for reconsideration of this final rule by the Regional Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. 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, General conformity, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: February 9, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

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

PART 52—[AMENDED]

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

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

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(75) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(75) A revision to the Louisiana State Implementation Plan for General Conformity: LAC 33:III. Chapter 14. Subchapter A ''Determining Conformity of General Federal Actions to State or Federal Implementation Plan,'' Section 1405.B as adopted by the Louisiana Department of Environmental Quality Secretary and published in the Louisiana Register, Vol. 23, No. 6, 720, June 20, 1997, was submitted by the Governor on September 8, 1997.

(i) Incorporation by reference.

(A) Louisiana General Conformity: LAC 33:III. Chapter 14. Subchapter A ''Determining Conformity of General Federal Actions to State or Federal Implementation Plan'', Section 1405.B as adopted by the Louisiana Department of Environmental Quality Secretary and published in the Louisiana Register, Vol. 23, No. 6, 720, June 20, 1997.

§ 52.994 [Removed]

3. Section 52.994 is removed.

[FR Doc. 98–5983 Filed 3–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–5975–2]

RIN 2060–AF75

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Finding of National Low Emission Vehicle Program in Effect

AGENCY: Environmental Protection Agency (EPA).

ACTION: Finding of National Low Emission Vehicle (LEV) Program in effect.

SUMMARY: Today EPA is finding the National LEV program in effect. Nine northeastern states and 23 manufacturers have opted into this voluntary clean car program and the opt-ins have met the criteria set forth by EPA in its National LEV regulations. This means light-duty vehicles and light light-duty trucks cleaner than those available today will be produced and sold starting later this year. The National LEV program demonstrates how cooperative, partnership efforts can produce a smarter, cheaper program that reduces regulatory burden while increasing protection of the environment and public health.

DATES: This finding is effective March 2, 1998.

ADDRESSES: Materials relevant to this finding have been placed in Public Docket No. A–95–26. The docket is located at the Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 (Telephone 202–260–7548; Fax 202–260–4400) in Room M–1500, Waterside Mall, and may be inspected weekdays between 8:00 a.m. and 5:30 p.m. A reasonable fee may be charged by EPA for copying docket materials. For further information on electronic availability of this final rule, see the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Karl Simon, Office of Mobile Sources, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. *Telephone* (202) 260–3623; *Fax* (202) 260–6011; *e-mail* simon.karl@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Obtaining Electronic Copies of the Regulatory Documents

This finding, along with rulemaking documents and other documents related to this finding are available electronically from the EPA Internet Web site. This service is free of charge, except for any cost you already incur for internet connectivity. An electronic version of this finding is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA–AIR/ (either select desired date or use Search feature)
2. http://www.epa.gov/OMSWWW/lev-nlev.htm

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

In Effect Finding

Today EPA is taking the final step necessary for the National Low Emission Vehicle program to come into effect. The National LEV program is a voluntary clean car program which will reduce smog and other pollution from new motor vehicles. On December 16, 1997, EPA finalized the regulations for the National Low Emission Vehicle (National LEV) program. 63 FR 926 (January 7, 1998). Because it is a voluntary program, it could only come into effect if agreed upon by the northeastern states and the auto manufacturers. EPA has now received notifications from all the auto manufacturers and the relevant states lawfully opting into the program. As a result, starting in the northeastern states in model year 1999 and nationally in model year 2001, new cars and light

light-duty trucks will meet tailpipe standards that are more stringent than EPA can mandate prior to model year 2004. Now that the program is agreed upon, these standards will be enforceable in the same manner as any other federal new motor vehicle program.

National LEV will reduce air pollution nationwide, harmonize federal and California motor vehicle standards to reduce manufacturers' design and testing costs, avoid a patchwork of state regulatory requirements, and achieve emission reductions in the northeast equivalent to or better than would be achieved if each northeastern state adopted the California Low Emission Vehicle program. Although it originated as a way to help the northeastern states address their smog problems, National LEV will have public health and environmental benefits nationwide. Across the country, National LEV will reduce ground level ozone, the principle harmful component in smog, as well as emissions of other pollutants, including particulate matter, benzene and formaldehyde. This will assist states in achieving cleaner air while the economy grows.

This program is the result of a remarkable effort by EPA, the northeastern states, the auto industry and other interested parties. EPA applauds the effort, time and energy that all parties have invested in the National LEV program. As a result of this cooperative, partnership approach, we now have a smarter, cheaper, cleaner program that reduces regulatory burden while increasing protection of the environment and public health.

In the December Final Rule, EPA promulgated the criteria for the Agency to find the National LEV program in effect. 40 CFR 86.1706–99(b) provides that EPA shall find the National LEV program in effect if each of the manufacturers listed in the rule submits an opt-in notification that complies with the requirements for opt-ins, each opt-in submitted by an Ozone Transport Commission (OTC) State complies with the requirements for opt-ins, any conditions placed on any of the opt-ins are satisfied, and no valid opt-out has become effective pursuant to 40 CFR 86.1707–99. As set forth below, these criteria have been met.

The following northeastern states have agreed to the National LEV program and have lawfully opted in pursuant to 40 CFR 86.1705–99(e):

Connecticut
Delaware
District of Columbia
Maryland
New Hampshire
New Jersey
Pennsylvania
Rhode Island
Virginia

Several of these states conditioned their opt-ins on all auto manufacturers opting into the program and/or on EPA finding that National LEV was in effect pursuant to 40 CFR 86.1706–99. All of the conditions these states placed on their opt-ins are now met.

All auto manufacturers have agreed to the National LEV program and have lawfully opted in pursuant to 40 CFR 86.1705–99(c). These auto manufacturers are listed below and at 40 CFR 86.1706–99(c):

American Honda Motor Company, Inc.
American Suzuki Motor Corporation
BMW of North America, Inc.
Chrysler Corporation
Fiat Auto U.S.A., Inc.
Ford Motor Company
General Motors Corporation
Hyundai Motor America
Isuzu Motors America, Inc.
Jaguar Motors Ltd.
Kia Motors America, Inc.
Land Rover North America, Inc.
Mazda (North America) Inc.
Mercedes-Benz of North America
Mitsubishi Motor Sales of America, Inc.
Nissan North America, Inc.
Porsche Cars of North America, Inc.
Rolls-Royce Motor Cars Inc.
Saab Cars USA, Inc.
Subaru of America, Inc.
Toyota Motor Sales, U.S.A., Inc.
Volkswagen of America, Inc.
Volvo North America Corporation

Several of these manufacturers conditioned their opt-ins on the nine northeastern states listed above opting into the program, on all auto manufacturers opting into the program, and/or on EPA finding the program in effect or finding it in effect no later than March 2, 1998. All of the conditions the auto manufacturers placed on their opt-ins are now met.

No state or manufacturer has withdrawn its opt-in, nor has any submitted an opt-out notification.

Thus, pursuant to 40 CFR 86.1706–99(b), EPA finds that the National LEV program is in effect. This finding is a nationally applicable final action.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

Dated: March 2, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–5981 Filed 3–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5972–8]

40 CFR Part 300

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Deletion of Monsanto Superfund Site from the National Priorities List (NPL).

SUMMARY: EPA, Region 4, announces the deletion of the Monsanto Superfund Site from the NPL. The NPL is Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). EPA and the State of Georgia (State) have determined that all appropriate CERCLA actions have been implemented and that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment and that the remaining groundwater monitoring and treatment are adequately being addressed by the State under the Resource Conservation and Recovery Act (RCRA).

DATES: Effective March 9, 1998.

ADDRESSES: Comprehensive information on this Site is available through the EPA Region 4 public docket, which is located at the Region 4 office and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed to the EPA Region 4 Docket Office.

The address for the Regional Docket Office is: Ms. Debbie Jourdan, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Telephone No.: (404) 562–8862.

Background information from the regional public docket is also available for viewing at the Site information repository located at the following address: Augusta Richmond County Public Library, 902 Green Street, Augusta, Georgia 30901, Telephone No.: (706) 821–2600.

FOR FURTHER INFORMATION CONTACT: John A. McKeown, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8913.

SUPPLEMENTARY INFORMATION: EPA announces the deletion of the Monsanto Superfund Site in Richmond County, Georgia from the National Priorities List (NPL), which is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to 42 U.S.C. 9605 (40 CFR 300.425(e)(3) of the NCP), any site deleted from the NPL remains eligible for Fund-financed Remedial Actions in the event that conditions at the site warrant such action.

EPA published a Notice of Intent to Delete the Monsanto Superfund Site from the NPL on October 6, 1997 in the **Federal Register**, (62 FR 52072–52074). EPA received no comments on the proposed deletion; therefore, no responsiveness summary is necessary for attachment to this Notice of Deletion. Deletion of a site from the NPL does not affect the responsible party liability or impede agency efforts to recover costs associated with response efforts.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 29, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, U.S. EPA Region 4.

40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 33 U.S.C. 9601–9657; 42 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 191 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the site ''Monsanto Corp. (Augusta Plant), GA''.

[FR Doc. 98–5980 Filed 3–6–98; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility: Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (''Corporation'') is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

EFFECTIVE DATE: March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002–4250; 202–336–8810.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act (''Act''), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Poverty Guidelines. The revised figures for 1998 set out below are equivalent to 125% of the current Poverty Guidelines as published on Feb. 24, 1998 (63 FR 9235).

List of Subjects in 45 CFR Part 1611

Legal services.

For reasons set out in the preamble, 45 CFR 1611 is amended as follows:

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of Part 1611 is revised to read as follows:

APPENDIX A OF PART 1611.—LEGAL SERVICES CORPORATION 1998 POVERTY GUIDELINES *

Size of family unit	All states but Alaska and Hawaii [1]	Alaska [2]	Hawaii [3]
1	$10,063	$12,588	$11,575
2	13,563	16,963	15,600
3	17,063	21,338	19,625
4	20,563	25,713	23,650
5	24,063	30,088	27,675
6	27,563	34,463	31,700
7	31,063	38,838	35,725
8	34,563	43,213	39,750

* The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

[1] For family units with more than eight members, add $3,500 for each additional member in a family.

[2] For family units with more than eight members, add $4,375 for each additional member in a family.

[3] For family units with more than eight members, add $4,025 for each additional member in a family.

Dated: March 4, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–5994 Filed 3–6–98; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[MM Docket No. 96–16, FCC 98–19]

Revision of Broadcast EEO Rule Enforcement

AGENCY: Federal Communications Commission.

ACTION: Final rule; policy statement.

SUMMARY: This *Order and Policy Statement* adopts a change in the Commission's enforcement of the Equal Employment Opportunity (EEO) Rule for religious broadcasters. The announced change is similar to suggestions made by some commenters in response to the Commission's *Order and Notice of Proposed Rule Making* (*NPRM*), MM Docket No. 96–16, which requested comment on ways to improve the Commission's EEO Rule and policies to offer relief to distinctly situated broadcasters without undermining the effectiveness of its EEO program. The Commission will now permit religious broadcasters, as

defined in the *Order and Policy Statement*, to establish religious belief or affiliation as a job qualification for all station employees. The Commission believes that this action will eliminate the potential danger of impermissible governmental interference with a religious broadcaster's judgment in the conduct and definition of its religious affairs.

DATES: Effective April 8, 1998.

FOR FURTHER INFORMATION CONTACT: Renee Licht, Deputy Chief, Mass Media Bureau. (202) 418–2600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order and Policy Statement*, FCC 98–19, adopted February 5, 1998, and released February 25, 1998.

The complete text of this *Order and Policy Statement* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., at (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Synopsis of Order and Policy Statement

1. In the *Order and Policy Statement*, the Commission modifies enforcement of its broadcast Equal Employment Opportunity (EEO) Rule with respect to religious broadcasters. Responding to the Commission's request in *Order and Notice of Proposed Rule Making* (*NPRM*), MM Docket No. 96–16, 11 FCC Rcd 5154 (1996), 61 FR 9964, March 12, 1996, for ways to improve its EEO Rule and policies to afford relief to distinctly situated broadcasters, some commenters requested that the Commission permit religious licensees to establish religious affiliation or belief as a *bona fide* occupational qualification for all positions at their stations. The Commission's prior policy was to allow religious broadcasters a limited exemption from the Commission's prohibition of religious employment discrimination only for employees hired to espouse religious views over the air. Upon review of this matter, the Commission concludes that its policy should be expanded to permit religious broadcasters to use religious belief or affiliation as a job qualification for all station employees. The Commission believes that this action will eliminate the potential danger of impermissible governmental interference with a religious broadcaster's judgment in the conduct and definition of its religious affairs.

2. This action should be considered binding as to radio licensees and permittees. It should be considered a non-binding policy statement for television licensees and permittees because section 334 of the Communications Act of 1934, as amended, 47 U.S.C. 334, prohibits revisions of EEO regulations concerning television licensees and permittees.

3. For these purposes, a ''religious broadcaster'' is defined as a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity. Commission determination as to whether a licensee is a ''religious broadcaster'' will be made on a case-by-case basis, based upon the evaluation of certain characteristics of the religious entity.

4. Some commenters to the *NPRM* are concerned that expanding the Commission's current policy concerning religious broadcasters would lead to racial and ethnic discrimination and have a negative impact on equal opportunity in the industry. However, in the *Order and Policy Statement*, the Commission emphasizes that religious broadcasters are still required to operate their stations in the public interest, as defined in the Commission's rules and policies. Therefore, religious broadcasters are not permitted to engage in employment discrimination against women and minorities and are still required to comply with sections 73.2080(b) and (c) of the Commission's Rules, 47 CFR 73.2080(b) and (c), requiring broadcasters to maintain a positive, continuing program of specific practices designed to ensure equal employment opportunity, for persons who share their faith, in every aspect of station employment and practice. Religious broadcasters are also still required to file EEO Forms 396–A, 396, and 395–B and their EEO programs will continue to be subject to examination by the Commission at renewal time, as well as other relevant periods, to determine compliance with the EEO Rule.

Initial Paperwork Reduction Act of 1995 Analysis

The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law No. 104–13, and found to impose or propose no modified information collection requirement on the public.

Final Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (''RFA''),[1] *see* 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *NPRM*.[2] The Commission sought written public comments on the proposals in the *NPRM*, including the IRFA.

Joint Commenters[3] criticize the IRFA for not stating that the proposals in the *Notice* could adversely affect some non-licensee entities including Black colleges, community groups which refer job candidates, discrimination victims, individual job applicants, petitioners to deny, and members of the listening and viewing audience. Joint Commenters maintain that the IRFA failed ''to mention the limited resources available to each of these parties in meeting significant burdens which would be imposed on them by cutbacks in EEO enforcement.''[4] Joint Commenters' arguments are without merit. In the IRFA, the Commission did not indicate the economic impact of a rule change on any entity, stating that it ''was unable to assess at this time what, if any, economic impact the proposed rule change would have on small business entities'' and that a full assessment of the potential impact would be made, if applicable, at the final rulemaking stage.[5] Furthermore, the entities described by Joint Commenters would not be discussed in the Regulatory Flexibility Analysis at any stage in this proceeding because such analysis is reserved for entities directly regulated and affected by the subject rule of a proceeding and the entities discussed by Joint Commenters are not so regulated and affected. *See Mid-Tex Electric Cooperative, Inc.* v. *Federal Energy Regulatory Commission*, 773 F.2d 327 (D.C. Cir. 1985).

We now believe that, pursuant to the RFA, *see* 5 U.S.C. 605(b), we can certify

[1] The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996.

[2] 11 FCC Rcd at 5183.

[3] Joint Commenters consist of the following organizations that filed their comments together: Minority Media Telecommunications Council, Office of Communication of the United Church of Christ, National Council of Churches, American Civil Liberties Union, American Hispanic Owned Radio Association, Association of Black Owned Television Stations, Black Citizens for a Fair Media, Black College Communications Association, Chinese for Affirmative Action, Cultural Environment Movement, Fairness and Accuracy in Reporting, Hispanic Association on Corporate Responsibility, League of United Latin American Citizens, Minority Business Enterprise Legal Defense and Education Fund, Inc., National Association for the Advancement of Colored People, National Association of Black Owned Broadcasters, National Bar Association, National Hispanic Media Coalition, National Rainbow Coalition, National Urban League, Operation PUSH, and Women's Institute for Freedom of the Press.

[4] Comments of Joint Commenters at 119.

[5] 11 FCC Rcd at 5183–84.

that the action taken in *this Order and Policy Statement*, as distinguished from the broader proposals contained in the entire *NPRM*, will not have a significant economic impact on a substantial number of small entities. Other issues and proposals will be addressed in a Report and Order to be issued at a later date. This action simply allows religious broadcasters to establish religious affiliation or belief as a *bona fide* occupational qualification for all station positions, an action which will not have a significant economic impact. Religious broadcasters are still required to ensure equal employment opportunity in every aspect of station employment policy and practice for persons who share their faith. The Commission will publish this certification in the **Federal Register**, and will provide a copy of the certification to the Chief Counsel for Advocacy of the Small Business Administration. The Commission will also include the certification in the report to Congress pursuant to the RFA, *see* 5 U.S.C. 801.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–5939 Filed 3–6–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–126; RM–9074]

Radio Broadcasting Services; Saint Florian, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 274A to Saint Florian, Alabama, as that community's first local aural transmission service, in response to a petition filed on behalf of Frederick A. Biddle dba Power Valley Enterprises. *See* 62 FR 24896, May 7, 1997. Coordinates used for Channel 274A at Saint Florain are 34–57–08 and 87–39–30. With this action, the proceeding is terminated.

DATES: Effective April 13, 1998. A filing window for Channel 274A at Saint Florian, Alabama, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a separate Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–126, adopted February 18, 1998, and released February 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Saint Florian, Channel 274A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–5930 Filed 3–6–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–187; RM–9149]

Radio Broadcasting Services; Patterson, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of West Wind Broadcasting, allots Channel 290A to Patterson, Iowa, as the community's first local aural transmission service. See FR 62 46707, September 4, 1997. Channel 290A can be allotted to Patterson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 290A at Patterson are 41–20–54 NL and 93–52–49 WL. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 13, 1998. A filing window for Channel 290A at Patterson, Iowa, will not be opened at this time. Instead the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–187, adopted February 18, 1998, and released February 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Patterson, Channel 290A.

Federal Communications Commission

John A. Karousos,

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

[FR Doc. 98–5932 Filed 3–6–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–155; RM–9109]

Radio Broadcasting Services; Winthrop, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Rick Miles and Don Ashford, allots Channel 248A at Winthrop,

Washington, as the community's first local aural transmission service. *See* 62 FR 38054, July 16, 1997. Channel 248A can be allotted to Winthrop in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.0 kilometers (1.2 miles) south. The coordinates for Channel 248A at Winthrop are North Latitude 48–27–40 and West Longitude 120–10–36. Since Winthrop is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 13, 1998. A filing window for Channel 248A at Winthrop, Washington will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–155, adopted February 18, 1998, and released February 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Winthrop, Channel 248A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–5933 Filed 3–6–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–127; RM–9077]

Radio Broadcasting Services; Moorcroft, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain Tower Broadcasting, allots Channel 228A at Moorcroft, Wyoming, as the community's first local aural transmission service. See 62 FR 24896, May 7, 1997. Channel 228A can be allotted to Moorcroft in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 228A at Moorcroft are North Latitude 44–15–54 and West Longitude 104–57–06. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 13, 1998. A filing window for Channel 228A at Moorcroft, Wyoming, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–127, adopted February 18, 1998, and released February 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Moorcroft, Channel 228A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–5934 Filed 3–6–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–104; RM–9048]

Radio Broadcasting Services; Wellington, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Stacey Allen Austin, allots Channel 278C3 to Wellington, Texas, as the community's first local aural transmission service. *See* 62 FR 15869, April 3, 1997. Channel 278C3 can be allotted to Wellington in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.5 kilometers (2.8 miles) southwest in order to avoid a short-spacing conflict with the licensed operation of Station KWOX (FM), Channel 266C, Woodward, Oklahoma. The coordinates for Channel 278C3 at Wellington are 34–49–13 NL and 100–14–29 WL. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 13, 1998. A filing window for Channel 278C3 at Wellington, Texas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–104, adopted February 18, 1998, and released February 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Wellington, Channel 278C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–5935 Filed 3–6–98; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 45
Monday, March 9, 1998

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–55–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney PW4000 series turbofan engines. This proposal would reduce life limits of certain 4th stage low pressure turbine (LPT) disks. It would also allow the original life limits of the disks to be restored if reoperation is performed to incorporate the original slotted cooling hole configuration. This proposal is prompted by reports that a change of a cooling hole geometry, which was introduced in the design of certain 4th stage LPT disks, inadvertently caused a reduction on the cooling air flow to the disk and an increased level of stress. The actions specified by the proposed AD are intended to prevent an uncontained disk failure and damage to the aircraft.

DATES: Comments must be received by May 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–55–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9–ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7147, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–55–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–55–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration received a report that a change was introduced in the design of certain 4th stage low pressure turbine (LPT) disks, installed on Pratt & Whitney Model PW4056, PW4152, PW4156A, PW4164, PW4168, and PW4460 turbofan engines, that inadvertently caused the reduction of amount of cooling air flow to the disk and resulted in a reduction of their life limits. These disks, part number (P/N) 50N924, are identified by serial number (S/N) in this AD. This condition, if not corrected, could result in an uncontained disk failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of Pratt & Whitney (PW) Service Bulletins (SB) No. PW4G 100–72–105, dated November 12, 1997, and SB No. PW4ENG 72–657, dated November 25, 1997, that describe the reduced life limits for affected disks, and describe procedures for reoperation of the disks to incorporate the slotted cooling air configuration to restore their original life limits.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would reduce life limits of affected 4th stage LPT disks, identified by S/N. It would also allow the original life limits to be restored, if reoperation is performed to incorporate the slotted cooling air configuration. The actions would be required to be accomplished in accordance with the SBs described previously.

There are approximately 27 engines of the affected design in the worldwide fleet. The FAA estimates that there are currently no engines installed on aircraft of U.S. registry would be affected by this proposed AD, but if one were installed, it would take approximately 4 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost

approximately $240 per engine. Based on these figures, the total cost impact of the proposed AD per engine is estimated to be $480.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney: Docket No. 97–ANE–55–AD.

Applicability: Pratt & Whitney Model PW4056, PW4152, W4156A, PW4164, PW4168, and PW4460 turbofan engines, with 4th stage low pressure turbine (LPT) disks, part number (P/N) 50N924, serial numbers (S/Ns) CLDL BX2061, CLDL BX6620, CLDL BX2054, CLDL BX2055, CLDL BX6596, CLDL BX2059, CLDL BX2060, CLDL BX6600, CLDL BX6597, CLDL BX6599, CLDL BX6601, CLDL BX6598, CLDL BX6604, CLDL BX6605, CLDL BX6602, CLDL BX6609, CLDL BX6607, CLDL BX6612, CLDL BX6611, CLDL BX6610, CLDL BX6608, CLDL BX6606, CLDL BX6615, CLDL BX6616, CLDL BX6619, CLDL BX2058, and CLDL BX6603 installed. These engines are installed on but not limited to Airbus A330, Boeing 747, and McDonnell Douglas MD–11 series aircraft .

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

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained disk failure and damage to the aircraft, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, prior to accumulating 7,500 cycles in service (CIS), remove the affected 4th stage LPT disks and replace them with new or serviceable parts.

Note 2: A list of the affected 4th stage LPT disks, identified by P/N and S/N, appears in the ''Applicability'' paragraph for this AD.

(b) Restoration of the original life limits on the affected disks may be accomplished as follows:

(1) Reoperation performed on the LPT disks installed in PW4164 and PW4168 model engines, in accordance with Pratt & Whitney (PW) Service Bulletin (SB) No. PW4G 100–72–105, dated November 12, 1997, prior to 7,000 CIS to incorporate the slotted cooling air configuration may restore the life limit to 15,000 CIS.

(2) Reoperation performed on the LPT disks installed in PW4156A and PW4460 model engines in accordance with PW SB No. PW4ENG 72–657, dated November 25, 1997, prior to 5,500 CIS to incorporate the slotted cooling air configuration may restore the life limit to 15,000 CIS.

(3) Reoperation performed on the LPT disks installed in PW4056 and PW4152 model engines in accordance with PW SB No. PW4ENG 72–657, dated November 25, 1997, prior to 4,500 CIS to incorporate the slotted cooling air configuration may restore the life limit to 20,000 CIS.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

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

Issued in Burlington, Massachusetts, on February 26, 1998.

Ronald L.Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–5797 Filed 3–6–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AWP–4]

Proposed Establishment of Class E Airspace; Borrego Springs, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Borrego Springs, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 25 at Borrego Valley Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 25 SIAP to Borrego Valley Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Borrego Valley Airport, Borrego Springs, CA.

DATES: Comments must be received on or before April 20, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 96–AWP–4, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT:

Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AWP–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at Borrego Springs, CA. The establishment of a GPS RWY 25 SIAP to Borrego Valley Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the approach and departure procedures at Borrego Valley Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 25 SIAP at Borrego Valley Airport, Borrego Springs, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AWP CA E5 Borrego Springs, CA [New]

Borrego Valley Airport, CA
(lat. 33°15′33″ N, long. 116°19′16″ W)

That airspace extending upward from 700 feet above the surface with a 6.4-mile radius of the Borrego Valley Airport.

* * * * *

Issued in Los Angeles, California, on February 13, 1998.

Alton D. Scott,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–5925 Filed 3–6–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 122

Withdrawal of International Airport Designation-Akron Fulton Airport

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of the Customs Service by withdrawing the international airport designation of Akron Municipal Airport (now functioning as Akron Fulton Airport) and by designating Akron Fulton Airport as a landing rights airport instead. The change is being proposed as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers and the general public.

DATES: Comments must be received on or before May 8, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue NW., Third Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of Field Operations, 202–927–0196.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs is proposing to amend §§ 122.13 and 122.24, Customs Regulations (19 CFR 122.13 and 122.24), by withdrawing the international airport designation of Akron Fulton Airport (formerly known as Akron Municipal Airport) and by designating the airport as a landing rights airport instead. Akron Municipal Airport (currently known as Akron Fulton Airport) is presently listed as an international airport of entry under § 122.13, Customs Regulations (19 CFR 122.13).

An international airport, as defined by the Customs Regulations, is an airport designated officially as a port of entry for international flights, for entry of alien citizens, and as a place for quarantine inspection.

A landing rights airport is any airport, other than an international airport or a user fee airport, at which flights from a foreign country are given permission by Customs to land.

According to the Customs Regulations, designation as an international airport may be withdrawn for various reasons. One reason is lack of sufficient international travel through the airport. Another reason is failure of the airport operator to maintain an adequate facility. Both of these factors apply to Akron Fulton Airport. The City of Akron sold the building containing Customs office; Customs has no office space on site at the airport. Furthermore, only two aircraft were processed by Customs in 1996 and 1997 (none in 1996 and two in 1997). Under these circumstances, the Customs Service Port Director of Middleburg Heights, Ohio, has requested that Akron Fulton Airport's designation as an international airport for Customs purposes be withdrawn.

Customs will continue to provide service at Akron Fulton Airport on a landing rights basis, but there is no need to maintain two separate operations in Akron. The Customs inspectors stationed adjacent to the Akron-Canton Regional Airport (where they process the vast majority of private aircraft arrivals) will be able to provide Customs services to international aircraft at the Akron Fulton Airport on an as-needed basis.

Proposal

The Customs designation of the Akron Fulton Airport as an international airport is proposed to be withdrawn; the list of international airports in § 122.13, Customs Regulations (19 CFR 122.13), is proposed to be amended by deleting the entry ''Akron, Ohio-Akron Municipal Airport'' from the Location and Name column. In addition, the list of landing rights airports in § 122.24(b), Customs Regulations (19 CFR 122.24(b)), is proposed to be amended by adding, in proper alphabetical order, the words ''Akron, Ohio'' in the Location column and the words ''Akron Fulton Airport'' opposite them in the Name column.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue NW., Third Floor, Washington, D.C., 20229.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

The Regulatory Flexibility Act and Executive Order 12866

Customs establishes, expands, consolidates, and makes other changes to Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this are exempt from consideration under Executive Order 12866.

Drafting Information

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

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: February 23, 1998.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–5990 Filed 3–6–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC24

Public Meetings on Proposed Rule—Establishing Oil Value for Royalty Due on Indian Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Minerals Management Service (MMS) is giving notice of two public meetings concerning the proposed Indian oil value rule published in the **Federal Register** on February 12, 1998 (63 FR 7089). The proposed rule amends the royalty valuation regulations for crude oil produced from Indian leases.

DATES: The public meeting dates are:

1. Albuquerque, NM, March 26, 1998, 9 a.m. to 3 p.m., Mountain time.
2. Lakewood, CO, April 1, 1998, 9 a.m. to 3 p.m., Mountain time.

ADDRESSES: The meeting locations are:

1. Bureau of Land Management, Albuquerque District Office, 435 Montano Road, Albuquerque, NM 82601, telephone number (505) 761–8700.
2. Minerals Management Service, Denver Federal Center, Building 85, Kipling Street (between 6th Avenue and Alameda Street), Lakewood, CO 80215, telephone number (303) 231–3585.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Christnacht, Royalty Valuation Division, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3151, Denver, CO, 80225–0165, telephone number (303) 275–7252; or, Mr. David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165, telephone number (303) 231–3432, fax number (303) 231–3385, e-Mail address RMP.comments@mms.gov.

SUPPLEMENTARY INFORMATION: The meetings will be open to the public in

order to discuss the proposed rule and gather comments. We encourage members of the public to attend these meetings. Those wishing to make formal presentations should sign up upon arrival. The sign-up sheet will determine the order of speakers. For building security measures, each person will be required to sign in and may be required to present a picture identification to gain entry to the meetings.

Dated: March 3, 1998.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 98–5909 Filed 3–6–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC32

Postlease Operations Safety; Correction

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rulemaking; Correction.

SUMMARY: MMS published in the **Federal Register** of February 13, 1998 (63 FR 7335), a proposed rule updating and clarifying regulations concerning postlease operations. This document corrects certain information omitted from the table listing data and information made available to the public.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Engineering and Operations Division at (703) 787–1600.

SUPPLEMENTARY INFORMATION: In the proposed rule FR Doc. 98–3533, published in the issue of Friday, February 13, 1998, make the following correction:

PART 250—[CORRECTED]

On page 7350, in § 250.27, correct paragraph (b) to read as follows;

§ 250.27 Data and information to be made available to the public.

* * * * *

(b) MMS will disclose lease information not collected on MMS forms in accordance with the following table:

If	MMS will release	At this time	Additional provisions
The Director determines that data and information are needed to unitize operations on two or more leases, to ensure proper plans of development for competitive reservoirs, or to promote operational safety or protect the environment.	Geophysical data, Geological data, Interpreted geological and geophysical (G&G) information, Processed and reprocessed geophysical information, Analyzed geological information.	Any time	Data and information will be shown only to persons with an interest.
The Director determines that data and information are needed for specific scientific or research purposes for the Government.	Geophysical data, Geological data, Interpreted G&G information, Processed and reprocessed geophysical information, Analyzed geological information.	Any time	MMS will release data and information only if release would further the national interest without unduly damaging the competitive position of the lessee.
Your lease is still in effect and you consent.	Geophysical data, Geological data, Interpreted G&G information, Processed and reprocessed geophysical information, Analyzed geological information.	When you consent.	
Data or information is collected with high-resolution systems (e.g., bathymetry, side-scan sonar, subbottom profiler, and magnetometer) to comply with safety or environmental protection requirements.	Geophysical data, Geological data, Processed G&G information, Interpreted G&G information.	60 days after you submit the data or information, if the Regional Supervisor deems it necessary.	MMS will release the data and information earlier than 60 days if the Regional Supervisor determines it is needed by affected States to make decisions under subpart B of this part. The Regional Supervisor will reconsider earlier release if you satisfy him/her that it would unduly damage your competitive position.
Your lease is no longer in effect	Geophysical data, Geological data, Processed and reprocessed geophysical information, Interpreted G&G information, Analyzed geological information.	When your lease terminates or 10 years after the date you submit the data, whichever is earlier.	This release time applies only if the provisions in this table governing high resolution systems and the provisions in § 252.7 do not apply.
Your lease is no longer in effect	Geological data, Analyzed geological information.	When your lease terminates	This release time applies only if the provisions in this table governing high resolution systems and the provisions in § 252.7 do not apply.
Your lease is still in effect	Geophysical data, Processed and reprocessed geophysical information, Interpreted G&G information.	10 years after the date you submit it.	This release time applies only if the provisions in this table governing high resolution systems and the provisions in § 252.7 do not apply.

If	MMS will release	At this time	Additional provisions
Your lease is still in effect and within the primary term specified in the lease.	Geological data, Analyzed geological information.	2 years after you submit it *or* 60 days after a lease sale if any portion of an offered block is within 50 miles of a well, whichever is later.	These release times apply only if the provisions in this table governing high resolution systems and the provisions in § 252.7 do not apply. If the primary term specified in the lease is extended under § 250.19 (except under § 250.19(c)), the extension applies to this provision.
Your lease is in effect and beyond the primary term specified in the lease.	Geological data, Analyzed geological information.	2 years after you submit it	
Data is released to the owner of an adjacent under subpart D of part 250.	Directional survey data	If the lessee from whose lease the directional survey was taken consents.	
Data and information are obtained from beneath unleased land as a result of a well deviation that has not been approved by the Regional or District Supervisor.	Any data or information obtained	At any time.	

Dated: March 3, 1998.

E. P. Danenberger,

Chief, Engineering and Operations.

[FR Doc. 98–5941 Filed 3–6–98; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA4067b; FRL–5968–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO_X RACT Determinations for Individual Sources

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 volatile organic compound (VOC) and nitrogen oxides (NO_X) reasonably available control technology (RACT) for six (6) major sources located in Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth'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 accompanying 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. If adverse comments are received that do not pertain to all paragraphs in this rulemaking action, those paragraphs not affected by the adverse comments will be finalized in the manner described here. Only those paragraphs that receive adverse comments will be withdrawn in the manner described here.

DATES: Comments must be received in writing by April 8, 1998.

ADDRESSES: Written comments on this action should be addressed to David Campbell, Air Protection Division, Mailcode 3AP11, 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 Protection Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, (215) 566–2196, at the EPA Region III office or via e-mail at campbell.dave@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: See the information pertaining to this action, VOC and NO_X RACT determinations for individual sources located in Pennsylvania, provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: February 3, 1998.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 98–5412 Filed 3–6–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA 25–1–7375b; FRL–5971–6]

Approval and Promulgation of Implementation Plan for Louisiana: General Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to approve a revision to the Louisiana State Implementation Plan (SIP) that contains section LAC 33:III.1405.B of the State general conformity rule and remove the conditional approval in 40 CFR 52.994(a). The EPA approved the Louisiana general conformity rule on September 13, 1996 (61 FR 48409) conditioned upon the State making certain revisions to LAC 33:III.1405.B. This approval action is intended to streamline the conformity process and allow direct consultation among agencies at the local levels.

In the Final Rules Section of this **Federal Register**, the EPA is approving LAC 33:III.1405.B of the State General Conformity rule as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial 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 the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in providing comments on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing, postmarked by April 8, 1998.

ADDRESSES: Comments should be mailed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address below. Copies of the State's General Conformity SIP and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Air Quality Division, Louisiana Department of Environmental Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810, Telephone: (504) 765–0219.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule which is located in the Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

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

Dated: February 9, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 98–5984 Filed 3–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[T50–1–6800; FRL–5975–7]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas: Disapproval of the Reasonable-Further-Progress Plan for the 1996–1999 Period and the Contingency Plan for the Houston/Galveston (HGA) Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed disapproval.

SUMMARY: The EPA is proposing to disapprove the SIP revisions submitted by the State of Texas to meet the Rate-of-Progress (ROP) requirements under the Clean Air Act (the Act). Under these requirements, States must demonstrate a 3 percent reduction of volatile organic compounds (VOCs) per year for a three year period between November 15, 1996 and November 15, 1999. The EPA is proposing disapproval of the ROP plan submitted by Texas for the Houston/Galveston area (HGA) primarily because the plan projects excessive emissions reductions for the EPA's Compliance Assurance Monitoring (CAM) Rules. The EPA is also proposing disapproval of the Contingency Plan associated with this ROP plan. This rulemaking action is being taken under sections 110 and Part D of the Act.

DATES: Comments must be received on or before May 8, 1998.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Donaldson, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7242.

SUPPLEMENTARY INFORMATION:

Introduction—Clean Air Act Requirements

Reasonable Further Progress Requirements

Section 182(c)(2) of the Act generally requires each state having one or more ozone nonattainment areas classified as serious or worse to develop a plan (for each subject area) that provides for actual VOC reductions of at least 3 percent per year averaged over each consecutive 3-year period, beginning six years after enactment of the Act, until such time as these areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone. These plans are referred to hereafter as post-1996 Rate-of-Progress Plans (or post-96 ROP plans). These plans were due to be submitted to EPA as a SIP revision by November 15, 1994.

Section 182(b)(1) of the Act mandates a 15 percent VOC emission reduction, net of growth, between 1990 and 1996 for each State having one or more ozone nonattainment areas classified as moderate or worse. That SIP revision was due to EPA by November 15, 1993. The plan for these reductions occurring between 1990–1996 is hereafter referred to as the 15% Rate-of-Progress Plan.

Sections 182(b)(1)(C), 182(b)(1)(D) and 182(c)(2)(B) of the Act limit the creditability of certain control measures toward the ROP requirements. Specifically, states cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (e.g., new car emissions standards) promulgated prior to 1990, or for reductions stemming from regulations promulgated prior to 1990 to lower the volatility (i.e., Reid Vapor Pressure) of gasoline. Furthermore, the Act does not allow credit toward ROP requirements for post-1990 corrections to existing motor vehicle Inspection and Maintenance (I/M) Programs or corrections to Reasonably Available Control Technology (RACT) rules, since these programs were required to be in place prior to 1990.

Additionally, sections 172(c)(9) and 182(c)(9) of the Act require contingency measures to be included in the ROP and attainment plans. These measures are required to be implemented immediately if reasonable further progress has not been achieved, or if the NAAQS is not met by the deadline set forth in the Act.

Attainment Demonstration Requirement

Under section 182(c)(2)(A) of the Act, States required to submit post-1996 ROP plan SIPs, by November 15, 1994 for serious or worse ozone nonattainment areas, must also submit for those areas an attainment demonstration to provide for achievement of the ozone NAAQS by the statutory deadline. This demonstration is to be based on photochemical grid modeling, such as the Urban Airshed Model, or an equivalent analytical method. In a March 2, 1995, memorandum from Mary Nichols, Assistant Administrator for EPA's Office of Air and Radiation, EPA set forth an approach to satisfy the attainment demonstration requirements under section 182(c)(2)(A) of the Act. Under this approach, Texas was required to submit a Rate of Progress Plan to cover the first three year period as part of their Phase I submittal by December 31, 1995. Pursuant to the December 23, 1997 memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, an attainment plan is due April, 1998 showing how Houston will attain by 2007.

Background of State Submittal

In a letter from the Governor dated November 9, 1994, Texas submitted a Post-96 ROP plan to reduce emissions in the Houston area by an additional 9 percent by November 15, 1999. In January of 1995, the Texas Legislature moved to suspend the motor vehicle tailpipe I/M program. The Post-96 ROP Plan depended in part on reductions from the I/M program.

In a letter dated August 9, 1996, Texas submitted a revision to the Post-96 ROP Plan as part of a larger SIP submittal which included revisions to the 1990 Base Year Inventories, the 15% Rate-of-Progress Plans for the Texas ozone nonattainment areas, the HGA Employee Trip Reduction Program, and section 179B Attainment Demonstration for El Paso. Today's proposed action addresses only the HGA Post-96 ROP Plan. The other portions of the submittal will be addressed in separate **Federal Register** actions. On July 11, 1997, the EPA proposed conditional interim approval of the Texas 15% Rate-of-Progress plans for the Houston/Galveston, Dallas/Fort Worth and El Paso areas and proposed to fully approve the base year emissions inventory revisions and the associated contingency plans for the three areas (62 FR 37175).

Analysis of the SIP Revision

Base Year Emission Inventory

Under Section 182(b)(1)(B), the baseline from which States determine the required reductions for ROP planning is the 1990 base year emission inventory. The inventory is broken down into several emissions source sectors: stationary, area, on-road mobile, and off-road mobile sources. The EPA originally approved the Texas 1990 base year inventories for the Dallas/Fort Worth, Houston/Galveston, Beaumont/Port Arthur and El Paso ozone nonattainment areas on November 8, 1994 (59 FR 55586). In the August 9, 1996, SIP revision, Texas submitted revisions to its 1990 Base Year Inventories. The EPA proposed approval of these revisions on July 11, 1997 (62 FR 37175). The Post-96 ROP plan relies on the revised 1990 emission inventory for the Houston area. The EPA will not take final action on the Post-96 ROP plan until the revised 1990 emission inventory rulemaking is finalized.

Growth in Emissions Between 1996 and 1999

States need to provide for sufficient control measures in their ROP Plans to offset any emissions growth projected to occur after 1996. Therefore, to meet the ROP requirement, a State must provide for sufficient emissions reductions to offset projected growth in emissions, in addition to a 3 percent annual average reduction of VOC emissions. Thus, an estimate of emissions growth from 1996 to 1999 is necessary. The EPA believes that Texas' estimates of growth for the time period from 1996–1999 are acceptable.

Calculation of Target Level Emissions

A target level of emissions represents the maximum level of emissions allowed in each post-1996 milestone year which will provide the 3 percent per year ROP requirement mandated by the Act. The EPA's guidance document entitled ''Guidance on the Post-1996 ROP Plan and the Attainment Demonstration'' (EPA 452–93–015), dated January 1995, outlines the approach States must take to calculate the 1999 target level needed to satisfy the Act's post-1996 plan requirement. Table 1 documents this calculation for the HGA area.

As described previously, revisions to the 15% ROP plan and the Post-96 ROP plan were both included in the August 9,1996 submittal. There is a slight discrepancy, however, between the 1996 target level used in the 15% ROP plan and the 1996 target level in the Post-96 ROP plan. The EPA is proposing not to accept the target level used in the State's Post-96 ROP calculations because the same target level for 1996 should be used in both the 15% ROP plan and the Post-96 ROP plan. The EPA believes the 1996 target level in the 15% ROP was calculated correctly and proposed approval of this target level on July 11, 1997 (62 FR 37175). Therefore, the data used by the EPA in Table 1 is consistent with the State's 15% ROP plan. The choice of target level is important because it affects the size of the emission reductions shortfall identified later in this **Federal Register**. In this case, the amount of the shortfall identified is made slightly smaller by using the target level identified in the 15% ROP Plan. In future submittals, Texas must use a target level that is consistent with the State's 15% ROP plan.

TABLE 1.—CALCULATION OF REQUIRED REDUCTIONS

[Tons/day]

	Houston/ Galveston
1990 Emission Inventory	1063.72
1990 Adjusted Relative to 1996	975.39
1990 Adjusted Relative to 1999	963.65
RVP and Fleet Turnover	11.74
9% of adjusted	86.73
1996 Target level	812.77
1999 Target level	714.30
1999 Projection	1029.18
Total Reductions required by 1999	314.88
Reductions required by 15%	213.27
Additional Reductions required	101.61

Measures Achieving the Projected Reductions

The EPA agrees with the emission reductions for the following control measures. The amount of emission reductions projected for these measures are tabulated in table 2. A more detailed analysis of these measures and associated emission reductions is included in the Technical Support Document for this action.

Hazardous Organic National Emission Standards for Hazardous Air Pollutants (HON)

In the 15% ROP plan, Texas developed rules to tighten controls on fugitive emissions at refineries and petrochemical plants. The HON also requires tighter controls on fugitive emissions (40 CFR 63.160). The HON applies to additional source categories (styrene butadiene rubber production and polybutadiene production, chlorine production, pesticide production, chlorinated hydrocarbon use, pharmaceutical production and

miscellaneous butadiene use) not covered in the Texas rule. The EPA is proposing to accept the projected emissions reductions associated with the HON controls on these source categories not covered by the State rules for fugitive emissions.

Aircraft Engines

The Airport Noise and Capacity Act of 1990 (ANCA) reduces VOC emissions in addition to noise. The ANCA will prevent aircraft with Stage II engines from operating at most airports. Newer Stage III engines will be required. Stage III engines are quieter and generally, although not exclusively, emit smaller amounts of pollutants. Texas has estimated that emissions will be 40 percent lower than otherwise because of the incorporation of the Stage III engines. The EPA is proposing to accept this estimate.

Pulp and Paper MACT

Texas has projected emission reductions for the implementation of the Pulp and Paper Maximum Available Control Technology (MACT) standard. Air emissions from the pulp and paper industry will be regulated in three phases. The MACT I regulates non-combustion sources at mills engaged in the production of pulp by chemically pulping wood. The MACT II will regulate chemical recovery area combustion sources at kraft, sulfite and soda mills. The MACT III will regulate emissions from nonchemical pulp and paper mills and paper machines. The rules for MACT I were signed on November 14, 1997 but have not yet been published. Texas examined facilities in the HGA nonattainment area subject to the MACT I rules to estimate the expected emission reductions. The EPA is proposing to accept this estimate.

Recreational Marine

Texas has projected VOC emission reductions from the Federal rules to control emissions from Outboard Marine Engines and Personal Watercraft (October 4, 1996, 61 FR 52087). It is the EPA's proposed position that the State calculated the emission reductions consistent with EPA guidance (November 28, 1994 memorandum ''Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards'') and that the projected emission reductions are acceptable.

Utility Engines

Texas has projected emission reductions based on Federal rules to control emissions from lawn and garden equipment (July 3, 1995, 60 FR 34581). It is the EPA's proposed position the State calculated these emission reductions consistent with EPA guidance (November 28, 1994, memorandum ''Future Nonroad Emission Reduction Credits for Court-Ordered nonroad Standards'') and the projected emission reductions are acceptable.

Underground Storage Tank Remediation

Texas estimated that emissions from leaking underground storage tank remediations resulted in about 2.05 tons/day of emissions in the HGA area in 1990. By 1998, the program for remediation of leaking underground storage tanks should be complete in Texas. After 1998, storage tanks are required to be upgraded with leak detection systems under the Resource Recovery and Conservation Act, 42 U.S.C. 6991 *et seq.* Therefore, the EPA is proposing to accept that emissions from the remediation of leaking underground storage tanks should be largely eliminated and the projected emission reductions are acceptable.

Transportation Control Measures

Texas has projected a small amount of emission reductions due to the implementation of measures to reduce vehicle emissions, such as signal light improvements and high occupancy vehicle lanes. The EPA is proposing to accept the projected emissions reductions.

Tier I, I/M and Reformulated Gasoline

Texas has projected reductions in vehicle emissions due to these three motor vehicle programs. Tier I emission reductions refer to emission reductions occurring due to the implementation of FMVCP standards that went into effect starting with the 1994 model year. Inspection and Maintenance (I/M) refers to the tail pipe testing and repair program instituted in the HGA area. Also, starting 1995, reformulated gasoline is being used in the HGA area as required by the Act, section 211(k)(10)(D).

The I/M and Reformulated Gasoline emission reductions were part of the 15% ROP Plan so they cannot be relied upon in the Post-96 ROP plan. They are listed here because emission reductions from these three programs are calculated together by the EPA's MOBILE model for estimating on-road emissions. Emission reductions from reformulated gasoline and I/M are not credited to the Post-96 plan so no double counting results. The EPA is proposing to accept the projected emission reductions.

Municipal Solid Waste Landfills

Texas has projected emission reductions for controls on emissions from solid waste landfills. During the decomposition of solid waste, large amounts of methane and significant amounts of VOCs are generated. These emissions can be captured and controlled. The EPA has promulgated a New Source Performance Standard for new landfills. In the same **Federal Register** action, the EPA has also issued emission guidelines under section 111(d) of the Act which require States to adopt controls on existing landfills (March 12, 1995, 61 FR 9905). The State has projected emission reductions from the rules they are required to adopt in response to the 111(d) requirement. The EPA proposes to accept these projected emission reductions.

Reformulated Gasoline in Storage Tanks

Reformulated Gasoline is required to have a lower volatility than conventional gasoline. Reformulated gasoline is required to have an average Reid vapor pressure of 7.2 pounds/square inch absolute (psia), whereas conventional gasoline was required to have a Reid vapor pressure of 7.8 psia. This reduced volatility lessens emissions from storage tanks. The EPA is proposing to accept the amount of emission reductions projected.

Reformulated Gasoline Loading Racks

As with storage tanks, emissions from gasoline loading racks are lowered by the use of reformulated gasoline. The EPA is proposing to accept the amount of emission reductions projected at loading racks due to the use of reformulated gasoline.

Rule Effectiveness Floating Roof Tanks

The EPA contracted, in cooperation with the Texas Natural Resource Conservation Commission, a study to establish the rule effectiveness for controls on floating roof tanks. The study concluded that the rule effectiveness measures controlling these tanks was 87 percent, which was factored into the original HGA 1990 inventory. Subsequent to that study, Texas instituted rule changes under the RACT fix-up requirements of the Clean Air Act (Section 182(a)(2)(A)) designed to improve the effectiveness and enforceability of the VOC rules including additional seal inspection requirements. Texas provided additional information based on more recent inspections of seal gaps and compliance rates to show that rule effectiveness had improved for floating roof tanks. In addition, Texas has further upgraded its rules to require

facilities to use actual seal gap measurements to determine actual excess emissions and for facilities to have these records on hand for their annual State inspections. Texas has projected, and the EPA is proposing to accept, that an improved rule effectiveness of up to 95 percent for nonpermitted and 98 percent for permitted sources is now warranted.

Measures Not Achieving the Projected Reductions

Enhanced Monitoring

The EPA published on October 26, 1997 (62 FR 54901), rules to implement the enhanced monitoring requirements of the Act. These rules are referred to as the CAM rules. The approach taken in the final CAM rules is significantly different than the approach taken in the enhanced monitoring rules that were first proposed. Based on the initially proposed enhanced monitoring rules, Texas projected emissions due to rule effectiveness improvements that could be expected. Specifically, Texas referred to draft EPA guidance entitled ''Rule Effectiveness Improvements Protocol'' indicating that the proposed enhanced monitoring rules would result in a 10 percent rule effectiveness improvement for sources covered by the enhanced monitoring rules without any confirmatory study. This guidance was later finalized in December, 1994 to say that sources subject to enhanced monitoring can be allowed a 90 percent rule effectiveness versus a 10 percent improvement in rule effectiveness. The 90 percent rule effectiveness, thus, represents a maximum that can be allowed without a confirmatory study. Under the Texas approach, a facility with a baseline rule effectiveness of 85 percent would be projected to improve to 95 percent, exceeding the 90 percent cap outlined in EPA guidance.

Even though the final CAM rules are significantly different and potentially less stringent than the originally proposed enhanced monitoring rules, EPA believes that the CAM rules will still result in improvements in the effectiveness of rules up to 90% rule effectiveness. Greater increases in effectiveness, must be justified through the commitment to perform a confirmatory study. If Texas believes that additional rule effectiveness improvements will occur, they must commit to perform a confirmatory study to show the reductions have occured.

The EPA has two additional concerns with the way Texas projected emissions reductions due to the CAM rule. First, the CAM rule now only applies to emission units that rely on a control device to reduce emissions. Control devices are defined as equipment that is used to destroy or remove air pollutants prior to discharge to the atmosphere. Texas has projected emissions reductions from several source categories that do not utilize control devices such as fugitive emission controls, and coating source categories. It is the EPA's proposed position that Texas should not project any reductions for emission units that do not have a control device. Second, the CAM rule will be implemented through the issuance of title V permits. Texas has projected that 40 percent of affected sources will be covered by title V permits in the 1996–1999 time period. While it is possible that 40 percent of emissions Statewide may be covered by Title V permits, it is not clear that the facilities scheduled to receive permits in the 1996–1999 time frame represent 40% of the emissions in the HGA area. The EPA believes that Texas should look specifically at the sources in the HGA area that will be issued permits between the issuance of the CAM rule and November 15, 1999, and identify any rule effectiveness improvements associated with these sources.

Therefore, due to the above concerns, EPA is proposing not to accept the reductions projected due to compliance assurance monitoring.

Texas Alternative Fuels Fleets

In July 1994, Texas submitted the State's opt-out from the Federal Clean Fuel Fleet (C.F.) program in a SIP revision to EPA and adopted rules to implement the Texas Alternative Fuel Fleet (TAFF) program. The program included low emitting vehicle purchase and fleet composition requirements which exceeded the Federal program by substantial margins. In 1995, the Texas Legislature modified the TAFF program through passage of Senate Bill (SB) 200. In response to SB 200, Texas adopted regulations to implement the modified program and submitted a revised SIP on August 6, 1996. On June 20, 1997, the Governor of Texas signed into law Senate Bill 681 that modified the supporting legislation on which the August 6, 1996, plan was based. On October 17, 1997, EPA proposed disapproval of the Texas C.F. Program based on the finding that changes to the supporting legislation have altered the August 6, 1996, submitted SIP revision. The specific legislative authority for the August 6, 1996, submittal is no longer in effect. In addition to the above issue, EPA raised concern that Texas' technical and equivalency method had not adequately identified and quantified the covered fleets in the Federal and State covered areas. These concerns, plus the broad exemptions allowed in the Texas program, lead EPA to conclude that the State has not made a convincing and compelling demonstration of equivalency with the **Federal Register** (62 FR 53997) for more details on EPA's proposed disapproval . Therefore, the EPA is proposing that projected emission reductions from the TAFF program cannot be credited toward the Post-96 ROP Plan.

Excess Emission Reductions From the 15% Plan

In its 15% ROP Plan, Texas projected emissions reductions in excess of that required to meet the 15 percent target level of emissions. Under section 182(c)(2)(B), these excess emission reductions can be carried over into the Post-96 ROP Plan. As explained in the Technical Support Document to the 15% ROP Plan, however, the emission reductions projected from the gas cap check in the Texas Motorist Choice (I/M) program were excessive. The EPA believes the excess reductions for the gas cap check are approximately 0.5 tons/day. It was explained in the 15% ROP Plan proposed approval that even with the excessive emission reductions projected for the gas cap check since Texas had other emission reductions available, the 15% ROP Plan was still approvable (July 11, 1997, 62 FR 37175). Essentially the excess emission reductions to cover the gas cap check shortfall were borrowed from the Post-96 ROP Plan. We explained that the excess emission reductions from the gas cap check should be addressed in the Post-96 ROP Plan. Therefore, it is proposed that 0.5 ton/day of excess emissions carried over from the 15% ROP Plan cannot be credited toward the Post-96 ROP plan.

Summary of Emission Reductions

Table 2 summarizes the emission reductions in the plan.

TABLE 2.—SUMMARY OF APPROVED AND DISAPPROVED EMISSION REDUCTIONS HOUSTON/GALVESTON

(Tons/day)

Required Reduction	101.61
Creditable Reductions	
HON	0.47
Aircraft Engines	0.97
Pulp and Paper MACT	8.26
Recreational Marine	0.06
Utility Engine 1997–1999	6.31
UST remediation	2.05
TCMs	0.5
Tier I, I/M, RFG	4.37
MSW landfills NSPS & E	4.06
RFG—Tanks	2.45
RFG—Loading Racks	3.76
RE Floating Roof Tanks	26.86
Excess emissions from the 15% plan	28.53
Total	88.65
Reductions not Approved	
Enhanced Monitoring	31.00
Texas Alternative Fuel Fleets	0.08
Excess emissions Gas Cap check	0.5
Total not approved	31.08
Shortfall	13.77

Contingency Measures

Pursuant to sections 172(c)(9) and 182(c)(9) of the Act, States must include contingency measures in their ROP Plan submittals for ozone nonattainment areas classified as moderate or above. Contingency measures are measures which are to be immediately implemented if reasonable further progress is not achieved in a timely manner, or if the areas do not attain the NAAQS by the applicable date mandated by the Act. The EPA's interpretation of this Act requirement is set forth in the *Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (April 16, 1992, 57 FR 13498), which states that the contingency measures should, at a minimum, ensure that emissions reductions continue to be made if reasonable progress (or attainment) is not achieved in a timely manner. Contingency measures must be fully adopted rules or measures but do not need to be implemented until they are triggered by either a failure to meet a milestone or failure to attain the NAAQS by the appropriate date.

States must show that their contingency measures can be implemented with minimal further action on their part, and with no additional rulemaking action (e.g., public hearings, legislative review, etc.). A capsule description of each of the measures follows:

Recreational Marine Vessels: As discussed in the Technical Support Document to this action, Texas has taken credit for reductions that will occur due to additional turnover of boats in the year of 2000. The EPA is proposing to approve these projected reductions for this plan.

Enhanced Monitoring: Texas has projected additional emission reductions from implementation of the CAM rules as additional title V permits are issued. As discussed above, the EPA does not believe these projected emissions reductions are approvable.

Texas Alternative Fuel Fleets: Texas has projected emission reductions as additional fleets are brought into compliance with this rule. As discussed above however, the EPA does not believe these projected reductions are approvable.

Naphtha Dry Cleaners: This rule calls for control of dry cleaners that use petroleum naphtha for cleaning. While this is not as common as perchloroethylene, surveys by Texas indicated significant emissions. The EPA first proposed approval of this contingency measure when it was submitted with the 15% ROP Plan. Since Texas has not implemented the measure because it was not needed after 1996, the EPA believes it continues to be acceptable as a contingency measure for the Post-96 ROP Plan.

Offset Lithography: These rules regulate emissions from offset printing operations. These operations produce a wide variety of products such as magazines, newspapers and books. The EPA first proposed approval of this contingency measure when it was submitted with the 15% ROP Plan. An analysis of the rule is contained in the Technical Support Document to the 15% ROP plan. Since Texas has not implemented the measure because it was not needed after 1996, the EPA believes it continues to be acceptable as a contingency measure for the Post-96 ROP Plan.

Utility Engines 1999–2000: Texas has projected the additional emission reductions that would be available from new, cleaner burning lawn equipment during the year 2000 when contingency measures should be implemented. The EPA is proposing to accept these emission reductions as contingency measures.

Excess Emission Reductions from the 9 Percent ROP plan: Texas had 10.69 tons/day of emission reductions projected in excess of the 9% ROP requirement. These reductions are not available as contingency measures because EPA believes that Texas has projected excessive emission reductions in the Post-96 ROP Plan. The plan, in reality, has a shortfall in required reductions, not excess emission reductions.

Summary of Contingency Measures

Table 3 summarizes the contingency measures in the plan.

TABLE 3.—SUMMARY OF APPROVED AND DISAPPROVED CONTINGENCY MEASURES HOUSTON/GALVESTON

[Tons/day]

Required Contingency	28.95
Creditable Reductions:	
Recreation Marine (2000)	0.31
Offset Printing	2.34
Naphtha Dry Cleaning	1.97
Utility Engine	1.51
Total	6.31
Reductions not Approved:	
Enhanced Monitoring	15.50
Texas Alternative Fuel Fleet	0.17
Excess from 9% plan	10.69
Total not approved	26.36
Shortfall	22.64

Proposed Rulemaking Action

The EPA has evaluated this submittal for consistency with the Act, applicable EPA regulations, and EPA policy. Texas' Post-96 ROP Plan for the HGA nonattainment area will not meet the ROP requirements of section 182(c)(2)(B) of the Act to achieve a reduction of emissions by 9 percent between 1996 and 1999, including a projection of growth. In addition, the contingency measures provided by Texas do not provide sufficient emission reductions to achieve an additional 3 percent reduction if the HGA misses a rate-of-progress milestone.

In light of the above deficiencies, EPA is proposing to disapprove the Post-96 Rate-of-Progress portion of the SIP revision and the associated contingency plan, which were submitted November 9, 1994, and revised August 9, 1996, under sections 110(k)(3), 301(a), and Part D of the Act. The submittal does not fully satisfy the requirements of section 182(c)(2)(B) of the Act regarding the post-1996 ROP Plan, nor the requirement of section 172(c)(9) of the Act regarding contingency measures.

On July 11, 1997, EPA granted conditional interim approval of the Texas I/M program (62 FR 37138). The interim conditional approval was granted under the provisions of the Clean Air Act and the National Highway Systems Designation Act of 1995. For the HGA area, the approval was granted using EPA's low enhanced performance standard. The low enhanced performance standard was developed and allowed for areas that were required to implement enhanced I/M programs, but desired to focus control strategies on other programs. The low enhanced standard (September 18, 1995, 60 FR 48035) was allowed for areas that had an approved plan to achieve Reasonable Further Progress (RFP) through 1996 (15% Plan) and did not have a disapproved plan for RFP after 1996 (e.g., 9% Plan), or a disapproved attainment plan. Thus, finalization of this disapproval would remove the area's eligibility for using the low enhanced performance standard in meeting the requirements of the Act and Federal I/M rule. Finalization of this action would result in the area being required to meet the high enhanced performance standard of the Federal I/M rule. The EPA proposes that the State be required to submit a revised I/M SIP which meets EPA high enhanced performance standard for the HGA area within 12 months of the effective date of final Post-96 ROP Plan disapproval.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: withholding of highway funding and the imposition of emission offset requirements. The 18-month period referred to in section 179(a) will begin on the effective date established in the final disapproval action. If the deficiency is not corrected within 6 months of the imposition of the first sanction, the second sanction will apply. This sanctions process is set forth at 59 FR 39832 (Aug. 4, 1994), and codified at 40 CFR 52.31. Moreover, the final disapproval triggers the Federal Implementation Plan requirement under section 110(c).

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

Administrative Requirements

Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

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

The EPA's disapproval of the State request under section 110 and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any preexisting Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed

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

The EPA has determined that the proposed 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 preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements.

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

Dated: February 24, 1998.

Lynda Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 98–5982 Filed 3–6–98; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1602

Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule substantially revises the current rule. The rule is restructured for clarity, titles are revised to better identify the purpose of the sections, and revisions are made to incorporate procedures for Office of Inspector General records and to implement 1996 amendments to the Freedom of Information Act regarding electronic records, time limits, and standards for processing requests for records.

DATES: Comments should be received on or before April 8, 1998.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Office of the General Counsel, 202–336–8817.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) revised and published its Freedom of Information Act (FOIA) rule as final in 1993, principally to include the Office of Inspector General (OIG) in the FOIA process. However, the rule was withdrawn before it became effective. In 1996, Congress amended the FOIA. See ''Electronic Freedom of Information Act Amendments of 1996.'' Public Law 104–231. The Office of Information and Privacy of the Department of Justice issued a proposed rule and guidances on the 1996 amendments, which LSC relied on for many of this proposed rule's revisions. See 62 FR 45184 (Aug. 26, 1997). Generally, the 1996 amendments deal with electronic records, but changes were also made to time limits and to procedures and standards for processing requests. On February 6, 1998, the Corporation's Operations and Regulations Committee (Committee) of the Corporation's Board of Directors (Board) met to consider a draft proposed rule to revise 45 CFR Part 1602, which sets out the Corporation's procedures for the disclosure of information under the FOIA. After making changes to the draft rule, the Committee adopted this proposed rule for publication for public comment. A section-by-section analysis follows.

Section-by-Section Analysis

Section 1602.1 Purpose

The purpose of this part is to set out the rules and procedures the Corporation follows to make information available to the public under the FOIA. The proposed language is revised to reflect the addition of a new section on records published in the **Federal Register**.

Section 1602.2 Definitions

Several definitions in the current rule have been deleted in this proposed rule. The definitions of ''clerical,'' ''management,'' ''professional staff,'' and ''professional support,'' which are used in the current rule in the section on fees, are deleted because they are no longer consistent with the Corporation's personnel system. The definition of ''direct costs'' is also proposed to be deleted. It is used in the current rule only in § 1602.4 to clarify the cost of duplication of the index. This proposed rule applies the same standard duplication charges to the index that apply to other Corporation records.

Requirement to Use OMB Definitions

FOIA requires that agencies promulgate rules specifying a schedule of fees based on guidance published by the Director of the Office of Management and Budget (OMB). See 52 FR 10012 (March 27, 1987). The terms defined in this section that are used in the section on fees, § 1602.13, were promulgated in 1988 and are based, as required, on the OMB guidance. See 53 FR 6151—6154 (March 1, 1988).

Commercial use request: The definition of this term is based on the OMB guidance, and the term is based on a standard for determining fees in the FOIA. The proposed definition eliminates a reference to looking at the identity of the requester to help determine whether the request is for commercial use. OMB included the references to the requester's identity in its proposed guidance, but deleted it in the final guidance.

Duplication: The definition of this term is based on the OMB guidance, and the term is included in the section on fees (§ 1602.13) which permits charging of fees for certain duplication of records.

Educational institution, non-commercial scientific institution, representative of the news media: The definitions of these terms are based on the OMB guidance and are used in the section on fees, § 1602.13. Minor technical revisions have been made.

Office of Inspector General records: The definition of this term distinguishes OIG records from Corporation records. This definition and other OIG provisions in this rule are proposed to provide regulatory authority to the OIG to process and to grant or deny FOIA requests for OIG records.

Records: The definition of records is revised to clarify that the term includes electronic records.

Review: This term is used in the section on fees (§ 1602.13) and is based on the OMB guidance. Proposed revisions are technical. The current definition includes reference to commercial use requests, because review fees are charged only for such requests. The section on fees which uses this term, however, makes it clear that review fees are charged only for commercial use requests, so it is redundant to include reference to commercial use requests in the

definition of review. The first sentence of the definition describes how the review process preliminarily identifies portions of information that clearly are exempt. If the reviewer is not certain whether certain information is exempt, and there is a need for qualified staff to resolve any legal or policy issues on disclosure, the time spent resolving such issues or policy is not included in the meaning of review, as is made clear in the third sentence of this definition.

''Search'' The term ''search'' is used in the section on fees (§ 1602.13). The proposed revisions are intended to conform the definition to the revised definition in the FOIA as amended in 1996 and includes searching for information by automated means.

Section 1602.3 Policy

This section generally states that it is the policy of the Corporation to make every reasonable effort to comply with the requirements of FOIA. The proposed revisions to this section are technical or eliminate unnecessary information. A reference to ''a recipient'' is added.

Section 1602.4 Records Published in the **Federal Register**

This is a proposed new section. Section 552(a)(1) of FOIA requires each agency to currently publish in the **Federal Register** for the guidance of the public a range of basic information regarding its structure and operations, including information on the agency's organization, functions, procedural and substantive rules, and general statements of policy. The Corporation routinely publishes such information in the **Federal Register** as it is revised or amended. Such publications include its regulations, notices, and requests for proposals. Information on the Corporation's structure and location is annually published in the United States Government Manual, a special publication of the **Federal Register**.

Section 1602.5 Public Reading Room

This section sets out the process by which the Corporation makes available for public inspection and copying records listed in paragraph (b) of this section, as required by Section 552(a)(2) of the FOIA. This rule proposes to change the title of this section from central records room to public reading room to better describe the function of the room. Paragraph (a) provides the address and hours of business of the public reading room. Paragraph (b) lists the types of reading room records. The use of the term ''will be made available'' in paragraph (b) is intended to clarify that certain public reading room records will normally be maintained in the public reading room while others will be kept in close proximity elsewhere in the Corporation's headquarters in Washington, DC. In response to a request, any records kept in close proximity will be made available for inspection and copying in the public reading room.

Paragraph (c) sets out the protections from public disclosure that may apply to certain reading room records and the process the Corporation will use to edit or delete protected information.

Paragraph (d) provides that reading room records created by the Corporation after November 1, 1996, and an index of such records, will be made available electronically. The Corporation is in the process of converting such records to electronic form. As they are so converted, they will be made available electronically in the public reading room.

Paragraph (e) states that the Corporation will make most of its electronic public reading room records available on its websites.

Section 1602.6 Procedures for Use of Public Reading Room

This section describes the process by which a member of the public may inspect and copy public reading room records. Persons interested in using the public reading room are advised to make arrangements ahead of time to facilitate their access to the requested information.

Section 1602.7 Index of Records

FOIA requires the Corporation to maintain and make available an index of reading room records. This section clarifies that the index the Corporation maintains will be made available in the Corporation's public reading room and on the Corporation's websites. A revision is proposed that would make the cost of duplicating the index consistent with the charges for duplication of other Corporation records.

Section 1602.8 Requests for Records

FOIA also addresses a third category of records, which are records required to be made available by the Corporation upon request by any person unless they are exempt from mandatory disclosure under any of the FOIA exemptions. This type of record does not include public reading room records or records published in the **Federal Register**. Section 1602.8 sets out the process by which the Corporation makes such records available.

This section has been restructured and revised from the current rule to better describe the procedures for submitting and processing requests for records. Minor revisions are proposed to paragraph (a) to make it consistent with other proposed revisions to the rule.

Paragraphs (b), (c) and (d) describe how requests should be made and reflect the Corporation's current practice. In order to facilitate the location of records by Corporation staff, requests should reasonably describe the records sought.

Paragraph (e) clarifies that FOIA does not require the Corporation to create a record or perform research on a matter to satisfy a request.

Paragraph (f) requires that a requester be promptly informed of any estimated fees that may be charged for the request as set out in the rule's section on fees, § 1602.13.

Paragraph (g) provides that any request for a fee waiver or reduction should be included in the FOIA request, and that the Corporation must respond promptly to such requests for a fee waiver or reduction.

Paragraphs (i) through (l) set out the process and time limits for responding to requests. The OIG provisions are new and are proposed in recognition of the establishment of an OIG at the Corporation. The proposed revisions reflect the current practices of the Corporation.

Paragraph (m) provides a process and standard for dealing with requests for expedited treatment and implements the 1996 amendments to FOIA. One criterion that will be considered when determining whether to provide expedited processing is whether there is an urgent need to inform the public about actual or alleged Corporation or government activity and the requester is a person primarily engaged in disseminating information. Consistent with the DOJ rules, a person primarily engaged in disseminating information is a full-time representative of the news media, as defined in this part, or a person whose primary profession is that of a representative of the news media.

Section 1602.9 Exemptions for Withholding Records

This section delineates the exemptions that protect certain records from mandatory disclosure. All of the exemptions in this section are based on the FOIA, although not all FOIA exemptions are included in this rule, because certain exemptions are not applicable to the Corporation. For example, the exemption for information on geological information related to wells is not included. Technical changes are proposed to this section to better conform the language to the FOIA.

The language for § 1602.9(a)(6)(iv) is proposed to be revised in recognition of the establishment of the OIG at the Corporation. This FOIA exemption protects documents that might identify a confidential source, and also, in the case of a criminal investigation, that might identify the information furnished by the source. LSC's current rule makes no reference to information compiled for law enforcement purposes. Because the OIG conducts investigations into criminal activities, addition of a reference to such information is appropriate. This exemption was included in the published rule that was withdrawn in 1993. A reference to ''a recipient'' is also proposed to be added to § 1602.9(a)(6)(ii).

Paragraph (b) explains the process by which the Corporation will segregate protected information from information that must be made available to the requester. The 1996 amendments to FOIA require the Corporation to indicate the amount and location of deleted material (if technically feasible), unless such action would harm the interest protected by the applicable exemption.

Paragraph (c) sets out the standard by which the Corporation may exercise discretion to release information otherwise protected from disclosure. The consultation language is proposed to address OIG records.

Section 1602.10 Officials Authorized to Grant or Deny Requests for Records

This section identifies the officials within the Corporation authorized to grant or deny requests for records. The proposed revisions to paragraphs (a) and (b) are added to include the OIG in the Corporation's processing of FOIA requests when OIG records are requested and to be consistent with the Corporation's current procedures.

Section 1602.11 Denials

This section sets out the process the Corporation shall follow when a request for records is denied.

Section 1602.12 Appeals of Denials

This section describes the process by which a person may appeal a denial. Provisions including the OIG in the appeal process are proposed to be added.

Section 1602.13 Fees

Revisions to this section are largely technical. Paragraph (e) sets out the schedule of charges for services regarding the production or disclosure of the Corporation's records. Revisions to paragraph (e) reflect changes to the Corporation's salary system. The term ''band'' in paragraph (e) refers to a specific range of pay.

References to the Corporation have been added to paragraph (f) to apply certain fee waiver provisions to the Corporation as well as to governmental entities.

A revision to paragraph (j) is proposed to allow rather than require the Corporation to charge interest, which is consistent with the OMB guidance.

List of Subjects in 45 CFR Part 1602

Freedom of information.

For reasons set forth in the preamble, LSC proposes to revise 45 CFR part 1602 as follows:

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Sec.

1602.1 Purpose.
1602.2 Definitions.
1602.3 Policy.
1602.4 Records published in the Federal Register.
1602.5 Public reading room.
1602.6 Procedures for use of public reading room.
1602.7 Index of records.
1602.8 Requests for records.
1602.9 Exemptions for withholding records.
1602.10 Officials authorized to grant or deny requests for records.
1602.11 Denials.
1602.12 Appeals of denials.
1602.13 Fees.

Authority: 42 U.S.C. 2996d(g); 5 U.S.C. 552.

§ 1602.1 Purpose.

This part contains the rules and procedures the Legal Services Corporation follows in making records available to the public under the Freedom of Information Act.

§ 1602.2 Definitions.

As used in this part—

(a) Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. When the Corporation has reasonable cause to doubt the requester's stated use of the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a category.

(b) Duplication means the process of making a copy of a requested record pursuant to this part. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable electronic documents, among others.

(c) Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education, which operates a program or programs of scholarly research.

(d) FOIA means the Freedom of Information Act, 5 U.S.C. 552.

(e) Non-commercial scientific institution means an institution that is not operated on a ''commercial'' basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(f) Office of Inspector General records means those records as defined generally in this section which are exclusively in the possession and control of the Office of Inspector General of the Legal Services Corporation.

(g) Records means books, papers, maps, photographs, or other documentary materials, regardless of whether the format is physical or electronic, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include, *inter alia,* books, magazines, or other materials acquired solely for library purposes.

(h) Representative of the news media means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in

this category. In the case of ''freelance'' journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(i) Review means the process of examining documents located in response to a request to determine whether any portion of any such document is exempt from disclosure. It also includes processing any such documents for disclosure. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(j) Search means the process of looking for and retrieving records that are responsive to a request for records. It includes page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Searches may be conducted manually or by automated means and will be conducted in the most efficient and least expensive manner.

§ 1602.3 Policy.

The Corporation will make records concerning its operations, activities, and business available to the public to the maximum extent reasonably possible. Records will be withheld from the public only in accordance with the FOIA and this regulation. Records exempt from disclosure under the FOIA may be made available as a matter of discretion when disclosure is not prohibited by law, and disclosure would not foreseeably harm a legitimate interest of the public, the Corporation, a recipient, or any individual.

§ 1602.4 Records published in the Federal Register.

The Corporation routinely publishes in the **Federal Register** information on its basic structure and operations necessary to inform the public how to deal effectively with the Corporation. The Corporation will make reasonable efforts to currently update such information, which will include basic information on the Corporation's location, functions, rules of procedure, substantive rules, statements of general policy, and information regarding how the public may obtain information, make submittals or requests, or obtain decisions.

§ 1602.5 Public reading room.

(a) The Corporation will maintain a public reading room at its office at 750 First Street, NE., Washington D.C. 20002–4250. This room will be supervised and will be open to the public during the regular business hours of the Corporation for inspecting and copying records described in paragraph (b) of this section.

(b) Subject to the limitation stated in paragraph (c) of this section, the following records will be made available in the public reading room:

(1) All final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation that are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to the staff that affect the public or recipients;

(4) Copies of records, regardless of form or format, released to any person in response to a public request for records pursuant to § 1602.8 which the Corporation has determined are likely to become subject to subsequent requests for substantially the same records, and a general index of such records;

(5) The current index required by § 1602.7;

(6) To the extent feasible, other records considered to be of general interest to recipients or members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities.

(c) Certain records otherwise required by FOIA to be available in the public reading room may be exempt from mandatory disclosure pursuant to § 552(b) of the FOIA and § 1602.9 of this part. Such records will not be made available in the public reading room. Other records maintained in the public reading room may be edited by the deletion of identifying details concerning individuals to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it a full explanation of the deletion. The extent of the deletion shall be indicated, unless doing so would harm an interest protected by the exemption under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(d) Records required by the FOIA to be maintained and made available in the public reading room that are created by the Corporation on or after November 1, 1996, shall be made available electronically. This includes the index of published and reading room records, which shall indicate which records are available electronically.

(e) Most electronic public reading room records will also be made available to the public on the Corporation's websites at http://www.lsc.gov and http://oig.lsc.gov.

§ 1602.6 Procedures for use of public reading room.

Any member of the public may inspect or copy records described in § 1602.5(b) in the public reading room during regular business hours. Because it will sometimes be impossible to produce records or copies of records on short notice, a person who wishes to inspect or copy records is advised to arrange a time in advance, by telephone or letter request made to the Office of the General Counsel. Persons submitting requests by telephone will be notofied whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Written requests should identify the records sought in the manner provided in § 1602.8(b) and should request a specific date for inspecting the records. The requester will be advised as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

§ 1602.7 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of § 1602.4 and § 1602.5(b)(1) through (5). The index will be maintained and made available for public inspection and copying at the Corporation's office in Washington, DC. The cost of a copy of the index will not exceed the standard charge for duplication set out in § 1602.13(e). The Corporation will also make the index available on its websites.

§ 1602.8 Requests for records.

(a) Except for records required by the FOIA to be published in the **Federal Register** (§ 1602.4) or to be made available in the public reading room (§ 1602.5), Corporation records will be made promptly available, upon request, to any person in accordance with this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9 of this part.

(b) Requests for records under this section shall be made in writing, with the envelope and the letter or e-mail request clearly marked Freedom of Information Request. All such requests shall be addressed to the Corporation's Office of the General Counsel. Requests

by letter shall use the address given in § 1602.5(a). E-mail requests shall be addressed to info@smtp.lsc.gov. Any request not marked and addressed as specified in this paragraph will be so marked by Corporation personnel as soon as it is properly identified, and will be forwarded immediately to the Office of the General Counsel. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (i) of this section until it has been received by the Office of the General Counsel. Upon receipt of an improperly addressed request, the General Counsel or designee shall notify the requester of the date on which the time period began.

(c) A FOIA request must reasonably describe the records requested so that employees of the Corporation who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. If it is determined that a request does not reasonably describe the records sought, the requester shall be so informed and provided an opportunity to confer with Corporation personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requester and the requirements of this paragraph.

(d) To facilitate the location of records by the Corporation, a requester should try to provide the following kinds of information, if known:

(1) The specific event or action to which the record refers;

(2) The unit or program of the Corporation which may be responsible for or may have produced the record;

(3) The date of the record or the date or period to which it refers or relates;

(4) The type of record, such as an application, a grant, a contract, or a report;

(5) Personnel of the Corporation who may have prepared or have knowledge of the record;

(6) Citations to newspapers or publications which have referred to the record.

(e) The Corporation is not required to create a record or to perform research to satisfy a request.

(f) The Corporation shall advise the requester of any estimated fees as promptly as possible. The Corporation may require that fees be paid in advance, in accordance with § 1602.13(i), and the Corporation will advise a requester as promptly as possible if the fees are estimated to exceed $25 or any limit indicated by the requester.

(g) Any request for a waiver or reduction of fees should be included in the FOIA request, and any such request should indicate the grounds for a waiver or reduction of fees, as set out in § 1602.13(f). The Corporation shall respond to such request as promptly as possible.

(h) The Corporation will provide records in the form or format indicated by the requester to the extent such records are readily reproducible in the requested form or format.

(i)(1) The General Counsel or designee, upon request for any records made in accordance with this section, except in the case of a request for Office of Inspector General records, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(2) If the General Counsel or designee determines that a request or portion thereof is for Office of Inspector General records, the General Counsel or designee shall promptly refer the request or portion thereof to the Office of Inspector General and send notice of such referral to the requester. In such case, the Counsel to the Inspector General or designee shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 working days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(3) As used herein, ''unusual circumstances'' are limited to the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(i) The need to search for and collect the requested records from regional LSC offices or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or organization, such as a recipient, having a substantial interest in the determination of the request or among two or more components of the Corporation having substantial subject matter interest therein.

(j) If a request is particularly broad or complex so that it cannot be completed within the time periods stated in paragraph (i) of this section, the Corporation may ask the requester to narrow the request or agree to an additional delay.

(k) When no determination can be dispatched within the applicable time limit, the General Counsel or designee or the Counsel to the Inspector General or designee shall inform the requester of the reason for the delay, the date on which a determination may be expected to be dispatched, and the requester's right to treat the delay as a denial and to appeal to the Corporation's President or Inspector General, in accordance with § 1602.12. If no determination has been dispatched by the end of the 20-day period, or the last extension thereof, the requester may deem the request denied, and exercise a right of appeal in accordance with § 1602.12. The General Counsel or designee or the Counsel to the Inspector General or designee may ask the requester to forego appeal until a determination is made.

(l) After it has been determined that a request will be granted, the Corporation will act with due diligence in providing a substantive response.

(m)(1) Requests and appeals will be taken out of order and given expedited treatment whenever the requester demonstrates a compelling need. A compelling need means:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Corporation or Federal government activity and the request is made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the Corporation's or the Federal government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be

properly addressed and marked and received by the Corporation pursuant to § 1602.8(b).

(3) A requester who seeks expedited processing must submit a statement demonstrating a compelling need that is certified by the requester to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within ten calendar days of its receipt of a request for expedited processing, the General Counsel or designee or the Inspector General or designee shall decide whether to grant the request and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously by the Corporation.

§ 1602.9 Exemptions for withholding records.

(a) A requested record of the Corporation may be withheld from public disclosure only if one or more of the following categories exempted by the FOIA apply:

(1) Matter which is related solely to the internal personnel rules and practices of the Corporation;

(2) Matter which is specifically exempted from disclosure by statute (other than the exemptions under FOIA at 5 U.S.C. 552(b)), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues, or establishes particular criteria for withholding, or refers to particular types of matters to be withheld;

(3) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(4) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Corporation;

(5) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(6) Records or information compiled for law enforcement purposes including enforcing the Legal Services Corporation Act or any other law, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person or a recipient of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(b) In the event that one or more of the above exemptions apply, any reasonably segregable portion of a record shall be provided to the requester after deletion of the portions that are exempt. The amount of information deleted shall be indicated on the released portion of the record, unless doing so would harm the interest protected by the exemption under which the deletion is made. If technically feasible, the amount of information deleted shall be indicated at the place in the record where the deletion is made. In appropriate circumstances, at the discretion of the Corporation officials authorized to grant or deny a request for records, and after appropriate consultation as provided in § 1602.10, it may be possible to provide a requester with:

(1) A summary of information in the exempt portion of a record; or

(2) An oral description of the exempt portion of a record. No requester shall have a right to insist that any or all of the foregoing techniques should be employed in order to satisfy a request.

(c) Records that may be exempt from disclosure pursuant to paragraph (a) of this section may be made available at the discretion of the Corporation official authorized to grant or deny the request for records, after appropriate consultation as provided in § 1602.10. Records may be made available pursuant to this paragraph when disclosure is not prohibited by law, and it does not appear adverse to legitimate interests of the Corporation, the public, a recipient, or any person.

§ 1602.10 Officials authorized to grant or deny requests for records.

(a) The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Corporation.

(b) The General Counsel or designee and the Counsel to the Inspector General or designee are authorized to grant or deny requests under this part. In the absence of a Counsel to the Inspector General, the Inspector General shall name a designee who will be authorized to grant or deny requests under this part and who will perform all other functions of the Counsel to the Inspector General under this part. The General Counsel or designee shall consult with the Office of Inspector General prior to granting or denying any request for records or portions of records which originated with the Office of Inspector General, or which contain information which originated with the Office of Inspector General, but which are maintained by other components of the Corporation. The Counsel to the Inspector General or designee shall consult with the Office of the General Counsel prior to granting or denying any requests for records.

§ 1602.11 Denials.

(a) A denial of a written request for a record that complies with the requirements of § 1602.8 shall be in writing and shall include the following:

(1) A reference to the applicable exemption or exemptions in § 1602.9 (a) upon which the denial is based;

(2) An explanation of how the exemption applies to the requested records;

(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;

(4) An estimate of the volume of requested matter denied unless providing such estimate would harm the interest protected by the exemption under which the denial is made;

(5) The name and title of the person or persons responsible for denying the request; and

(6) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, including the address of the official to whom appeals should be submitted.

(b) Whenever the Corporation makes a record available subject to the deletion of a portion of the record, such action shall be deemed a denial of a record for purposes of paragraph (a) of this section.

(c) All denials shall be treated as final opinions under § 1602.5(b).

§ 1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within 90 days by writing to the President of the Corporation or, in the case of a denial of a request for Office of Inspector General records, the Inspector General, at the addresses given in § 1602.5(a) and § 1602.8(b). The envelope and letter or e-mail appeal should be clearly marked: ''Freedom of Information Appeal.'' An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President or designee, or Inspector General or designee, for this purpose.

(c) The decision of the President or the Inspector General on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requester, the matters described in § 1602.11(a) (1) through (4), and the provisions for judicial review of such decision under § 552(a)(4) of the FOIA. The decision shall be dispatched to the requester within 20 working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(i) and such period taken together with any earlier extension does not exceed 10 days. The decision of the President or the Inspector General shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.5(b).

(d) On an appeal, the President or designee shall consult with the Office of Inspector General prior to reversing in whole or in part the denial of any request for records or portions of records which originated with the Office of Inspector General, or which contain information which originated with the Office of Inspector General, but which are maintained by other components of the Corporation. The Inspector General or designee shall consult with the President prior to reversing in whole or in part the denial.

§ 1602.13 Fees.

(a) No fees will be charged for information routinely provided in the normal course of doing business.

(b) Fees shall be limited to reasonable standard charges for document search, review, and duplication, when records are requested for commercial use;

(c) Fees shall be limited to reasonable standard charges for document duplication after the first 100 pages, when records are sought by a representative of the news media or by an educational or non-commercial scientific institution; and

(d) For all other requests, fees shall be limited to reasonable standard charges for search time after the first 2 hours and duplication after the first 100 pages.

(e) The schedule of charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Manual search for and review of records will be charged as follows:

(i) Band 1: $10.26 per hour;

(ii) Band 2: $16.12 per hour;

(iii) Band 3: $25.22 per hour;

(iv) Band 4–5: $42 per hour;

(v) Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: actual charges as incurred;

(3) Duplication by paper copy: 10 cents per page;

(4) Duplication by other methods: actual charges as incurred;

(5) Certification of true copies: $1.00 each;

(6) Packing and mailing records: no charge for regular mail;

(7) Special delivery or express mail: actual charges as incurred.

(f) Fees will be waived or reduced below the fees established under paragraph (e) of this section if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government, the Corporation will consider the following four criteria:

(i) The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the Corporation or the Federal government'';

(ii) The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of Corporation or Federal government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to ''public understanding''; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute ''significantly'' to public understanding of the Corporation or Federal government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''

(3) These fee waiver/reduction provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(g) No fee will be charged under this section if the cost of routine collection and processing of the fee payment is likely to equal or exceed $6.50.

(h) Requesters must agree to pay all fees charged for services associated with their requests. The Corporation will assume that requesters agree to pay all charges for services associated with their requests up to $25 unless otherwise indicated by the requester. For requests estimated to exceed $25, the Corporation will first consult with the requester prior to processing the request, and such requests will not be deemed to have been received by the Corporation until the requester agrees in writing to pay all fees charged for services.

(i) No requester will be required to make an advance payment of any fee unless:

(1) The requester has previously failed to pay a required fee within 30 days of the date of billing, in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. (The request will not be deemed to have been received by the Corporation until such payment is made.); or

(2) The Corporation determines that an estimated fee will exceed $250, in which case the requester shall be

notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within 5 working days of receipt by the Corporation, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet the needs of the requester at a reduced cost. The request will not be deemed to have been received by the Corporation for purposes of the initial 20-day response period until an advance payment of the entire fee is made.

(j) Interest may be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(k) If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Corporation shall aggregate such requests and charge accordingly. Likewise, the Corporation will aggregate multiple requests for documents received from the same requester within 45 days.

(l) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

Dated: March 4, 1998.

Victor M. Fortuno,

General Counsel.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–22, RM–9183]

Radio Broadcasting Services; Chittenango and DeRuyter, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Cram Communications, LLC, seeking the reallotment of Channel 286B from DeRuyter to Chittenango, NY, as the community's first local aural broadcast service, and the modification of Station WVOA's license to specify Chittenango as the station's community of license. Channel 286B can be allotted to Chittenango in compliance with the Commission's minimum distance separation requirements at Station WVOA's presently licensed transmitter site, at coordinates 42–46–58 North Latitude and 75–50–28 West Longitude, which represents a site restriction of 29.2 kilometers (18.2 miles) south of Chittenango. This site will maintain the presently grandfathered short-spacings to Stations WBBS, Channel 284B, Fulton, NY, WNGZ, Channel 285A, Montour Falls, NY, WILQ, Channel 286B, Williamsport, PA, WGKR, Channel 287A, Grand Gorge, NY, and WKPQ, Channel 287B, Hornell, NY. Chittenango is located within 320 kilometers of the U.S.-Canadian border. Therefore, concurrence by the Canadian government in this allotment is required.

DATES: Comments must be filed on or before April 20, 1998, and reply comments on or before May 5, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James L. Oyster, 108 Oyster Lane, Castleton, VA 22716–9720 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–22, adopted February 18, 1998, and released February 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–5929 Filed 3–6–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–161; RM–9111]

Radio Broadcasting Services; Susquehanna, PA and Walton, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission, at the request of KG Broadcasting, Inc., dismisses its petition proposing the substitution of Channel 223B1 for Channel 223A at Susquehanna, Pennsylvania, and the modification of Station WKGB-FM's license accordingly. To accommodate the upgrade, petitioner also requested the substitution of Channel 248A for Channel 221A at Walton, New York, and the modification of Station WDLA-FM license accordingly. *See* 62 FR 41015, July 31, 1997. A showing of continuing interest is required before a channel can be allotted to a community. It is Commission policy, absent such an expression of interest, to refrain from allotting the channel. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–161, adopted February 18, 1998, and released February 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–5931 Filed 3–6–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–23, RM–9226]

Radio Broadcasting Services; Bozeman, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bozeman Educational Access Radio proposing the allotment of Channel 240C3 to Bozeman, Montana, and the reservation of the channel for noncommercial educational use. The channel can be allotted to Bozeman without a site restriction at coordinates 45–40–48 and 111–02–18.

DATES: Comments must be filed on or before April 20, 1998, and reply comments on or before May 5, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: William R. Smith, President, Bozeman Educational Access Radio, Post Office Box 283, Bozeman, Montana 59771–0283.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–23, adopted February 18, 1998, and released February 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–5936 Filed 3–6–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 980225048–8048–01; I.D. 021898B]

RIN 0648–AK58

Pacific Halibut Fisheries; Retention of Undersized Halibut in Regulatory Area 4E

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would allow the retention of undersized halibut (halibut less than 32 inches, 81.3 centimeters (cm) with the head on; or halibut less than 24 inches, 61 cm) caught with authorized commercial gear in International Pacific Halibut Commission (IPHC) Regulatory Area 4E for personal use. Commercial sale of undersized halibut would remain prohibited. This action is necessary to implement the recommendation of the North Pacific Fishery Management Council (Council) to allow the legal harvest of undersized halibut by persons using Community Development Quota (CDQ) in Regulatory Area 4E. This action is intended to provide for the continued existence of the customary and traditional food practices of indigenous inhabitants by allowing them to retain all halibut caught with deployed gear in Regulatory Area 4E.

DATES: Comments must be received by March 24, 1998.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Administrator for Sustainable Fisheries, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) for this action may be obtained from the above address.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and the Bering Sea (Convention), signed at Ottawa, Ontario, Canada, on March 2, 1953, and amended by a Protocol Amending the Convention, signed at Washington, DC, United States of America, on March 29, 1979, authorizes the IPHC to promulgate regulations for the conservation and management of the Pacific halibut fishery. These regulations must be approved by the Secretary of State of the United States pursuant to section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773–773k) that executes the above Convention. The Halibut Act, in section 5, provides that the Regional Fishery Management Council having authority for the geographical area concerned may recommend management measures governing Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Section 5 of the Halibut Act also provides that the Secretary of Commerce (Secretary) shall have the general responsibility to carry out the Convention between the United States and Canada and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the Assistant Administrator for Fisheries, NOAA (AA).

In 1996, the Council was requested by Alaska Native tribal organizations to review the prohibition on retaining undersized halibut caught with authorized commercial gear. This request was made on behalf of Western Alaska Natives who retained undersized halibut harvested along with CDQ halibut of commercial length. Traditionally, Western Alaska Natives of Yupik descent keep all fish caught and endeavor to utilize this fish to the fullest extent possible. This practice is in

keeping with their traditional belief that the fish, as well as the stock of fish to which a captured fish is returned, is irreparably harmed by its capture and release.

In September 1996, the Council received a NMFS report about enforcement issues related to halibut fishing practices of Western Alaska Natives. In October 1996, staff from the Council, NMFS, NOAA General Counsel, and the Alaska Department of Fish and Game met with Alaska Native tribal representatives to exchange information on the Council process for developing fishing regulations that would recognize traditional fishing customs. In December 1996, the Council established a Halibut Subsistence Committee (Committee) to review undersized halibut retention and other issues related to subsistence fishing for halibut. The Committee met in January 1997 and provided its recommendations to the Council in February 1997. After receiving the Committee's recommendations, the Council initiated preparation of an EA/RIR for a regulatory amendment to allow for subsistence fishing for halibut. In April 1997, the Council approved release of the EA/RIR for public review. In June 1997, although the Council tabled the majority of halibut subsistence issues until February 1998, it recommended that regulations be developed that would allow the retention of undersized halibut caught with authorized commercial gear in Regulatory Area 4E for personal use.

Size limits for Pacific halibut in Area 4E

Current regulations require that all undersized halibut caught with authorized commercial gear be released. This requirement conflicts with the customary and traditional halibut fishing practices of Western Alaska Natives of Yupik descent. The proposed action would revise current halibut fishing regulations to allow the retention of undersized halibut caught with authorized commercial gear in Regulatory Area 4E for personal use. Staff for the IPHC informed the Council that the IPHC would probably not object to the proposed action because the limited amount of removals retained for personal use from the commercial CDQ fishery in Regulatory Area 4E has little effect on the halibut resource. In 1997, the total allowable catch (TAC) of halibut for Regulatory Area 4E was 260,000 lb (117.9 mt). This amount was less than 3 percent of the combined TAC for Regulatory Area 4A through E (9,000,000 lb (4,082.3 mt), and less than .0005 percent of the combined TAC for all regulatory areas in and off Alaska (53,000,000 lb) (24,040.4 mt). These percentages illustrate the negligible impact the retention of undersized halibut in Regulatory 4E would have on the stock.

Also, all halibut in Regulatory Area 4E are allocated to the CDQ Program, unlike other areas where the TAC is divided between the Individual Fishing Quota (IFQ) Program and the CDQ Program. The exclusive nature of the Regulatory Area 4E allocation will eliminate potential difficulties in distinguishing between IFQ and CDQ halibut when enforcing the minimum size limit for IFQ halibut.

At its annual meeting in Anchorage, AK during the week of January 26, 1998, the IPHC relaxed its existing regulations on the minimum size retention limit to allow CDQ fishers in Area 4E to land undersized halibut caught with commercial gear for subsistence use. This proposed rule would allow the retention of undersized halibut in Area 4E as recommended by the Council in accordance with the Halibut Act and adopted by the IPHC.

Classification

The Council prepared an EA/RIR for this rule that describes the management background, the purposes and need for action, the management action alternatives, and the environmental and the socio-economic impacts of the alternatives. A copy of the EA/RIR can be obtained from NMFS (see **ADDRESSES**).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed action would allow current Community Development Quota (CDQ) participants in Area 4E (88 fishermen), all of whom are small entities, to retain halibut that now must be discarded because of size limitations. This revision would provide a benefit to the 88 fishermen who participate in Area 4E CDQ fisheries. Without this revision, undersized halibut caught while prosecuting the CDQ halibut fishery in Area 4E would have to be discarded. This result would pose a hardship on Area 4E participants for two reasons. First, most participants are indigenous inhabitants of Yupik descent who believe that discarding fish captured indicates ingratitude to the causal agent that provided the fish. Second, most participants live a subsistence lifestyle and could use discarded fish for personal use. Allowing participants to keep undersized halibut during the prosecution of CDQ fisheries reduces the need for these same participants to prosecute a separate subsistence fishery for personal use fish. This proposed action would have no effect on participants fishing in other regulatory areas or other fisheries.

As a result, a regulatory flexibility analysis was not prepared.

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

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: March 3, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

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

Authority: 16 U.S.C. 773 *et seq.*; 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 973–973r; 16 U.S.C. 2431 *et seq.*; 16 U.S.C. 3371–3378 *et seq.*; 16 U.S.C. 3636(b); 16 U.S.C. 5501 *et seq.*; and 16 U.S.C. 1801 *et seq.*

2. In § 300.63, paragraph (c) is proposed to be added to read as follows:

§ 300.63 Catch sharing plans and domestic management measures.

* * * * *

(c) A person may take and retain halibut in Area 4E that are smaller than the size limit specified in the annual management measures published pursuant to § 300.62, provided that no person may sell or barter such halibut.

[FR Doc. 98–6001 Filed 3–6–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[030398C]

Magnuson Act Provisions; Essential Fish Habitat

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

ACTION: Proposed recommendations for Essential Fish Habitat; notice of public hearings and request for public comments.

SUMMARY: NMFS requests public comments on proposed

recommendations for Essential Fish Habitat (EFH) to the Pacific Fishery Management Council (Council) for its Fishery Management Plans (FMP) for salmon, groundfish, and coastal pelagics. NMFS also announces public hearings on the proposed recommendations in Washington, Oregon, California and Idaho.

DATES: Comments must be received by May 8, 1998. The public hearings will be held at 7:00 p.m. on:

April 6, 1998, at the Doubletree Hotel, Columbia River, 1401 N. Hayden Island Drive, Portland, OR (503–283–2111);

April 14, 1998, at the NOAA Auditorium, 7600 Sand Point Way NE, Seattle, WA (206–526–6140);

April 15, 1998, at the Park Plaza International Hotel, 1177 Airport Blvd., Burlingame, CA (415-342-9200); and

April 16, 1998; at the Owyhee Plaza Hotel, 1109 Main St., Boise, ID (208-343-4611).

ADDRESSES: Send comments or requests for a copy of the proposed EFH recommendations for the salmon and groundfish FMPs to NMFS Northwest Region, Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, WA 98115. Send comments or requests for a copy of the proposed EFH recommendations for the coastal pelagics FMP to NMFS Southwest Region, Sustainable Fisheries Division, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, NMFS-Northwest Region, 206–526–6143, on salmon EFH; Yvonne deReynier, NMFS-Northwest Region, 206–526–6120, on groundfish EFH; Mark Helvey, NMFS-Southwest Region, 707–575–7585, on coastal pelagics EFH.

SUPPLEMENTARY INFORMATION: The Sustainable Fisheries Act of 1996 amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to establish new requirements for EFH descriptions in FMPs and require consultation between NMFS and Federal agencies on activities that may adversely impact EFH for species managed under FMPs. The Magnuson-Stevens Act requires all Councils to amend their FMPs by October 1998 to describe and identify EFH for each managed fishery. In accordance with the Magnuson-Stevens Act, NMFS published an interim final rule in the **Federal Register** on December 19, 1997 (62 FR 66531) providing guidelines to assist the Councils in description and identification of EFH in FMPs (including adverse impacts on EFH) and consideration of actions to ensure conservation and enhancement of EFH. The Magnuson-Stevens Act also requires NMFS to provide each Council with recommendations and information regarding EFH for each fishery under that Council's authority.

NMFS has developed proposed EFH recommendations for the Pacific Council's three FMPs through a process that has involved input from the Council, its advisory bodies, and the fishing industry at the Council's public meetings in September 1997, November 1997, and March 1998. NMFS also formed a technical team consisting of fishing industry, state, tribal, university and Federal individuals to provide technical input and advice on the development of the NMFS recommendations.

The proposed EFH recommendations for each FMP include a description of EFH for the managed species, a description of adverse effects to EFH including fishing and non-fishing threats, and a description of measures to ensure the conservation and enhancement of EFH. Copies of the proposed EFH recommendations are available (see **ADDRESSES**). Public comments are requested by May 8, 1998.

Special Accommodations

The public hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be requested at least 5 working days prior to the hearing date.

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

Dated: March 3, 1998.

Garry F. Mayer,

Acting Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 98–5998 Filed 3–6–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 45
Monday, March 9, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Special Provisions for Canadian Fresh Fruit and Vegetable Imports Under the North American Free Trade Agreement

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination of existence of conditions necessary for imposition of temporary duty on cauliflower from Canada.

SUMMARY: As required by section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, as amended by the North American Free Trade Agreement Implementation Act (''FTA Implementation Act''), this is a notification that the Secretary of Agriculture has determined that the necessary conditions exist with respect to United States acreage and import price criteria for cauliflower classifiable to subheadings 0704104000 of the Harmonized Tariff Schedule of the United States (HTS) imported from Canada to permit the Secretary to consider recommending to the President the imposition of a temporary duty (''snapback duty'') by the United States pursuant to section 301(a) of the FTA Implementation Act, implementing Article 702 of the United States-Canada Free-Trade Agreement, Special Provisions for Fresh Fruits and Vegetables, as incorporated by reference and made a part of the North American Free Trade Agreement (NAFTA) pursuant to Annex 702.1, paragraph 1 of NAFTA.

FOR FURTHER INFORMATION CONTACT: Howard Wetzel, Horticultural & Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1049 or telephone at (202) 720–3423.

SUPPLEMENTARY INFORMATION: The FTA Implementation Act, in accordance with the NAFTA, authorizes the imposition of a temporary duty (snapback) for a limited group of fresh fruits and vegetables from Canada when certain conditions exist. Cauliflower, classified under subheadings 0704104000 of the HTS, is a good subject to the snapback duty provision.

Under section 301(a) of the FTA Implementation Act, two conditions must exist before imposition by the United States of a snapback duty can be considered. First, the import price of a covered Canadian fruit or vegetable, for each of five consecutive working days, must be less than ninety percent of the corresponding five-year average monthly import price. This price for a particular day is the average import price of a Canadian fresh fruit or vegetable imported into the United States from Canada, for the calendar month in which that day occurs, in each of the 5 preceding years, excluding the years with the highest and lowest monthly averages.

Second, the planted acreage in the United States for the like fruit or vegetable must be no higher than the average planted acreage over the preceding five years, excluding the years with the highest and lowest acreage.

From October 27 to November 7, 1997, the price conditions with respect to cauliflower were met.

The most recent revision of planted acreage for cauliflower shows that this year's planted acreage is below the planted acreage over the preceding five years, excluding the years with the highest and lowest planted acreages.

Issued at Washington, D.C. the 27 day of February, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 98–5880 Filed 3–6–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–128–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection necessary for collecting user fees, ensuring remittances in a timely manner, and determining proper credit for payment of international air passenger, aircraft clearance, commercial truck, commercial railroad car, commercial vessel, phytosanitary certificate, import/export, and veterinary diagnostic user fees.

DATES: Comments on this notice must be received by May 8, 1998, to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–128–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–128–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information regarding user fees, contact Ms. Donna J. Ford, User Fees Section Head, FSSB, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–5752; or e-mail dford@aphis.usda.gov. For copies of more detailed information on the information collection, contact Ms. Celeste Sickles, Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: User Fee Regulations.

OMB Number: 0579–0094.

Expiration Date of Approval: July 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: This information collection is necessary for the Animal and Plant Health Inspection Service (APHIS) to

effectively collect fees, ensure remittances in a timely manner, and determine proper credit for payment of international air passenger, aircraft clearance, commercial truck, commercial railroad car, commercial vessel, phytosanitary certificate, import/export, and veterinary diagnostic user fees. APHIS no longer receives an appropriation to fund these activities; instead, user fees are calculated and assessed to ensure full cost recovery of each user fee program. If the information was not collected, the Agency would not be able to perform the services since the fees collected will fund the work.

Requestors of our services usually are repeat customers, and, in many cases, request that we bill them for our services. Also, the 1996 Debt Improvement Collection Act requires that agencies collect tax identification numbers (TIN's) from all persons doing business with the Government for purposes of collecting delinquent debts. Without a TIN, service cannot be provided on a credit basis.

We are responsible for ensuring that the fees collected are correct and that they are remitted in full and in a timely manner. To ensure this, the party responsible for collecting and remitting fees (ticketing agents for transportation companies) must allow APHIS personnel to verify the accuracy of the fees collected and remitted, and otherwise determine compliance with the statute and regulations. We also require that whoever is responsible for making fee payments advise us of the name, address, and telephone number of a responsible officer who is authorized to verify fee calculations, collections, and remittances. The requests for our services are in writing, by telephone, or in person. The information contained in each request identifies the specific service requested and the time in which the requester wishes the service to be performed. This information is necessary in order for the animal import centers and port offices to schedule the work and to calculate the fees due.

We have reviewed paperwork requirements of the user fee programs and have made every possible effort to streamline our processes and minimize the impact on the public. Whenever possible, we are using existing billing/collection methods to minimize the cost to the Agency. If the work is not performed, individuals and business entities will not be able to import animals, fruits, vegetables, plants, and animal and plant products.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.03663 hours per response.

Respondents: Arriving international passengers, international means of conveyance, and importers and exporters who wish to import or export animals and animal products.

Estimated annual number of respondents: 17,761.

Estimated annual number of responses per respondent: 11.7773.

Estimated annual number of responses: 209,177.

Estimated total annual burden on respondents: 7,663 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of March 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–5988 Filed 3–6–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–011–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of plant pest, noxious weed, and garbage regulations.

DATES: Comments on this notice must be received by May 8, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 98–011–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket No. 98–011–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the plant pest and noxious weed regulations, contact Polly Lehtonen, Botanist, Biological Assessments & Taxonomic Support, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737, (301) 734–4394. For copies of more detailed information on the information collection, contact Ms. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Federal Plant Pest and Noxious Weed Regulations.

OMB Number: 0579–0054.

Expiration Date of Approval: August 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, is responsible for preventing the introduction and dissemination of plant pests, noxious weeds, and communicable livestock and poultry diseases. APHIS is also responsible for eradicating plant pests, noxious weeds, and livestock and poultry diseases when eradication is feasible.

The introduction or establishment of new plant pests, noxious weeds, and communicable diseases of livestock and poultry in the United States could cause multimillion dollar losses to American agriculture.

To prevent the introduction and dissemination of plant pests, noxious weeds, and communicable diseases of livestock and poultry, APHIS engages in a number of information collection activities designed to allow us to determine whether shipments of regulated articles (such as certain plants and soil) that may be imported into the United States or moved interstate present a risk of introducing plant pests, noxious weeds, or communicable diseases of livestock and poultry.

Our primary means of obtaining this vital information is requiring individuals to apply to us for a permit to import regulated articles or to move these articles interstate. The permit application contains such information as the nature and amount of items to be imported or moved interstate, the country or locality of origin and the intended destination, and the intended port of entry in the United States.

This data enables us to evaluate the risks associated with the proposed importation or interstate movement of regulated articles, and also enables us to develop risk-mitigating conditions, if necessary, for the proposed importation or movement.

We also require owners or operators of certain garbage-handling facilities to apply to us for a permit so that they can be approved to process regulated garbage in such a way that it no longer poses a threat of disseminating plant pests or livestock and poultry diseases within the United States.

We are asking the Office of Management and Budget (OMB) to approve the continued use of these information collection activities.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection activity. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .80966 hours per response.

Respondents: Importers and shippers of plant pests, noxious weeds, and other regulated articles; State plant health authorities; owners or operators of regulated garbage-handling facilities.

Estimated annual number of respondents: 40,912.

Estimated annual number of responses per respondent: 1.1361.

Estimated annual number of responses: 46,480.

Estimated total annual burden on respondents: 37,633 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of March 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–5989 Filed 3–6–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of Lake Tarleton Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of Establishment of Lake Tarleton Purchase Unit.

SUMMARY: The Secretary of Agriculture created the 2,514-acre Lake Tarleton Purchase Unit in Grafton County, New Hampshire. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

EFFECTIVE DATE: Establishment of this purchase unit was effective January 7, 1998.

ADDRESSES: A copy of the map depicting the lands within the purchase unit is on file and available for public inspection in the office of the Director, Lands Staff, 201 14th Street, S.W., Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Jack Craven, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, telephone: (202) 205–1248.

Dated: February 26, 1998.

Gloria Manning,

Associate Deputy Chief, National Forest System.

Lake Tarleton Purchase Unit—Warren & Piermont Townships, Grafton County, New Hampshire

Pursuant to the Secretary of Agriculture's authority under Section 17, P.L. 94–588 (90 Stat. 2949), the lands as described hereto are within the Lake Tarleton Purchase Unit:

A tract of land lying and being in Warren and Piermont Townships, Grafton County, New Hampshire, being more particularly described as follows:

Beginning at the corner common to the Towns of Piermont, Haverhill, Benton and Warren.

Thence southerly with the Town Line common to Piermont and Warren and with Proclamation Boundary #1449 (May 16, 1918) 2700 feet.

Thence leaving said Piermont/Warren Town Line and continuing with said Proclamation Boundary #1449 in the Town of Benton southeasterly and southerly to an intersection with the centerline of State Route #25C.

Thence with said centerline of Route 25C northwesterly, at 4200 feet pass the Warren/Piermont Town Line, in all 6500 feet to an intersection with the centerline of a stream flowing out of Lake Armington.

Thence up said out flow of Lake Armington to the natural high water mark of Lake Armington.

Thence with said natural high water mark of Lake Armington as it meanders southerly to lands of Nardone Family Trust.

Thence westerly with said lands of Nardone Family Trust and lands of Roy 300 feet to lands of Meadows End Timberlands, Ltd.

Thence northwesterly with said lands of Meadows End Timberlands 8700 feet to lands of Rodimon.

Thence northeasterly with said lands of Rodimon to an intersection with the centerline of said Route 25C.

Thence northwesterly with said centerline of Route 25C 3200 feet to lands of Shields.

Thence northwesterly with said lands of Shields 700 feet to lands of Fagnant

Thence northeasterly with said lands of Fagnant 3840 feet to an intersection with the Haverhill/Piermont Town Line.

Thence with said Haverhill/Piermont Town Line 9500 feet to the PLACE OF THE BEGINNING.

Containing 2,514 acres, more or less; the boundary to be consistent with the surveys of Tracts #1067 and #1067a. These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Technical and clerical corrections to the above description may be made as necessary.

Dated: January 7, 1998.

Brian Eliot Burke,

Deputy Under Secretary, Natural Resources and the Environment.

[FR Doc. 98–5976 Filed 3–6–98; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Sunshine Act Meeting Notice, 62 FR 24635 (5–6–97).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: March 10, 1998, ARRB, 600 E Street, NW, Washington, DC.

CHANGES IN THE MEETING: This closed meeting has been canceled and will be rescheduled on a future date.

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Press and Public Affairs Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–457.

T. Jeremy Gunn,

Executive Director.

[FR Doc. 98–6110 Filed 3–5–98; 12:33 pm]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Recruitment of Private-Sector Members

SUMMARY: The President's Export Council Subcommittee on Export Administration (PECSEA) advises the U.S. Government on matters and issues pertinent to implementation of the provisions of the Export Administration Act and the Export Administration Regulations, as amended, and related statutes and regulations. These issues relate to U.S. export controls as mandated by law for national security, foreign policy, non-proliferation, and short supply reasons. The PECSEA draws on the expertise of its members to provide advice and make recommendations on ways to minimize the possible adverse impact export controls may have on U.S. industry. The PECSEA provides the Government with direct input from representatives of the broad range of industries that are directly affected by export controls.

The PECSEA is composed of high-level industry and Government members representing diverse points of view on the concerns of the business community. PECSEA industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, foreign policy, non-proliferation, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

PECSEA members are appointed by the Secretary of Commerce and serve at the Secretary's discretion. The membership reflects the Department's commitment to attaining balance and diversity. PECSEA members must obtain secret-level clearance prior to appointment. These clearance are necessary so that members can be permitted access to relevant classified information needed in formulating recommendations to the President and the U.S. Government. The PECSEA meets 4 to 6 times per year. Members of the Subcommittee will not be compensated for their services. The PECSEA is seeking approximately eight private-sector members with senior export control expertise and direct experience in one or more of the following industries: machine tools, semiconductors, commercial communication satellites, high performance computers, telecommunications, aircraft, pharmaceuticals, and chemicals. Please send a fact sheet on your company that details your activity in the areas listed above, as well as a short biographical sketch on the individual who wishes to become a candidate. Materials may be faxed to the number below.

DEADLINE: This request will be open for 15 days from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482–2583. Materials may be faxed to (202) 501–8024, to the attention of Ms. Lee Ann Carpenter.

Dated: March 3, 1998.

William V. Skidmore,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 98–5911 Filed 3–6–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c) (2) (A)).

DATES: Written comments must be submitted on or before May 8, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Faye Robinson, Statutory Import Programs Staff, Room 4211, U.S. Department of Commerce, Washington, DC 20230; Phone number: (202) 482–3526, and fax number: (202) 482–0949.

SUPPLEMENTARY INFORMATION:

I. Abstract

Congress, when it enacted legislation to implement the Nairobi Protocol to the Florence Agreement, included a provision for the Departments of Commerce and Treasury to collect information on the import of articles for the handicapped. Form ITA–362P, Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty, is the vehicle by which statistical information is obtained to assess whether the duty-free treatment of articles for the handicapped has had a significant adverse impact on a domestic industry (or portion thereof) manufacturing or

producing a like or directly competitive article. Without the collection of data, it would be almost impossible for a sound determination to be made and for the President to appropriately redress the situation.

II. Method of Data Collection

The Department of Commerce and the U.S. Customs Service have copies of Form ITA–362P and distributes the form to importers and brokers upon request. The importer or its broker normally completes the form, which is included in the Customs entry package. Forms are then forwarded by Customs officials or brokers to the Department of Commerce, which keeps the statistical records.

III. Data

OMB Number: 0625–0118.

Form Number: ITA–362P.

Type of Review: Revision-Regular Submission.

Affected Public: Commercial, non-commercial, and individual importers of articles for the handicapped who wish to receive duty-free entry into the U.S.

Estimated Number of Respondents: 380.

Estimated Time Per Response: 4 minutes.

Estimated Total Annual Burden Hours: 304 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $14,240.00 ($3,040.00 for respondents and $11,200.00 for federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 5, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–6146 Filed 3–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[AA–421–805]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide (PPD–T) From the Netherlands; Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of the Antidumping Duty Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide (PPD–T aramid) from the Netherlands in response to requests by respondent, Akzo Nobel Aramid Products, Inc. and Aramid Products V.o.F. (Akzo) and petitioner, E.I. DuPont de Nemours and Company. This review covers sales of this merchandise to the United States during the period June 1, 1996, through May 31, 1997, by Akzo. The results of the review indicate the existence of dumping margins for the above period.

We invite interested parties to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan at (202) 482–1324 or Eugenia Chu at (202) 482–3964, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230.

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 19 CFR part 353 (1997).

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** the antidumping duty order on PPD–T aramid from the Netherlands on June 24, 1994 (59 FR 32678). On June 11, 1997, we published in the **Federal Register** (62 FR 31786) a notice of opportunity to request an administrative review of the antidumping duty order on PPD–T aramid from the Netherlands covering the period June 1, 1996, through May 31, 1997.

In accordance with 19 CFR 353.22(a)(1), Akzo and petitioner requested that we conduct an administrative review for the aforementioned period. On August 1, 1997, the Department published a notice of ''Initiation of Antidumping Review'' (62 FR 41339). The Department is now conducting this administrative review pursuant to section 751 of the Act.

Scope of Review

The products covered by this review are all forms of PPD–T aramid from the Netherlands. These consist of PPD–T aramid in the form of filament yarn (including single and corded), staple fiber, pulp (wet or dry), spun-laced and spun-bonded nonwovens, chopped fiber, and floc. Tire cord is excluded from the class or kind of merchandise under review. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 5402.10.3020, 5402.10.3040, 5402.10.6000, 5503.10.1000, 5503.10.9000, 5601.30.0000, and 5603.00.9000. The HTS item numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondent, using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in public versions of the verification reports, available to the public in Room B–099 of the H.C. Hoover Building (the main Commerce Building).

Transactions Reviewed

In accordance with section 751 of the Act, the Department is required to determine the normal value (NV) and export price (EP) or constructed export price (CEP) of each entry of subject merchandise. See Section 751(a)(2)(A). Because there can be a significant lag between entry date and sale date for CEP sales, it has been the Department's

practice to examine U.S. CEP sales during the period of review. See *Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review* , 58 FR 48826 (1993) (the Department did not consider ESP (now CEP) entries which were sold after the POR). The Court of International Trade (CIT) has upheld the Department's practice in this regard. See *The AD Hoc Committee of Southern California Producers of Gray Portland Cement* v. *United States,* Slip Op. 95–195 (CIT December 1, 1995).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the Scope of the Review, which were produced and sold by the respondent in the home market during the POR, to be foreign like products for purposes of product comparisons to U.S. sales. Where there were no sales of identical or similar merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the constructed value (CV) of the product sold in the U.S. market during the comparison period.

On January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cemex, S.A.* v. *United States,* No. 97–1151, 1998 WL 3626 (Fed. Cir. Jan. 8, 1998). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (''CV'') as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales disregarded as below cost. See section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

Constructed Export Price

The Department based its margin calculation on CEP, as defined in section 772(b), (c), and (d) of the Act, because all sales to the first unaffiliated purchaser in the United States took place after importation.

We calculated CEP based on delivered prices to unaffiliated purchasers in the United States. When appropriate, the Department made adjustments for discounts and rebates. We deducted credit expenses, direct selling expenses and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. We also made deductions for movement expenses (international freight, brokerage and handling, U.S. duties, domestic inland freight, and insurance). Finally, pursuant to section 772(d)(3), an adjustment was made for CEP profit.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) and (C) of the Act. Because Akzo's aggregate volume of the home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV on home market sales.

We based NV on packed, ex-factory or delivered prices to unaffiliated purchasers in the home market. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments to home market price for discounts, rebates, inland freight and insurance. To adjust for differences in circumstances of sale between the home market and the United States, we reduced home market prices by an amount for home market credit expenses. In order to adjust for differences in packing between the two markets, we adjusted home market price by deducting HM packing costs and adding U.S. packing costs. Prices were reported net of value added taxes (VAT) and, therefore, no deduction for VAT was necessary. We made adjustments, where appropriate, for physical differences in merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Cost of Production Analysis

In the most recently completed administrative review of Akzo, we disregarded sales found to be below the cost of production (COP). Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales below the COP may have occurred during this review period. Thus, pursuant to section 773(b) of the Act, we initiated a COP investigation of Akzo in the instant review.

In accordance with section 773(b)(3) of the Act, we calculated an average COP, by model, based on the sum of the cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market general and administrative expenses and packing costs in accordance with section 773(b)(3) of the Act. We used the home market sales data and COP information provided by Akzo in its questionnaire responses.

After calculating a weighted-average COP, we tested whether home market sales of PPD-T aramid were made at prices below COP within an extended period of time in substantial quantities, and whether such prices permitted recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(C), where less than 20 percent of Akzo's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' In accordance with section 773(b)(2)(B) and (D) where 20 percent or more of home market sales of a given product during the POR were at prices less than the COP, we found that such sales were made in substantial quantities within an extended period of time. Because the sales prices would not permit recovery of all costs within a reasonable period of time, we disregarded those below cost sales and used the remaining above-cost sales to determine NV in accordance with section 773(b)(1). For those models of PPD-T aramid for which there were no above-cost sales available for matching purposes, we compared CEP to CV.

Price-to-Price Comparisons

Pursuant to section 777A(d)(2), we compared the CEPs of individual U.S. transactions to the monthly weighted-average NV of the foreign like product

where there were sales at prices above COP, as discussed above.

To determine whether sales of PPD-T aramid by Akzo to the United States were made at less than NV, we compared the CEP (Akzo had no EP sales), as described in the ''Constructed Export Price'' section of this notice, to the NV.

We made adjustments, where appropriate, for physical differences in merchandise (DIFMER) in accordance with section 773(a)(6)(C)(ii) of the Act. In addition, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Akzo's cost of materials and fabrication employed in producing the subject merchandise, selling, general and administrative expenses, and profit incurred and realized in connection with production and sale of the foreign like product, and U.S. packing costs. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by Akzo in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We used the costs of materials, fabrication, and SG&A as reported in the CV portion of Akzo's questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of Akzo's questionnaire response. We based selling expenses and profit on the information reported in the home market sales portion of Akzo's questionnaire response. *See Certain Pasta from Italy; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 61 FR 1344, 1349 (January 19, 1996). For selling expenses, we used the average of the home market selling expenses weighted by the total quantity sold. For actual profit, we first calculated the difference between the home market sales value and home market COP for all home market sales in the ordinary course of trade, and divided the sum of these differences by the total home market COP for these sales. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

We derived the CEP offset amount from the amount of the indirect selling expenses on sales in the home market. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted from CEP under section 772(d) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In the present case, we were not able to compare U.S. CEP sales to HM sales at the same level of trade. First we compared the CEP to the HM sales to determine whether a level-of-trade adjustment was appropriate, in accordance with the principles discussed above. For purposes of our analysis, we examined information regarding the distribution systems in both the United States and the Netherlands markets, including the selling functions, classes of customer, and selling expenses. Upon consideration of the above mentioned factors, the Department determined that there is one level of trade and one channel of distribution in the home market (direct to end users/converters) and a different level of trade in the U.S. market (sales to an affiliated importer). However, the data available do not provide an appropriate basis to determine a level of trade adjustment. Further, we determined that Akzo's NV sales to end-users/converters in the home market, as well as CV, are at a more advanced stage of distribution than sales to affiliated importers in the United States. As a result, the Department has preliminarily determined to grant Akzo an adjustment to NV and CV in the form of a CEP Offset. For a complete analysis of the Department's methodology *see* the Level of Trade Memorandum dated March 2, 1998.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. See Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996). Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61971 (November 19, 1997). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate, in accordance with established practice. Therefore, for purposes of the current review, we have made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales based on the methodology discussed above.

Preliminary Results of the Review

As a result of our comparison of CEP and NV, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
Akzo	06/01/96–05/31/97	17.10

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any

hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will publish a notice of final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We calculated an importer-specific ad valorem duty assessment rate for the class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries that particular importer made during the POR. (This is equivalent to dividing the total amount of the antidumping duties, which are calculated by taking the difference between statutory NV and statutory CEP, by the total statutory CEP value of the sales compared, and adjusting the result by the average difference between CEP and customs value for all merchandise examined during the POR).

Furthermore, the following deposit requirements will be effective for all shipments of PPD–T aramid from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 66.92 percent, the ''all others'' rate established in the LTFV investigation (59 FR 32678, June 24, 1994), as explained before. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this 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 administrative review and notice are published pursuant to section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–5992 Filed 3–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of one Megabit or Above From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent not to Revoke Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary result of antidumping duty administrative review and notice of intent not to revoke order.

SUMMARY: In response to requests from two respondents and one U.S. producer, the Department of Commerce is conducting an administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above from the Republic of Korea. The review covers two manufacturers/exporters of the subject merchandise to the United States and four ''third-country'' resellers from Singapore, Malaysia, Canada, and Hong Kong for the period of May 1, 1996 through April 30, 1997. As a result of the review, the Department of Commerce has preliminarily determined that dumping margins exist for both manufacturers/exporters and two of the third-country resellers. With respect to the third-county resellers, one did not respond, two stated that they made no sales of the subject merchandise to the U.S. during the period of review, and one reseller did not fully respond. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties as appropriate. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–3814.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the regulations of the Department of Commerce (the Department) are to 19 CFR part 353 (1997).

Background

On May 10, 1993, the Department published in the **Federal Register** (58 FR 27250) the antidumping duty order on DRAMs from the Republic of Korea. On May 2, 1997, the Department published a notice of ''Opportunity to Request an Administrative Review'' of this antidumping duty order for the period of May 1, 1996, through April 30, 1997 (62 FR 24081). We received timely requests for review from two manufacturers/exporters of subject merchandise to the United States; Hyundai Electronics Industries, Co. (Hyundai), and LG Semicon Co., Ltd (L.G. formerly Goldstar Electronics Co., Ltd.). The petitioner, Micron Technologies Inc., requested an administrative review of these same two Korean manufacturers of DRAMs as well as four third-country resellers of DRAMS. The third-country resellers are Techgrow Limited (Hong Kong) (Techgrow), Singapore Resources Pte. Ltd. (Singapore), NIE Electronics Sdn. Bhd. (Malaysia, and Vitel Electronics Ottawa Office (Canada) (Vietel). On June 19, 1997, the Department initiated a review of the above-mentioned Korean manufacturers and third-country resellers (62 FR 33394). The period of review (POR) of all respondents is May

1, 1996, through April 30, 1997. The Department is conducting this review in accordance with section 751 of the Act.

In addition, on June 25, 1997, we initiated an investigation to determine if Hyundai and LG made sales of subject merchandise below the cost of production (COP) during the POR based upon the fact that we had disregarded sales found to have been made below the COP in the original less-than-fair-value (LTFV) investigation, which was the most recent period for which final a final determination was available when this review was initiated. On January 12, 1998, the Department published in the **Federal Register** (63 FR 1824) a notice extending the time for the preliminary results from January 30, 1998, until March 2, 1998.

Scope of the Review

Imports covered by the review are shipments of Dynamic Random Access Memory Semiconductors (DRAMS) of one megabit or above from the Republic of Korea (Korea). Included in the scope are assembled and unassembled DRAMS of one megabit and above. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die, and cut die. Processed wafers produced in Korea, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea, are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMS, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope. The scope of this review also includes video random access memory semiconductors (VRAMS), as well as any future packaging and assembling of DRAMS. The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMS or memory modules that are reimported for repair or replacement.

The DRAMS subject to this review are currently classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMS contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review remains dispositive.

Intent Not To Revoke

Both Hyundai and LG submitted requests to revoke the order covering DRAMS from Korea pursuant to 19 CFR 353.25(b). Under the Department's regulations, the Department may revoke an order, in part, if the Secretary concludes that, among other things: (1) ''[o]ne or more producers or resellers covered by the order have sold the merchandise at not less than [normal] value for a period of at least three consecutive years''; (2) ''[i]t is not likely that those persons will in the future sell the merchandise at less than normal value * * *''; and (3) ''the producers or resellers agree in writing to the immediate reinstatement of the order, as long as any producer or reseller is subject to the order, if the Secretary concludes * * * that the producer or reseller, subsequent to the revocation, sold the merchandise at less than [normal] value.'' *See* 19 CFR 353.25(a)(2). In this case, neither respondent meets the first criterion for revocation. The Department has preliminarily found that the two respondents, LG and Hyundai, sold subject merchandise at not less than normal value in the two prior reviews under this order, but did sell at less than normal value during the instant review. Since neither respondent has met the first criterion for revocation, *i.e.*, or *de minimis* margins for three *consecutive* reviews, the Department need not reach a conclusion with respect to the ''not likely'' standard. Therefore, on this basis, we have preliminarily determined not to revoke the Korean DRAM antidumping duty order.

Facts Available

LG

Based on information obtained from the Customs Service, we have preliminarily determined that a number of sales LG had reported as being to a third country were actually sales to the United States. *See* Memorandum from Team to Thomas Futtner, February 25, 1998. The Department has preliminarily determined that in accordance with section 776(a) of the Act, the margin for LG should be based on facts available as it failed to report those U.S. sales. As facts available, the Department has calculated a dumping margin based on both the reported and the unreported sales to the United States which we were able to identify based on Customs Service data.

For LG's unreported sales, we used product-specific weighted average U.S. selling expenses based on reported expenses for identical products. Where there were no identical matches, we used weighted average selling expenses based on reported selling expenses.

Interested parties may submit comments regarding the application of facts available to LG due to unreported sales within 14 calendar days of publication of this notice. Rebuttal comments may be submitted from the 15th calendar day through and including the 21st calendar day. Comments submitted during this period may address the application of facts available due to LG's unreported sales only. Time limits for case briefs and rebuttal briefs, and the contents thereof, are not affected by the stipulations noted above. Requirements for the submission of case briefs and rebuttal briefs are described elsewhere in this notice.

Techgrow

On October 16, 1997, the Department notified Techgrow that under the Department's regulations Techgrow was affiliated with *Tech Perfect Inc.* and requested that Techgrow submit a response for sections B through E which included information covering Techgrow, Tech Perfect, and any other affiliated parties which sold subject merchandise during the POR. The Department reiterated this request on November 17, 1997. Techgrow submitted responses to sections A, B, and C only, and did not include the information requested for its affiliates. On November 26, 1997 and December 3, 1997, Tech Perfect, Inc. and Techgrow respectively, notified the Department that they would not participate in the instant review. Tech Perfect Inc. and Techgrow formally filed notices of withdrawal with the Department on December 16, 1997. Failure to submit the requested information, and withdrawal from this proceeding, has significantly impeded our review with respect to Techgrow. Thus in

accordance with section 776(a) of the Act, we must rely on facts available for sales to Techgrow and its affiliates.

Vitel

On August 12, 1997, Vitel confirmed it had received the questionnaire, but subsequently failed to submit a response. Since Vitel failed to submit a questionnaire response in accordance with section 776(a) of the Act, we are relying on facts available to establish an antidumping margin for Vitel.

Corroboration of Facts Available

As discussed above, Techgrow submitted responses to sections A, B, and C only, and did not include the information requested for its affiliates. Vitel confirmed it had received the questionnaire, but subsequently failed to submit a response. Section 776(a)(2) of the Act provides that if any interested party: (1) withholds information that has been requested by the Department; (2) fails to provide such information in a timely manner or in the form or manner requested; (3) significantly impedes an antidumping investigation; or (4) provides such information but the information cannot be verified, the Department is required to use facts otherwise available (subject to subsections 782(c)(1) and (e)) to make its determination. Because Techgrow failed to respond in full to the Department's questionnaire, and Vitel did not respond at all, we must use facts otherwise available to calculate their dumping margin.

Section 776(b) provides that adverse inferences may be used against a party that failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* the Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994) (''SAA''). Techgrow's decision to respond only in part, and failure to provide affiliate information, demonstrates that Techgrow has failed to cooperate to the best of its ability in this review. Vitel failed to cooperate since it provided no questionnaire response at all. Therefore, the Department has determined that, in selecting among the facts otherwise available for Techgrow and Vitel, an adverse inference is warranted.

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

As adverse facts available, we are assigning to Techgrow and Vitel, individually, the highest margin calculated in these preliminary results, that rate calculated for Hyundai, 12.64 percent. The Department considers this rate corroborated and having probative value since it was calculated based on information collected and verified specifically for purpose of calculating a margin for a respondent in the instant review.

No Shipments

Singapore Resources Pte. Ltd. (Singapore) and NIE Electronics Sdn. Bhd. (Malaysia) reported that they made no U.S. sales of subject merchandise during the POR. Therefore, unless and until these companies sell subject merchandise to the U.S. and participate in an administrative review, any future shipments by these companies of subject merchandise to the U.S. will be subject to the all others rate established in the LTFV investigation.

Constructed Export Price

For LG and Hyundai, in calculating price to the United States, the Department used constructed export price (CEP), as defined in section 772(b) of the Act, because the merchandise was first sold to an unaffiliated U.S. purchaser after importation.

We calculated CEP based on packed, factory prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for discounts, rebates, foreign brokerage and handling, foreign inland insurance, air freight, air insurance, U.S. duties and direct and indirect selling expenses to the extent that they are associated with economic activity in the United States (these included credit expenses, warranty expenses, royalty payments, commissions as applicable, advertising and promotion expenses paid by the respondent, and inventory carrying costs incurred by the respondents U.S. subsidiaries) in accordance with sections 772(c)(2) and 772(d)(1) of the Act. We added duty drawback paid on imported materials in the home market, where applicable, pursuant to section 772(c)(1)(B) of the Act.

For DRAMS that were further manufactured into memory modules after importation, we deducted all costs of further manufacturing in the United States, pursuant to section 772(b)(2) of the Act. These costs consisted of the costs of the materials, fabrication, and general expenses associated with the further manufacturing in the United States.

Pursuant to section 772(d)(3) of the Act, we also reduced the CEP United States price by the amount of profit allocated to the expenses deducted under section 772(d)(1) and (2).

No other adjustments were claimed or allowed.

Normal Value

In order to determine whether there was a sufficient volume of sales of DRAMS in the home market to serve as a viable basis for calculating normal value, we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the aggregate volume of home market sales of the foreign like products for both Hyundai and LG was greater than five percent of the respective aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for all respondents.

We disregarded Hyundai's and LG's sales found to have been made below the COP during the LTFV investigation, the most recent period for which final results were available at the time of the initiation of this review. Accordingly, the Department, pursuant to section 773(b) of the Act, initiated COP investigations of both respondents for purposes of this administrative review.

We calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A), and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment, in accordance with section 773(b)(3) of the Act. We relied on the home market sales and COP information provided by the respondents in the questionnaire responses. In accordance with section 773(b)(1) of the Act, in order to determine whether to disregard home market sales made at price below the COP, we examined whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permit the recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of home market sales of a given model were at prices less than the COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in ''substantial

quantities''. Where 20 percent or more of home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made in ''substantial quantities'' and at prices that would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in CEMEX v. United States, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales in the ordinary course of trade of the identical or the most similar merchandise in the home market that were otherwise suitable for comparison, we compared U.S. sales to sales of the next most similar foreign like product, based on the characteristics listed in Section B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

In accordance with section 773(e) of the Act, we calculated CV based on the respondents' cost of materials and fabrication employed in producing the subject merchandise, SG&A and profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the cost of materials, fabrication, and G&A as reported in the CV portion of the questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of the respondents' questionnaire responses. For selling expenses, we used the average of the selling expenses reported for home market sales that survived the cost test, weighted by the total quantity of those sales. For actual profit, we first calculated the difference between the home market sales value and home market COP, and divided the difference by the home market COP. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

For both respondents, the Department relied on the submitted COP and CV information, adjusted as necessary. As discussed below, we adjusted the respondents' reported COP and CV with respect to the following: (1) research and development (R&D), (2) depreciation, and (3) foreign exchange losses.

R&D

The Department recalculated the respondents' reported R&D expense based on the ratio of each company's total semiconductor expenses to the total semiconductor cost of goods sold. Due to the forward-looking nature of the R&D activities, the Department, in this review, cannot identify every instance where DRAM R&D may influence logic products or where logic R&D may influence DRAM products, but the Department's own semiconductor expert has identified areas where R&D from one type of semiconductor product has influenced another semiconductor product in the past. Dr. Murzy Jhabvala, a semiconductor device engineer at NASA with twenty-four years experience, was asked by the Department to state his views regarding cross-fertilization of R&D efforts in the semiconductor industry. In a July 14, 1995 Memorandum to Holly Kuga, ''Cross Fertilization of Research and Development Efforts in the Semiconductor Industry,'' Dr. Jhabvala stated that ''it is reasonable and realistic to contend that R&D from one area (*e.g.*, bipolar) applies and benefits R&D efforts in another area (*e.g.*, MOS memory).'' It is the Department's practice where costs benefit more than one product to allocate those costs to all the products which they benefit. This practice is consistent with section 773(f)(1)(A) of the Act because we have determined that the product-specific R&D accounts do not reasonably reflect the costs associated with the production and sale of DRAMS. Therefore, as semiconductor R&D benefits all semiconductor products, we allocated semiconductor R&D to all semiconductor products.

Depreciation

In contrast to the previous year, both respondents, for this POR, elected not to take special depreciation. This represents a failure to report depreciation expenses in a systematic and rational manner. As a result, disproportionately greater costs were attributed to products manufactured during the period for which the special depreciation was taken than for the subsequent period when it was not taken. Therefore, for these preliminary results, we are making an adjustment to the respondents' reported depreciation. We are adding special depreciation to the reported cost of production.

Foreign Exchange Losses

We have included the amortized portion of foreign exchange losses on long-term debt in the cost of production as part of interest expense. The translation gains and losses at issue are related to the cost of acquiring and maintaining debt. These costs are related to production and are properly included in the calculation of financing expense as a part of COP. In previous cases, we have found that translation losses represent an increase in the actual amount of cash needed by the respondents to retire their foreign currency denominated loan balances. *See Notice of Final Determination of Sales at Less than Fair Value: Fresh Cut Roses from Ecuador,* 24 FR 7019, 7039, (Feb. 6, 1995). Also, *see Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From the Republic of Korea,* 63 FR 8937, (Feb. 23, 1998). Furthermore, the Department has amortized these expenses over the remaining life of the companies' loans in the past. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737, 9743, (Mar. 4, 1997). Also, *see Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From the Republic of Korea,* 63 FR 8937, (Feb. 23, 1998). We have verified deferred foreign exchange translation gains and losses for both respondents. To reasonably reflect the cost of producing and selling the subject merchandise, it is necessary that the respondents' costs reflect the additional financial burden represented by the cash needed to retire foreign currency denominated loans.

Therefore, we are amortizing deferred foreign exchange translation gains and losses over the average remaining life of the loans on a straight-line basis and are including the amortized portion in net interest expense.

For price-to-price comparisons, we based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and to the extent practicable, at the same level of trade, in accordance with section 773(a)(1(B)(i) of the Act. We compared the U.S. prices of individual transactions to the monthly weighted-average price of sales of the foreign like product. We calculated NV based on delivered prices to unaffiliated customers and, where appropriate, to affiliated customers in the home market.

In calculating NV for both CV and home market prices, we made adjustments, where appropriate, for inland freight, inland insurance, discounts, rebates, and Korean brokerage and handling charges. We also reduced NV by packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i) of the Act. In addition, we increased NV for U.S. packing costs, in accordance with section 773(a)(6)(A) of the Act. We also made further adjustments, when applicable, to account for differences in physical characteristics of the merchandise in accordance with section 773(a)(6)(c)(ii) of the Act. Finally, in accordance with section 773(a)(6)(C)(iii) of the Act, we made an adjustment for differences in the circumstances of sale by deducting home market direct selling expenses (credit expenses, advertising expenses, royalty expenses, and bank charges) and adding any direct selling expenses associated with U.S. sales not deducted under the provisions of section 772(d)(1) of the Act.

Level of Trade and CEP Offset

In accordance with section 773(a)(1(B) of the Act, to the extent practical, we determined NV based on sales in the comparison market at the same level of trade as the EP or CEP sales. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, it is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examined stages in the marketing process and selling activities along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

We reviewed the questionnaire responses of both respondents to establish whether there were sales at different levels of trade based on the distribution system, selling activities, and services offered to each customer or customer category.

For both respondents, we identified one level of trade in the home market with direct sales by the parent corporation to the domestic customer. These direct sales were made by both respondents to original equipment manufacturers (OEMs) and to distributors. In addition, all sales, whether made to OEM customers or to distributors, included the same selling functions. For the U.S. market, all sales for both respondents were reported as CEP sales. The level of trade of the U.S. sales is determined for the sale to the affiliated importer rather than the resale to the unaffiliated customer. We examined the selling functions performed by the Korean companies for U.S. CEP sales (as adjusted) and preliminarily determine that they are at a different level of trade from the Korean companies' home market sales because the companies' CEP transactions were at a less advanced stage of marketing. For instance, at the CEP level the Korean companies did not engage in any general promotion, marketing activities, or price negotiations for U.S. sales.

Because we compared CEP sales to home market sales at a more advanced level of trade, we examined whether a level of trade adjustment may be appropriate. In this case, both respondents only sold at one level of trade in the home market; therefore, there is no basis upon which either respondent can demonstrate a pattern of consistent price differences between levels of trade. Further, we do not have information which would allow us to examine pricing patterns based on the respondents' sales of other products and there is not other record information on which such an analysis could be based. Because the data available do not provide an appropriate basis for making a level of trade adjustment and the level of trade in the home market is at a more advanced stage of distribution than the level of trade of the CEP sales, a CEP offset is appropriate. Both respondents claimed a CEP offset. We applied the CEP offset to adjusted home market prices or constructed value, as appropriate. The CEP offset consisted of an amount equal to the lesser of the weighted-average U.S. indirect selling expenses and U.S. commissions or homemarket indirect selling expenses. No other adjustments were claimed or allowed. The level of trade methodology employed by the Department in these preliminary results of review is based on the facts particular to this review. The Department will continue to examine its policy for making level of trade comparisons and adjustments for its final results of review.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the POR:

Manufacturer/exporter	Percent margin
Hyundai Electronic Industries, Inc ..	12.64
LG Semicon Co., Ltd	7.61
Techgrow Limited (Hong Kong)	12.64
Vitel Electronics Ottawa Office (Canada)	12.64

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales made during

POR to the total customs value of the sales used to calculate those duties. These rates will be assessed uniformly on all entries of each particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory EP and CEP, by the total statutory EP or CEP value of the sales compared, and adjusting the result by the average difference between EP or CEP and customs value for all merchandise examined during the POR).

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of DRAMS from Korea entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Hyundai, LG, Techgrow and Vitel will be the rates indicated above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of the most recent review, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 3.85 percent, the ''all-others'' rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within ten days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments not later than 120 days after the date of publication of this notice.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this 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 administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 2, 1998.

Robert S. LaRussa,

Assistant Secretary Import Administration.

[FR Doc. 98–5991 Filed 3–6–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 970424097–8019–03]

RIN 0625–ZA05

Market Development Cooperator Program

AGENCY: International Trade Administration (ITA), Commerce.

ACTION: Notice.

SUMMARY: ITA promotes U.S. exports and works to improve the global competitiveness of the United States, creating jobs for Americans. ITA has created the Market Development Cooperator Program (MDCP) to build public/private export marketing partnerships. The MDCP is a competitive matching grants program that provides federal assistance to non-profit export multipliers such as states, trade associations, chambers of commerce, world trade centers and other non-profit industry groups that are particularly effective in reaching small- and medium-size enterprises (SMEs). MDCP awards help to underwrite the start up costs of exciting new export promotion ventures which these groups are often reluctant to undertake without federal government support.

The MDCP aims to:

- Challenge the private sector to think strategically about foreign markets;
- Be the catalyst that spurs private sector innovation and investment in export marketing; and
- Increase the number of American companies, particularly SMEs, taking decisive export actions.

The advantage of a joint effort is that it permits the federal government to pool expertise and funds with non-federal sources so that each maximizes its market development resources. Partnerships of this sort also may provide a sharper focus on long-term export market development than do traditional trade promotion activities and serve as a mechanism for improving government-industry relations.

While the Department of Commerce sponsors, guides and partially funds the MDCP with a matching requirement by the recipient, the Department of Commerce expects applicants to develop, initiate and carry out market development project activities. As an active partner, ITA will, as appropriate, provide assistance identified by the applicant as being essential to the achievement of project goals and objectives. U.S. industry is best able to assess its problems and needs in the foreign marketplace and to recommend innovative solutions and programs that can be the formula to success in international trade.

Examples of activities that might be included in an applicant's project proposal are described below. No one or any combination of these activities must be included for a proposal to receive favorable consideration. The Department of Commerce encourages applicants to propose activities that (1) would be most appropriate to the market development needs of their industry or industries; and (2) display the imagination and innovation of the applicant working in partnership with the government to obtain the maximum market development impact.

A public meeting for parties considering applying for funding under the MDCP will be held on April 3. Attendance at this public meeting is not required of potential applicants. The purpose of the meeting is to provide general information to potential applicants regarding MDCP procedures, selection process, and proposal preparation. No discussion of specific proposals will occur at this meeting.

DATES: The public meeting will be held from 2–4 p.m, on April 3, in Room 6808, at the Herbert Clark Hoover Building, 14th and Constitution Avenue, N.W., Washington, D.C. Completed applications must be received no later than 5 p.m. Eastern Standard Time May 4, 1998. Late applications will not be

accepted. They will be returned to sender. Application kits will be available from the Department of Commerce starting March 9, 1998.

ADDRESSES: The public meeting will be held from 2–4 p.m., on April 3, in Room 6808, at the Herbert Clark Hoover Building, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

To obtain an application kit, please send a written request with a self-addressed mailing label to Mr. Greg O'Connor, Manager, Market Development Cooperator Program, Trade Development/OPCRM, Room 3221, U.S. Department of Commerce, Washington, D.C. 20230. Application kits may also be picked up in Room 3209, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. The application kit contains all forms necessary to participate in the MDCP application process.

Please send completed applications to the Office of Planning, Coordination and Resource Management, Trade Development, Room 3221, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Greg O'Connor, Manager, Market Development Cooperator Program, Trade Development, Room 3221, Washington, D.C. 20230, (202) 482–3197.

SUPPLEMENTARY INFORMATION:

Authority: The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, Title II, sec. 2303, 102 Stat. 1342, 15 U.S.C. 4723.

(Catalog of Federal Domestic Assistance (CFDA): No. 11.112, Market Development Cooperator Program.)

Program Description

The goal of the MDCP identified in authorizing legislation is to develop, maintain, and expand foreign markets for nonagricultural goods and services produced in the United States. For purposes of this program, ''nonagricultural goods and services'' means goods and services other than agricultural products as defined in 7 U.S.C. 451. ''Produced in the United States'' means having substantial inputs of materials and labor originating in the United States, such inputs constituting at least 50 percent of the value of the good or service to be exported. The intended beneficiaries of the program are U.S. producers of nonagricultural goods or services that seek to export such goods or services.

MDCP funds should not be viewed as a replacement for funding from other sources, either public or private. An important aspect of this program is to increase the sum of federal and non-federal export market development activities. This result can best be achieved by using program funds to encourage new initiatives.

In addition to new initiatives, expansion of the scope of an existing project also may qualify for funding consideration. Eligible organizations that have previously received an MDCP award must propose a new project or expansion of an existing project to receive consideration for a new award.

The Department of Commerce encourages applicants to propose activities that would be most appropriate to the market development needs of their U.S. industry or industries. The following are examples of activities which applicants might include in an application (no one of these activities or any combination of these activities must be included for an application to receive favorable consideration). Many of these activities have been undertaken by current and past MDCP award winners:

(1) Opening an overseas office or offices to perform a variety of market development services for companies joining a consortium to avail themselves of such services; such an office should not duplicate the programs or services of the U.S. and Foreign Commercial Service (US&FCS) post(s) in the region, but could include co-location with a US&FCS Commercial Center;

(2) Detailing a private sector individual to a US&FCS post in accordance with 15 U.S.C. 4723(c);

(3) Commissioning overseas market research, participating in overseas trade exhibitions and trade missions to promote U.S. exports, and/or hosting reverse trade missions;

(4) Overseas U.S. product demonstrations;

(5) Export seminars in the United States or market penetration seminars in the market(s) to be developed;

(6) Technical trade servicing that helps overseas buyers choose the right U.S. goods or services and to use the good or service efficiently;

(7) Joint promotions of U.S. goods or services with foreign partners;

(8) Training of foreign nationals to perform after-sales service or to act as distributors for U.S. goods or services;

(9) Working with organizations in the foreign marketplace responsible for setting standards and for product testing to improve market access for U.S. goods or services;

(10) Publishing an export resource guide or an export product directory for the U.S. industry or industries in question, if no comparable one exists; and

(11) Establishing an electronic business information system to identify overseas trade leads and facilitate matches with foreign partners for U.S. businesses.

Funding Availability

The total amount of funds available for this program is $2.0 to $2.25 million for fiscal year (FY) 98. The Department expects to conclude a minimum of five (5) cooperative agreements with eligible entities for this program. No award will exceed $400,000, regardless of the duration of the cooperative agreement.

Matching Requirements

To receive MDCP funding, the applicant must contribute at least two dollars for each federal dollar provided. In satisfying this matching requirement, the applicant must make one dollar of new cash outlays expressly for the project for each federal dollar of MDCP funding. The balance of the applicant's support may consist of in-kind contributions (goods and services). Recipient cash contributions are defined in OMB Circular A–110, § ____.2(f) as the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties. In order for a recipient to outlay cash contributed by a third party, the third party must transfer the funds to the recipient. Otherwise, expenditures for goods and services contributed by a third party are considered to be in-kind contributions. For example, an applicant requesting $200,000 of federal funds must supply, at a minimum, $200,000 of new cash outlays expressly for the project. The remaining $200,000 of the required match can be made up of additional new cash outlays or in-kind contributions.

Applicants may propose projects for which the applicant's match will exceed two applicant dollars to each federal dollar. However, private sector matches exceeding program guidelines have consequences in the disbursement of funds. A cost share ratio is established for each award winner based upon the award winner's share of the total cost of the project. Funds are disbursed using this ratio. For example, a project for which the applicant will assume 3/4 of the total cost will have a cost share ratio of 75 percent applicant/25 percent federal. In requesting a disbursement of federal dollars, the award winner will have to generate $3 in grant expenditures for each dollar it wants to obtain in federal grant monies.

In the proposed budget, all in-kind contributions to be used in meeting the

applicant's share of costs should be listed in a separate column from cash contributions. A separate budget narrative describing these in-kind contributions should also be included with the proposal. This information should be in sufficient detail for a determination to be made that the requirements of OMB Circular A–110, section 23 (a), and 15 CFR part 24.24 (a) and (b) are met.

The Department of Commerce will support only a portion of the direct costs of each project. Each applicant will support a portion of the direct costs (to be specified in the application). Generally, direct costs are those that are specifically associated with an award, and usually include expenses such as personnel, fringe benefits, travel, equipment, supplies and contractual obligations relating directly to program activity. Allowable costs will be determined on the basis of the applicable cost principles, *i.e.*, OMB Circulars A–21, A–87, and A–122; 45 CFR part 74, Appendix E; and 48 CFR part 31. No indirect costs will be paid with Department of Commerce funding under this program.

Applicants may charge companies in the industry or other industry organizations reasonable fees to take part in or avail themselves of services provided as part of applicants' projects. Applicants should describe in detail plans to charge fees. Fees generated under the award are program income and must be used for project related purposes during the award period.

Type of Funding Instrument

Since ITA will be substantially involved in the implementation of each project for which an award is made, the funding instrument for this program will be a cooperative agreement. To administer each cooperative agreement, a project team is established including key personnel from the award winning organization and officials from ITA who can help award winners achieve MDCP project objectives. If representatives from other federal agencies can make a meaningful contribution to the achievement of project objectives, they are invited to participate on the project team.

Each project team acts as a ''board of directors'' specifying direction or redirection of the scope of work of the project and determining mode of project operations and other management processes, coupled with close monitoring or operational involvement during performance of project activities. At the beginning of each fiscal year, the project team negotiates an annual operating plan setting forth specific activities that will take place, project responsibilities and how much each activity will cost. In addition to participating on project teams, ITA staff may work directly on individual MDCP project activities.

Eligibility Criteria

U.S. trade associations, nonprofit industry organizations, state trade departments and their regional associations including centers for international trade development, and private industry firms or groups of firms in cases where no entity described above represents that industry are eligible to apply for cooperative agreements under this program. For the purpose of this program, a ''trade association'' is defined as a fee based organization consisting of member firms in the same industry, or in related industries, or which share common commercial concerns. The purpose of the trade association is to further the commercial interests of its members through the exchange of information, legislative activities, and the like.

For the purpose of this program, a ''nonprofit industry organization'' is an organization that is classified as a nonprofit organization under Title 26 U.S.C. Section 501(c) (3), (4), (5), or (6) and operates as one of the following:

(1) A local, state, regional, or national chamber of commerce; (2) a local, state, regional, or national board of trade; (3) a local, state, regional, or national business, export or trade council/interest group; (4) a local, state, regional, or national visitors bureau or tourism promotion group; (5) a local, state, regional, or national economic development group; (6) a Small Business Administration Small Business Development Center; (7) a world trade center; (8) a port authority; or a (9) free trade zone.

Prospective applicants are strongly encouraged to seek advice on their eligibility to enter the MDCP competition, according to the criteria above. To obtain advice regarding eligibility, the applicant should submit basic organizational documents (e.g. charters, articles of incorporation) and information on types of members, membership fees, ties to state trade departments or their regional associations, organizations's purpose, and activities, and IRS status. All requests for advice regarding eligibility should be received no later than April 3, 1998. Applicants are advised to continue working on proposals while awaiting advice on eligibility. Absolutely no extensions of the deadline for submitting applications will be granted.

Eligible U.S. entities may join together to submit an application as a joint venture and to share costs. For joint venture applicants, one organization meeting the above eligibility criteria must be designated as the prospective MDCP grant recipient organization for administrative purposes. For example, two trade associations representing different segments of a single industry or related industries may pool their resources and submit one application. Foreign businesses and private groups also may join with eligible U.S. organizations to submit applications and to share the costs of proposed projects.

The Department of Commerce will accept applications from eligible entities representing any industry, subsector of an industry or related industries. Each applicant must permit all companies in the industry in question to participate, on equal terms, in all activities that are scheduled as part of a proposed project whether or not the company is a member or constituent of the eligible organization.

Eligible entities desiring to participate in this program must demonstrate the ability to provide an established competent, experienced staff and other resources to assure adequate development, supervision and execution of the proposed project activities. Applicants must describe in detail all assistance expected from the Department of Commerce or other federal agencies to implement project activities successfully. Each applicant must provide a description of the membership/qualifications, structure and composition of the eligible entity, the degree to which the entity represents the industry or industries in question, and the role, if any, foreign membership plays in the affairs of the eligible entity. Applicants should summarize both the recent history of their industry or industries' competitiveness in the international marketplace and the export promotion history of the eligible entity or entities submitting the application.

Project proposals must be compatible with U.S. trade and commercial policy. Additional information delineating U.S. commercial policy may be obtained from the 1997 Trade Promotion Coordinating Committee's National Export Strategy.

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.

Indirect Costs

Department of Commerce funds can not be used to pay indirect costs. The total dollar amount of the indirect costs proposed in an application under this program (using recipient funds) must not exceed the indirect cost rate negotiated and approved by a cognizant federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Application Forms and Kit

Standard Forms 424 (Rev. 4–92) Application for Federal Assistance, 424A (Rev. 4–92) Budget Information—Non-Construction Programs, 424B (Rev. 4–92) Assurances—Non-Construction Programs, SF–LLL, Disclosure of Lobbying Activities and other Department of Commerce forms (CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying; CD–512, Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying), which are required as part of the application, are available from the contact person indicated above. Applicants must submit a signed original and two (2) copies of the application and supporting materials.

Project Funding Priorities

ITA is especially interested in receiving proposals that focus in whole or in part on the following ITA priorities:

(1) Monitoring foreign compliance with our trade agreements such as NAFTA, WTO and sector-specific agreements;

(2) Identifying and working to eliminate tariff and non-tariff barriers to market access for U.S. goods or services, including working with organizations in the foreign marketplace responsible for setting standards and for product testing;

(3) Understanding the export aversion of SMEs, targeting export-ready SMEs, and offering export assistance services designed to meet the special needs of SMEs as opposed to just offering SMEs the opportunity to participate in activities aimed broadly at the entire export marketing community;

(4) Improving communication with and outreach to old and new private sector international trade constituencies and initiating or enhancing public/private export partnerships.

Applications may be targeted for any market in the world and/or industry covered by ITA's industry units (Technology and Aerospace Industries; Basic Industries; Service Industries and Finance; Textiles, Apparel and Consumer Goods Industries; Environmental Technologies Exports; and Tourism Industries).

Background Research

Developing a project plan requires solid background research. Applicants should study, and applications should reflect the findings of such study, of the following:

(1) The market potential of the U.S. good(s) or service(s) to be promoted in a particular market(s),

(2) The competition from host-country and third-country suppliers, and

(3) The economic situation and prospects that bear upon the ability of a country to import the U.S. good(s) or service(s).

In their applications, applicants should present an assessment of industry resources that can be brought to bear on developing a market; the industry's ability to meet potential market demand expeditiously; and the industry's after-sales service capability in a particular foreign market(s).

After describing their completed basic research, applicants should develop marketing plans that set forth the overall objectives of the projects and the specific activities applicants will undertake as part of these projects. Applications should display the imagination and innovation of the private sector working in partnership with the government to obtain the maximum market development impact.

Evaluation Criteria

The Department of Commerce is interested in projects that demonstrate the possibility of both significant results during the project period and lasting benefits extending beyond the project period. To that end, consideration for financial assistance under the MDCP will be based upon the following evaluation criteria:

(1) Potential of the project to generate export success stories and/or export initiatives in both the short and medium-term. For purposes of this program, an export initiative is defined as a significant expenditure of resources (time, people or money) by the CEO of a company in the active pursuit of export sales. Examples of export initiatives include, but are not limited to the following:

(a) An overseas trip by a CEO to explore a new market;

(b) Participation in an overseas trade promotion event;

(c) Hiring an export manager;

(d) Establishing an export department;

(e) Enrolling in a college level export marketing course;

(f) Developing an export marketing/business plan;

(g) Translation of product literature into a foreign language;

(h) Making product modifications to comply with foreign market requirements;

(i) Commissioning an in-depth market research study;

(j) Advertising in a foreign business publication;

(k) Undertaking an overseas direct mail campaign to create product awareness;

(l) Signing an agent/distributor;

(m) Introduction to a potential foreign buyer;

(n) Signing an export contract/filling an export order.

(o) Co-location with a US&FCS Commercial Center.

Applicants should provide detailed explanations of projected project results.

(2) Projected increase (multiplier effect) in the number of U.S. companies operating in the market(s) selected, particularly SMEs, and the degree to which the project will help the industry in question increase or maintain market share in the market/s selected. Applicant should provide quantifiable estimates of projected increases.

(3) The degree to which the proposal furthers or is compatible with ITA's priorities stated above and the degree to which a proposal initiates or enhances partnership with the Department of Commerce.

(4) Creativity and innovation displayed by the work plan while at the same time being realistic and the institutional capacity of the applicant to carry out the work plan. Creativity and innovation can be displayed in a variety of ways. Applicants might propose projects that include ideas not previously tried before to promote a particular industry's goods or services in a particular market. Creativity can be demonstrated by the manner in which techniques are customized to meet the specific needs of certain client groups. A proposal can be creative in the way it brings together the strengths and resources of partners participating in project activities. Further, projects that focus on market development are inherently more creative than projects that focus only on export promotion. Market development is the process of identifying or creating emerging markets or market niches and modifying products to penetrate those markets. Market development is demand driven and designed to create long term export capacity where not only current

products can be sold, but future products as well.

Current or past MDCP applicants should be aware that to be in a position to earn the maximum number of points under this criterion, they should propose projects that are entirely new. If a current or past MDCP applicant chooses to propose an expansion of an existing or past project, the expansion should be the majority of the total project for the proposal to earn a high score on this criterion. In addition, current or past MDCP applicants that apply proposing an expansion of an existing or past project must clearly demonstrate how the expansion, standing alone, is creative and innovative in accordance with the above definition.

(5) Reasonableness of the itemized budget for project activities, the amount of the cash match that is readily available at the beginning of the project, and the probability that the project can be continued on a self-sustained basis after the completion of the award.

Current or past MDCP recipients who propose an expansion of an existing project must show how the expansion will achieve self-sustainability independent of current or past projects funded under the MDCP.

Each of the above criteria is worth a maximum of 20 points.

Selection Procedures

Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted under the program. The Independent Review Panel, consisting of at least three people, will review all applications based on the criteria stated above. The Independent Review Panel will identify and rank the top ten proposals and make recommendations to the Assistant Secretary for Trade Development concerning which of the proposals should receive awards. The Assistant Secretary for Trade Development will make the final recommendations regarding the funding of applications from the group of ten identified by the Independent Review Panel.

In making his decision, the Assistant Secretary for Trade Development will consider the following:

(1) The evaluations of the individual reviewers of the Independent Review Panel;

(2) The degree to which applications satisfy ITA priorities as established under the project funding priorities listed above;

(3) The geographic distribution of the proposed awards;

(4) The diversity of industry sectors covered by the proposed grant awards;

(5) The diversity of project activities represented by the proposed awards;

(6) Avoidance of redundancy and conflicts with the initiatives of other federal agencies; and

(7) The availability of funds.

Performance Measures

On August 3, 1993, the Government Performance and Results Act (GPRA) was enacted into law (Public Law 103–62). GPRA requires each federal agency to submit a strategic plan for program activities to OMB. Among other things, each strategic plan must include ''performance indicators to be used in measuring or assessing the relevant outputs, service levels and outcomes of each program activity.'' While not abandoning outputs (units of products, including services, of an activity) as a measure of achievement, OMB directed agencies to focus more on outcomes (the resulting effect of the use or application of an output) as the primary indicator of the success of programs and activities.

Beginning with the submission of its FY 1998 budget, ITA began reporting results using the GPRA measures defined for its programs and activities. Many of these measures apply only to the programs and activities of ITA and have little relevance to the activities of MDCP award winners. The following performance measures, however, have particular applicability to MDCP projects:

Outcome Measures

Dollar Value of Exports Resulting from Outputs.

Number of New-to-Export Firms Participating in Activities.

Number of New-to-Market Firms Participating in Activities.

Degree of Customer Satisfaction (value of outputs determined by perception of customer based on their expectation of the output versus the plan, an agreed upon specification or other criteria).

Output Measures

Number of Counseling Sessions.

Number of Clients Counseled.

Number of Reports (Publications) Prepared.

Number of Copies of Reports (Publications) Distributed.

Number of Trade Events.

Number of Firms Participating in Trade Events.

All award winners active in the MDCP during FY 1997 were asked to use these measures in their quarterly reports and to provide an end-of-year assessment of the accomplishments of their projects using these measures. Applicants for this year's MDCP competition should be mindful of these performance measures and should use them wherever possible when estimating projected project results in their proposals. As was the case in FY 1997, all active MDCP award winners in FY 1998 will be asked to use these measures in quarterly reports and to provide an end-of-year assessment of the accomplishments of their projects using these measures. Therefore, winners of the FY 1998 MDCP award competition should be prepared upon receipt of an award to put in place a system to capture the results achieved from project activities. Each applicant should describe this system in its proposals. Applicants are encouraged to develop and utilize additional performance measures they find meaningful to demonstrate the success of their projects.

Other Requirements

(1) Federal Policies and Procedures

Recipients and subrecipients are subject to all federal laws and federal and Department of Commerce policies, regulations, and procedures applicable to federal financial assistance awards.

(2) Past Performance

Unsatisfactory performance under prior federal awards may result in an application not being considered for funding.

(3) Preaward Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover preaward costs.

(4) No Obligation for Future Funding

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future 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.

(5) Delinquent Federal Debts

No award of federal funds shall be made to an applicant who has an outstanding delinquent federal debt until either:

a. The delinquent account is paid in full,

b. A negotiated repayment schedule is established and at least one payment is received, or

c. Other arrangements satisfactory to the Department of Commerce are made.

(6) Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(7) Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

a. Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

b. Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

c. Anti-Lobbying

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitations on use of appropriated funds to influence certain federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

d. Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, Appendix B.

(8) Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

(9) False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(10) Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

(11) Buy American-Made Equipment and Products

Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

12. Fly America Act

All award recipients must comply with the provisions of the Fly America Act.

Classification

This notice has been determined to be not significant for purposes of Executive Order 12866. The standard forms referenced in this notice are cleared under OMB Control No. 0348–0043, 0348–0044, 0348–0040, and 0348–0046 pursuant to the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Dated: March 4, 1998.

Jerome S. Morse,

Director, Resource Management and Planning Staff, Office of Planning, Coordination and Resource Management Trade Development, International Trade Administration.

[FR Doc. 98–5910 Filed 3–6–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Showcase Exhibit of U.S. Exports

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Showcase Exhibit of U.S. Exports.

DATE: March 9, 1998.

SUMMARY: The International Trade Administration (''ITA'') of the Department of Commerce announces an exhibition of exported U.S. products and services. The exhibition will showcase U.S. exports by exhibiting successfully exported products and services at ITA headquarters in Washington, DC, to highlight the benefits of exporting and the impact of exports on the U.S. economy. Companies and trade associations are encouraged to express interest in providing exhibit material. The automotive sector will be the first industrial sector to be represented.

Authority: 15 U.S.C. 1512.

FOR FURTHER INFORMATION ON AUTOMOTIVE SECTOR EXHIBIT ONLY, PLEASE CONTACT: Robert O. Reck, Director, Auto Parts Division; U.S. Department of Commerce/ITA; Room 4036; Washington, DC 20230; Telephone (202) 482–1418.

SUPPLEMENTARY INFORMATION:

Background

ITA will showcase U.S. exports by exhibiting successfully exported products and services at its headquarters in Washington, DC, to highlight the benefits of exporting and the impact of exports on the U.S. economy. The exhibit, which will represent a series of industries and a variety of companies, will be located in the office of the Under Secretary for International Trade. Displayed items may include illustrations, miniaturized or actual models, or actual products. The exhibit will be rotated approximately every four months.

The first sector to be displayed will be the motor vehicles and automotive parts industry. Companies and trade associations in this sector are encouraged to express interest in

showcasing their exports of goods and/or services by contacting ITA through the individual listed above. A **Federal Register** notice will be published subsequently to announce the next sector to be highlighted.

Selection Process

Items will be selected for exhibition on the basis of the following factors:

(1) Items must be produced in, or representative of services exported from, the United States and have at least a 50% U.S. content (including materials, equipment and labor). To highlight the impact of exports on small businesses, items will also be considered that are produced by U.S. companies that do not directly export but rather whose goods or services are incorporated into another company's for export.

(2) The items must relate to the industry selected by ITA and are suitable for exhibit in a limited space.

(3) The company must not be owned or controlled, indirectly or directly, by a foreign government.

(4) Items chosen should reflect diversity of company size, location, demographics, and traditional under-representation in business.

(5) Preference will be given to companies which ITA assisted in their exporting endeavors through ITA's business counseling services, trade promotion events, or market access negotiations.

Other Conditions

Displayed items will be considered loans to the Department. Companies will be responsible for shipment of the item to and from the Commerce Department, for obtaining appropriate insurance, and for all related costs.

Time Frame for Applications

Expressions of interest from the motor vehicles/automotive parts sector should be received within one month of the date of this Notice. Expressions of interest should be sent to the ITA official identified above.

Dated: March 3, 1998.

David L. Aaron,

Under Secretary for International Trade.

[FR Doc. 98–5889 Filed 3–6–98; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020498B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fisheries for Dolphin and Wahoo

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

ACTION: Request that NMFS designate the South Atlantic Fishery Management Council to prepare a fishery management plan (FMP) and subsequent FMP amendments (amendments) for dolphin and wahoo; request for public comments.

SUMMARY: NMFS has received a request from the South Atlantic Fishery Management Council (South Atlantic Council) that NMFS designate, under procedures of the Magnuson-Stevens Fishery Conservation and Management Act, the South Atlantic Council as the Regional Fishery Management Council (Council) to prepare a FMP and amendments for the fisheries for dolphin, *Coryphaena hippurus*, and wahoo, *Acanthocybium solanderi*, throughout their range in the exclusive economic zone (EEZ) of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. If NMFS designates the South Atlantic Council to prepare this FMP and amendments for these fisheries, the Caribbean, Gulf of Mexico, Mid-Atlantic, and New England Fishery Management Councils would still be able to propose dolphin and wahoo management measures for inclusion in the FMP and amendments. Under the South Atlantic Council's proposal, preparation of the FMP and amendments, and submission of these to NMFS for review, approval, and implementation (as provided under section 302(h) of the Magnuson-Stevens Act), would require a majority vote by only the South Atlantic Council. Input to the FMP and amendments by other Councils would not require their formal action (i.e., formal Council vote). Public comments are solicited concerning the South Atlantic Council's request.

DATES: Comments must be submitted by April 8, 1998.

ADDRESSES: Comments should be directed to Dr. Andrew J. Kemmerer, Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: Currently, dolphin is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Pelagics FMP). Wahoo in the Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, is not included in any Federal FMP. At its August 1997 meeting, the South Atlantic Council passed a motion to begin development of an FMP that would regulate commercial and recreational fisheries for dolphin and wahoo in the Atlantic EEZ. The South Atlantic Council requested that NMFS designate it to prepare such an FMP for these species throughout their range in the EEZ of the Atlantic Ocean.

Under section 304(f) of the Magnuson-Stevens Act, NMFS, on behalf of the Secretary of Commerce, may designate which Council(s) shall prepare an FMP and amendments for a fishery that extends beyond the geographical area of authority of any one Council. Specifically, NMFS may designate one Council to prepare the FMP and amendments or require that the FMP and amendments be prepared jointly by the Councils concerned. No jointly prepared FMP or amendment may be submitted to NMFS for review, approval, and implementation unless it is approved by a majority of the voting members, present and voting, of each Council concerned. Designation of one Council to prepare the FMP and amendments does not preclude participation in developing proposed management measures by the other Councils concerned.

South Atlantic Council action to initiate development of the FMP was prompted by public and Congressional concerns regarding possible overfishing and localized reductions of these two species because of increased harvesting by commercial and recreational fishermen. The South Atlantic Council believes that an FMP is necessary to protect and manage dolphin and wahoo resources throughout the Atlantic Ocean. Development of such an FMP is consistent with the Magnuson-Stevens Act that requires the prevention of overfishing of fishery resources in the EEZ and the maintenance of fish stocks at population levels sufficient to produce maximum sustainable yield on a continuing basis. The South Atlantic Council indicates that the FMP would insure the long term health and sustainability of these fishery resources. Such an FMP would also address user group conflicts. To provide protection for dolphin and wahoo throughout their range in the Atlantic Ocean, the South Atlantic Council has asked the

Caribbean, Gulf, Mid-Atlantic, and New England Fishery Management Councils to support and participate in the management of these species. Specifically, the South Atlantic Council would establish a dolphin and wahoo management committee comprised of members of all the Councils concerned as well as an advisory panel comprised of fishery representatives from the various Councils' jurisdictions. The South Atlantic Council indicates the FMP would preferably provide for consistent measures throughout the full range of dolphin and wahoo, but, where possible, the management program would be tailored to each Council's jurisdiction.

Inclusion of dolphin in the proposed FMP would require its removal from the Coastal Pelagics FMP by amendment to this fishery management plan. The Gulf and South Atlantic Councils jointly developed and amend the Coastal Pelagics FMP (managed species include king mackerel, Spanish mackerel, cero, cobia, dolphin, little tunny, and in the Gulf only, bluefish). The Coastal Pelagics FMP is implemented under authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622. Presently, those regulations specify authorized and unauthorized fishing gears for dolphin in the Atlantic and Gulf of Mexico EEZ, and corresponding dolphin possession limits for those gears.

The South Atlantic Council indicates, based on available information, that increased harvesting of dolphin and wahoo off the southern Atlantic states has contributed to localized depletion and user group conflicts. These problems are attributed to recent increases in fishing effort and market demand spurred by the popularity of dolphin among restaurant patrons. Available landings information indicates that the pelagic longlining fleet is directing increased effort toward dolphin, perhaps to offset declining swordfish catches. Considering that this fleet operates throughout the Atlantic EEZ, there is increasing opportunity for occurrences of localized overfishing of dolphin elsewhere in the EEZ, possibly leading to an overfished condition of the stock.

The South Atlantic Council believes that the present situation requires timely remedial action to prevent overfishing and serious user group conflicts before they occur off the southern Atlantic states or elsewhere in the Atlantic EEZ. In considering the increasing fishing pressure on dolphin and wahoo, and the sparse information available on stock structure and status, the South Atlantic Council perceives a need to provide management throughout their range. Consequently, the South Atlantic Council requests authorization to develop an FMP that would provide comprehensive management and protection of dolphin and wahoo in the EEZ of the Atlantic Ocean.

NMFS requests public comments on the South Atlantic Council's proposal to be designated as the Council to prepare a new FMP to manage dolphin and wahoo throughout the Atlantic Ocean. Written comments will be reviewed and considered prior to NMFS' decision on this request.

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

Dated: March 2, 1998.

Gary C. Matlock,

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

[FR Doc. 98–5838 Filed 3–6–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030398D]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Essential Fish Habitat (EFH) Technical Review Panel (TRP).

DATES: The meeting is scheduled to begin at 1:00 p.m. on Wednesday, April 1, 1998, and adjourn at 3:00 p.m. on Thursday, April 2, 1998.

ADDRESSES: The meeting will be held at the at the Wyndham Riverfront Hotel, 701 Convention Center Boulevard, New Orleans, LA 70130; telephone: 504–524–8200.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: At this meeting, the TRP will review the technical accuracy and adequacy of a revised preliminary draft of the Generic Amendment Addressing EFH Requirements in the Fishery Management Plans of the Gulf of Mexico. EFH amendments are mandated by the recent passage of the Magnuson-Stevens Fishery Conservation and Management Act.

The TRP will review each section and provide comments. Based on the review, the TRP will develop recommendations for consideration by drafters of the document.

A copy of the agenda can be obtained by calling 813–228–2815.

Although other issues not on the agenda may come before the TRP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 25, 1998.

Dated: March 3, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–6000 Filed 3–6–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030398E]

Marine Mammals

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Mr. Michael deGruy, The Film Crew, 629 State Street, Suite 222, Santa Barbara, CA 93101, has requested an amendment to Photography Permit No. 860–1374.

DATES: Written or telefaxed comments must be received on or before April 8, 1998.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (562/980–4001).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at 301/713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 860–1374, issued on October 15, 1997, (62 FR 54836) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 860–1374 authorizes the permit holder to take by Level B harassment gray whales (*Eschrichtius robustus*) and northern elephant seals (*Mirounga angustirostris*) in California waters for purposes of commercial photography. The permit holder requests authorization to include 50 California sea lions (*Zalophus californianus*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 3, 1998.

Art Jeffers,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–6002 Filed 3–6–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0077]

Proposed Collection; Comment Request Entitled Quality Assurance Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0077).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Quality Assurance Requirements. The clearance currently expires on June 30, 1998.

DATES: Comments may be submitted on or before May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

ADDRESSES: Comments 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. 9000–0077, Quality Assurance Requirements, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Supplies and services acquired under Government contracts must conform to the contract's quality and quantity requirements. FAR Part 46 prescribes inspection, acceptance, warranty, and other measures associated with quality requirements. Standard clauses related to inspection (a) Require the contractor to provide and maintain an inspection system that is acceptable to the Government; (b) give the Government the right to make inspections and test while work is in process; and (c) require the contractor to keep complete, and make available to the Government, records of its inspection work.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .25 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, *950*; responses per respondent, *1*; total annual responses, *950*; preparation hours per response, *.25*; and total response burden hours, *237.5 (238)*.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *58,060*; hours per recordkeeper, *.68*; and total recordkeeping burden hours, *39,481*. The total annual burden is *238+39,481=39,719*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0077, Quality Assurance Requirements, in all correspondence.

Dated: March 3, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–5879 Filed 3–6–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Air and Space Command & Control Agency (ASC2A) Advisory Group Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet at Langley Air Force Base, VA on April 9–10, 1998 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–5977 Filed 3–6–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–175 and EA–176]

Applications To Export Electric Energy; Enova Energy, Inc. and Sempra Energy Trading Corp.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: Enova Energy, Inc. and Sempra Energy Trading Corp. both power marketers, have submitted applications to export electric energy to Mexico.

DATES: Comments, protests or requests to intervene must be submitted on or before March 24, 1998.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

The Office of Fossil Energy (FE) of the Department of Energy (DOE) has received applications from the following companies for authorization to export electric energy to Mexico, pursuant to section 202(e) of the FPA:

Applicant	Application date	Docket No.
Enova Energy, Inc. (EEI)	2/27/98	EA–175
Sempra Energy Trading Corp. (SET)	2/27/98	EA–176

EEI, a wholly owned subsidiary of Enova Corporation which owns 100% of San Diego Gas & Electric Company (SDG&E), is a power marketer that does not own, operate or control any electric power generation, transmission or distribution facilities. In Docket EA–175, EEI proposes to purchase electric energy from electric utilities and federal power marketing agencies and transmit the energy on its own behalf to Mexico. EEI would arrange for the exported energy to be transmitted to Mexico over the international transmission facilities owned by SDG&E.

In Docket EA–176, SET, a power marketer, also proposes to transmit to Mexico surplus electric energy purchased from utilities and federal power marketing agencies using the international transmission facilities owned by SDG&E. SET is a wholly owned subsidiary of Wine Acquisition Inc., which in turn, is owned 50% by Enova Corporation and 50% Pacific Enterprises (which owns 100% of Southern California Gas Company).

The SDG&E international transmission facilities, as more fully described in the applications, have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to these proceedings or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above.

The comment period in this proceeding has been abbreviated so that each applicant may make a timely response to a solicitation for 320 MW or more of energy and capacity proffered by Comision Federal de Electricidad (CFE), the national electric utility of Mexico. FE considers this action to not harm, or otherwise prejudice, any entity that may wish to become a party to this proceeding because both EEI and SET are corporately related to SDG&E, the owner of the transmission facilities each proposes to use.

Comments on EEI's request to export to Mexico should be clearly marked with Docket EA–175. Additional copies are to be filed directly with Dwain M. Boettcher, President, Enova Energy, Inc., P.O. Box 126211, San Diego, CA 92112–6211 *AND* Michael C. Tierney, Enova Corporation, P.O. Box 129400, San Diego, CA 92112–9400.

Comments on SET's request to export to Mexico should be clearly market with Docket EA–176. Additional copies are to be filed directly with Michael A. Goldstein, Esq., Vice President & General Counsel, Sempra Energy Trading Corp., One Greenwich Plaza, Greenwich, CT 06830 *AND* Michael C. Tierney, Enova Corporation, P.O. Box 129400, San Diego, CA 92112–9400.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on March 3, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 98–5940 Filed 3–6–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–2–000]

Amoco Production Company; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 20, 1998, Amoco Production Company (Amoco), alleging compliance with the Commission's January 23, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to Amoco's Kansas ad valorem tax refund obligation to K N Interstate Gas Transmission Company (KNI), identified in the Statement of Refunds Due filed by KNI in Docket No. RP98–53–000. Amoco's pleading is on file with the Commission and, except for Amoco's confidential offer of settlement, is open to public inspection.

Amoco contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. Amoco suggests that a Settlement Judge be appointed, that Amoco's refund obligation to KNI be held in abeyance and that interest be tolled, on the basis

that Amoco has a constitution and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that Amoco previously collected from KNI. Amoco further alleges that it made a settlement offer to KNI, and that KNI rejected that offer.

Amoco also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which KNI and Amoco disagree. Amoco further argues that these issues must be adjudicated. Amoco's alleged issues of material fact include:

(1) The amount of dollars of revenue Amoco collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars Amoco collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by Amoco were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which Amoco contends will govern the amount of interest owned.

Amoco's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting KNI's refund claim, and Amoco's privileged and confidential offer of settlement to KNI (Amoco's Attachment A). Amoco also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to Amoco's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 12, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5965 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–4–000]

Amoco Production Company; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 20, 1998, Amoco Production Company (Amoco), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to Amoco's Kansas ad valorem tax refund obligation to Williams Gas Pipeline Central, Inc., formerly: Williams Natural Gas Company, (Williams), identified in the Statement of Refunds Due filed by Williams in Docket No. RP98–52–000. Amoco's pleading is on file with the Commission and, except for Amoco's confidential offer of settlement, is open to public inspection.

Amoco contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. Amoco suggests that a Settlement Judge be appointed, that Amoco's refund obligation to Williams to held in abeyance and that interest be tolled, on the basis that Amoco has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that Amoco previously collected from Williams. Amoco further alleges that it made a settlement offer to Williams, and that Williams rejected that offer.

Amoco also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which Williams and Amoco disagree. Amoco further argues that these issues must be adjudicated. Amoco's alleged issues of material fact include:

(1) Amount of dollars of revenue Amoco collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars Amoco collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by Amoco were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which Amoco contends will govern the amount of interest owned.

Amoco's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting William's refund claim, and Amoco's privileged and confidential offer of settlement to Williams (Amoco's Attachment A). Amoco also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to Amoco's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 12, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5967 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–9–000]

Amoco Production Company; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 24, 1998, Amoco Production Company (Amoco), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to Amoco's Kansas ad valorem tax refund obligation to Panhandle Eastern Pipe Line Company (Panhandle), identified in the Statement of Refunds Due filed by Panhandle in Docket No RP98–40–000. Amoco's pleading is on file with the Commission and, except for Amoco's confidential offer of settlement, is open to public inspection.

Amoco contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. Amoco suggests that a Settlement Judge be appointed, that Amoco's refund obligation to Panhandle be held in abeyance and that interest be tolled, on the basis that Amoco has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that Amoco previously collected from Panhandle. Amoco further alleges that it made a settlement offer to Panhandle, and that Panhandle rejected that offer.

Amoco also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which Panhandle and Amoco disagree. Amoco further argues that these issues must be adjudicated. Amoco's alleged issues of material fact include:

(1) The amount of dollars of revenue Amoco collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars Amoco collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by Amoco were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which Amoco contends will govern the amount of interest owned.

Amoco's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting Panhandle's refund claim, and Amoco's privileged and confidential offer of settlement to Panhandle (Amoco's Attachment A). Amoco also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with resect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to Amoco's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, by March 16, 1998 in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers

Acting Secretary.

[FR Doc. 98–5972 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–10–000]

Amoco Production Company; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 24, 1998, Amoco Production Company (Amoco), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to Amoco's Kansas and valorem tax refund obligation to Colorado Interstate Gas Company (CIG), identified in the Statement of Refunds Due filed by CIG in Docket No. RP98–54–000. Amoco's pleading is on file with the Commission and, except for Amoco's confidential offer of settlement, is open to public inspection.

Amoco contends that the Commission has established a procedure to follow, under 18 CFR 385.605 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. Amoco suggests that a Settlement Judge be appointed, that Amoco's refund obligation to CIG be held in abeyance and that interest be tolled, on the basis that Amoco has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that Amoco previously collected from CIG. Amoco further alleges that it made a settlement offer to CIG, and that CIG rejected that offer.

Amoco also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which CIG and Amoco disagree. Amoco further argues that these issues must be adjudicated. Amoco's alleged issues of material fact include:

(1) The amount of dollars of revenue Amoco collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars Amoco collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by Amoco were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which Amoco contends will govern the amount of interest owned.

Amoco's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting CIG's refund claim, and Amoco's privledged and confidential offer of settlement to CIG (Amoco's Attachment A). Amoco also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make

comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to Amoco's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, by March 16, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5973 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–12–000]

Amoco Production Company; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice of that on February 24, 1998, Amoco Production Company (Amoco), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to Amoco's Kansas ad valorem tax refund obligation to Northern Natural Gas Company (Northern Natural), identified in the Statement of Refunds Due filed by Northern Natural in Docket No. RP98–39–000. Amoco's pleading is on file with the Commission and, except for Amoco's confidential offer of settlement, is open to public inspection.

Amoco contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. Amoco suggests that a Settlement Judge be appointed, that Amoco's refund obligation to Northern Natural be held in abeyance and that interest be tolled, on the basis that Amoco has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that Amoco previously collected from Northern Natural. Amoco further alleges that it made a settlement offer to Northern Natural, and that Northern Natural rejected that offer.

Amoco also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which Northern Natural and Amoco disagree. Amoco further argues that these issues must be adjudicated. Amoco's alleged issues of material fact include:

(1) The amount of dollars of revenue Amoco collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars Amoco collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by Amoco were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which Amoco contends will govern the amount of interest owned.

Amoco's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting Northern Natural's refund claim, and Amoco's priviledged and confidential offer of settlement to Northern Natural (Amoco's Attachment A). Amoco also provided its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to Amoco's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 16, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5975 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–14–000]

Anadarko Petroleum Corporation; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 24, 1998, Anadarko Petroleum Corporation (Anadarko), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to Anadarko's Kansas ad valorem tax refund obligation to Northern Natural Gas Company (Northern Natural), identified in the Statement of Refunds Due filed by Northern Natural in Docket No. RP98–39–000. Anadarko's pleading is on file with the Commission and, except for Anadarko's confidential offer of settlement, is open to public inspection.

Anadarko contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. Anadarko suggests that a Settlement Judge be appointed, that Anadarko's refund obligation to Northern Natural be held in abeyance and that interest be tolled, on the basis that Anadarko has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad volorem tax reimbursement dollars that Anadarko previously collected from Northern Natural. Anadarko further alleges that it may be settlement offer to Northern Natural, and that Northern Natural rejected that offer.

Anadarko also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which Northern Natural and Anadarko disagree. Anadarko further argues that these issues must be adjudicated. Anadarko's alleged issues of material fact include:

(1) The amount of dollars of revenue Anadarko collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars Anadarko collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by Anadarko were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which Anadarko contends will govern the amount of interest owned.

Anadarko's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting Northern Natural's refund claim, and Anadarko's privileged and confidential offer of settlement to Northern Natural (Anadarko's Attachment A). Anadarko also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the settlement offer was filed. Accordingly, any person desiring to file comments with respect to Anadarko's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 16, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5957 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–17–000]

Anadarko Petroleum Corporation; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 24, 1998, Anadarko Petroleum Corporation (Anadarko), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to Anadarko's Kansas ad valorem tax refund obligation to Colorado Interstate Gas Company (CIG), identified in the Statement of Refunds Due filed by CIG in Docket No. RP98–54–000. Anadarko's pleading is on file with the Commission and, except for Anadarko's confidential offer of settlement, is open to public inspection.

Anadarko contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. Anadarko suggests that a Settlement Judge be appointed, that Anadarko's refund obligation to CIG be held in abeyance and that interest be tolled, on the basis that Anadarko has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that Anadarko previously collected from CIG. Anadarko further alleges that it made a settlement offer to CIG, and that CIG rejected that offer.

Anadarko also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which CIG and Anadarko disagree. Anadarko further argues that these issues must be adjudicated. Anadarko's alleged issues of material fact include:

(1) The amount of dollars of revenue Anadarko collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars Anadarko collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by Anadarko were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which Anadarko contends will govern the amount of interest owned.

Anadarko's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting CIG's refund claim, and Anadarko's privileged and confidential offer of settlement to CIG (Anadarko's Attachment A). Anadarko also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the settlement offer was filed. Accordingly, any person desiring to file comments with respect to Anadarko's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 16, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5960 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–18–000]

Anadarko Petroleum Corporation; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 24, 1998, Anadarko Petroleum Corporation (Anadarko), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to Anadarko's Kansas ad valorem tax refund obligation to Williams Gas Pipelines Central, Inc., formerly: Williams Natural Gas Company (Williams), identified in the Statement of Refunds Due filed by Williams in Docket No. RP98–52–000. Anadarko's pleading is on file with the Commission and, except for Anadarko's confidential offer of settlement, is open to public inspection.

Anadarko contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. Anadarko suggests that a Settlement Judge be appointed, that Anadarko's refund obligation to Williams be held in abeyance and that

interest be tolled, on the basis that Anadarko has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that Anadarko previously collected from Williams. Anadarko further alleges that it made a settlement offer to Williams, and that Williams rejected that offer.

Anadarko also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which Williams and Anadarko disagree. Anadarko further argues that these issues must be adjudicated. Anadarko's alleged issues of material fact include:

(1) The amount of dollars of revenue Anadarko collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars Anadarko collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by Anadarko were actually paid by customers of interstate pipeline through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which Anadarko contends will govern the amount of interest owned.

Anadarko's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting William's refund claim, and Anadarko's privledged and confidential offer of settlement to Williams (Anadarko's Attachment A). Anadarko also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must be do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to Anadarko's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 16, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5961 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–6–000]

Anadarko Petroleum Corporation; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 19, 1998, Anadarko Petroleum Corporation (Anadarko), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to Anadarko's Kansas ad valorem tax refund obligation to Panhandle Eastern Pipe Line Company (Panhandle), identified in the Statement of Refunds Due filed by Panhandle in Docket No. RP98–40–000. Anadarko's pleading is on file with the Commission and, except for Anadarko's confidential offer of settlement, is open to public inspection.

Anadarko contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. Anadarko suggests that a Settlement Judge be appointed, that Anadarko's refund obligation to Panhandle be held in abeyance and that interest be tolled, on the basis that Anadarko has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that Anadarko previously collected from Panhandle. Anadarko further alleges that it made a settlement offer to Panhandle, and that Panhandle rejected that offer.

Anadarko also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which Panhandle and Anadarko disagree. Anadarko further argues that these issues must be adjudicated. Anadarko's alleged issues of material fact include:

(1) The amount of dollars of revenue Anadarko collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars Anadarko collected were in excess of the maximum lawful (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by Anadarko were actually paid by customers of interstate pipeline through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which Anadarko contends will govern the amount of interest owned.

Anadarko's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting Panhandle's refund claim, and Anadarko's privileged and confidential offer of settlement to Panhandle (Anadarko's Attachment A). Anadarko also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to Anadarko's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 11, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5969 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1955–000]

The California Power Exchange Corporation; Notice of Filing

March 2, 1998.

Take notice that on February 20, 1998, the California Power Exchange

Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and San Diego Gas & Electric Company for acceptance by the Commission. The PX requests that the Commission disclaim jurisdiction over this and other Meter Service Agreements or, in the alternative, waive the requirement that such executed versions of the pro forma Meter Service Agreement accepted for filing by the Commission be submitted to the Commission.

The PX states that this filing has been served on all parties to Docket Nos. EC96–19–003 and ER96–1663–003 and the California Public Utilities Commission.

Any person desiring to be heard 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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 16, 1998. Protests will be considered by the Commission 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 must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5901 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–2350–010]

CMS Marketing Services and Trading; Notice of Filing

March 3, 1998.

Take notice that on February 18, 1998, CMS Marketing Services and Trading tendered for filing a Notification of Change in Status in the above-referenced docket.

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before March 9, 1998. Protests will be considered by the Commission to determine 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5949 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–406–000]

CNG Transmission Corporation; Notice of Informal Settlement Conference

March 3, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, March 9, 1998, at 9:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact William J. Collins at (202) 208–0248.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5953 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–406–011]

CNG Transmission Corporation; Notice of Tariff Compliance Filing

March 3, 1998.

Take notice that on February 26, 1998, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed below.

Docket No. RP98–91–003 (proposed Effective Date of January 1, 1998):

3rd Sub. Fifteenth Revised Sheet No. 31
3rd Sub. Twenty-Seventh Rev. Sheet No. 32
3rd Sub. Twenty-Seventh Rev. Sheet No. 33
3rd Substitute Twelfth Rev. Sheet No. 34
3rd Substitute Fourth Rev. Sheet No. 37

Docket No. RP98–103–002 (proposed Effective Date of February 1, 1998):

2nd Sub. Thirty-Fourth Rev. Sheet No. 32
2nd Sub. Thirty-Fourth Rev. Sheet No. 33

CNG states that the purpose of this filing is to remove from base rates in Docket No. RP97–406, effective as of January 1, 1998, CNG's proposal to recover gathering costs that it intended to recover through the ACRM surcharge, but was unable to put into effect because of the Commission's five month suspension in Docket No. RP98–91. CNG's filing is also intended to align its stranded cost surcharge filing in Docket No. 98–103 with the resulting adjustment to base rate levels, effective as of February 1, 1998.

CNG states that it is complying with these aspects of the order immediately, in an effort to secure rate certainty for its customers at the earliest possible date. CNG intends to comply with all other aspects of the February 25 order, within the fifteen days provided. CNG also reserves the right to pursue rehearing of the February 25 order, and file revised rates that reflect the ultimate outcome of that rehearing request.

CNG states that copies of its letter of transmittal and enclosures are being mailed to its customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5954 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–4–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1998.

Take notice that on February 26, 1998, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective April 1, 1998, the following tariff sheets:

Twenty-Sixth Revised Sheet No. 8A
Seventeenth Revised Sheet No. 8A.01
Eighteenth Revised Sheet No. 8A.02
Twenty-Third Revised Sheet No. 8B
Sixteenth Revised Sheet No. 8B.01

FGT states that Section 27 of the General Terms and Conditions (GTC) of its Tariff provides for the recovery by FGT of gas used in the operation of its system and gas lost from the system or otherwise unaccounted for. The fuel reimbursement charges pursuant to Section 27 consist of the Fuel Reimbursement Charge Percentage (FRCP), designed to recover current fuel usage on an in-kind basis, and the Unit Fuel Surcharge (UFS), designed to recover or refund previous under or overcollections on a cash basis. Both the FRCP and the UFS are applicable to Market Area deliveries and are effective for seasonal periods, changing effective each April 1 (for the Summer Period) and each October 1 (for the Winter Period).

FGT states that it is filing to establish an FRCP of 3.46% to become effective April 1, 1998. Pursuant to the terms of Section 27.B of the GTC, FGT may file for adjustments to actual fuel usage and lost and unaccounted for gas or deliveries when computing the FRCP. FGT's lost and unaccounted for gas as a percentage of deliveries has averaged between 0.25% and 0.50% on an historical basis. FGT believes this component of the FRCP calculation should be adjusted to recognize the unusually high unaccounted for loss of 0.7729% experienced from April 1997 through September 1997, the period which is the basis for the calculation of the FRCP to become effective April 1, 1998.

Accordingly, FGT has adjusted its lost and unaccounted for gas percentage to reflect FGT's historical long-term average of roughly 0.375% to minimize the balance of the deferred fuel account to be resolved in a subsequent period. FGT states that it is also filing to establish a Summer Period UFS of $0.0139 per MMBtu to become effective April 1, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5955 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1981–000]

LG&E Energy Marketing Inc.; Notice of Filing

March 3, 1998.

Take notice that on February 20, 1998, LG&E Energy Marketing Inc. (LEM), submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, an Application for Authorization to Amend Market-Based Rate Schedule.

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 March 13, 1998. Protests will be considered by the Commission 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 must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5951 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–13–000]

Mobil Oil Corporation; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 24, 1998, Mobil Oil Corporation (Mobil), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to Mobil's Kansas ad valorem tax refund obligation to Williams Gas Pipelines Central, Inc., formerly: Williams Natural Gas Company (Williams), identified in the State of Refunds Due filed by Williams in Docket No RP98–52–000. Mobil's pleading is on file with the Commission and, except for Mobil's confidential offer of settlement, is open to public inspection.

Mobil contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. Mobil suggests that a Settlement Judge be appointed, that Mobil's refund obligation to Williams be held in abeyance and that interest be tolled, on the basis that Mobil has a constitutional and statutory right to a hearing before it may be deprived of property i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that Mobil previously collected from Williams. Mobil further alleges that it made a settlement offer to Williams, and that Williams rejected that offer.

Mobil also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which Williams and Mobil disagree. Mobil further argues that these issues must be adjudicated. Mobil's alleged issues of material fact include:

(1) The amount of dollars of revenue Mobil collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars Mobil collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by Mobil were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which Mobil contends will govern the amount of interest owned.

Mobil's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting Williams' refund claim, and Mobil's privileged and confidential offer of settlement to Williams (Mobil's Attachment A). Mobil also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 day after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to Mobil's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, by March 16, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5956 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–5–000]

Mobil Oil Corporation; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 20, 1998, Mobil Oil Corporation (Mobil), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to Mobil's Kansas ad valorem tax refund obligation to Northern Natural Gas Company (Northern Natural), identified in the Statement of Refunds Due filed by Northern Natural in Docket No. RP98–39–000. Mobil's pleading is on file with the Commission and, except for Mobil's confidential offer of settlement, is open to public inspection.

Mobil contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. Mobil suggests that a Settlement Judge be appointed, that Mobil's refund obligation to Northern Natural be held in abeyance and that interest be tolled, on the basis that Mobil has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that Mobil previously collected form Northern Natural. Mobil further alleges that it made a settlement offer to Northern Natural, and that Northern Natural rejected that offer.

Mobil also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which Northern Natural and Mobil disagree. Mobil further argues that these issues must be adjudicated. Mobil's alleged issues of material fact include:

(1) The amount of dollars of revenue Mobil collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars Mobil collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by Mobil were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which Mobil contends will govern the amount of interest owned.

Mobil's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting Northern Natural's refund claim, and Mobil's privileged and confidential offer of settlement to Northern Natural (Mobil's Attachment A). Mobil also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to Mobil's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 12, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5968 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–15–000]

OXY USA, Inc.; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 24, 1998, OXY USA, Inc. (OXY), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to OKY's Kansas ad valorem tax refund

obligation to K N Interstate Gas Transmission Company (KNI), identified in the Statement of Refunds Due filed by KNI in Docket No. RP98–53–000. OXY's pleading is on file with the Commission and, except for OXY's confidential offer of settlement, is open to public inspection.

OXY contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. OXY suggests that a Settlement Judge be appointed, that OXY's refund obligation to KNI be held in abeyance and that interest be tolled, on the basis that OXY has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that OXY previously collected from KNI. OXY further alleges that it made a settlement offer to KNI, and that KNI rejected that offer.

OXY also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which KNI and OXY disagree. OXY further argues that these issues must be adjudicated. OXY's alleged issues of material fact include:

(1) The amount of dollars of revenue OXY collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars OXY collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by OXY were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which OXY contends will govern the amount of interest owned.

OXY's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting KNI's refund claim, and OXY's priviledged and confidential offer of settlement to KNI (OXY's Attachment A). OXY also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to OXY's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 16, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5958 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

[Docket No. GP98–3–000]

OXY USA, Inc.; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 20, 1998, OXY USA, Inc. (OXY), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to OXY's Kansas ad valorem tax refund obligation to Williams Gas Pipelines Central, Inc., formerly: Williams Natural Gas Company, (Williams), identified in the Statement of Refunds Due filed by Williams in Docket No. RP98–52–000. OXY's pleading is on file with the Commission and, except for OXY's confidential offer of settlement, is open to public inspection.

OXY contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. OXY suggests that a Settlement Judge be appointed, that OXY's refund obligation to Williams be held in abeyance and that interest be tolled, on the basis that OXY has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that OXY previously collected from Williams. OXY further alleged that it made a settlement offer to Williams, and that Williams rejected that offer.

OXY also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which Williams and OXY disagree. OXY further argues that these issues must be adjudicated. OXY's alleged issues of material fact include:

(1) The amount of dollars of revenue OXY collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars OXY collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by OXY were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which OXY contends will govern the amount of interest owned.

OXY's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting Williams's refund claim, and OXY's privileged and confidential offer of settlement to Williams (OXY's Attachment A). OXY also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to OXY's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, by March 12, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5966 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–7–000]

OXY USA, Inc.; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 23, 1998, OXY USA, Inc. (OXY), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to OXY's Kansas ad valorem tax refund obligation to Panhandle Eastern Pipe Line Company (Panhandle), identified in the Statement of Refunds Due filed by Panhandle in Docket No. RP98–40–000. OXY's pleading is on file with the Commission and, except for OXY's confidential offer of settlement, is open to public inspection.

OXY contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. OXY suggests that a Settlement Judge be appointed, that OXY's refund obligation to Panhandle be held in abeyance and that interest be tolled, on the basis that OXY has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that OXY previously collected from Panhandle. OXY further alleges that it made a settlement offer to Panhandle, and that Panhandle rejected that offer.

OXY also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which Panhandle and OXY disagree. OXY further argues that these issues must be adjudicated. OXY's alleged issues of material fact include:

(1) The amount of dollars of revenue OXY collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars OXY collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by OXY were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which OXY contends will govern the amount of interest owned.

OXY's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting Panhandle's refund claim, and OXY's privileged and confidential offer of settlement to Panhandle (OXY's Attachment A). OXY also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to OXY's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 16, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5970 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–8–000]

OXY USA, Inc.; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 23, 1998, OXY USA, Inc. (OXY), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to OXY's Kansas ad valorem tax refund obligation to Northern Natural Gas Company (Northern Natural), identified in the Statement of Refunds Due filed by Northern Natural in Docket No. RP98–39–000. OXY's pleading is on file with the Commission and, except for OXY's confidential offer of settlement, is open to public inspection.

OXY contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. OXY suggests that a Settlement Judge be appointed, that OXY's refund obligation to Northern Natural be held in abeyance and that interest be tolled, on the basis that OXY has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that OXY previously collected from Northern Natural. OXY further alleges that it made a settlement offer to Northern Natural, and that Northern Natural rejected that offer.

OXY also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which Northern Natural and OXY disagree. OXY further argues that these issues must be adjudicated. OXY's alleged issues of material fact include:

(1) The amount of dollars of revenue OXY collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars OXY collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by OXY were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which OXY contends will govern the amount of interest owned.

OXY's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting Northern Natural's refund claim, and OXY's privileged and confidential offer of settlement to Northern Natural (OXY's Attachment A). OXY also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of

Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to OXY's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 16, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5971 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–11–000]

OXY USA, Inc.; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 24, 1998, OXY USA, Inc. (OXY), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61, 059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to OXY's Kansas ad valorem tax refund obligation to Colorado Interstate Gas Company (CIG), identified in the Statement of Refunds Due filed by CIG in Docket No. RP98–54–000. OXY's pleading is on file with the Commission and, except for OXY's confidential offer of settlement, is open to public inspection.

OXY contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. OXY suggests that a Settlement Judge be appointed, that OXY's refund obligation to CIG be held in abeyance and that interest be tolled, on the basis that OXY has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that OXY previously collected from CIG. OXY further alleges that it made a settlement offer to CIG, and that CIG rejected that offer.

OXY also request a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which CIG and OXY disagree. OXY further argues that these issues must be adjudicated. OXY's alleged issues of material fact include:

(1) The amount of dollars of revenue OXY collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars OXY collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by OXY were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which OXY contends will govern the amount of interest owned.

OXY's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting CIG's refund claim, and OXY's privledged and confidential offer of settlement to CIG (OXY's Attachment A). OXY also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to OXY's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 16, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5974 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–16–000]

Union Pacific Resources Company; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 24, 1998, Union Pacific Resources Company (UPRC), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61, 059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to UPRC's Kansas ad valorem tax refund obligation to Williams Gas Pipelines Central, Inc., formerly: Williams Natural Gas Company (Williams), identified in the Statement of Refunds Due filed by Williams in Docket No. RP98–52–000. UPRC's pleading is on file with the Commission and, except for UPRC's confidential offer of settlement, is open to public inspection.

UPRC contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. UPRC suggests that a Settlement Judge be appointed, that UPRC's refund obligation to Williams be held in abeyance and that interest be tolled, on the basis that UPRC has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that UPRC previously collected from Williams. UPRC further alleges that it made a settlement offer to Williams, and that Williams rejected that offer.

UPRC also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which Williams and UPRC disagree. UPRC further argues that these issues must be adjudicated. UPRC's alleged issues of material fact include:

(1) The amount of dollars of revenue UPRC collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars UPRC collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by UPRC were actually paid by customers of interstate pipelines

through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which UPRC contends will govern the amount of interest owned.

UPRC's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting Williams's refund claim, and UPRC's priviledged and confidential offer of settlement to Williams (UPRC's Attachment A). UPRC also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to UPRC's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 16, 1998, in accordance with the requirements of the Commission's rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5959 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–19–000]

Union Pacific Resources Company; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 24, 1998, Union Pacific Resources Company (UPRC), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to UPRC's Kansas ad valorem tax refund obligation to K N Interstate Gas Transmission Company (KNI), identified in the Statement of Refunds Due filed by KNI in Docket No. RP98–53–000. UPRC's pleading is on file with the Commission and, except for UPRC's confidential offer of settlement, is open to public inspection.

UPRC contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. UPRC suggests that a Settlement Judge be appointed, that UPRC's refund obligation to KNI be held in abeyance and that interest be tolled, on the basis that UPRC has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that UPRC previously collected from KNI. UPRC further alleges that it made a settlement offer to KNI, and that KNI rejected that offer.

UPRC also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which KNI and UPRC disagree. UPRC further argues that these issues must be adjudicated. UPRC's alleged issues of material fact include:

(1) The amount of dollars of revenue UPRC collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars UPRC collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by UPRC were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which UPRC contends will govern the amount of interest owned.

UPRC's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting KNI's refund claim, and UPRC's privileged and confidential offer of settlement to KNI (UPRC's Attachment A). UPRC also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to UPRC's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 16, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [17 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5962 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–20–000]

Union Pacific Resources Company; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 24, 1998, Union Pacific Resources Company (UPRC), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed; an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to UPRC's Kansas ad valorem tax refund obligation to Northern Natural Gas Company (Northern Natural), identified in the Statement of Refunds Due filed by Northern Natural in Docket No. RP98–39–000. UPRC's pleading is on file with the Commission and, except for UPRC's confidential offer of settlement, is open to public inspection.

UPRC contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. UPRC suggests that a Settlement Judge be appointed, that UPRC's refund obligation to Northern Natural be held in abeyance and that interest be tolled, on the basis that UPRC has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that UPRC previously collected from

Northern Natural. UPRC further alleges that it made a settlement offer to Northern Natural, and that Northern Natural rejected that offer.

UPRC also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which Northern Natural and UPRC disagree. UPRC further argues that these issues must be adjudicated. UPRC's alleged issues of material fact include:

(1) the amount of dollars of revenue UPRC collected for the sale of its gas in each relevant time period;

(2) how much (if any) of the dollars UPRC collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) how much (if any) of the excess dollars collected by UPRC were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which UPRC contends will govern the amount of interest owned.

UPRC's pleading includes its claim that it has complied with the Commission's orders requiring a statement of its basic principles for rejecting Northern Natural's refund claim, and UPRC's privileged and confidential offer of settlement to Northern Natural (UPRC's Attachment A). UPRC also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to UPRC's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, by March 16, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5963 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–1–000]

Union Pacific Resources Company; Notice of Offer of Settlement and Call for the Protection of Rights Pending Adjudication or Settlement

March 3, 1998.

Take notice that on February 20, 1998, Union Pacific Resources Company (UPRC), alleging compliance with the Commission's January 28, 1998 Order Clarifying Procedures (82 FERC ¶ 61,059), filed an offer of settlement with the Commission, and called for the protection of its rights pending adjudication or settlement, with respect to UPRC's Kansas ad valorem tax refund obligation to Colorado Interstate Gas Company (CIG), identified in the Statement of Refunds Due filed by CIG in Docket No. RP98–54–000. UPRC's pleading is on file with the Commission and, except for UPRC's confidential offer of settlement, is open to public inspection.

UPRC contends that the Commission has established a procedure to follow, under 18 CFR 385.602 of the Commission's regulations, when informal settlement or reconciliation efforts fail, and that it has complied with the requisites of that Section. UPRC suggests that a Settlement Judge be appointed, that UPRC's refund obligation to CIG be held in abeyance and that interest be tolled, on the basis that UPRC has a constitutional and statutory right to a hearing before it may be deprived of property, i.e., the 1983–1988 Kansas ad valorem tax reimbursement dollars that UPRC previously collected from CIG. UPRC further alleges that it made a settlement offer to CIG, and that CIG rejected that offer.

UPRC also requests a full and fair hearing, and claims that there are contested issues of material fact (measurable in dollars) on which CIG and UPRC disagree. UPRC further argues that these issues must be adjudicated. UPRC's alleged issues of material fact include:

(1) The amount of dollars of revenue UPRC collected for the sale of its gas in each relevant time period;

(2) How much (if any) of the dollars UPRC collected were in excess of the maximum lawful price (MLP) in each relevant time period;

(3) How much (if any) of the excess dollars collected by UPRC were actually paid by customers of interstate pipelines through the pipeline's PGA process, i.e., how much were the pipeline's customers overcharged; and

(4) Assuming that part of the refund amount is interest, then when did the interstate pipeline customers begin paying a fraction of the amounts determined to be in excess of the MLP, which UPRC contends will govern the amount of interest owned.

UPRC's pleading includes its claim that it was complied with the Commission's orders requiring a statement of its basic principles for rejecting CIG's refund claim, and UPRC's privileged and confidential offer of settlement to CIG (UPRC's Attachment A). UPRC also provides its own assessment as to how to compute the correct refund amount.

The procedural rules governing settlements are set forth in Section 385.602 of the Commission's Rules of Practice and Procedure. Under Section 385.602(f), any person wishing to make comments with respect to an offer of settlement must do so not later than 20 days after the date the settlement offer was filed. Reply comments must be filed not later than 30 days after the date the settlement offer was filed. Accordingly, any person desiring to file comments with respect to UPRC's offer of settlement should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by March 16, 1998, in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.602(f)].

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5964 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–411–003]

Wolverine Power Supply Cooperative, Inc.; Notice of Filing

March 3, 1998.

Take notice that on January 30, 1998, Wolverine Power Supply Cooperative, Inc., tendered for filing its revised service agreement in the above-referenced docket.

Any person desiring to be heard or to protest such 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 385.214). All such motions and

protests should be filed on or before March 13, 1998. Protests will be considered by the Commission to determine 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5950 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1952–000, et al.]

PP&L, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 2, 1998.

Take notice that the following filings have been made with the Commission:

1. PP&L, Inc.

[Docket No. ER98–1952–000]

Take notice that on February 20, 1998, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company)(PP&L), filed a Service Agreement dated January 29, 1998, with Commonwealth Edison Company (CEC), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds CEC as an eligible customer under the Tariff.

PP&L requests an effective date of February 20, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to CEC and to the Pennsylvania Public Utility Commission.

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. The United Illuminating Company

[Docket No. ER98–1956–000]

Take notice that on February 20, 1998, The United Illuminating Company (UI), tendered for filing a Service Agreement, dated February 13, 1998, between UI and Cinergy Capital & Trading, Inc. (Cinergy), for non-firm point-to-point transmission service under UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended. The Service Agreement adds Cinergy as a transmission customer under the Tariff.

UI requests an effective date of December 31, 1997, and has therefore requested that the Commission waive its 60-day prior notice requirement. Copies of the filing were served upon Mr. H. Mark Stremming, Cinergy Services, Inc., and upon Robert J. Murphy, Executive Secretary, Connecticut Department of Public Utility Control.

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Potomac Electric Power Company

[Docket No. ER98–1957–000]

Take notice that on February 20, 1998, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and Horizon Energy Company, DTE Energy Trading, Inc., and Continental Energy Services, L.L.C. An effective date of February 1, 1998, for these service agreements, with waiver of notice, is requested.

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket No. ER98–1958–000]

Take notice that on February 20, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreements to provide Non-Firm Point-To-Point Transmission Service to the Cinergy Capital & Trading, Inc., under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to the Cinergy Capital & Trading, Inc.

NUSCO requests that the Service Agreement become effective February 23, 1998.

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Mississippi Power Company

[Docket No. ER98–1959–000]

Take notice that on February 20, 1998, Mississippi Power Company and Southern Company Services, Inc., its agent, tendered for filing a Service Agreement, pursuant to the Southern Companies Electric Tariff Volume No. 4—Market Based Rate Tariff, with South Mississippi Electric Power Association for the Aleco Fire Tower Road Delivery Point to Singing River Electric Power Association. The agreement will permit Mississippi Power to provide wholesale electric service to South Mississippi Electric Power Association at a new service delivery point.

Copies of the filing were served upon South Mississippi Electric Power Association, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Ameren Services Company

[Docket No. ER98–1960–000]

Take notice that on February 20, 1998, Ameren Services Company (ASC), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and Columbia Power Marketing Corporation and North American Energy Conservation, Inc. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. EC96–7–000 *et al.*

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Ameren Services Company

[Docket No. ER98–1961–000]

Take notice that on February 20, 1998, Ameren Services Company (ASC), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between ASC and Columbia Power Marketing Corporation and North American Energy Conservation, Inc. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. EC96–7–000 *et al.*

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Co.

[Docket No. ER98–1944–000]

Take notice that on February 20, 1998, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies) submitted for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services to Tex-La Electric Cooperative of Texas, Inc. (Tex-La) and NP Energy, Inc. (NP) in accordance with the CSW Operating Companies' open access transmission service tariff. The CSW Operating Companies also submitted a notice of cancellation for each firm point-to-point

transmission service agreement and notices of cancellation of service agreements with Destec Energy, Inc., (Destec).

The CSW Operating Companies also submitted for filing notices of cancellation of service agreements with Coastal Electric Services Company (Coastal), and replacement agreements with Engage Energy US, L.P. (Engage), to reflect an assignment by Coastal to Engage of its rights and obligations under the agreements.

The CSW Operating Companies state that a copy of the filing has been served on Tex-La, Destec, Coastal, Engage, and NP.

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER98–1947–000]

Take notice that on February 20, 1998, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and Marquette City Board of Light & Power (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on January 27, 1998.

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. PP&L, Inc.

[Docket No. ER98–1948–000]

Take notice that on February 20, 1998, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated February 10, 1998, with Tennessee Valley Authority (TVA), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds TVA as an eligible customer under the Tariff.

PP&L requests an effective date of February 20, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to TVA and to the Pennsylvania Public Utility Commission.

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PP&L, Inc.

[Docket No. ER98–1949–000]

Take notice that on February 20, 1998, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company)(PP&L), filed a Service Agreement dated February 3, 1998, with CNG Power Services Corporation (CNG), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds CNG as an eligible customer under the Tariff.

PP&L requests an effective date of February 20, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to CNG and to the Pennsylvania Public Utility Commission.

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. PP&L, Inc.

[Docket No. ER98–1950–000]

Take notice that on February 20, 1998, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company)(PP&L), filed a Service Agreement with Louisville Gas and Electric Company (LG&EC), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds LG&EC as an eligible customer under the Tariff.

PP&L requests an effective date of February 20, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to LG&EC and to the Pennsylvania Public Utility Commission.

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Boston Edison Company

[Docket No. ER98–1951–000]

Take notice that on February 20, 1998, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff), for Constellation Power Source, Inc., (Constellation). Boston Edison requests that the Service Agreement become effective as of February 13, 1998.

Edison states that it has served a copy of this filing on Constellation and the Massachusetts Department of Public Utilities.

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. PG Energy Power Plus

[Docket No. ER98–1953–000]

Take notice that on February 20, 1998, PG Energy Power Plus (PGEPP), petitioned the Commission for acceptance of PGEPP 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. PGEPP is a wholly-owned subsidiary of Pennsylvania Enterprises, Inc., (PEI).

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Madison Gas and Electric Company

[Docket No. ER98–1954–000]

Take notice that on February 19, 1998, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with:

- Tenaska Power Services Co.

MGE requests an effective date 60 days from the filing date.

Comment date: March 16, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5900 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–42–000, et al.]

Sithe West Medway LLC, et al.; Electric Rate and Corporate Regulation Filings

February 27, 1998.

Take notice that the following filings have been made with the Commission:

1. Sithe West Medway LLC

[Docket No. EG98–42–000]

On February 25, 1998, Sithe West Medway LLC, 450 Lexington Avenue, 37th Floor, New York, NY 10017 (Sithe West Medway), filed with the Federal Energy Regulatory Commission an amended application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Sithe West Medway will own an electric generating facility with a capacity of approximately 126 MW located in West Medway, Massachusetts.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Citizens Utilities Company

[Docket No. ER98–1916–000]

Take notice that on February 17, 1998, Citizens Utilities Company filed a revised Attachment E, Index of Point-to-Point Transmission Service Customers to update the Open Access Transmission Tariff of the Vermont Electric Division of Citizens Utilities Company.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.)

[Docket No. ER98–1917–000]

Take notice that on February 17, 1998, Entergy Services, Inc., on behalf of System Energy Resources, Inc. (SERI), filed, pursuant to § 205 of the Federal Power Act, the Grand Gulf Accelerated Recovery Tariff (GGART). The GGART permits Entergy Arkansas, Inc. (EAI), to accelerate the payment of the retail portion of its obligation to SERI for Grand Gulf capacity and energy. A copy of such application has been served upon the state regulators of the Entergy operating companies and EAI's wholesale requirements customers.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Madison Gas and Electric Company

[Docket No. ER98–1918–000]

Take notice that on February 17, 1998, Madison Gas and Electric Company (MGE), tendered for filing a service agreement under MGE's Power Sales Tariff with:

- Power Company of America.

MGE requests an effective date of February 3, 1998, which is the date the agreement was signed.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. The California Independent System Operator Corporation)

[Docket No. ER98–1919–000]

Take notice that on February 17, 1998, the California Independent System Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and the City of Anaheim Public Utilities Department for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. FirstEnergy System

[Docket No. ER98–1920–000]

Take notice that on February 18, 1998, FirstEnergy System filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for Consumers Energy Company and The Detroit Edison Company (referred to collectively as the Michigan Companies), the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective dates under the Service Agreements is February 1, 1998.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. FirstEnergy System

[Docket No. ER98–1921–000]

Take notice that on February 18, 1998, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for American Municipal Power—Ohio, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective date under this Service Agreement is February 1, 1998.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota) Northern States Power Company (Wisconsin)

[Docket No. ER98–1922–000]

Take notice that on February 18, 1998, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and NRG Power Marketing Inc.

NSP requests that the Commission accept both the agreements effective January 21, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. The California Independent System Operator Corporation

[Docket No. ER98–1923–000]

Take notice that on February 18, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Utility Distribution Company Operator Agreement between the ISO and the City of Anaheim Public Utilities Department for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. The California Independent System Operator Corporation

[Docket No. ER98–1924–000]

Take notice that on February 18, 1998, the California Independent System Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and Western Area Power Administration, Sierra Nevada Region for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Service Commission.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. The California Independent Operator System Corporation

[Docket No. ER98–1925–000]

Take notice that on February 18, 1998, the California Independent System Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and Long Beach Generating LLC, for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Service Commission.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. The California Independent System Operator Corporation

[Docket No. ER98–1926–000]

Take notice that on February 18, 1998, the California Independent System Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and EL Segundo Power, LLC for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Duquesne Light Company

[Docket No. ER98–1927–000]

Take notice that February 18, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated February 12, 1998, with Tenaska Power Services Co., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Tenaska Power Services Co., as a customer under the Tariff. DLC requests an effective date of February 12, 1998, for the Service Agreement.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. The California Independent System Operator Corporation

[Docket No. ER98–1928–000]

Take notice that on February 18, 1998, the California Independent System Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement executed by the ISO and Western Area Power Administration, Sierra Nevada Region for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. The California Independent System Operator Corporation

[Docket No. ER98–1929–000]

Take notice that on February 18, 1998, the California Independent System Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and the Department of Water and Power of the City of Los Angeles for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. California Independent System Operator Corporation

[Docket No. ER98–1930–000]

Take notice that on February 18, 1998, the California Independent System Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and Alta Power Generation, L.L.C., for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. California Independent System Operator Corporation

[Docket No. ER98–1931–000]

Take notice that on February 18, 1998, the California Independent System Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and Ocean Vista Power Generation, L.L.C., for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. FirstEnergy Operating Companies

[Docket No. ER98–1932–000]

Take notice that on February 18, 1998, FirstEnergy Corp., tendered for filing on behalf of Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, revisions to certain rate terms and conditions in Schedules 7 and 8, and Section 17.3 of FirstEnergy's Open Access Transmission Tariff (Tariff), filed on November 8, 1996 in Docket No. ER97–412–000 and designated as FERC Electric Tariff, Original Volume No. 1.

FirstEnergy states that a copy of the filing has been served on the public utility commissions of Ohio and Pennsylvania, active participants in the ongoing proceeding in Docket No. ER97–412–000, and posted on the FirstEnergy OASIS.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. California Independent System Operator Corporation

[Docket No. ER98–1933–000]

Take notice that on February 18, 1998, the California Independent System Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and Long Beach Generating LLC, for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. California Independent System Operator Corporation

[Docket No. ER98–1934–000]

Take notice that on February 18, 1998, the California Independent System Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and the Department of Water and Power of the City of Los Angeles.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. California Independent System Operator Corporation

[Docket No. ER98–1935–000]

Take notice that on February 18, 1998 the California Independent System Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and Oeste Power Generation, L.L.C., for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Central Louisiana Electric Company, Inc.

[Docket No. ER98–1936–000]

Take notice that on February 19, 1998, Central Louisiana Electric Company, Inc. (CLECO), tendered for filing a service agreement under which CLECO will provide Non-Firm Point-To-Point transmission service to Engage Energy US, L.P., under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Engage Energy US, L.P.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Arizona Public Service Company

[Docket No. ER98–1937–000]

Take notice that on February 19, 1998, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3, with Eastern Power Distribution, Inc., and ConAgra Energy Services, Inc.

A copy of this filing has been served on the Arizona Corporation Commission Eastern Power Distribution, Inc., and ConAgra Energy Services, Inc.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. New York State Electric & Gas Corporation

[Docket No. ER98–1938–000]

Take notice that on February 19, 1998, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and NGE Generation, Inc., Energetix, Inc., and Consolidated Edison Company of New York, Inc., (Customers). These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on June 11, 1997, in Docket No. OA97–571–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of February 9, 1998, for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. American Electric Power Service Corporation

[Docket No. ER98–1939–000]

Take notice that on February 19, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997, and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for service billed on and after January 21, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. UtiliCorp United Inc.

[Docket No. ER98–1940–000]

Take notice that on February 19, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Engage Energy US, L.P., for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Virginia Electric and Power Company

[Docket No. ER98–1941–000]

Take notice that on February 19, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a new Schedule 5.05B to replace, in part, Schedule 5.04 of an Interconnection Agreement which is Virginia Power's FERC Electric Rate Schedule No. 73. Schedule 5.05B sets forth rates, terms and conditions for emergency service to be provided by Virginia Power to the Regional Transmission Owners within the PJM Interconnection. Virginia Power requests waiver of the Commission's Regulations to permit the filing to become effective March 1, 1998.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Union Electric Company

[Docket No. ER98–1942–000]

Take notice that on February 19, 1998, Union Electric Company (UE), tendered for filing a Service Agreement for Market Based Rate Power Sales between UE and Northern States Power Company (NSP). UE asserts that the purpose of the Agreement is to permit UE to make sales of capacity and energy at market based rates to NSP pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Sithe New England Holdings LLC

[Docket No. ER98–1943–000]

Take notice that on February 19, 1998, Sithe New England Holdings LLC (Sithe New England), tendered for filing with the Federal Energy Regulatory Commission, FERC Electric Rate Schedules No. 1, on behalf of Sithe Mystic LLC, Sithe Edgar LLC, Sithe New Boston LLC, Sithe Framingham LLC, Sithe West Medway LLC and Sithe Wyman LLC (the Project LLCs). Sithe New England requests authority to make wholesale power sales, including energy and capacity, at market-based rates, requests certain blanket authorizations, and waiver of certain of the Commission's Regulations. Sithe New England requests that the tendered rate schedules become effective April 30, 1998.

The Project LLCs intend to engage in wholesale power sales within NEPOOL. The Project LLCs do not own or control and are not affiliated with any entity that owns or controls electric transmission or distribution facilities in the United States. Sithe New England further states that it is not affiliated with any franchised electric utility in the United States. Sithe New England concludes that any interests that its affiliates have in domestic electric generation facilities do not raise any generation market power concerns.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Southern Company Services, Inc.

[Docket No. ER98–1945–000]

Take notice that on February 20, 1998, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Company), filed a Network Integration Transmission Service Agreement between SCS, as agent for Southern Company, and Southern Wholesale Energy, a Department of SCS, as agent for Mississippi Power Company, two (2) umbrella service agreements for short-term firm point-to-point transmission service between SCS, as agent for Southern Company, and i) Tampa Electric Company, and ii) Entergy Services, and three (3) service agreements for non-firm point-to-point transmission service executed between SCS, as agent for Southern Company, and i) ConAgra Energy Services, Inc., ii) AEPSC, as agent for the operating utility subsidiaries of American Electric Power Company, Inc., and iii) PacifiCorp Power Marketing, Inc., under the Open Access Transmission Tariff of Southern Company (Tariff). In addition, Southern Company also filed a Notice of Cancellation for the Non-Firm Point-To-Point Transmission Service Agreement executed by SCS, as agent for Southern Company, and Delhi Energy Services, Inc., under the Tariff.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Arizona Public Service Company

[Docket No. ER98–1946–000]

Take notice that on February 20, 1998, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS' FERC Electric Tariff, Original Volume No. 3, with Tohono O'Odham Utility Authority.

A copy of this filing has been served on the Arizona Corporation Commission and Tohono O'Odham Utility Authority.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Citizens Utilities Company

[Docket No. ES98–21–000]

Take notice that on February 25, 1998, Citizens Utilities Company (Citizens Utilities), filed an application with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act requesting an order authorizing, for the maximum period, the issuance by Citizens Utilities of up to (a) $1,000,000,000 principal amount of unsecured promissory notes outstanding at any one time (Promissory Notes), (b) $1,000,000,000 aggregate principal amount of debt securities (Longer Term Debt Securities), with a final maturity or maturities of not less than nine months nor more than 50 years, and (c) $80,000,000 shares of common stock of Citizens Utilities (Common Stock), (subject to adjustment for stock splits, stock dividends, recapitalizations and similar changes after the date of this Application), and $400,000,000 liquidation value of preferred stock of Citizens Utilities (Preferred Stock), subject to an overall limitation, at any time, of the securities to be issued under (a), (b) and (c) of $1,000,000,000. Citizens Utilities further requests that the foregoing be exempted from the competitive bidding requirements of Part 34.

Comment date: March 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Exxon Company, U.S.A., Exxon Chemical Americas

[Docket No. QF98–36–000]

On February 20, 1998, Exxon Company, U.S.A. and Exxon Chemical Americas (collectively, Applicant), of P.O. Box 551, Baton Rouge, Louisiana 70821–0551, filed with the Federal Energy Regulatory Commission an application for certification of a facility as a qualifying cogeneration 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 topping-cycle cogeneration facility is located in Baton Rouge, Louisiana adjacent to the applicant's petroleum refinery and chemical plant (Exxon Complex). The facility consists of certain existing steam and gas turbine generating units leased from Entergy Gulf States, Inc. (Entergy), and a new gas-fired turbine generator and heat recovery steam generator. Steam recovered from the facility will be used in the Exxon Complex for oil refining and chemical processing. The power output of the facility will be used in the Exxon Complex, with the surplus power sold to Entergy. The primary energy sources will be refinery gas and natural gas. The maximum net electric power production capacity of the facility will be 422.1 MW.

Comment date: March 27, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5899 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

March 3, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No:* 10703–008.

c. *Dated Filed:* January 26, 1998.

d. *Applicant:* City of Centralla Light Department.

e. *Name of Project:* Yelm Hydroelectric Project.

f. *Location:* The project is located on the Nisqually River in Thurston and Pierce Counties, Washington.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. Francis Naglich, Ecological Landscape Services, Inc., 1339 Commerce Ave., Suite 301, Longview, WA 98632, (306) 578–1371.

i. *FERC Contact:* Steve Hocking (202) 219–2656.

j. *Comment Date:* April 6, 1998.

k. *Description of Amendment:* Article 415 of the Yelm Hydroelectric Project license requires the licensee, City of Centralia Light Department, to file a revised project boundary map (revised exhibit G) showing a 120 acre parcel of land in the project boundary. The 120 acre parcel includes lands along the shoreline of the Nisqually River as well as an existing bald eagle nest. The licensee's revised exhibit G filed January 26, 1996 is for a 6.8 acre parcel of land immediately around the eagle nest. The licensee's change requires an amendment to its license.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5952 Filed 3–6–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[PF–795A; FRL–5777–8]

Notice of Filing of Pesticide Petition; Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is to clarify information published in a Notice of Filing in the **Federal Register** of February 25, 1998. Uniroyal Chemical Company has issued a petition request concerning use of diflubenzuron on rice.

FOR FURTHER INFORMATION CONTACT: By mail: Paul Schroeder, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 255, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-6602, e-mail: schroeder.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice is to clarify information published in the **Federal Register** of February 25, 1998 (63 FR 9528) (FRL–5775–3). Uniroyal Chemical Company, Inc. has submitted two tolerance petitions to the Agency concerning use of diflubenzuron on rice. PP 8F4925 requests that 40 CFR 180.377 be amended to include a tolerance for the combined residues of diflubenzuron on rice grain at 0.02 parts per million (ppm) and rice straw at 0.8 ppm. PP 6G4771 requests a temporary tolerance for diflubenzuron on rice grain at 0.01 ppm in association with an Experimental Use Permit, EUP No. 400–EUP–69. The notice of filing published on February 25, 1998 will serve as a notice for both of these petitions.

List of Subjects

Environmental protection.

Dated: March 3, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–6099 Filed 3–5–98; 1:37 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 98–443]

Numbering Council; Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On March 4, 1998, the Commission released a public notice announcing the March 24, 1998, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes, Paralegal Specialist, assisting the NANC at (202) 418–2313 or via the Internet at jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20054. The fax number is: (202) 418–7314. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: March 4, 1998.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, March 24, 1998, from 8:30 a.m., until 5:00 p.m., EST. The meeting will be held at the Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, DC.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at either meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda

The planned agenda for the March 24, 1998, meeting is as follows:

1. Number Pooling Management Group (NPMG) Status Report. Recommendation on industry fora for certain network tasks to support number pooling. Discussion of Chairman's proposal regarding number conservation planning.

2. Industry Numbering Committee (INC) Monthly Report to the NANC.

3. North American Numbering Plan Administration (NANPA)Working Group Report: Review Aging Disconnected Numbers report. Review ''Broader Issues'' associated with Toll Free Administration. CO Code Transition Task Force Update.

4. Cost Recovery Working Group Report.

5. Local Number Portability Administration (LNPA) Working Group Report: Phase I Implementation update; discussion and resolution of High

Volume Call-In (HVCI) network question on how to incorporate HVCI networks in the LNP scheme. Discussion of other issues involving implementation of LNP.

6. Wireline/Wireless Integration Task Force Update.

7. N11 Ad Hoc Committee initial work plan report on NANC Responsibilities under the First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Use of the Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket 92–105, FCC 97–51.

8. Other Business.

9. Review of Decisions Reached and Action Items.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division Common Carrier Bureau.

[FR Doc. 98–5937 Filed 3–6–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

International Transport Group, Inc., 1699 Wall Street, Suite 201, Mt. Prospect, IL 60056, Officers: Eve'Lynn Macella, President; Ken Kwaitkowski, Exec. Vice President.

Reuy International Company, 239–45 66th Avenue, Douglaston, NY 11362, Reuyling Chang Liu, Sole Proprietor.

All Destinations Shipping Company, 300 West Park Drive, #105, Miami, FL 33172, Officers: Alberto Alicandu, President; Noemi Rodriguez-Alicandu, Vice President.

Eastern International, 8411 Mobud, Houston, TX 77036, Afsaneh Saei-Oskoei, Sole Proprietor.

America's Custom Brokers, Inc., 2050 NW, 70th Avenue, Miami, FL 33122, Officers: Jorge J. Sam, President; Annette Sam, Vice President.

Dated: March 3, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–5905 Filed 3–6–98; 8:45 am]

BILLING CODE 6730–01–M

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 April 2, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Mariner Bancorp, Baltimore, Maryland; to acquire 100 percent of the voting shares of Glen Burnie Bancorp, Glen Burnie, Maryland, and thereby indirectly acquire Bank of Glen Burnie, Glen Burnie, Maryland.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Cumberland Bancorp, Inc., Carthage, Tennessee; to acquire 100 percent of the voting shares of The Bank of Mason, Mason, Tennessee.

2. PAB Bankshares, Inc., Valdosta, Georgia; to merge with Investors Financial Corporation, Bainbridge, Georgia, and thereby indirectly acquire Bainbridge National Bank, Bainbridge, Georgia.

Board of Governors of the Federal Reserve System, March 3, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–5877 Filed 3–6–98; 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, including the companies listed below, 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 April 2, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. HUBCO, Inc., Mahway, New Jersey; to acquire MSB Bank, Inc., Goshen, New York, and indirectly acquire MSB Bank, Goshen, New York, and thereby engage in operating a federally charted savings bank, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y. MSB Bancorp, Inc., will merge with HUBCO, Inc., upon consummation.

2. North Fork Bancorporation, Inc., Melville, New York; to acquire 9.9 percent of the voting shares of Long Island Bancorp, Inc., Melville, New York, and thereby indirectly acquire

Long Island Savings Bank F.S.B., Melville, New York, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Stichting Prioriteit ABN AMRO Holding, Amsterdam, The Netherlands, Stichting Administratiekantoor ABN AMRO Holding, Amsterdam, The Netherlands, ABN AMRO Holding N.V., Amsterdam, The Netherlands, ABN AMRO Bank N.V., Amsterdam, The Netherlands, and ABN AMRO North America, Inc., Chicago, Illinois; to acquire indirectly through Integrion Financial Network LLC, Atlanta, Georgia, 15.38 percent of the voting shares of CheckFree Corporation, Norcross, Georgia, and thereby engage in providing data processing and data transmission services, pursuant to § 225.28(b)(14) of the Board's Regulation Y. Comments regarding this application must be received not later than March 24, 1998.

Board of Governors of the Federal Reserve System, March 3, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–5878 Filed 3–6–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Stamp Program: Grants for Nutrition Education Projects

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of availability of competitive grants for Food Stamp Nutrition Education Projects.

SUMMARY: The United States Department of Agriculture announces a new program of competitive grants mandated by the Balanced Budget Act of 1997. These grants will provide for collaborative efforts to integrate and coordinate nutrition education into health, social service and food distribution programs to reach large numbers of food stamp participants and other low-income households. This notice sets out the objectives for these grant projects, the eligibility criteria for the projects and applicants, and the application procedures.

DATES: Applications must be received on or before May 8, 1998. Applications received after May 8, 1998 will not be considered for funding.

ADDRESSES: To obtain program grant application materials, and to submit completed applications, please contact the USDA, Food and Nutrition Service, Contract Management Branch, Room 914, 3101 Park Center Drive, Alexandria, Virginia 22302, Attn: Suzanne A. Pastura.

FOR FURTHER INFORMATION CONTACT: Edward Speshock, Food Stamp Program, at (703) 305–2410, or via Internet mail at ed__speshock@fcs.usda.gov.

Legislative Authority

Section 1004 of the Balanced Budget Act of 1997 (Pub. L. 105–33) (BBA) amended Section 11(f) of the Food Stamp Act of 1977, (the Act) 7 U.S.C. 2020(f), to require the Department of Agriculture (the Department) to make available up to $600,000 in each of fiscal years 1998 through 2001 to pay the Federal share of collaborative grants to eligible private nonprofit organizations and State agencies. As required in Section 1004 the Department, in deciding between 2 or more eligible project proposals, shall give preference to a private nonprofit organization or state agency that conducted and received funding for a collaborative nutrition education project before August 5, 1997, the date of enactment of this authorization.

Description of Projects

The Food and Nutrition Service (FNS) of the Department will conduct a one-time competition for grants to support the development or the continuation of collaborative food stamp nutrition education projects. In accordance with the requirements of Section 11(f) of the Act, as amended by the BBA, the food stamp collaborative nutrition education projects should be designed to: (i) Meet the food needs of Food Stamp Program participants and other low-income households; (ii) increase the self-reliance of households in providing improved food preparation, safety, and budgeting skills; and (iii) promote comprehensive approaches to local food and nutrition education activities. Successful proposals will include objectives which describe how the collaborative nutrition education project will support the design and implementation of nutrition education efforts that reach large numbers of food assistance program recipients, foster the development or continuation of nutrition network resources to better integrate nutrition education services, and provide integrated nutrition education outside of traditional program-centered delivery systems. Proposals that focus their nutrition education messages on topics that have relevance to large numbers of program recipients, such as healthful eating behavior or economical shopping practices are encouraged rather than narrowly focused topics of interest to small segments of the eligible population. Healthful eating practices are those that are described in the Fourth Edition (1995) of the Dietary Guidelines for Americans published by the U.S. Departments of Agriculture and Health and Human Services.

Eligibility

Applications may be submitted by private nonprofit organizations and State agencies. To be eligible for a food stamp collaborative nutrition education grant, as mandated by Section 1004, private nonprofit organizations and State agencies must agree to: (1) Use the funds to direct collaborative efforts to coordinate and integrate nutrition education into health, nutrition, social service, and food distribution programs for food stamp participants and other low-income households; and (2) design the collaborative effort to reach large numbers of food stamp participants and other low-income households through a network of organizations including but not limited to schools, child care centers, farmers' markets, health clinics, and outpatient education services.

Applications must contain a description of how the grant funds will be used for the four years of the award. Each year of the grant, beginning with 1998, should be described as a discrete portion of the project's work with all four years contributing toward the goals and objectives as spelled out in the proposal. The authorizing legislation, in particular Section 11(f)(2)(C), requires FNS, in deciding between two or more private nonprofit organizations or State agencies that are eligible to receive a grant, to give preference to an organization or State agency that conducted and received funding for that collaborative effort from FNS prior to August 5, 1997.

Availability of Funds and Award Limitations

The total amount of funds available will not exceed $600,000 in each fiscal year beginning in 1998 and ending in 2001 to pay the Federal share. The Federal share of each grant will not exceed $200,000 for each fiscal year and will represent 50 percent of each grant. Grant awards will be made to successful proposals for four years beginning in fiscal year 1998 with subsequent year funding subject to the availability of Federal funds. The non-federal share of these projects must be in cash. Funding

to support the non-federal share could include State agency as well as private non-governmental sources. No in-kind contributions are allowed as the non-federal share of the grant. Private sector contributions that require product endorsement or an advertising tie-in are not permitted, only unrestricted cash donations will be considered.

Authority: 7 U.S.C. 2011–2036.

Dated: March 2, 1998.

Yvette S. Jackson,

Administrator.

[FR Doc. 98–5979 Filed 3–6–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority; Office of the Actuary

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 62, No. 85, pp. 24121–24122, dated Friday, May 2, 1997, and **Federal Register**, Vol. 62, No. 129, pg. 36294, dated Monday, July 7, 1997) is amended as a result of the Balanced Budget Act of 1997 to reflect a change to the Actuarial and Health Cost Analysis Group in the Office of Strategic Planning (OSP). Specifically, the Actuarial and Health Cost Analysis Group (FAKC) and its subordinate divisions are abolished and replaced by the Office of the Actuary (OACT) which will now report directly to the Administrator. The functional responsibilities of the remaining components in OSP are not affected. OACT's administrative code is changed from FAKC to FAN.

The specific amendments to Part F are described below:

• Section F.10. (Organization) is amended to read as follows:

4. Office of Strategic Planning (FAK)
a. Research and Evaluation Group (FAKA)
b. Planning and Policy Analysis Group (FAKB)
c. Systems, Technical and Analytic Resources Group (FAKD)
d. Information and Methods Group (FAKE)
18. Office of the Actuary (FAN)
a. Medicare and Medicaid Cost Estimates Group (FAN1)
b. National Health Statistics Group (FAN2)

• Section F.20. (Functions) is amended to read as follows:

4. Office of Strategic Planning (FAK)

• Develops and manages the long-term strategic planning process for the Agency; responsible for the Agency's conformance with the requirements of the Government Performance and Results Act (GPRA).

• Provides analytic support and information to the Administrator and the Executive Council needed to establish Agency goals and directions.

• Performs environmental scanning, identifying, evaluating, and reporting emerging trends in health care delivery and financing and their interactions with Agency programs.

• Manages strategic, crosscutting initiatives.

• Designs and conducts research and evaluations of health care programs, studying their impacts on beneficiaries, providers, plans, States and other partners and customers, designing and assessing potential improvements, and developing new measurement tools.

• Coordinates all Agency demonstration activities, including development of the research and demonstration annual plan, evaluation of all Agency demonstrations, and assistance to other components in the design of demonstrations and studies.

• Manages assigned demonstrations, including Federal review, approval, and oversight; coordinates and participates with departmental components in experimental health care delivery projects.

• Develops research, demonstration, and other publications and papers related to health care issues.

18. Office of the Actuary (FAN)

• Conducts and directs the actuarial program for HCFA and directs the development of and methodologies for macroeconomic analysis of health care financing issues.

• Performs actuarial, economic and demographic studies to estimate HCFA program expenditures under current law and under proposed modifications to current law.

• Provides program estimates for use in the President's budget and for reports required by Congress.

• Studies questions concerned with financing present and future health programs, evaluates operations of the Federal Hospital Insurance Trust Fund and Supplementary Medical Insurance Trust Fund and performs microanalyses for the purpose of assessing the impact of various health care financing factors upon the costs of Federal programs.

• Estimates the financial effects of proposals to create national health insurance systems or other national or incremental health insurance reform.

• Develops and conducts studies to estimate and project national and area health expenditures.

• Develops, maintains, and updates provider market basket input price indexes and the Medicare Economic Index.

• Analyzes data on physicians' costs and charges to develop payment indices and monitors expansion of service and inflation of costs in the health care sector.

• Performs actuarial reviews and audits of employee benefit expenses charged to Medicare by fiscal intermediaries and carriers.

• Publishes cost projections and economic analyses, and provides actuarial, technical advice and consultation to HCFA components, governmental components, Congress, and outside organizations.

a. Medicare and Medicaid Cost Estimates Group (FAN1)

• Evaluates the financial status of the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) Trust Funds and prepares the annual report to Congress for the Medicare Board of Trustees.

• Prepares cost estimates for the HI program, the SMI program, and the Medicaid program for use in the President's budget.

• Estimates the financial effects of proposed Medicare and Medicaid legislation.

• Determines key Medicare program amounts, including the Part B premium rates, the inpatient hospital deductible, the Part A premium rate for voluntary enrolles, and the physicians' economic index applicable to prevailing fees.

• Develops the payment rates for the annual update of the Medicare+Choice capitation rate book, which is used to pay managed care organizations that enter into a risk contract with HCFA to provide benefits to Medicare enrolles.

• Serves as technical consultant throughout the Government on Medicare and Medicaid cost estimate issues.

• Provides actuarial consultation to other organizations in the research of managed care payment methodology.

b. National Health Statistics Group (FAN2)

• Develops, maintains and makes analytical use of the National Health Accounts (NHA) which include annual estimates and publication of National Health Expenditures (NHE) and periodic estimates and publication of NHE by age groupings or by region and state.

• Tracks and publishes quarterly health care indicators to identify emerging health sector trends, including data on health care utilization and costs; health sector employment, wages, and prices; and economy-wide economic conditions.

• Prepares estimates of NHE for future years by type of service and source of financing.

• Develops, analyzes and publishes results from health sector models which allow evaluation of the impact of proposed changes to the current health system on the overall economy.

• Develops, maintains, and updates provider market basket input price indexes, including the Hospital Input Price Index, the Medicare Economic Index, and the other price indexes mandated for use in setting Medicare payments to providers.

• Provides technical support for HCFA regulatory processes, especially those related to payment systems or reform.

Dated: February 8, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–5874 Filed 3–6–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The information collection requirements to evaluate visitor response to the recreation fee demonstration program in the U.S. Fish and Wildlife Service's National Wildlife Refuges has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before April 8, 1998.

ADDRESSES: Comments and suggestions on specific requirements should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of the Interior Desk Officer, 725—17th Street, NW., Washington, DC 20503; and a copy to the Service's Information Collection Clearance Officer, U.S. Fish and Wildlife Service, [MS 222 ARLSQ], 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Stephens R. Vehrs, Refuge Specialist, Division of Refuges, 703/358–2397; or Phadrea Ponds, Wildlife Biologist, U.S. Geological Survey, Fort Collins, CO, 970/226–9445.

SUPPLEMENTARY INFORMATION: The Service submitted the following proposed information collection clearance requirement to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Congress authorized a recreation fee demonstration program in Public Law 104–134. The U.S. Fish and Wildlife Service was one of the four agencies mandated to implement the program and evaluate its impact on the visiting public. This study is designed to scientifically evaluate visitor reactions impact of the fees on visitation to the national wildlife refuges (NWR); it will be conducted by the U.S. Geological Survey, Biological Resources Division, Social Economic and Institutional Analysis Section in Fort Collins, Colorado under a cooperative agreement with the U.S. Fish and Wildlife Service.

To represent the various types of fee changes, as well as fee demonstration refuges, six distinct fee programs and ten refuges were selected for inclusion in the study. These include (1) new entrance fees (Sacramento NWR, CA and Aransas NWR, TX); (2) increased entrance fees (Dungeness NWR, WA); (3) new annual passes (Chincoteaque NWR, VA and Crab Orchard NWR, IL); (4) new hunt fees (St. Catherine's Creek NWR, MS and Balcones NWR, TX); (5) non-hunt use permits (Buenos Aires NWR, AZ and Fort Niobrara NWR, NE), and (6) non-fee adjustments (Piedmont NWR, GA). Random samples of individuals using these refuges will be surveyed.

The Service plans to use as part of the evaluation process a survey questionnaire to assess the different fee programs. An on-site questionnaire will be distributed during the peak season to a random sample of the visiting public. A minimum of 400 completed surveys will be obtained for each fee type. An additional 200 surveys will be obtained from Sacramento NWR to allow for generation of a statistic on credit card entrances. Overall, this will result in a total sample of 2,600 respondents. The margin of error for each fee type is ±5% at the 95% confidence level. The information gained from this survey will provide a scientific basis for evaluating the viability of the fee program among the visiting public. The lead project officer is Dr. Jonathan G. Taylor, Research Social Scientist, phone 970–226–9438, 4512 McMurry Avenue, Fort Collins, CO 80525–3400.

Title: Evaluation of visitor responses to recreation fee demonstration program.

Bureau form number: None.

Frequency of collection: Annual.

Description of respondents: Individuals and households.

Number of respondents: 2,600.

Estimated completion time: 10 minutes.

Burden estimate: 433 hours.

Paul R. Schmidt,

Acting Assistant Director for Refuges and Wildlife.

[FR Doc. 98–5999 Filed 3–6–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Availability, etc. Lafayette Park Northside Barrier Project

ACTION: Announcement: Availability of environmental assessment for the Lafayette Park Northside Barrier project.

SUMMARY: The National Park Service, at the request of the Department of Treasury, has prepared an Environmental Assessment for a construction project to replace temporary security barriers along the north side of Lafayette Park across from the White House with permanent security barriers. The project also includes the future removal by the National Park Service of a lodge house located in Lafayette Park. The document is available for review and public comment through April 15, 1998.

Copies may be requested by calling the National Park Service, White House Liaison, at (202) 619–6344 weekdays from 9:00 a.m. to 4:00 p.m. Written requests may be sent to 1100 Ohio

Drive, S.W., Room 344, Washington, D.C., 20242.

Dated: February 27, 1998.

James I. McDaniel,

Director, White House Liaison.

[FR Doc. 98–5907 Filed 3–6–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Aniakchak National Monument and the Chairperson of the Subsistence Resource Commission for Aniakchak National Monument announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order. (Chairman)
(2) SRC Roll call; confirmation of quorum. (Chairman)
(3) Welcome and introductions. (Public, agency staff, others)
(4) Review and adopt agenda. (SRC)
(5) Review and adopt minutes from the November 1997 meeting.
(6) Review commission's role and purpose.
(7) Public and agency comments.
(8) Status of commission membership.
(9) Old business:
  a. Status of recommendation to designate Ivanof Bay and Perryville as resident zone communities.
  b. Status of Aniakchak National Preserve hunting guide prospectus.
  c. Aniakchak National Monument and Preserve visitor use report.
  d. Aniakchak National Monument and Preserve status of moose and caribou populations.
  e. Status of Unit 9E Board of Game Agenda Change Request and Federal Subsistence Board Special Action 97–09 Request.
  f. Status of 1992 Subsistence Hunting Program recommendations.
  g. Status of draft Subsistence Hunting Program recommendations.
  (1) 97–1: Establish a one year residency requirement for the resident zone communities.
  (2) 97–2: Establish a registration permit requirement for non-subsistence hunting, trapping, and fishing activities within the Aniakchak National Preserve.
  (10) New business:
  a. Federal Subsistence Program update.
  (1) Bristol Bay Regional Council March 12 meeting report.
  (2) Review Unit 9E Federal Subsistence Board proposals. b. Public and agency comments.
  b. Public and agency comments.
(11) SRC work session (draft proposals, letters, and recommendations).
(12) Set time and place of next SRC meeting.
(13) Adjournment.

DATES: The meeting will begin at 1 p.m. on Wednesday, March 25, 1998, and conclude at approximately 7 p.m. The meeting will reconvene at 8 a.m. on Thursday, March 26, 1998, and adjourn at approximately 1 p.m.

LOCATION: The meeting location is: Community Subsistence Building, Chignik Lake, Alaska.

FOR FURTHER INFORMATION CONTACT: Karen C. Gustin, Unit Manager, Rick Clark, Chief of Resources Management, or Donald Mike, Resource Specialist, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613. Phone (907) 246–3305.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Regional Director.

[FR Doc. 98–5906 Filed 3–6–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of meeting.

SUMMARY: Announcement of the first public meeting of the Advisory Council to the Partnership of the Boston Harbor Islands National Recreation Area.

DATES: March 10, 1998, 4:00 pm–6:00 pm.

ADDRESSES: The Exchange Conference Center at the Boston Fish Pier, 212 Northern Avenue, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Mr. George Price, Project Manager, Boston Harbor Islands National Recreation Area, at 617–223–8666. Written comments can be addressed to George Price, Project Manager, Boston Harbor Islands National Recreation Area, 408 Atlantic Avenue., Suite 228, Boston, MA, 02110.

SUPPLEMENTARY INFORMATION: The twenty-eight member Advisory Council to the Partnership of the Boston Harbor Islands National Recreation Area will hold its first official meeting on Tuesday, March 10 from 4–6 p.m. the Exchange Conference Center at the Fish Pier in South Boston. The meeting is open to the public.

The Advisory Council members were appointed by the Director of the National Park Service and represent: business, educational, cultural, and environmental entities; municipalities surrounding the harbor; and Native American interests. The Advisory Council was formed to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of the Integrated Management Plan and the operation of this new national park area. ''This Advisory Council is unique in that it is intended to provide assistance to the Partnership for the long term, not simply during the planning period. In addition, two of the members of the Advisory Council will become voting members of the Partnership with two additional people selected as voting alternates,'' said George Price, Project Manager.

In 1996 Congress created the Boston Harbor Islands National Recreation Area to recognize the rich natural and cultural resources and history found on the 30 islands located in Boston Harbor. The legislation (Pub. L. 104–333) established a thirteen-member partnership to jointly manage the Islands. The 13-member Partnership represents city, state, federal and private agencies with responsibilities for the harbor islands. Peter Webber, Chair of the Partnership said, ''we are very happy that the Advisory Council has now been officially appointed by the Director of the National Park Service. Much interest has been shown by many people to insure this was a representative group that cares deeply about the future of the Boston Harbor Islands. We look forward to a long and productive relationship with the members of the Advisory Council as we develop the plan and implement the programs for this new national park area.''

Dated: March 2, 1998.

George E. Price, Jr.,

Project Manager, Boston Harbor Islands National Recreation Area.

[FR Doc. 98–5914 Filed 3–6–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meeting Cancellation

Notice is hereby given in accordance with the Federal Advisory Committee Act that the meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission previously scheduled for Wednesday, March 11, 1998 in San Francisco will be canceled.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Members of the Commission are as follows:

Ms. Amy Meyer, Vice Chair
Mr. Richard Bartke, Chairman
Ms. Naomi T. Gray
Mr. Michael Alexander
Ms. Lennie Roberts
Ms. Sonia Bolaños
Mr. Redmond Kernan
Mr. Merritt Robinson
Mr. John J. Spring
Mr. Joseph Williams
Dr. Howard Cogswell
Mr. Jerry Friedman
Ms. Yvonne Lee
Mr. Trent Orr
Ms. Jacqueline Young
Mr. R. H. Sciaroni
Dr. Edgar Wayburn
Mr. Mel Lane

Date: February 24, 1998.

Brian O'Neill,

Acting General Superintendent Golden Gate National Recreation Area.

[FR Doc. 98–5915 Filed 3–6–98; 8:45 am]

BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

Upper Delaware Scenic and Recreational River Citizens Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the 1998 business meetings of the Upper Delaware Citizens Advisory Council.

The Upper Delaware Citizens Advisory Council will meet March 9, April 13, May 11, June 8, July 13, August 10, September 14, October 19, November 9, and December 14, 1998. Meetings will convene at 6:00 p.m., at NPS Headquarters, River Road, Beach Lake, Pennsylvania, unless local press releases state otherwise

Press Releases containing specific information regarding the subject of meetings and special informational programs will be published in the following area newspapers:

The Sullivan County Democrat
The Times Herald Record
The River Reporter
The Tri-state Gazette
The Pike County Dispatch
The Wayne Independent
The Hawley News Eagle
The Weekly Almanac

Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, WJFF and WVOS.

FOR FURTHER INFORMATION CONTACT: Calvin F. Hite, Superintendent; Upper Delaware Scenic and Recreational River, RR2, Box 2428, Beach Lake PA 18405–9737; 717–729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704 (f) of the National Parks and Recreation Act of 1978 Pub. L. 95–625, 16 USC s1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware Region

All meeting are open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Dated: February 24, 1998.

Calvin F. Hite,

Superintendent, Upper Delaware Scenic & Recreational River.

[FR Doc. 98–5908 Filed 3–6–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Idaho County, ID in Possession of the Cottonwood District Office, Bureau of Land Management, Cottonwood, ID

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Idaho County, ID that are in possession of the Cottonwood District Office, Bureau of Land Management (BLM), Cottonwood, ID.

A detailed assessment of the human remains and associated funerary objects from Idaho County, ID was made by the Bureau of Land Management professional staff in consultation with the Nez Pearce Tribe of Idaho.

In 1963, human remains representing two individuals were recovered from site 10IH57, Idaho County, ID during legally authorized exacavations by Idaho State University personnel prior to the construction of Idaho State Highway 95 through the site. No known individuals were identified. The minimum of 350 associated funerary objects includes beads, glass, mirrors, bracelets, cloth, wood, rings, nails, iron hooks, hoops, shells, and non-human bone.

Based on the associated funerary objects, these human remains have been determined to be Native American from the historic period. Continuities of material culture, ethnographic information, and historical documents indicate the Nez Perce Tribe of Idaho has occupied this area from precontact times into the historic period.

Based on the above-mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Bureau of Land Management have also determined that, pursuant to 43 CFR 10.2 (d)(2), the minimum of 350 objects listed above are reasonably believed to have been placed with or near the individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR

10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Nez Perce Tribe of Idaho.

This notice has been sent to officials of the Nez Perce Tribe of Idaho. Representatives of any other tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dave Sisson, Cottonwood District Office, BLM, Route 3, Box 181, Cottonwood, ID 83522; telephone: (208) 962–3782 before April 8, 1998. Repatriation of the human remains and associated funerary objects to the Nez Perce Tribe of Idaho may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: March 3, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–5916 Filed 3–6–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Rhode Island Historical Society, Providence, RI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Rhode Island Historical Society which meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

The four objects are a soapstone bowl, two soapstone bowl fragments, and a string of whelk shell beads. The accession information regarding these objects has been lost since the date of acquisition.

Consultation evidence provided by representatives of the Narragansett Indian Tribe indicates the soapstone bowl is used for the Ceremony of the Green Corn, and would also be used in baptismal ceremonies. Consultation evidence provided by representatives of the Narragansett Indian Tribe also indicates that the inclusion of soapstone bowls, soapstone bowl fragments and whelk shell beads is consistent with traditional Narragansett burial practice.

The three objects from Westerly, RI are glass bottles, beads, and a wampum bracelet. Museum documentation indicates they were recovered in 1835 from burials at the railhead site in Westerly, RI; and were purchased by the Rhode Island Historical Society from Mr. Chesebrough that same year.

Based on funerary objects, this railhead site has been determined to be a Narragansett burial site during the historic period (approximately 16th century until the late 1600s). Historical documents and archeological evidence indicates this area was occupied by the Narragansett Indian Tribe during this period.

The 19 objects from Charlestown, RI are pewter latten spoons, glass rum bottles, a sword handle, copper pots, glass vials, a flute, gold effigy comb, man's gold ring, a disk, a stove ornament and hanging chain, two silver thimbles, a copper snuff box, a copper spoon, strings of glass beads, and loose glass beads. Museum documentation indicates these objects were excavated from the burial site in 1859; and were given to the Rhode Island Historical Society in 1877 by C.W. Parsons and Charles Cross, as well as other members of the Society.

The site from which these objects were taken is a historically documented Narragansett burial site stated to be the grave of Princess Weunquesh, a daughter of Ninigret who died about 1660. The type and style of these objects date from that era. No human remains from this grave are in the possession of the Rhode Island Historical Society.

The 14 objects from Charlestown, RI are pewter latten spoons. Museum documentation regarding the accession of these objects by the Rhode Island Historical Society has been lost.

The site from which these objects were taken is a historically documented Narragansett burial site stated to be the grave of the second (unmarried) daughter of Ninigret who died in 1660. The type and style of these objects date from that era. No human remains from this grave are in the possession of the Rhode Island Historical Society.

The 24 objects from the Arnolda site in Charlestown, RI are a 16th century Portuguese cannon, four blocks of ochre, 12 pipes and pipe fragments, a sword fragment, a buckshot mold, two glass rods, glass beads, and three ceramic sherds. Museum documentation indicates these objects were excavated in 1921 and 1925 from burials from the Arnolda site on the property of J. Arnold and were donated to the Rhode Island Historical Society about 1925.

The Arnolda site is a historically documented Narragansett burial site used during the historic era, based on manner of interment and the types of funerary objects present.

Based on the above-mentioned information, officials of the Rhode Island Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 64 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Rhode Island Historical Society have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these 64 items and the Narragansett Indian Tribe.

This notice has been sent to officials of the Narragansett Indian Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Linda Eppich, Curator, or Albert T. Klyberg, Director, Rhode Island Historical Society, 110 Benevolent St., Providence, RI 02906, telephone: (401) 331–8575 before April 8, 1998. Repatriation of these objects to the Narragansett Indian Tribe may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: March 3, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–5917 Filed 3–6–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Westerly, RI in the Possession of the Rhode Island Historical Society, Providence, RI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human

remains and associated funerary objects from Westerly, RI in the possession of the Rhode Island Historical Society, Providence, RI.

A detailed assessment of the human remains was made by Rhode Island Historical Society, Haffenreffer Museum of Anthropology, and the Public Archaeology Lab professional staffs in consultation with representatives of Narragansett Indian Tribe.

In 1835, human remains representing one individual (a hair lock) were recovered from a railhead site in Westerly, RI and sold to the Rhode Island Historical Society by Mr. Chesebrough. No known individuals were identified. The three associated funerary objects include a string of beads, wampum, and a wampum shell bracelet.

Based on funerary objects, this railhead site has been determined to be a Narragansett burial site during the historic period (approximately 16th century until the late 1600s). Historical documents and archeological evidence indicates this area was occupied by the Narragansett Indian Tribe during this period.

Based on the above mentioned information, officials of the Rhode Island Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Rhode Island Historical Society have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the three objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Rhode Island Historical Society have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Narragansett Indian Tribe.

This notice has been sent to officials of the Narragansett Indian Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Linda Eppich, Curator, or Albert T. Klyberg, Director, Rhode Island Historical Society, 110 Benevolent St., Providence, RI 02906, telephone (401) 331–8575, before April 8, 1998. Repatriation of the human remains and associated funerary objects to the Narragansett Indian Tribe may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: March 3, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–5918 Filed 3–6–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of time for review of the draft programmatic environmental impact statement (DPEIS); correction.

SUMMARY: The Bureau of Reclamation (Reclamation) has changed the time for the public hearing to be held on April 8, 1998, in Oakland, California, regarding the DPEIS for the Central Valley Project Improvement Act (CVPIA). Comments may be submitted in accordance with the notice published in the **Federal Register** on December 31, 1997 (62 FR 68299).

DATES: The Oakland public hearing will now be held at 7:00 p.m. on April 8, 1998, instead of 2:00 p.m.

ADDRESSES: The hearing will be held at the Oakland Federal Building, 1301 Clay Street, Oakland, California.

FOR FURTHER INFORMATION CONTACT: For additional information contact Mr. Alan Candlish, Bureau of Reclamation, 2800 Cottage Way, MP–120, Sacramento CA 95825, telephone: (916) 978–5190.

Dated: February 27, 1998.

Kirk C. Rodgers,

Deputy Regional Director.

[FR Doc. 98–5943 Filed 3–6–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–6]

Nora Brayshaw, M.D.; Revocation of Registration

On October 7, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Nora Brayshaw, M.D. (Respondent), of Sausalito, California. The Order to Show Cause notified her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration AB9072618, and deny any pending applications for renewal of such registration pursuant to 823(f) and 824, for reason that she is not currently authorized to handle controlled substances in the State of California.

By letter dated November 8, 1997, Respondent, through counsel, filed a request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On November 18, 1997, Judge Bittner issued an Order for Prehearing Statements. On November 20, 1997, the Government filed a Motion for Summary Disposition, alleging that effective January 16, 1997, the Medical Board of California (Board) revoked Respondent's license to practice medicine in California and therefore, she is not authorized to handle controlled substances in that state. Respondent submitted a response dated December 8, 1997, to the Government's motion, arguing that the revocation by the Board is under review, and therefore is not a final decision. Respondent further agreed that no action should be taken by DEA ''until the California matter is final.''

On January 6, 1998, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, finding that Respondent lacked authorization to handle controlled substances in the State of California; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on February 9, 1998, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that by a Decision effective January 16, 1997, the Board adopted the proposed decision of an Administrative Law Judge of the Board recommending the revocation of Respondent's license to practice medicine in the State of California. Respondent argues that her DEA registration should not be revoked

at this time because she has filed a Petition for writ of Mandate to Set Aside Order Imposing Discipline, and she expects that the Board's decision will be set aside and her medical license will be reinstated. However, the Acting Deputy Administrator further finds that Respondent did not offer any evidence that the Board's revocation was stayed pending review, nor did she deny that she is not currently authorized to handle controlled substances in California. Therefore, the Acting Deputy Administrator concludes that Respondent is not currently authorized to practice medicine in the State of California.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which she conducts her business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Dermetris A. Green, M.D.,* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

Here it is clear that Respondent is not licensed to practice medicine in California. Consequently, it is reasonable to infer that she is not authorized to handle controlled substances in California, where she is registered with DEA. Since Respondent lacks this state authority, she is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. Here, the parties did not dispute the fact that Respondent was unauthorized to handle controlled substances in California. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See *Phillip E. Kirk, M.D.,* 48 FR 32,887 (1983), *aff'd sub nom Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO,* 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.,* 44 F.2d 432 (9th Cir. 1971).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AB9072618, previously issued to Nora Brayshaw, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 8, 1998.

Dated: March 3, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–5997 Filed 3–6–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed new collection of the Trade Adjustment Assistance and NAFTA Transitional Adjustment Assistance Program Performance Report. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed in the Addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 20, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions or responses.

ADDRESSES: Curtis K. Kooser, Senior Economist, Office of trade Adjustment Assistance, U.S. Department of Labor, Room C4318, 200 Constitution Ave. NW, Washington, DC 20210. Telephone (202) 219–4845, Ext. 111 (this is not a toll-free number), FAX (202) 219–5753.

SUPPLEMENTARY INFORMATION:

I. Background

The Government Performance and Results Act (GPRA) of 1993 requires all federal benefits programs to report on the outcomes achieved for benefit recipients and how those outcomes can be continuously improved. In addition, public and Congressional awareness and concern regarding the effectiveness of assistance provided to U.S. workers displaced byimprots has created a demand for more information on those receiving assistance from Trade Adjustment Assistance (TAA) and North American Free Trade Act Transitional Adjustment Assistance (NAFTA–TAA). The data currently collected by TAA does not provide sufficient information to adequately assess TAA program performance and participant outcomes, making it impossible to precisely evaluate program effectiveness.

II. Current Actions

In order to comply with Federal law and respond to other concerns, the Office of Trade Adjustment Assistance (OTAA) is implementing a new system of collecting and reporting performance and outcomes data. Each quarter, the States will provide the Department with reports on demographic data, benefits provided, and participant outcomes for each participant who has terminated from the TAA or NAFTA–TAA program during the reporting quarter. A conference of Regional and State TAA staff concluded that many States already collect most, if not all, of the proposed data items. Therefore, many State TAA coordinators will only need to access existing data and reformat it for submission to the Department, rather than creating an entirely new data collection and reporting system. States may also take this opportunity to begin to collect additional data items for their own program review and improvement purposes.

Type of Review: New.
Agency: Employment and Training Administration.
Title: Trade Adjustment Assistance and NAFTA Transitional Adjustment Assistance Program Performance Report.
OMB Number: 1205–New.
Affected Public: State governments.
Total Respondents: 50.
Frequency: Quarterly.
Total Responses: 200.
Average Time per Respondent: 80 hours per quarter.
Estimated Total Burden Hours: 16,000.
Total Burden Cost (capital/startup): $500,000.
Total Burden Cost (operating/maintaining): $225,000.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 4, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–5913 Filed 3–6–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Notice of Open Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on Friday, March 27, 1998, at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–2508, Washington, DC 20210 from 9:00 a.m. to 4:30 p.m.

Written comments are welcome and may be submitted by addressing them to: Ms. Polin Cohanne, Designated Federal Official, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–1315, Washington, D.C. 20210.

The primary items on the agenda are:

- Adoption of Minutes of the Previous Meeting.
- Priority of Services for Veterans in the Employment Service and on American's Job Bank.
- Gulf War Illness.
- Congressional Report on Status of Legislation Affecting Veterans.
- Unemployment Insurance Issues.

The meeting will be open to the public.

Persons with disabilities needing special accommodations should contact Ms. Polin Cohanne at telephone number 202–219–9116 no later than March 18, 1998.

Signed at Washington, D.C. this March 3, 1998.

Espiridion (Al) Borrego,

Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 98–5912 Filed 3–6–98; 8:45 am]

BILLING CODE 4510–79–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Sunshine Act Meeting

TIME, DATE, AND PLACE:

Status: Closed

7 April 1998.
9:00–10:30 a.m.—Executive Session to discuss internal personnel matters.

Status: Open

8:00–9:00 a.m.—Linda Hall Library.
10:30–1:15 p.m.—Truman Library, Independence, MO.
1:45–5:00 p.m.—Linda Hall Library, Kansas City, MO.

Status: Open

8 April 1998.
9:00 a.m. to 3:00 p.m.—Linda Hall Library.

MATTERS TO BE DISCUSSED:

Meeting/tour/demonstration, Truman Library.
Tour/demonstration, Linda Hall Library.
NCLIS business meeting.
Update on NCLIS projects/plans.
Session with directors of libraries of Big 12+ Library Consortium.

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: March 3, 1998.

Robert S. Willard,

Acting Executive Director.

[FR Doc. 98–6169 Filed 3–5–98; 3:42 pm]

BILLING CODE 7527–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) is permitting the withdrawal of Baltimore Gas and Electric Company's (the licensee) application of April 5, 1996, as supplemented November 20, 1996, regarding the proposed amendment to Facility Operating License Nos. DPR–53 and DPR–69 for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Lusby, Maryland.

The proposed amendment would have revised the operating licenses to reflect the new company ownership of Calvert Cliffs Units 1 and 2 and the Independent Spent fuel Storage Installation.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 22, 1996 (61 FR 25697). However, by letter dated January 30, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 5, 1996, and the licensee's letter dated January 30, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 27th day of February 1998.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–5945 Filed 3–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company (Donald C. Cook Nuclear Plant, Units 1 and 2); Exemption

I

Indiana Michigan Power Company (the licensee) is the holder of Facility

Operating License Nos. DPR–58 and DPR–74, which authorize operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, respectively. The Donald C. Cook facilities are pressurized-water reactors located at the licensee's site in Berrien County, Michigan. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

Section 50.71(e)(4) of Title 10 of the Code of Federal Regulations, ''Maintenance of records, making of reports,'' states, in part, that ''Subsequent revisions [to the final safety analysis report (FSAR)] must be filed annually or 6 months after each refueling outage provided the interval between successive updates [to the FSAR] does not exceed 24 months.'' The two Donald C. Cook facilities share a common FSAR; therefore, this rule requires the licensee to update the same document within 6 months after a refueling outage for either unit.

III

Section 50.12(a), ''Specific exemptions,'' makes the following statement:

The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—

(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

(2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) states that special circumstances are present whenever—

Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

IV

As noted in the staff's safety evaluation, the licensee's proposed schedule for FSAR updates will ensure that the FSAR for the Donald C. Cook Nuclear Plant will be kept current within 24 months of the last revision and will not exceed a 24-month maximum interval for submission of updates to the FSAR pusuant to 10 CFR 50.71(e)(4). The Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with common defense or security, and is otherwise in the public interest. The Commission has also determined that there are special circumstances as defined in 10 CFR 50.12(a)(2)(ii) since the recent revision to 10 CFR 50.71(e), intended to decrease the burden associated with submittal of revisions to the FSAR, did not address multiple-unit sites with a common FSAR and provides that FSAR updates must be filed every 24 months. The licensee's proposed exemption provides the decrease in burden which was intended by the revision and, therefore, achieves the underlying purpose of the rule. The Commission hereby grants the licensee an exemption from the requirement of 10 CFR 50.71(e)(4) to submit updates to the FSAR for the Donald C. Cook Nuclear Plant within 6 months of each outage. The licensee will be required to submit updates to the Donald C. Cook Nuclear Plant FSAR once every Unit 1 fuel cycle, but not to exceed 24 months from the last submittal.

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 59753).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3d day of March 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–5947 Filed 3–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–64 issued to New York Power Authority for operation of the Indian Point Nuclear Generating Unit No. 3 (IP3) located in Westchester County, New York.

The proposed amendment would change the pressure-temperature and overpressure limits.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response:

The proposed license amendment does not involve a significant increase in the probability or consequences of a previously analyzed accident. The pressure-temperature limit changes proposed by this amendment are based on supporting data and evaluation methodologies previously submitted to the NRC in References 2, 3 and 4 [see application dated February 27, 1998]. These limits are based upon the irradiation damage prediction methods of Regulatory Guide 1.99, Revision 2. The LTOPS [low-temperature overpressure protection] changes contained in this submittal have been conservatively adjusted in accordance with the new pressure-temperature limits, in accordance with the information contained in References 2 and 5 [see application dated February 27, 1998] and ASME Code Case N–514.

The revised version of Section 3.1.A.8 clarifies existing requirements related to the OPS [overpressure protection system] system and adds an eight hour completion time for compensating actions, consistent with the STS. The changes to Section 3.1.A.1.h, l, and j revise the requirements associated with the start of an RCP [reactor coolant pump]. These changes improve specification clarity and do not increase the probability or consequences of an accident.

The Technical Specification changes associated with the restriction on SI [safety injection] pumps provides added conservatism to the Technical Specifications and limits the likelihood of an RHR [residual heat removal] overpressurization event. Current plant procedures prohibit actuation of any SI pumps when RHR is in service, except during testing, loss of RHR cooling, or reduced inventory operations. Therefore, the change to the Technical Specifications will not alter current plant operation.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously analyzed. The pressure-temperature limits are updating the existing limits by taking into account the effects of radiation embrittlement, utilizing criteria defined in Regulatory Guide 1.99, Revision 2, and extending the effective period to 13.3 EFPYs [effective full-power years]. The updated OPS limits have been adjusted to account for the effect of irradiation on the limiting reactor vessel material. These changes do not affect the way the pressure-temperature or OPS limits provide plant protection and no physical plant alterations are necessary.

The revisions to Section 3.1.A.8 concerning the OPS system improve on the clarity of existing specifications and add a completion time for compensating actions that is consistent with the STS. These changes do not involve any hardware modifications and do not affect the function of the OPS system.

The revisions concerning the operation of SI pumps bring the Technical Specifications into line with current operating procedures. The changes to Specification 3.1.A.1.h, l, and j provide specification clarity and are more conservative than existing Technical Specifications. Therefore, the changes cannot create the possibility of a new or different kind of accident.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed amendment does not involve a significant reduction in a margin of safety. The margins of safety against fracture provided by the pressure-temperature limits are those limits specified in 10 CFR Part 50, Appendix G, ASME [American Society of Mechanical Engineers] Boiler and Pressure Vessel Code Section XI, Appendix G, and Reference 4 [see application dated February 27, 1998]. The guidance in these documents has been utilized to develop the pressure-temperature limits with the requisite margins of safety for the heatup and cooldown conditions. The new LTOP limits are based upon References 2 and 5 [see application dated February 27, 1998] and ASME Code Case N–514.

The revisions to Section 3.1.A.8 clarify the requirements associated with the OPS system. The revisions associated with the operation of SI pumps with RHR in service (Sections 3.3.A.3, 8, 9 and 10) and the changes regarding RCP starts (Section 3.1.A.1.h, l, and j) are more conservative than the current Technical Specifications, and are consistent with plant operating procedures. Therefore, they do not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 8, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law

or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Susan F. Shankman: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. David Blabey, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 27, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Rockville, Maryland, this 4th day of March 1998.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–5948 Filed 3–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–87 and NPF–89, issued to Texas Utilities Electric Company, (TU Electric, the licensee), for operation of the Comanche Peak Steam Electric Station, Units 1 and 2, located in Somervell County, Texas.

The proposed amendment would be a temporary change to the Technical Specifications to remove the requirement to demonstrate the load shedding feature of MCC XEB4–3 as part of Surveillance Requirements (SRs) 4.8.1.1.2f.4)(a) and 4.8.1.1.2f.6)(a) until the plant startup subsequent to the next refueling outage or until the next outage greater than 24 hours in duration for each respective unit. This temporary change is requested as a result of the failure to confirm the load shedding feature of MCC XEB4–3 during the performance of these SRs for the Unit 1 and Unit 2 train B diesel generators (DGs). This was reported promptly to the NRC at the time of discovery and prompt action to remedy the situation was taken.

The licensee requested a Notice of Enforcement Discretion (NOED) by letter dated February 20, 1998. The NRC orally issued the NOED at 4:49 pm EST on February 20, 1998, to allow the facility to continue operation while the TS is processed. Pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.c, of the ''General Statement of Policy and Procedures for NRC Enforcement Actions'' (Enforcement Policy), NUREG–1600, the letter documenting the issuance of the NOED was dated February 24, 1998. The NOED was to be effective for the period of time it takes the NRC staff to process the proposed change to the TSs on an exigent bases.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The only potential impact of operating without having demonstrated the load shedding feature of MCC XEB4–3 is the potential that the train B DG for either CPSES Unit 1 or Unit 2 will not be able to perform its safety function following a postulated accident or event. TU Electric has evaluated the potential load added to the DGs if this bus does not shed and has concluded that the DGs remain fully capable of performing their safety function. As a result, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Operation without having tested the load shedding feature of bus XEB4–3 does not effect the operation or design of the Units and therefore cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Because the diesel generators remain fully capable of performing their safety functions without having demonstrated the load shedding feature of MCC XEB4–3, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 8, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, may be delivered to the Commission's Public Document Room, the Gelman

Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 25, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the University of Texas at Arlington Library, Government Publications/ Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Dated at Rockville, Maryland, this 3rd day of March 1998.

For the Nuclear Regulatory Commission.

Timothy J. Polich,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–5944 Filed 3–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Toledo Edison Company Centerior Service Company and the Cleveland Electric Illuminating Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3 issued to the Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company (the licensees) for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The application requests that tube repair roll, as described in proprietary Framatome Technologies Incorporated Topical Report BAW–2303P, Revision 3, ''OTSG Repair Roll Qualification Report,'' dated October 1997, be included as a repair option for steam generator tube defects in the upper tubesheet. The application further requests that the pressure boundary joint be defined as the tube-to-tubesheet expansion joint that is closest to the secondary face of the tubesheet. Additionally, the application proposes several associated administrative changes.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the proposed changes described for Surveillance Requirements (SR) 4.4.5.2.a.1, SR 4.4.5.4.a.4, SR 4.4.5.4.a.6, SR 4.4.5.4.a.7, SR 4.4.5.4.b, SR 4.4.5.4.a.9, SR 4.4.5.5.b.3, and Table 4.4–2 add a repair process defined as ''repair roll'' and redefine the pressure boundary joint for a tube repaired by the repair roll process. The application of the repair roll process is limited to repairs in the upper tube sheet. The new pressure boundary joint created by the repair roll process has been shown by testing and analysis to provide structural and leakage integrity equivalent to the original design and construction for all normal operating and accident conditions. Furthermore, the testing and analysis demonstrate the repair roll process creates no new adverse effects for the repaired tube and does not change the design or operating characteristics of the steam generators. Similarly, the design and operating characteristics of the systems interfacing with the steam generators are preserved by the repair roll process. Accordingly, tubes repaired by the repair roll process will not increase the probability of the tube rupture accident previously analyzed.

The proposed change to SR 4.4.5.3.c.1 and the proposed addition of SR 4.4.5.9 define additional required inspections for the primary system to secondary system joints created by the repair roll process. The addition of this inspection does not change any accident initiators and, therefore, does not increase the probability of an accident previously evaluated.

The proposed change to Limiting Condition for Operation (LCO) 3.4.6.2.c reduces the maximum allowed primary-to-secondary leakage through the steam generators from 1 gallon per minute (1440 GPD) to 150 GPD through any one steam generator. The reduction in allowed primary-to-secondary leakage does not change any accident initiators and, therefore, does not increase the probability of an accident previously evaluated.

The proposed additional requirements of SR 4.4.6.2.1.e describe the method and frequency that will be used for monitoring the reduced leakage limit. This additional monitoring of primary to secondary leakage through the steam generators does not change any accident initiators and, therefore, does not increase the probability of an accident previously evaluated.

The proposed changes to Bases B 3/4.4.5 add reference to the repair roll method and change the description of the allowed primary to secondary leakage through the steam generators to the reduced limit of 150 GPD through any one steam generator. It is noted that in Bases 3/4.4.5 the leakage limit established is defined as an inservice indicator of the structural integrity of the tubes. The reduction in the allowed primary to secondary leakage continues to provide inservice indication of tube structural integrity such that adequate margins of safety exist to withstand the loads imposed by normal operations and postulated accidents. Each of these changes to the Bases does not change any accident initiators and, therefore, does not increase the probability of an accident previously evaluated.

The proposed changes to Bases 3/4.4.6.2 also change the description of the maximum allowed primary-to-secondary leakage to the lowered limit of 150 GPD through any one steam generator. The reduction of allowed primary-to-secondary leakage does not increase the probability of an accident previously evaluated.

The proposed changes to SR 4.4.5.2.a and SR 4.4.5.3.a are administrative changes and do not affect the probability of accidents previously evaluated.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes described for SR 4.4.5.2.a.1, SR 4.4.5.4.a.4, SR 4.4.5.4.a.6, SR 4.4.5.4.a.7, SR 4.4.5.4.b, SR 4.4.5.4.a.9, SR 4.4.5.5.b.3, and Table 4.4–2 add a repair process defined as ''repair roll'' and redefine the pressure boundary joint for a tube repaired by the repair roll process. The application of the repair roll process is limited to repairs in the upper tube sheet. The new pressure boundary joint created by the repair roll process has been shown by testing and analysis to provide structural and leakage integrity equivalent to the original design and construction for all normal

operating and accident conditions. Furthermore, the testing and analysis demonstrate the repair roll process creates no new adverse effects for the repaired tube and does not change the design or operating characteristics of the steam generators. Similarly, the design and operating characteristics of the systems interfacing with the steam generators are preserved by the repair roll process. Accordingly, tubes repaired by the repair roll process will not increase the consequences of an accident previously analyzed. At worst, tubes repaired by the repair roll process will result in primary-to-secondary leakage. Should a tube leak occur, it would be bounded by the steam generator tube rupture accident consequences, which have been analyzed previously.

The proposed change to SR 4.4.5.3.c.1 and the proposed addition of SR 4.4.5.9 define additional required inspections for the primary system to secondary system joints created by the repair roll process. The addition of this inspection requirement does not increase the consequences of an accident previously evaluated.

The proposed change to LCO 3.4.6.2.c reduces the maximum allowed primary-to-secondary leakage through the steam generators from 1440 GPD to 150 GPD through any one steam generator. This change provides additional conservatism in the operation of the DBNPS and does not increase the consequences of an accident previously evaluated.

The proposed additional requirements of SR 4.4.6.2.1.e describe the method that will be used for monitoring the reduced leakage limit. This additional method of monitoring primary to secondary leakage through the steam generators does not change any accident and, therefore, does not increase the consequences of any accident previously evaluated.

The proposed changes to Bases B 3/4.4.5 add reference to the repair roll method and change the description of the allowed primary to secondary leakage through the steam generators to the reduced limit of 150 GPD through any one steam generator. It is noted that in Bases 3/4.4.5 the leakage limit established is defined as an inservice indicator of the structural integrity of the tubes. The reduction in the allowed primary to secondary leakage continues to provide inservice indication of tube structural integrity such that adequate margins of safety exist to withstand the loads imposed by normal operations and postulated accidents. These changes to the Bases do not change any accident and, therefore, will not increase the consequences of any accident previously evaluated.

The proposed changes to Bases 3/4.4.6.2 also change the description of the maximum allowed primary-to-secondary leakage to the lowered limit of 150 GPD through any one steam generator. The reduction of allowed primary-to-secondary leakage does not increase the consequences of any accident previously evaluated.

The changes to SR 4.4.5.2.a and SR 4.4.5.3.a are administrative changes and do not affect the consequences of accidents previously evaluated.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because there is no change in the operation of the steam generators or connecting systems with the repair roll process added by the proposed changes in SR 4.4.5.2.a.1, SR 4.4.5.4.a.4, SR 4.4.5.4.a.6, SR 4.4.5.4.a.7, SR 4.4.5.4.a.9, SR 4.4.5.4.b, SR 4.4.5.5.b.3 and Table 4.4–2. The physical changes in the steam generators associated with the repair roll process have been evaluated and do not create the possibility for a new or different kind of accident from any accident previously evaluated, i.e., the physical change in the steam generators is limited to the location of the primary to secondary boundary within the tubesheet and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The reduction in maximum allowed primary-to-secondary leakage defined by the proposed change to LCO 3.4.6.2.c does not create the possibility of a new or different kind of accident from any previously evaluated accident. The additional testing of tubes repaired by the repair roll process as required by the proposed change to SR 4.4.5.3.c.1 and the addition of SR 4.4.5.9 does not create the possibility of a new or different kind of accident from any previously evaluated accident. Similarly, the monitoring of primary to secondary leakage as specified in the proposed SR 4.4.6.2.1.e does not create the possibility of a new or different kind of accident from any previously evaluated accident.

The proposed changes to Bases 3/4.4.5 and 3/4.4.6.2 reflect the changes proposed to their associated LCOs and SRs, and are not involved with any accident. The changes made to SR 4.4.5.2.a and SR 4.4.5.3.a are administrative changes and do not create the possibility of new or different kinds of accidents from any accident previously evaluated.

3. Not involve a significant reduction in a margin of safety because all of the protective boundaries of the steam generator are maintained equivalent to the original design and construction with tubes repaired by the repair roll process. Furthermore, tubes with primary system to secondary system boundary joints created by the repair roll have been shown by testing and analysis to satisfy all structural, leakage, and heat transfer requirements.

The additional testing of tubes repaired by the repair roll process provides continuing inservice monitoring of these tubes such that inservice degradation of tubes repaired by the repair roll process will be detected. Therefore, the changes to SR 4.4.5.2.a.1, SR 4.4.5.4.a.4, SR 4.4.5.4.a.6, SR 4.4.5.4.a.7, SR 4.4.5.4.b, SR 4.4.5.5.b.3 and Table 4.4–2 to add repair roll as a repair process do not reduce a margin of safety. Similarly, the proposed change to SR 4.4.5.4.a.9 to redefine the pressure boundary for a tube with a repair roll is based upon eddy current testing demonstrating the adequacy of the repair roll to provide this pressure boundary and maintain the present margin of safety.

The proposed reduction of allowed primary to secondary leakage, as defined in the changes to LCO 3.4.6.2.c, constitutes additional conservatism in the operation of the DBNPS and does not reduce a margin of safety. Similarly, the additional testing and monitoring defined in the changed SR 4.4.5.3.c.1 and the proposed SR 4.4.5.9 and SR 4.4.6.2.1.e constitute additional conservatism in the operation of the DBNPS and do not reduce a margin of safety.

The proposed changes to Bases ¾.4.5 and ¾.4.6.2 reflect the changes pro posed to their associated LCOs and SRs, and do not reduce a margin of safety.

The changes to SR 4.4.5.2.a and SR 4.4.5.3.a are administrative changes and do not reduce the margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public

Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 8, 1998 the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 26, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Dated at Rockville, Maryland, this 3d day of March 1998.

For the Nuclear Regulatory Commission.

William O. Long,

Senior Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–5946 Filed 3–6–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Transmittal Memorandum No. 18, Amending OMB Circular No. A–76, ''Performance of Commercial Activities''

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This notice contains Transmittal Memorandum No.18, to OMB Circular No. A-76, ''Performance of Commercial Activities''.

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay costs, as

generally provided in the President's Budget for Fiscal Year 1999.

DATES: All changes in the Transmittal Memorandum are effective immediately and shall apply to all cost comparisons in process where the Government's in-house cost estimate has not been publicly revealed before this date.

FOR FURTHER INFORMATION CONTACT: The Budget Analysis and Systems Division, NEOB Room 6002, Office of Management and Budget, 725 17th Street, N.W., Washington, D.C. 20503, Telephone Number: (202) 395–6104, FAX Number (202) 395–7230.

Clarence Crawford,

Associate Director for Administration.

February 18, 1998.

Circular No. A–76 (Revised)
Transmittal Memorandum No. 18

To The Heads of Executive Departments and Agencies

Subject: Performance of Commercial Activities

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay costs, as generally provided in the President's Budget for Fiscal Year 1999.

The non-pay inflation factors are for purposes of A–76 cost comparison determinations only. They reflect the generic non-pay inflation assumptions used to develop the FY 1999 Budget baseline estimates required by law. The law requires that a specific inflation factor (GDP FY/FY chained price index) be used for this purpose. These inflation factors should not be viewed as estimates of expected inflation rates for major long-term procurement items or as an estimate of inflation for any particular agency's non-pay purchases mix.

The following factors should be applied per paragraph B, pages 19–21 of the OMB Circular A–76 Revised Supplemental Handbook (March 1996).

Federal pay raise assumptions	Military/ civilian
Effective Date:	
January 1998	2.8
January 1999	3.1
January 2000	3.0
January 2001	3.0
January 2002	3.0
January 2003	3.0
Non-Pay Categories (Supplies and Equipment, etc.):	
FY 1997	2.2
FY 1998	1.9
FY 1999	2.0
FY 2000	2.1
FY 2001	2.2
FY 2002	2.2
FY 2003	2.2

Geographic pay differentials received in 1998 shall be included for the development of in-house personnel costs. The above pay raise factors shall be applied after consideration is given to the geographic pay differentials. The pay raise factors provided for 1999 and beyond shall be applied to all employees, with no assumption being made as to how they will be distributed between possible locality and ECI-based increases.

These updates are effective as follows: all changes in the Transmittal Memorandum are effective immediately and shall apply to all cost comparisons in process where the Government's in-house cost estimate has not been publicly revealed before this date.

Agencies are reminded that OMB Circular No. A–76, Transmittal Memoranda 1 through Transmittal Memorandum 14 are canceled. Transmittal Memorandum No. 15 provided the Revised Supplemental Handbook, and is dated March 27, 1996 (**Federal Register**, April 1, 1996, pages 14338–14346). Transmittal Memoranda No. 16 and 17, which provided the last two year's OMB Circular A–76 Federal pay raise and inflation factor assumptions are also canceled.

Sincerely,

Franklin D. Raines,

Director.

[FR Doc. 98–5902 Filed 3–6–98; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23054; File No. 812–10914]

St. Clair Funds, Inc. et al.; Notice of Application

March 2, 1998.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') granting exemptive relief 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.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of capital stock of certain series of St. Clair Funds, Inc. (the ''Funds'') or any other investment company (the Funds and such other investment companies referred to collectively as the ''Insurance Product Funds'') for which Munder Capital Management or any of its affiliates may in the future serve as manager, investment adviser, administrator, principal underwriter or sponsor to be sold to and held by separate accounts (''Separate Accounts'') funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); and qualified pension and retirement plans outside of the separate account context (''Plans''). *Applicants:* St. Clair Funds, Inc. (the ''Company'') and Munder Capital Management (the ''Advisor'').

FILING DATES: The application was filed on December 22, 1997, and amended on February 3, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on March 27, 1998, and must be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Cynthia Surprise, Esq., State Street Bank and Company, Legal Division, 1776 Heritage Drive, Mail Stop AFB4, North Quincy, Massachusetts 02171.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior 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 SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Company is a Maryland corporation and is registered under the 1940 Act as an open-end management investment company. It currently consists of eleven separate series which operate as distinct investment vehicles, five of which are Funds. The Company may in the future issue shares of additional series and/or multiple classes of shares of each Fund.

2. The Advisor is organized as a Delaware general partnership, the partners of which are Woodbridge Capital Management, Inc. (''Woodbridge''), WAM Holdings, Inc. (''WAM''), Old MCM, Inc. and Munder Group, LLC. Woodbridge and WAM are wholly-owned subsidiaries of Comerica Bank—Ann Arbor, which in turn is a wholly-owned subsidiary of Comerica Inc., a publicly-held bank holding company. The Advisor serves as

investment advisers to each of the Funds.

3. The Company initially intends to offer Fund shares to variable annuity and variable life insurance separate accounts established by Kemper Investors Life Insurance Company (''Kemper''). The Company may offer Fund shares to Separate Accounts of additional insurance companies, including insurance companies that are not affiliated with Kemper, to serve as the investment medium for variable annuity contracts and variable life insurance policies (including single premium, scheduled premium, and flexible premium contracts) (collectively, ''Contracts''). These Separate Accounts may or may not be registered under the federal securities laws.

4. The Participating Insurance Companies will establish their own Separate Accounts and design their own Contracts. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under the federal securities laws.

5. The Company also may offer shares of the Insurance Product Funds to Plans described in Treasury Regulation § 1.817–5(f)(3)(iii) and Revenue Ruling 94–62.

6. The Plans may choose one or more of the Insurance Product Funds as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given the right to select among Insurance Product Funds, depending on the Plan itself. The trustees of such Plans will hold the Fund shares, as required by Section 403(a) of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''). The trustee or custodian of each Plan will have the legal obligation of satisfying all requirements applicable to such Plan under the federal securities laws.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptive relief from Sections 9(a), 15(a) and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to: (a) permit ''mixed'' and ''shared'' funding as defined below; and (b) allow shares of the Insurance Product Funds to be sold to Plans.

2. Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the 1940 Act, or the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. 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 where the management investment company underlying the separate account offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company.''

4. The use of a common management investment company as the underlying investment medium for both variable annuity and flexible premium variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to as ''mixed funding.'' The use of a common management company as the underlying investment medium for variable annuity or variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to as ''shared funding.'' ''Mixed and shared funding'' denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or any other affiliated or unaffiliated company. Therefore, Rule 6e–2(b)(15) precludes mixed and shared funding.

5. The relief granted by Rule 6e–2(b)(15) also is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to Plans.

6. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, similar to those provided by Rule 6e–2. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of 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 contracts or flexible premium variable life insurance contracts, or both, or which offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Thus, Rule 6e–3(T)(b)(15) permits mixed funding with respect to a flexible premium variable life insurance separate account, but precludes shared funding or selling to Plans.

7. Applicants state that the current tax law permits the Insurance Product Funds to increase their asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of the Contracts. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contract for any period during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain certain exceptions to this requirement, however, one of which permits shares of an investment company to be held by the trustee of a Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

8. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Treasury regulations. Applicants assert that, given the then-current tax law, the sale of shares of the same underlying fund to separate accounts and to Plans could not have been envisioned at the time of the adoption of Rules 6e–2 and 6e–3(T).

9, Applicants assert that if the Insurance Product Funds were to sell their respective shares only to Plans, no exemptive relief would be necessary. Applicants state that none of the relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Plans or to a registered investment company's ability to sell its shares of Plans. Exemptive relief is requested in the Application

only because it is possible that some of the separate accounts that will invest in the Insurance Product Funds will be themselves investment companies seeking relief under Rules 6e–2 and 6e–3(T) and thus would otherwise be denied such relief if the Insurance Product Funds were to sell shares to Plans as well.

10. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to, or principal underwriter of, any registered opened investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2 and 6e–2(b)(15)(i) and (ii), and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitation on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals of companies that directly participate in the management or administration of the underlying investment company.

11. Applicants state that the relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), 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 assert 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 who may be involved in a large insurance company complex but who have no involvement in matters pertaining to the investment company funding the separate accounts.

12. Applicants state that there is no regulatory purpose in denying the partial exemptions because of mixed and shared funding and sales to Plans. Applicants assert that sales to Separate Accounts and Plans do not change the fact that the purposes of the 1940 Act are not advanced by applying the prohibitions of Section 9(a) to individuals who may be involved in a life insurance complex but have no involvement in the underlying fund.

13. Applicants submit that Rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a ''pass-through voting'' requirement with respect to management investment company shares held by a separate account. Applicants state that Rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirements with respect to several significant matters, assuming the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder are observed. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying investment company, or any contract between an underlying investment company and its investment advisor, when required to do so by an insurance regulatory authority and subject to certain requirements. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that an insurance company may disregard contract owners' voting instructions with regard to changes initiated by the contract owners as to the investment company's investment policies, principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T). In the case of such a change in the investment company's investment policies, in order to disregard a contract owner's voting instructions, the insurance company must make a good-faith determination that such a change would: (a) Violate state law; or (b) result in investment that either (i) would not be consistent with the investment objectives of the separate account, or (ii) would vary from the general quality and nature of investments techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. In the case of such a change in an investment advisor, the insurance company, in order to disregard a contract owner's voting instructions, must make a good-faith determination that either: (a) The advisor's fees would exceed the maximum rate that may be charged against the separate account's assets; or (b) the proposed advisor may be expected to employ investment techniques that either (i) would vary from the general techniques used by the current advisor, or used to manage the investments in a manner inconsistent with the investment objectives of the separate account, or (ii) would result in investments that vary from certain standards.

14. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts and are subject to extensive state regulations of insurance. Applicants maintain, therefore, that in adopting Rule 6e–2, the Commission expressly recognized that state insurance regulators have authority to disapprove or require changes in investment policies, investment advisors, or principal underwriters. Applicants also maintain that the Commission expressly recognized that exemptions from pass-through voting requirements were necessary to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. Applicants assert that flexible premium variable life insurance contracts and variable annuity contracts are subject to substantially the same state insurance regulatory authority, and therefore corresponding provisions of Rule 6e–3(T) presumably were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2.

15. Applicants assert that the offer and sale of shares of the Insurance Product Funds to Plans will not have any impact on the relief requested in this regard. The trustees of such Plans will hold the shares, as required by Section 403(a) of ERISA, or applicable provisions of the Code. Section 403(c) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustees 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. Under one of the two exceptions stated in Section 403(a) applies, the Plan trustees have exclusive authority and responsibility for voting proxies. Where a named fiduciary 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. In any event, ERISA permits, but does not require, pass-through voting to the participants in Plans. Accordingly, Applicants assert that, unlike the case with the insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Plans because they are not entitled to pass-through voting privileges.

16. Applicants acknowledge that some Plans may provide participants

with the right to give voting instructions. Applicants assert that there is no reason to believe, however, that participants in Plans generally, or those in a particular Plan, whether as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. Therefore, Applicants submit that the purchase of the shares of the Insurance Product Funds by Plans that provide voting rights to participants does not present any complications occasioned by mixed and shared funding.

17. Applicants state that no increased conflict of interest would be presented by the granting of the requested relief. Applicants submit that 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. In this regard, Applicants note that it is possible that a particular state insurance regulatory body in a state in which a Participating Insurance Company's is licensed to do business could require action that is inconsistent with the requirements of other insurance regulators in one or more other states in which the Participating Insurance Company offers its policies. That different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

18. Applicants assert that shared funding by unaffiliated insurers, in this respect, is not different than 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) permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Applicants thereby assert that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth in the application and later in this notice (which are adapted from the conditions included in Rule 6e–3(T)(b)(15)) are designed to safeguard against, and provide procedures for resolving, and 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, the affected insurer may be required to withdraw its Separate Account's investment in the relevant Insurance Product Funds.

19. Applicants assert that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Contract owner voting instructions. The potential for disagreement is limited by the requirements that disregarding voting instructions be reasonable and based on specified good faith determinations. However, if a particular insurer's decision to disregard Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, then the insurer may be required, at the election of the relevant Insurance Product Funds, to withdraw its Separate Account's investment in that Insurance Product Fund, and no charge or penalty will be imposed upon the Contract owners as a result of such withdrawal.

20. Applicants submit that there is no reason why the investment policies of an Insurance Product Fund with mixed funding would or should be materially different from what those policies would or should be if such Insurance Product Fund funded only variable annuity or variable life insurance contracts. Applicants state that each type of insurance product is designed as a long-term investment program. Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. 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 fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting mixed and shared funding will provide economic support for the continuation of the Insurance Product Funds. In addition, permitting mixed and shared funding also will facilitate the establishment of additional Insurance Product Funds serving diverse goals. The broader base of contract owners can be expected to provide economic support for the creation of additional Insurance Product Funds with a greater variety of investment objectives and policies.

21. 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. Treasury Regulation § 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Therefore, Applicants assert that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, present any inherent conflicts of interest if Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

22. While there may be differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants state that the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or Plan cannot net purchase payments to make the distributions, the Separate Account or Plan will redeem shares of the Insurance Product Funds at their respective net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

23. Applicants submit that the ability of the Insurance Product Funds to sell their respective shares directly to qualified plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. As noted above, regardless of the rights and benefits of participants under the Plans, or Contract owners under the Contracts, the Plans and the Separate Accounts have rights only with respect to their respective shares of the Insurance Product Funds. They only can redeem such shares at their net asset value. No shareholder of any of the Insurance Product Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

24. Applicants assert that there are no conflicts between the Contract owners of the separate accounts and Plan participants with respect to state insurance commissioners' veto powers over investment objectives. A basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. While time-consuming, complex transactions must be undertaken to accomplish redemptions and transfers by separate accounts, trustees of Plans can quickly redeem shares from Insurance Product Funds and reinvest in other funding vehicles without the same regulatory impediments or, as in the case with most Plans, even hold cash pending suitable alternative investment. Applicants maintain that even if there should arise issues where the interests of Contract owners and the interests of

participants in Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of the Insurance Product Funds.

25. Applicants submit that it is possible to provide an equitable means of giving voting rights to Contract owners and to Plans. In connection with any meeting of shareholders, the Insurance Product Funds will inform each shareholder, including each Separate Account and each Plan, of information necessary for the meeting, including its respective share of ownership in the respective Insurance Product Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

26. Applicants submit that mixed and shared funding should provide benefits to 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 the Advisor, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets available for investment by the Insurance Product Funds, thereby promoting economies of scale, by permitting increased safety through greater diversification and by making the addition of new funds more feasible. Therefore, making the Insurance Product Funds available for mixed and shared funding will encourage more insurance companies to offer Contracts, and this should result in increased competition with respect to both Contract design and pricing, which can be expected to result in more product variation and lower charges to investors. The sale of shares of the Insurance Product Funds to Plans also can be expected to increase the amount of assets available for investment by the Insurance Product Funds and thus promote economies of scale and greater diversification.

27. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to Plans, will have any adverse federal income tax consequences.

28. Applicants state that each Insurance Product Fund will be managed to attempt to achieve the investment adjective of that Insurance Product Fund and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of each Insurance Product Fund's Board of Directors or Board of Trustees (''Board'') shall consist of persons who are not ''interested persons'' thereof, 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 Board member, then the operation of this condition shall be suspended: (a) For a period of 45 days, if the vacancy or vacancies may be filled by the remaining Board members; (b) for a period of 60 days, if a vote of shareholders is required to file the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Insurance Product Fund's Board will monitor the fund for the existence of any material irreconcilable conflict among the interests of the Contract owners of all Separate Accounts investing in the Insurance Product Funds and of Plan participants investing in the Insurance Produce Funds. 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 interpretive 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 the Insurance Product Funds are being managed; (e) a difference in voting instructions given by Contract owners and trustees of 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 Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, the Advisor (or any other primary investment adviser of the Insurance Product Funds), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Product Fund (a ''Participating Plan'') will report any potential or existing conflicts of which it becomes aware to the relevant Board. Participating Insurance Companies, the Advisor and Participating Plans will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the appropriate Board whenever Contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Participating 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 Boards will be contractual obligations of all Participating Insurance Companies and Plans investing in the Insurance Product Funds under their agreements governing participation in the Insurance Product Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Contract owners.

4. If a majority of an Insurance Product Fund's Board members, or a majority of the disinterested Board members, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Participating Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Board members), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Insurance Product Fund or any portfolio thereof, and reinvesting such assets in a different investment medium, which may include another portfolio of an Insurance Product Fund or another Insurance Product Fund; (b) in the case of Participating Insurance Companies, submitting the question as to whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; (c) in the case of

Participating Plans, withdrawing the assets allocable to some or all of the Plans from the Insurance Product Fund and reinvesting such assets in a different investment medium; and (d) establishing a new registered management investment company or managed Separate Account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard Contract owner voting instructions, and this decision represents a minority position or would preclude a majority vote, then that Participating Insurance Company may be required, at the Insurance Product Fund's election, to withdraw its Separate Account's investment in such fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Participating 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 Participating Plan may be required, at the election of the Insurance Product Fund, to withdraw its investment in such fund, 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 shall be a contractual obligation of all Participating Insurance Companies and Participating Plans under their agreements governing participation in the Insurance Product Funds and these responsibilities will be carried out with a view only to the interests of the Contract owners and Plan participants.

5. For purposes of Condition 4, a majority of the disinterested members of the applicable Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict. In no event will the relevant Insurance Product Fund or the Advisor be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Contract if a majority of Contract owners materially and adversely affected by the material irreconcilable conflict, vote to decline such offer. No Participating Plan shall be required by Condition 4 to establish a new funding medium for any Participating Plan if: (a) A majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer; or (b) pursuant to governing Plan documents and applicable law, the Participating Plan makes such decision without Plan participant vote.

6. All Participating Insurance Companies and Participating Plans will be informed promptly in writing of a Board's determination of the existence of an irreconcilable material conflict and its implications.

7. Participating Insurance Companies will provide pass-through voting privileges to Contract owners who invest in registered Separate Accounts so long as and to the extent that the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. As to Contracts issued by unregistered Separate Accounts, pass-through privileges will be extended to participants to the extent granted by issuing insurance companies. Each Participating Insurance Company also will vote shares of the Insurance Product Fund held in its Separate Accounts for which no voting instructions from Contract owners are timely received, as well as shares of the Insurance Product Funds which the Participating Insurance Company itself owns, in the same proportion as those shares of the Insurance Product Funds for which voting instructions from Contract owners are timely received. Participating Insurance Companies will be responsible for assuring that each of their registered Separate Accounts investing in an Insurance Product Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in the Insurance Product Funds will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Product Funds. Each Participating Plan will vote as required by applicable law and governing Plan documents.

8. All reports of potential or existing conflicts received by a Board, and all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying Participating Insurance Companies and Participating Plans of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

9. Each Insurance Product Fund will notify all Participating Insurance Companies that Separate Account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Product Fund shall disclose in its registration statement that: (a) The Insurance Product Fund is intended to be a funding vehicle for Contracts offered by various insurance companies, and for Plans; (b) differences in tax treatment or other considerations may cause the interests of various Contract owners participating in the Insurance Product Fund or the interests of Plans investing in the Insurance Product Fund to conflict; and (c) the Board will monitor the Insurance Product Fund for any material conflicts and determine what action, if any, should be taken.

10. Each Insurance Product Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Insurance Product Funds). In particular, each such Insurance Product Fund either will provide for annual shareholder meetings (except insofar as 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 Insurance Product Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent that Rule 6e–2 or Rule 6e–3(T) under the 1940 Act is amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Insurance Product Funds, Participating Insurance Companies or Participating Plans, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent such rules are applicable.

12. The Participating Insurance Companies and Participating Plans or the Advisor, at least annually, shall submit to each Board such reports, materials or data as each Board may reasonable request so that such Boards may fully carry out the obligations imposed upon them by the conditions stated in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the

participants to provide these reports, materials and data upon reasonable request of a Board shall be a contractual obligation of all participants under their agreements governing participation in the Insurance Product Funds.

13. If a Plan should be come a holder of 10% or more of the assets of an Insurance Product Fund, such Plan will execute a participation agreement with such fund. A Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Product Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are necessary and appropriate in the public 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.

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39706; File No. SR–AMEX–98–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Extension of the Permissible Maturity of FLEX Equity Options

March 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 5, 1998, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On February 20, 1998, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 903G to permit flexible (''FLEX'') equity options to have a term of five years in certain circumstances. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to allow FLEX equity options[3] traded on the Exchange to have a maturity beyond three years and up to five years in certain circumstances. Currently, FLEX equity options, by operation of Rule 903G, are limited to a maturity of three years.

When the Exchange filed for permission to list and trade FLEX equity options[4] it determined to limit the maturity of these options to three years because, unlike FLEX Index options which were already being traded on the Exchange since August 1993 and which could have a maturity of up to five years, the Exchange was concerned that there would not sufficient liquidity in many equity option classes to support services with a longer term to expiration. Since it has traded FLEX equity options, however, the Exchange has had numerous requests from broker-dealers to extend the maturity of FLEX equity options to five years. Among the reasons the broker-dealer firms have been interested in seeking an extension in the allowable maturity is that these longer expiration FLEX equity options might be used to hedge the longer term issuances of structured products linked to returns of a individual stock. The rule would permit the longer term FLEX equity options to be listed when requested by the submitting member if the Exchange determines that sufficient liquidity exists among Equity FLEX qualified participants. By allowing for the extension of the maturity of FLEX equity options to five years in situations where there is demand for a longer term expiration and where there is sufficient liquidity to support the request, the proposed rule change will better serve the needs of Amex's customers and the Exchange members who make a market for such customers.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change:

(i) does not significantly affect the protection of investors or the public interest;

(ii) does not impose any significant burden on competition; and

(iii) does not become operative for 30 days from the date on which it was

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 clarifies the Exchange's course of action when criteria set forth in the proposed rule are met. *See* Letter from Scott G. VanHatten, Legal Counsel, Derivative Securities, Exchange, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, Commission, dated February 19, 1998.

[3] FLEX equity options are flexible exchange-traded options contracts which overlie equity securities. In addition, Exchange equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[4] *See* Exchange Act Release No. 37336 (June 19, 1996), 61 FR 33558 (June 27, 1996).

filed,[5] or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and Rule 19b–4(e)(6) thereunder.[7] The Commission finds good cause to allow the proposed rule change to become operational on March 6, 1998. This accelerated operational date should facilitate faster access for Amex members and customers to the potential benefits of extended maturity dates for FLEX equity options, consistent with the protection of investors and the public interest. The Commission has previously approved a substantially similar proposal by the Chicago Board Options Exchange, Inc.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–AMEX–98–07 and should be submitted by March 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–5891 Filed 3–6–98; 8:45 am]

BILLING CODE 8010–01–M

[5] The proposed rule change filing is deemed filed as of the date Amendment No. 1 was received by the Commission.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e)(6). In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] *See* Exchange Act Release No. 39524 (January 8, 1998), 63 FR 3009 (January 20, 1998).

[9] 17 CFR 200.3–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39705; File No. SR–BSE–98–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Incorporated Relating to its Fee Schedule

March 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 2, 1998, the Boston Stock Exchange, Incorporated (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its fee schedule pertaining to Floor Operation Fees.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed fee revision is to eliminate the $.50 per trade charge to specialists for all non-self-directed market orders from 100 to 2,500 shares in the top 1,000 Consolidated Tape Association (''CTA'') ranked stocks. At the same time, the Exchange also proposes to rebate to its specialists an amount equal to five months (October 1997—February 1998) of the same $.50 per trade charge for non-self-directed market orders. This is in keeping with the Exchange's practice of distributing profits back to its membership, and of providing its members with increased incentives for directing more order flow to the Exchange.

2. Statutory Basis

The Exchange believes that the basis for the proposed rule change is Section 6(b)(5) of the Act,[1] in that the proposed rule change is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions, in, securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[2] and subparagraph (e) of Rule 19b–4 thereunder,[3] in that the proposal

[1] 15 U.S.C. 78f(b)(5).

[2] 15 U.S.C. 78f(b)(3)(A).

[3] 17 CFR 19b–4.e(6).

establishes or changes a due, fee, or other charge by eliminating a member fee and rebating that same fee to BSE members for the months October 1997 to February 1998. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–98–02 and should be submitted by March 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–5890 Filed 3–6–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice #2759]

International Telecommunications Advisory Committee (ITAC); Notice of Meetings

The Department of State announces that a meeting of the United States International Telecommunications Advisory Committee (ITAC) will be held March 12, 1998, 9:30–11:30 a.m., in Room 1912 of the Department of State, 2201 ''C'' Street, NW., Washington, DC. The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues.

To assist in preparations for related international meetings, the Department has established two new ITAC Ad Hoc groups, as follows:

(a) The first, under the chairmanship of Richard Beaird (Ph: 202–647–5832), will consider U.S. preparations for the ITU Plenipotentiary Conference, to be held October 12–November 6, 1998 in Minneapolis, and provide recommendations. The first two meetings of the Ad Hoc will be held April 1 and April 8, 9:30–Noon, in Room 1207 of State Department. In this regard, Ad Hoc groups dealing with the ITU Strategic Plan and the ITU–2000 Working Group are canceled, and any remaining tasks are now included in the new Ad Hoc on Plenipotentiary Preparations;

(b) The second, under the chairmanship of William Jahn (Ph: 202–647–2723), will consider the communications policy issue of free flow of information and recommend positions and strategies for use in various activities of the ITU and related forums. The first meeting of the Ad Hoc will be held March 17, 9:30–11:30 a.m., in Room 1406 of State Department.

The agenda of the ITAC meeting will include: (1) Overview of activities in the ITU Radio and Standards Sectors, and related developments; (2) discussion of the free flow of information issue and the new Ad Hoc Group; (3) discussion of preparations for the ITU Plenipotentiary Conference and the new Ad Hoc Group; and (4) any other business. Questions regarding the agenda or ITAC activities in general may be directed to Richard Shrum, Department of State (Ph: 202–647–0050).

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair. In this regard, entry to the building is controlled. If you wish to attend, please send a fax to 202–647–7407 not later than 24 hours before the scheduled meeting and include the name of the meeting, your name, affiliation, social security number and date of birth. One of the following valid photo ID's will be required for admittance. U.S. driver's license with picture, U.S. passport, or U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: February 27, 1998.

Richard E. Shrum,

ITAC Executive Director.

[FR Doc. 98–6064 Filed 3–5–98; 9:23 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week of February 27, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–1998–3561
Date Filed: February 26, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR–AFR 0042 dated February 6, 1998 rl–7
PTC2 EUR–AFR 0043 dated February 6, 1998, r8–24
PTC2 EUR–AFR 0044 dated February 6, 1998 r25–45
PTC2 EUR–AFR 0045 dated February 6, 1998 r46–63
PTC2 EUR–AFR 0046 dated February 6, 1998 r64–77
PTC2 EUR–AFR 0047 dated February 6, 1998 r78–90
Minutes—PTC2 EUR–AFR 0048 dated February 13, 1998
Tables—PTC2 EUR–AFR Fares 0021 dated February 20, 1998
PTC2 EUR–AFR Fares 0022 dated February 20, 1998
PTC2 EUR–AFT Fares 0023 dated February 20, 1998
PTC2 EAR–AFR Fares 0024 dated February 20, 1998
Intended effective date: May 1, 1998

Docket Number: OST–1998–3562
Date Filed: February 26, 1998
Parties: Members of the International Air Transport Association
Subject:
COMP Telex Reso 033f—Hungary Currency Rate Changes
Intended effective Date: April 1, 1998

Docket Number: OST–1998–3566
Date Filed: February 27, 1998
Parties: Members of the International Air Transport Association
Subject:
Comp Telex Mail Vote 913
Conversion of Local Currency (Lower IROE Tolerance)
Intended effective date: March 10, 1998.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–5995 Filed 3–6–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 27, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1996–1131.

Date Filed: February 25, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 1, 1996.

Description: Amendment No. 2 to the Application of United Air Lines, Inc., pursuant to Subpart Q of the Regulations, requesting authority to additional points identified in Exhibit UA–8, ''Between any point or points behind the U.S., any intermediate point or points (including but not limited to points in those countries listed in Exhibit UA–8), any point or points in Japan, and any point or points beyond Japan (including but not limited to points in those countries listed in Exhibit UA–8)''.

Docket Number: OST–1998–3565.

Date Filed: February 26, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 26, 1998.

Description: Application of Canada 3000 Airlines Limited, pursuant to 49 U.S.C. Section 41302, and Subpart Q of the Regulations, applies for a foreign air carrier permit authorizing Canada 3000 to provide scheduled and charter foreign air transportation of persons, property and mail between any point or points in Canada, on the one hand, and any point or points in the United States, on the other hand, without restriction or limitation. Canada 3000 also requests that it be granted authority to perform 5th freedom charters between points in the United States and points outside of the United States.

Docket Number: OST–1995–625.

Date Filed: February 27, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 9, 1995.

Description: Amendment No. 1 to the Application of United Air Lines, Inc., pursuant to Subpart Q of the Act, for addition of the following points to Segment 2 of its Certificate of Public Convenience and Necessity for Route 603:

Azerbaijan
Belarus
Bosnia
Croatia
Eritrea
Estonia
Ethiopia
Kazakhstan
Kenya
Latvia
Lithuania
Malta
Morocco
Tanzania
Tunisia
Turkmenistan
Uzbekistan
Yemen

United requests that its authority to serve points in France on Segment 2 be amended to include Lyon and Nice in addition to Paris. United also requests that its authority to serve the United Kingdom on Segments 2 and 3 of Route 603 be amended to eliminate the exclusion of Manchester.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–5996 Filed 3–6–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Request Renewal From the Office of Management and Budget (OMB) of Current Public Collection's Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on 13 currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before May 8, 1998.

ADDRESSES: Comments on any of these collections may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 612, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on any of the current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following are short synopses of the 13, currently approved public information collection activities, which will be submitted to OMB for review and renewal:

1. 2120–0001, Notice of Proposed Construction or Alteration, Notice of Actual Construction, Project Status. Federal Regulations require all persons to report proposed or actual construction/alternation of structures affecting air safety. The reporting requirements as prescribed in 14 CFR part 77 affects any person or business planning to construct or alter a structure that may affect air safety. The information is used to ensure the safe and efficient use of the navigable airspace by aircraft. The estimated annual reporting burden on the public is 16,500 hours.

2. 2120–0018, Certification Procedures for Products and Parts, FAR 21. 14 CFR part 21 prescribes certification procedures for aircraft, aircraft engines, propellers, products and parts. Information collected is used to determine compliance and applicant eligibility. The respondents are aircraft parts designers, manufacturers, and aircraft owners. The annual estimated burden in 44,000 hours.

3. 2120–0020, Maintenance, Preventive Maintenance, Rebuilding, and Alteration. The information collection associated with 14 CFR part 43 is necessary to ensure that maintenance, rebuilding, or alteration of aircraft, aircraft components, etc., is performed by qualified individuals and at proper intervals. Further, maintenance records are essential to ensure that an aircraft is properly maintained and is mechanically safe for flight. The respondents are certified mechanics, repair stations, and air carriers authorized to perform maintenance. Pilots are also authorized to perform and record preventive maintenance; however, the authorization applies only to those pilots who own or lease their aircraft for private operation. The annual estimated reporting and recordkeeping burden associated with this requirement is 5.5 million hours.

4. 2120–0040, Aviation Maintenance Technician Schools—FAR Part 147.14 CFR part 147 prescribes requirements for certification and operation of aviation mechanic schools. The information is necessary to ensure that Aviation Maintenance Technician Schools meet the minimum requirements for procedures and curriculum set forth by the FAA. Also, it is necessary for the FAA to develop minimum standards for properly qualified persons who would enter the aviation industry. The estimated annual burden for reporting and recordkeeping is 79,000 hours.

5. 2120–0056, Report of Inspections Required by Airworthiness Directives, FAR part 39. Airworthiness directives are regulations issued to require corrective action to correct unsafe conditions in aircraft, engines, propellers, and appliances. Records of inspections are often needed when emergency corrective action is taken to determine if the action was adequate to correct the unsafe condition. The respondents are owners and operators of the affected products. The estimated annual burden is 21,000 hours.

6. 2120–0057, Safety Improvement Report Accident Prevention Counselor Activity Reports. Safety Improvements Reports are used by airmen to notify the FAA of hazards to flight operations. Accident Prevention Counselor Activity Reports are used by counselors to advise the FAA of Accident Prevention Program Accomplishments. The affected public are pilots, airport operators, charter and commuter aircraft operators engaging in air transportation. The estimated annual burden for this reporting activity is 4,600 hours.

7. 2120–0067, Air Taxi and Commercial Operator Airport Activity Survey. The information collected through this survey is restricted to all air taxi/commercial operators who are subject to the passenger transportation tax. Response to the survey is voluntary. Data collected is to serve as an input to the FAA revenue emplanement data base which is used in allocating Airport Improvement Program (AIP) funds to airports. The estimated annual burden for this information is 500 hours.

8. 2120–0101, Physiological Training. This collection of information is used to determine if the applicants meet the qualifications for the voluntary physiological training under the FAA/USAF training agreement. The estimated annual burden for this collection is 500 hours.

9. 2120–0508, Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes. This is a labeling requirement to put the date of manufacture and compliance status on the identification plate and is intended to minimize the effort required to determine whether a turbojet engine may legally be installed and operate on a aircraft in the United States as required by 14 CFR part 45. The estimated annual burden associated with this submission is 100 hours.

10. 2120–0524, High Density Traffic Airports Slot Allocation and Transfer Methods. The FAA uses this information to allocate slots and maintain accurate records of slot transfers at the High Density Traffic Airports. The information will be provided by air carriers and commuter operators or other persons holding a slot at High Density Traffic Airports. The estimated annual burden associated with this collection is 1800 hours.

11. 2120–0539, Implementation to the Equal Access to Justice Act (EAJA). The Equal Access to Justice Act provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to administrative proceedings before government agencies and who prevail over the government. The information collected will be used to determine whether an applicant is eligible to receive an award under the EAJA. The annual estimated burden associated with this collection is 200 hours.

12. 2120–0564, Unescorted Access Privilege—14 CFR parts 107 and 108. The information is required to ensure that airports and air carriers comply with the investigations into the background of individuals permitted unescorted access privileges. The estimated annual burden associated with this collection of information is 37,000 hours.

13. 2120–0569, Airports Grants Program. The FAA collects information from airport sponsors and planning agencies in order to administer the Airports Grants Program. Data is used to determine eligibility, ensure proper use of Federal funds, and ensure project accomplishments.

Issued in Washington, DC, on March 3, 1998.

Steve Hopkins,

Manager, Corporate Information Division. ABC–100.

[FR Doc. 98–5922 Filed 3–6–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development (R, E&D) Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development Advisory Committee. The meeting will be held on April 23–24, at the Washington Dulles Airport Hilton, 13869 Park Center Road, Herndon, Virginia.

On Thursday, April 23 the meeting will begin at 8:00 a.m. and end at 5: 00 p.m. On Friday, April 24 the meeting will begin at 8:00 a.m. and end at 5:00 p.m. The meeting agenda will review the Federal Aviation Administration planned fiscal year 2000 research and development investments in the areas of air traffic services, airports, aircraft safety, security, human factors and environment and energy.

Attendance is open to the interested public but limited to space available. Persons wishing to attend the meeting or obtain information should contact Lee Olson at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW, Washington, DC 20591 (202) 267–7358.

Members of the public may present a written statement to the Committee at any time

Issued in Washington, DC on February 13, 1998.

Jan Brecht-Clark,

Acting Director, Office of Aviation Research.

[FR Doc. 98–5924 Filed 3–6–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Norfolk Southern Corporation (Waiver Petition Docket Number PB–98–1)

The Norfolk Southern Corporation (NS) seeks a temporary waiver of compliance from certain provisions of the Railroad Power Brake and Drawbars regulations, 49 CFR 232.21 (a) and (f), which describes the design and performance standards for two-way end-of-train devices.

Section 232.21(a) requires ''an emergency brake application command from the front unit of the device shall activate the emergency air valve at the rear of the train within one second.'' According to NS, their front unit sends an emergency brake command in 1.675 seconds of which a significant portion of this time is involved in coding the unique signal that provides a security barrier against an attempted malicious emergency command from an outside source, or an accidental transmission from another front unit that may have an erroneous rear number inputted. NS's system is designed to code a unique message between the individual devices. These messages are separate from the rear unit number and are coded and initialized only during a five minute window at the initial terminal setup and testing of the system. NS believes this function provides a higher level of security than the two-way systems currently used by other Class I railroads.

Section 232.21(f) requires ''the availability of the front-to-rear communications link shall be checked automatically at least every 10 minutes.'' The system used by NS does not have front-to-rear communications checked automatically every 10 minutes. NS claims their system communications failure warning is linked to the rear-to-front portion of the messaging. If five minutes elapse since a good message was received by the front unit, a ''STAND BY'' message is displayed on the front unit. This message informs the engineer that communication is lost.

Section 232.23(d) permits NS to use these devices because ''each two-way end-of-train device purchased by any person prior to promulgation of these regulations shall be deemed to meet the design and performance requirements contained in § 232.21.''

In anticipation of NS's acquisition of the Consolidated Rail Corporation (CR) and NS's desire to redesign all of their devices to comply with § 232.21, NS is designing a dual frequency two-way system which will operate in both the NS and CR mode. When these devices are operated in the CR mode, they will comply with current regulations. However, when they are operated in the NS mode, they will be compatible with existing NS devices as described above. NS is expecting immediate delivery of 116 new locomotives which will be equipped with front units designed to work with the existing NS devices. Additionally, NS has approximately 100 existing units which need to be replaced due to loss or damage.

Within three years, NS states they will redesign all of their two-way devices to comply with the design and performance standards of § 232.21 (a) and (f). In order to facilitate a smooth transition from the existing NS mode to the mode that is currently being used by the rest of the Class I railroads, NS requests a temporary waiver for three years of § 232.21 (a) and (f) for the dual mode devices, the 116 devices being delivered with the new locomotives, and the 100 units that will replace existing units.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–98–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Mail Stop 10, Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, NW., Room 7051, Washington, DC 20005.

Issued in Washington, DC on March 2, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–5875 Filed 3–6–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33560]

Norfolk Southern Railway Company—Corporate Family Exemption—Lease and Operation of Mobile and Birmingham Railroad Company

Norfolk Southern Railway Company (NSR), a Class I rail carrier, has filed a notice of exemption to renew its lease and to operate approximately 147 miles of rail line owned by Mobile and Birmingham Railroad Company (M&B), a Class III carrier and a subsidiary of NSR, located in the State of Alabama.

NSR states that the lease was to be extended prior to March 1, 1998. The earliest the transaction could be consummated was February 25, 1998, the effective date of the exemption (7 days after the exemption was filed).

NSR has filed its notice of exemption under 49 CFR 1180.2(d)(3) as the proposed renewal of its lease with M&B is exempt because it is within the NSR corporate family and will not result in adverse changes in service levels, operational changes or a change in the competitive balance with carriers outside the NSR corporate family.

As a condition to this exemption, any employee affected by the transaction will be protected by the conditions imposed in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. RLEA* v. *ICC*, 675 F.2d 1248 (D.C. Cir. 1982).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions 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. 33560, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001 and served on: James A. Squires, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

Decided: March 2, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–5823 Filed 3–6–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–303 (Sub–No. 14X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Wood County, WI

Wisconsin Central Ltd. (WCL) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately .75-mile line of railroad between milepost 22 and milepost 22.75 northwest of Wisconsin Rapids, in Wood County, WI. The line traverses United States Postal Service Zip Code 54495.

WCL has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 8, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 19, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 30, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael J. Barron, Jr., Wisconsin Central Ltd., P.O. Box 5062, Rosemont, IL 60017–5062.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

WCL has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 13, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WCL shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WCL's filing of a notice of consummation by March 9, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: March 2, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–5790 Filed 3–6–98; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25). This fee is scheduled to increase to $1000, effective March 20, 1998.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Offer In Compromise of liability incurred under the provisions of Title 26 U.S.C. enforced and administered by the Bureau of Alcohol, Tobacco and Firearms.

DATES: Written comments should be received on or before May 8, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Orlow, Revenue Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Offer In Compromise of liability incurred under the provisions of Title 26 U.S.C. enforced and administered by the Bureau of Alcohol, Tobacco and Firearms.

OMB Number: 1512–0221.

Form Number: ATF F 5640.1.

Abstract: ATF F 5640.1 is used by persons who wish to compromise criminal and/or civil penalties for violations of the Internal Revenue Code. If accepted, the offer in compromise is a settlement between the government and the party in violation in lieu of legal procedings or prosecution. The form identifies the party making the offer, violations, amount of offer and circumstances concerning the violations.

Current Actions: There are no changes associated with this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 40.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 80.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 2, 1998.

William T. Earle,

Asistant Director (Management)/CFO.

[FR Doc. 98–5882 Filed 3–6–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Referral of Information.

DATES: Written comments should be received on or before May 8, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Orlow, Revenue Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Referral of Information.

OMB Number: 1512–0035.

Form Number: ATF F 5000.21.

Abstract: The form is used to internally refer potential violations of ATF administered statutes and to externally refer to the appropriate Federal, State or local enforcement/regulatory agency potential violations of other statutes. The information is voluntary and pertinent only to the Federal or State agency that has information referred to it.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 2, 1998.

William T. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–5883 Filed 3–6–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Amended Basic Permit Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before May 8, 1998 to be assured of consideration.

ADDRESSESES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Ruhf, Revenue Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Application for Amended Basic Permit Under the Federal Alcohol Administration Act.

OMB Number: 1512–0090.

Form Number: ATF F 5100.18 (1643).

Abstract: ATF F 5100.18 (1643) is completed by permittees who have changes in their operations which require a new permit to be issued or a notice to be received by ATF. The permittees are businesses involving beverage alcohol operations at distilled spirits plants, bonded wineries, wholesalers and importers. The information allows ATF to identify the permittee, the changes to the permit or business operations and to determine whether the applicant qualifies for an amended basic permit under the Federal Alcohol Administration Act.

Current Actions: A number of changes have been made to decrease the respondents' time to complete the form. Items have been removed from the application that are not necessary. The paperwork required for a permittee to

report a change in an officer, director, stockholder or investor has been reduced. With the proposed edition of ATF F 5100.18 (1643), there will be only one form or notice completed which contains all the necessary information. The permittee, not the officer, director, stockholder or investor, will be responsible for completing the form. The burden hours have decreased due to an overestimation of the number of respondents and the time it takes to complete the form.

Type of Review: Revision.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 600.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 2, 1998.

William T. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–5884 Filed 3–6–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Interstate Firearms Shipment Report of Theft/Loss.

DATES: Written comments should be received on or before May 8, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nicholas Colucci, Firearms Trafficking Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226,(202) 927–8475.

SUPPLEMENTARY INFORMATION:

Title: Interstate Firearms Shipment Report of Theft/Loss

OMB Number: 1512–0007

Form Number: ATF F 3310.6

Abstract: ATF F 3310.6 is used by common carriers to ensure that firearms stolen from their interstate shipments are reported to an interested law enforcement agency. The information is used by ATF to investigate and develop criminal cases against individual(s) involved in this type of criminal activity.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,014.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 338.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 2, 1998.

William T. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–5885 Filed 3–6–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the User-Limited Permit (Explosives).

DATES: Written comments should be received on or before May 8, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mark Waller, Explosives and Arson Branch, Public Safety Section, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8047.

SUPPLEMENTARY INFORMATION:

Title: User-Limited Permit (Explosives).

OMB Number: 1512–0242.

Form Number: ATF F 5400.6.

Abstract: The user-limited permit is useful to the person making a one-time purchase from out-of-state. It is used

one time only and is nonrenewable. The explosives distributor makes entries on the form and returns the form to the permittee to prevent reuse of the permit. Dealers maintain copies of the form on file for a period of 5 years.

Current Actions: The form has been changed and will now be a two-part form, one part remaining with the distributor and the other being the purchaser's copy. A warning label will be printed across the permit to indicate its limited usage. There are name and phone number changes to reflect updated information. With regard to the Paperwork Reduction Act on the back of the form, the burden hours have been amended to reflect minutes.

Type of Review: Extension with changes.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,092.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 22.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 2, 1998.

William T. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–5886 Filed 3–6–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Basic Permit Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before May 8, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Ruhf, Revenue Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Application for Basic Permit Under the Federal Alcohol Administration Act.

OMB Number: 1512–0089.

Form Number: ATF F 5100.24.

Abstract: ATF F 5100.24 is completed by persons intending to engage in a business involving beverage alcohol operations at a distilled spirits plant or bonded winery, or to wholesale or import beverage alcohol. The information allows ATF to identify the applicant and the location of the business and to determine whether the applicant qualifies for a basic permit under the Federal Alcohol Administration Act.

Current Actions: The revision to ATF F 5100.24 incorporates the information of ATF F 5170.4 (OMB NO. 1512–0220), an application form for a basic permit under the Federal Alcohol Administration Act to wholesale or import beverage alcohol. The revised ATF F 5100.24 will be used in place of ATF F 5170.4. The revision reduces several instructions which will reduce the burden to complete the form by 15 minutes per applicant. The request to increase burden hours represents the burden of the combination of both forms. However, we have reduced this increase by 400 hours through eliminating half of the general instructions and specific instructions for each item.

Type of Review: Revision.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,600.

Estimated Time Per Respondent: 1 hour and 45 minutes.

Estimated Total Annual Burden Hours: 2,800.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 2, 1998.

William T. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–5887 Filed 3–6–98; 8:45 am]

BILLING CODE 4810–31–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Ancestors of the Incas: The Lost Civilizations of

Peru'' (see list[1], imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Memphis International Cultural Series Grand Exhibition Hall in Memphis, Tennessee from on or about April 16, 1998 through on or about September 16, 1998, the Florida International Museum in St. Petersburg, Florida, from on or about October 23, 1998 to on or about March 10, 1999, and possibly an additional venue yet to be determined, is in the national interest.

Public Notice of these determinations is ordered to be published in the **Federal Register.**

Dated: March 4, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–5986 Filed 3–6–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg, Assistant General Counsel, at (202) 619–6084. The address is U.S. Information Agency, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Corrections

Federal Register

Vol. 63, No. 45

Monday, March 9, 1998

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.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1802, 1803, 1804, 1805, 1814, 1815, 1816, 1817, 1832, 1834, 1835, 1842, 1844, 1852, 1853, 1871, and 1872

Contracting by Negotiation

Correction

In rule document 98–4853 beginning on page 9953 in the issue of Friday, February 27, 1998, make the following correction:

§ 1852.243–70 [Corrected]

On page 9966, in the first column, in amendatory instruction 17, in the third and fourth line ''(Insert month and year of **Federal Register** publication), should read ''(FEB 1998)''.

BILLING CODE 1505–01–D

federal register

Monday
March 9, 1998

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 222, 226, and 227

Endangered and Threatened Species: West Coast Chinook Salmon; Listing Status Change; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222, 226, and 227

[Docket No. 980225050–8050–01; I.D. 022398C]

RIN 0648–AK65

Endangered and Threatened Species: Proposed Endangered Status for Two Chinook Salmon ESUs and Proposed Threatened Status for Five Chinook Salmon ESUs; Proposed Redefinition, Threatened Status, and Revision of Critical Habitat for One Chinook Salmon ESU; Proposed Designation of Chinook Salmon Critical Habitat in California, Oregon, Washington, Idaho

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

ACTION: Proposed rule; proposed redefinition; proposed designation and revision of critical habitat; request for comments.

SUMMARY: NMFS completed a comprehensive status review of west coast chinook salmon (*Oncorhynchus tshawytscha*, or *O. tshawytscha*) populations in Washington, Oregon, Idaho, and California in response to petitions filed to list chinook salmon under the Endangered Species Act (ESA). Based on this review, NMFS identified a total of 15 Evolutionarily Significant Units (ESUs) of chinook salmon within this range, including two Snake River ESUs already listed under the ESA, one previously identified ESU (mid-Columbia River summer/fall run) for which no listing was proposed, and one population (Sacramento River winter run) that was listed as a ''distinct population segment'' prior to the formulation of the NMFS ESU policy. With respect to the 12 ESUs that are the subject of this proposed rule, NMFS has concluded that two ESUs are at risk of extinction and five ESUs are at risk of becoming endangered in the foreseeable future. NMFS also concluded that one currently listed ESU should be redefined to include additional chinook salmon populations and that this redefined ESU is at risk of becoming endangered in the foreseeable future. NMFS also concluded that four ESUs are not at risk of extinction nor at risk of becoming endangered in the foreseeable future. Finally, NMFS also renamed the previously identified Mid-Columbia River summer/fall-run ESU as the Upper Columbia River summer/fall-run ESU.

NMFS is now issuing a proposed rule to list two ESUs as endangered, five ESUs as threatened, and to redefine one currently listed ESU to include additional chinook populations, under the ESA. The endangered chinook salmon are located in California (Central Valley spring-run ESU) and Washington (Upper Columbia River spring-run ESU). The threatened chinook salmon are dispersed throughout California, Oregon, and Washington. They include the California Central Valley fall-run ESU, the Southern Oregon and California Coastal ESU, the Puget Sound ESU, the Lower Columbia River ESU, and the Upper Willamette River ESU. NMFS also proposes to redefine the Snake River fall-run chinook salmon ESU to include fall chinook salmon populations in the Deschutes River, and proposes to list this redefined ESU as a threatened species. This proposal does not affect the current definition and threatened status of the listed Snake River fall chinook salmon ESU.

In each ESU identified as threatened or endangered, only naturally spawned, non-introduced chinook salmon are proposed for listing. Prior to the final listing determinations, NMFS will examine the relationship between hatchery and natural populations of chinook salmon in these ESUs and assess whether any hatchery populations are essential for the recovery of the natural populations and thus will be listed.

NMFS is proposing to designate critical habitat for the chinook salmon ESUs newly proposed for listing within this notice, and for the Snake River fall-run ESU, proposing to revise its existing critical habitat. At this time, proposed critical habitat for these ESUs is the species' current freshwater and estuarine range, certain marine areas, and includes all waterways, substrate, and adjacent riparian zones below longstanding, impassible, natural barriers.

NMFS is requesting public comments on the issues pertaining to this proposed rule. NMFS is also requesting suggestions and comments on integrated local/state/tribal/Federal conservation measures that will achieve the purposes of the ESA to recover the health of chinook salmon populations and the ecosystems upon which they depend. Should the proposed listing be made final, NMFS will adopt protective regulations and a recovery plan under the ESA.

DATES: Comments must be received by June 8, 1998. NMFS will announce the dates and locations of public hearings in Washington, Oregon, Idaho, and California in a forthcoming **Federal Register** notice. Requests for additional public hearings must be received by April 23, 1998.

ADDRESSES: Comments on this proposed rule, requests for reference materials, and requests for public hearings should be sent to Chief, Protected Species Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503–231–2005, Craig Wingert, 562–980–4021, or Joe Blum, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Previous Federal ESA Actions Related to West Coast Chinook

West Coast chinook salmon have been the subject of many Federal ESA actions. In November 1985, NMFS received a petition to list Sacramento River winter-run chinook salmon from the American Fisheries Society (AFS). NMFS determined that the petitioned action might be warranted and announced it would conduct a review of the run's status (51 FR 5391, February 13, 1986). In its status review, NMFS determined that Sacramento River winter-run chinook salmon was a ''species'' for the purposes of the ESA, but based upon the conservation and restoration efforts by California and other Federal resource agencies, declined to list the winter-run chinook at that time (52 FR 6041, February 27, 1987). Subsequent low returns prompted NMFS to adopt an emergency rule listing Sacramento River winter-run chinook salmon as a threatened species under the ESA (54 FR 10260, August 4, 1989). NMFS then issued a proposed rule to list Sacramento River winter-run chinook as a threatened species under the ESA (55 FR 102260, March 20, 1990), and also published a second emergency rule listing the winter-run chinook as threatened to avoid any lapse in ESA protections while considering the proposed rule (55 FR 12191, April 2, 1990). On November 5, 1990, NMFS completed its listing determination for Sacramento River winter-run chinook, and published a final rule listing the run as a threatened species under the ESA (55 FR 46515).

In June 1991, AFS petitioned NMFS to reclassify the winter-run as an endangered species. Based on the information submitted by AFS, and after reviewing all other available data, NMFS determined that the petitioned action may be warranted, and announced its intention to review the status of the winter-run chinook (56 FR 58986, November 7, 1991), and then published a proposed rule to reclassify

winter-run chinook salmon as endangered under the ESA (57 FR 27416, June 19, 1992). Critical habitat for Sacramento winter-run chinook salmon was designated on June 16, 1993 (58 FR 33212). After several extensions of the listing determination and the comment period, NMFS finalized its proposed rule and re-classified the winter-run chinook as an endangered species under the ESA (59 FR 440, January 4, 1994).

While NMFS was reviewing and reclassifying the status of Sacramento River chinook, NMFS also received a petition from Oregon Trout and five co-petitioners on June 7, 1990, to list Snake River spring/summer and fall chinook salmon as threatened species under the ESA. On September 11, 1990, NMFS determined that the petition presented substantial scientific information indicating that the proposed action may be warranted, and initiated a status review (55 FR 37342). NMFS published a proposed rule listing two Snake River chinook salmon runs as threatened under the ESA on June 27, 1991 (56 FR 29542 and 56 FR 29547). NMFS finalized its rule listing these Snake River chinook salmon runs as threatened species on April 22, 1992 (57 FR 14653).

Meanwhile, on June 3, 1993, American Rivers and 10 other organizations petitioned NMFS to add Mid-Columbia River summer chinook salmon to the list of endangered species. NMFS determined that this petition presented substantial scientific information indicating that the petitioned action may be warranted, and initiated a status review (58 FR 46944, September 3, 1993). Subsequently, NMFS determined that mid-Columbia River summer chinook salmon did not qualify as an ESU, and therefore was not a ''distinct population segment'' under the ESA (59 FR 48855, September 23, 1994). However, NMFS determined that mid-Columbia River summer chinook salmon were part of a larger ESU that included all late-run (summer and fall) Columbia River chinook salmon between McNary and Chief Joseph dams. NMFS also concluded that this ESU did not warrant listing as a threatened or endangered species (59 FR 48855, September 23, 1994).

Immediately prior to that determination, NMFS determined that a petition filed on March 14, 1994, by Professional Resources Organization-Salmon (PRO-Salmon) to list various populations of chinook salmon in Washington contained substantial scientific information indicating that the petitioned action may be warranted (59 FR 46808, September 12, 1994). NMFS then announced that it would commence a coast-wide status review of all west coast chinook salmon (59 FR 46808). Shortly after initiating this comprehensive coast wide status review for chinook and other salmon species, NMFS received a petition from Oregon Natural Resource Council and Dr. Richard Nawa on February 1, 1995, to list chinook salmon throughout its range. NMFS determined that this petition contained substantial scientific information indicating that the petitioned action may be warranted, and reconfirmed its intention to conduct a comprehensive coast wide status review of west coast chinook salmon (60 FR 30263, June 8, 1995).

In the intervening period between the two most recent petitions to list various populations of west coast chinook salmon, NMFS published an emergency rule on August 18, 1994 (59 FR 42529) after determining that the status of Snake River spring/summer-run and Snake River fall-run chinook salmon warranted reclassification as endangered, based on projected declines and low abundance levels of adult chinook salmon. Because emergency rules under the ESA have a maximum duration of 240 days (see 16 U.S.C. 1533(b)(7) and 50 CFR § 424.20(a)), NMFS published a proposed rule reclassifying listed Snake River spring/summer-run and Snake River fall-run chinook salmon ESUs as endangered on December 28, 1994 (59 FR 66784). Since publishing that proposed rule, a congressional moratorium on listing activities, a large ESA listing determination backlog and other delays prevented NMFS from completing its assessment of the proposed rule. During this period, abundance of both stocks of Snake River chinook salmon has increased. Based on these increases, along with improved management activities affecting these chinook salmon, NMFS concluded that the risks facing these chinook salmon ESUs are lower than they were at the time of the proposed rule, and thus NMFS withdrew the proposed reclassification (63 FR 1807, January 12, 1998).

During the coast wide chinook salmon status review initiated in September, 1994, NMFS assessed the best available scientific and commercial data, including technical information from Pacific Salmon Biological Technical Committees (PSBTCs) and interested parties in Washington, Oregon, Idaho, and California. The PSBTCs consisted primarily of scientists (from Federal, state, and local resource agencies, Indian tribes, industries, universities, professional societies, and public interest groups) possessing technical expertise relevant to chinook salmon and their habitats.

A NMFS Biological Review Team, composed of scientists from NMFS' Northwest and Southwest Fisheries Science Centers, NMFS' Northwest and Southwest Regional Offices, as well as a representative of the National Biological Service, completed a coast wide status review for chinook salmon [Memorandum to W. Stelle and W. Hogarth from M. Schiewe, December 18, 1997, Chinook Salmon Status Review Report]. The review (summary follows) evaluates the status of 15 chinook salmon ESUs in the four states. The complete results of NMFS' status review for chinook salmon populations will be published in a forthcoming NOAA Technical Memorandum (Myers et al., 1998).

Chinook Salmon Life History and Ecology

Chinook salmon (*O. tshawytscha*) are easily distinguished from other *Oncorhynchus* species by their large size. Adults weighing over 120 pounds have been caught in North American waters. Chinook salmon are very similar to coho salmon (*O. kisutch*) in appearance while at sea (blue-green back with silver flanks), except for their large size, small black spots on both lobes of the tail, and black pigment along the base of the teeth. Chinook salmon are anadromous and semelparous. This means that as adults, they migrate from a marine environment into the fresh water streams and rivers of their birth (anadromous) where they spawn and die (semelparous). Adult female chinook will prepare a spawning bed, called a redd, in a stream area with suitable gravel composition, water depth and velocity. Redds will vary widely in size and in location within the stream or river. The adult female chinook may deposit eggs in 4 to 5 ''nesting pockets'' within a single redd. After laying eggs in a redd, adult chinook will guard the redd from 4 to 25 days before dying. Chinook salmon eggs will hatch, depending upon water temperatures, between 90 to 150 days after deposition. Stream flow, gravel quality, and silt load all significantly influence the survival of developing chinook salmon eggs. Juvenile chinook may spend from 3 months to 2 years in freshwater after emergence and before migrating to estuarine areas as smolts, and then into the ocean to feed and mature. Historically, chinook salmon ranged as far south as the Ventura River, California, and their northern extent reaches the Russian Far East.

Among chinook salmon, two distinct races have evolved. One race, described

as a ''stream-type'' chinook, is found most commonly in headwater streams. Stream-type chinook salmon have a longer freshwater residency, and perform extensive offshore migrations before returning to their natal streams in the spring or summer months. The second race is called the ''ocean-type'' chinook, which is commonly found in coastal streams in North America. Ocean-type chinook typically migrate to sea within the first three months of emergence, but they may spend up to a year in freshwater prior to emigration. They also spend their ocean life in coastal waters. Ocean-type chinook salmon return to their natal streams or rivers as spring, winter, fall, summer, and late-fall runs, but summer and fall runs predominate (Healey, 1991). The difference between these life history types is also physical, with both genetic and morphological foundations.

Juvenile stream- and ocean-type chinook salmon have adapted to different ecological niches. Ocean-type chinook salmon tend to utilize estuaries and coastal areas more extensively for juvenile rearing. The brackish water areas in estuaries also moderate physiological stress during parr-smolt transition. The development of the ocean-type life history strategy may have been a response to the limited carrying capacity of smaller stream systems and glacially scoured, unproductive, watersheds, or a means of avoiding the impact of seasonal floods in the lower portion of many watersheds (Miller and Brannon, 1982).

Stream-type juveniles are much more dependent on freshwater stream ecosystems because of their extended residence in these areas. A stream-type life history may be adapted to those watersheds, or parts of watersheds, that are more consistently productive and less susceptible to dramatic changes in water flow, or which have environmental conditions that would severely limit the success of subyearling smolts (Miller and Brannon, 1982; Healey, 1991). At the time of saltwater entry, stream-type (yearling) smolts are much larger, averaging 73–134 mm depending on the river system, than their ocean-type (subyearling) counterparts and are therefore able to move offshore relatively quickly (Healey, 1991).

Coastwide, chinook salmon remain at sea for 1 to 6 years (more commonly 2 to 4 years), with the exception of a small proportion of yearling males (called jack salmon) which mature in freshwater or return after 2 or 3 months in salt water (Rutter, 1904; Gilbert, 1912; Rich, 1920; Mullan *et al.*, 1992). Ocean- and stream-type chinook salmon are recovered differentially in coastal and mid-ocean fisheries, indicating divergent migratory routes (Healey, 1983 and 1991). Ocean-type chinook salmon tend to migrate along the coast, while stream-type chinook salmon are found far from the coast in the central North Pacific (Healey 1983 and 1991; Myers *et al.*, 1984). Differences in the ocean distribution of specific stocks may be indicative of resource partitioning and may be important to the success of the species as a whole.

There is a significant genetic influence to the freshwater component of the returning adult migratory process. A number of studies show that chinook salmon return to their natal streams with a high degree of fidelity (Rich and Holmes 1928; Quinn and Fresh, 1984; McIssac and Quinn, 1988). Salmon may have evolved this trait as a method of ensuring an adequate incubation and rearing habitat. It also provides a mechanism for reproductive isolation and local adaptation. Conversely, returning to a stream other than that of one's origin is important in colonizing new areas and responding to unfavorable or perturbed conditions at the natal stream (Quinn, 1993).

Chinook salmon stocks exhibit considerable variability in size and age of maturation, and at least some portion of this variation is genetically determined. The relationship between size and length of migration may also reflect the earlier timing of river entry and the cessation of feeding for chinook salmon stocks that migrate to the upper reaches of river systems. Body size, which is correlated with age, may be an important factor in migration and redd construction success. Roni and Quinn (1995) reported that under high density conditions on the spawning ground, natural selection may produce stocks with exceptionally large-sized returning adults.

Early researchers recorded the existence of different temporal ''runs'' or modes in the migration of chinook salmon from the ocean to freshwater. Freshwater entry and spawning timing are believed to be related to local temperature and water flow regimes (Miller and Brannon, 1982). Seasonal ''runs'' (*ie.*, spring, summer, fall, or winter) have been identified on the basis of when adult chinook salmon enter freshwater to begin their spawning migration. However, distinct runs also differ in the degree of maturation at the time of river entry, the thermal regime and flow characteristics of their spawning site, and their actual time of spawning. Egg deposition must occur at a time to ensure that fry emerge during the following spring when the river or estuary productivity is sufficient for juvenile survival and growth.

Other Life History Traits

Pathogen resistance is another locally adapted trait. Chinook salmon from the Columbia River drainage were less susceptible to *Ceratomyxa shasta*, an endemic pathogen, than stocks from coastal rivers where the disease is not known to occur (Zinn *et al.*, 1977). Alaskan and Columbia River stocks of chinook salmon exhibit different levels of susceptibility to the infectious hematopoietic necrosis virus (IHNV) (Wertheimer and Winton 1982). Variability in temperature tolerance between populations is likely due to selection for local conditions; however, there is little information on the genetic basis of this trait (Levings, 1993).

Consideration as a ''Species'' Under the ESA

To qualify for listing as a threatened or endangered species, the identified populations of chinook salmon must be considered ''species'' under the ESA. The ESA defines a ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' NMFS published a policy (56 FR 58612, November 20, 1991) describing the agency's application of the ESA definition of ''species'' to anadromous Pacific salmonid species. NMFS' policy provides that a Pacific salmonid population will be considered distinct and, hence, a species under the ESA if it represents an ESU of the biological species. A population must satisfy two criteria to be considered an ESU, it must be reproductively isolated from other conspecific population units, and it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion is met if the population contributes substantially to the ecological and genetic diversity of the species as a whole. Guidance on the application of this policy is contained in a scientific paper ''Pacific Salmon (*Oncorhynchus* spp.) and the Definition of 'Species' under the Endangered Species Act'' (Waples, 1991) and a NOAA Technical Memorandum ''Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon'' (NMFS F/NWC–194) which are available upon request (see **ADDRESSES**). The following sections

describe the genetic, ecological, and life history characteristics, as well as human-induced genetic changes that NMFS assessed to determine the number and geographic extent of chinook salmon ESUs.

Reproductive Isolation

Genetic data provide useful indirect information on reproductive isolation because they integrate information about migration and gene flow over evolutionarily important time frames.

Genetic information obtained from allozyme, DNA, and chromosomal sampling indicate strong differentiation between chinook salmon ESUs, and were largely consistent with those described in previous studies of chinook salmon. Puget Sound populations of chinook salmon appear to constitute a genetically distinct group, a conclusion that is consistent with the results of Utter *et al.* (1989) and Marshall *et al.* (1995). In NMFS' analyses, Washington coastal populations appeared to form a genetically distinct group that was most similar to, but still distinct from, Oregon coastal populations. The Washington coastal group included the Hoko River population in the western part of the Strait of Juan de Fuca. Chinook salmon in the Elwha River, which also drains into the Strait of Juan de Fuca, were genetically intermediate between Puget Sound and Washington coastal populations.

Chinook salmon populations in the Columbia and Snake Rivers appear to be separated into two large genetic groups: those producing ocean-type outmigrants and those producing stream-type outmigrants. The first group includes populations in lower Columbia River tributaries, with both spring-run and fall-run (''tule'') life histories. These ocean-type populations exhibit a range of juvenile life history patterns that appear to depend on local environmental conditions. The Willamette River hatchery populations form a distinct subgroup within the lower Columbia River group. Ocean-type chinook salmon populations east of the Cascade Range Crest include both summer-and fall-run (''bright'') populations, and are genetically distinct from lower Columbia River ocean-type populations. Fall-run populations in the Snake River, Deschutes River, and Marion Drain (Yakima River) form a distinct subgroup.

The second major group of chinook salmon in the Columbia and Snake River drainage consists of spring- or summer-run fish. Based on analysis of genetic clusters, three relatively distinct subgroups appeared within these stream-type populations. One subgroup includes spring-run populations in the Klickitat, John Day, Deschutes, and Yakima Rivers of the mid-Columbia River. A second subgroup includes upper Columbia River spring-run chinook salmon in the Wenatchee and Methow Rivers, but also includes spring-run fish in the Grande Ronde River and Carson Hatchery. This is likely due to the releases of exotic Carson hatchery stock in these basins, rather than to natural genetic similarities. A third subgroup consists of Snake River spring- and summer-run populations in the Imnaha and Salmon Rivers, as well as those in the Rapid River and Lookingglass Hatcheries. The Klickitat River spring-run population appears to be genetically intermediate between upper and lower Columbia River groups.

All populations of chinook salmon south of the Columbia River drainage appear to consist of ocean-type fish. Populations along the north coast of Oregon form a genetically distinct group, consisting of populations north of and including the Elk River, except for the Rock Creek Hatchery spring-run population, which show greater genetic affinity to southern Oregon coastal populations. A southern coastal group includes populations south of the Elk River to and including populations in the lower Klamath River in northern California. However, Euchre Creek, which is located near the Rogue River and has been planted extensively with Elk River stock, is more similar to populations north of Cape Blanco. Upper Klamath River populations of chinook salmon are genetically distinct from other northern California, southern Oregon and California Central Valley populations.

Sacramento and San Joaquin River populations are genetically distinct from northern California coastal and Klamath River populations. Previous studies grouped populations in the Sacramento River with those in the San Joaquin River (Utter et al., 1989; Bartley and Gall, 1990; Bartley et al., 1992). However, Hedgecock et al. (1995), Banks (1996), and Nielsen (1995 and 1997) surveyed DNA markers and these results indicate that the winter, spring, fall, and late-fall runs may be genetically distinct from one another.

Genetic Changes Due to Human Activities

The effects of artificial propagation and other human activities such as harvest and habitat modification, can be relevant to ESA listing determinations in two ways. First, such activities can genetically change natural populations so much that they no longer represent an evolutionarily significant component of the biological species (Waples, 1991). For example, in 1991, NMFS concluded that, as a result of massive and prolonged effects of artificial propagation, harvest, and habitat degradation, the agency could not identify natural populations of coho salmon (*O. kisutch*) in the lower Columbia River that qualified for ESA listing consideration (56 FR 29553, June 27, 1991). Second, risks to the viability and genetic integrity of native salmon populations posed by human activities may contribute to their threatened or endangered status (Goodman, 1990; Hard et al., 1992). The severity of these effects on natural populations depends both on the nature of the effects (e.g., harvest rate, gear size, or type of hatchery practice) and their magnitude (e.g., duration of a hatchery program and number and life-history stage of hatchery fish involved).

For example, artificial propagation is a common practice to supplement chinook salmon stocks for commercial and recreational fisheries. However, in many areas, a significant portion of the naturally spawning population consists of hatchery-produced chinook salmon. In several of the chinook salmon ESUs, over 50 percent of the naturally spawning fish are from hatcheries. Many of these hatchery-produced fish are derived from a few stocks which may or may not have originated from the geographic area where they are released. However, in several of the ESUs analyzed, insufficient or uncertain information exists regarding the interactions between hatchery and natural fish, and the relative abundance of hatchery and natural stocks.

Artificial propagation is important to consider in ESA evaluations of anadromous Pacific salmonids for several reasons. First, although natural fish are the focus of ESU determinations, possible effects of artificial propagation on natural populations must also be evaluated. For example, stock transfers might change the genetic bases or phenotypic expression of life history characteristics in a natural population in such a way that the population might seem either less or more distinctive than it was historically. Artificial propagation can also alter life history characteristics such as smolt age and migration and spawn timing (e.g., Crawford, 1979, NRC 1996). Second, artificial propagation poses a number of risks to natural populations that may affect their risk of extinction or endangerment. Finally, if any natural populations are listed under the ESA, then it will be necessary to determine the ESA status of

all associated hatchery populations. This latter determination would be made following a proposed listing and is not considered further in this document.

The impacts of hatchery activities on specific ESUs is discussed in the Status of Chinook Salmon ESUs and Summary of Factors Affecting the Species sections.

Ecological and Genetic Diversity

Several types of physical and biological evidence were considered in evaluating the contribution of chinook salmon from Washington, Oregon, Idaho, and California to the ecological and genetic diversity of the biological species throughout its range. Factors examined included: (1) The physical environment—geology, soil type, air temperature, precipitation, river flow patterns, water temperature, and vegetation; (2) biogeography—marine, estuarine, and freshwater fish distributions; and (3) life history traits—age at smolting, age at spawning, river entry timing, and spawning timing. An analysis of the physical environment and life history traits provides important insight into the ecological and genetic diversity of the species and can reflect unusual or distinctive adaptations that promote evolutionary processes.

The predominant differentiation in chinook salmon life history types is that between ocean- and stream-type chinook salmon. Ocean-type populations typically migrate to the ocean in their first year of life and spend most of their marine life in coastal waters, whereas stream-type populations migrate to sea as yearlings and often make extensive ocean migrations.

In some areas within the Columbia River Basin, stream- and ocean-type chinook salmon stocks spawn in relatively close proximity to one another but are separated by run timing. Stream-type chinook salmon include spring-run populations in the Columbia River and its tributaries east of the Cascade Crest, and spring- and summer-run fish in the Snake River and its tributaries. Ocean-type chinook salmon include fall-run chinook salmon in both the Columbia and Snake River Basins, summer-run chinook salmon from the Columbia River, and spring-run fish from the lower Columbia River. There are substantial genetic differences between stream- and ocean-type chinook salmon in both the Fraser and Columbia River Basins, and the genetic analyses show clearly that the two life history forms represent two major evolutionary lineages.

Adult run-time has also long been used to identify different temporal ''races'' of chinook salmon. In cases where the run-time differences correspond to differences between stream- and ocean-type fish (e.g., in the Columbia and Fraser River Basins), relatively large genetic differences (as well as ecological and life history differences) can be found between the different runs. In most coastal areas, however, life history and genetic differences between the runs are relatively modest, relative to the larger differences used in designating other ESUs. Although many populations have some fraction of yearling migrants, all the coastal populations are part of the ocean lineage, and spring- and fall-run fish are very similar in ocean distribution.

Among basins supporting only ocean-type chinook salmon, the Sacramento River system is somewhat unusual in that its large size and ecological diversity historically allowed for substantial spatial as well as temporal separation of different runs. Genetic and life history data both suggest that considerable differentiation among the runs has occurred in this basin. The Klamath River Basin, as well as chinook salmon in Puget Sound, shares some features of coastal rivers but historically also provided an opportunity for substantial spatial separation of different temporal runs. As discussed below, the diversity in run timing made identifying ESUs difficult in the Klamath and Sacramento River Basins.

NMFS considers differences in life history traits as a possible indicator of adaptation to different environmental regimes and resource partitioning within those regimes. The relevance of the ecologic and genetic basis for specific chinook salmon life-history traits as they pertain to each ESU is discussed in the brief summary that follows.

ESU Determinations

The ESU determinations described here represent a synthesis of a large amount of diverse information. In general, the proposed geographic boundaries for each ESU (i.e., the watersheds within which the members of the ESU are typically found) are supported by several lines of evidence that show similar patterns. However, the diverse data sets are not always entirely congruent (nor would they be expected to be), and the proposed boundaries are not necessarily the only ones possible. For example, in some cases (e.g., in the Middle Columbia River near the Cascade Crest), environmental changes occur over a transition zone rather than abruptly.

Based on the best available scientific and commercial information, NMFS has identified 15 ESUs of chinook salmon from Washington, Oregon, Idaho, and California, including 11 new ESUs, and one redefined ESU. The 15 ESUs are briefly described and characterized below. Genetic data (from studies of protein electrophoresis and DNA) were the primary evidence considered for the reproductive isolation criterion, supplemented by inferences about barriers to migration created by natural geographic features and human-induced changes resulting from artificial propagation and harvest. Factors considered to be most informative in evaluating ecological and genetic diversity include data pertaining to the physical environment, ocean conditions and upwelling, vegetation, estuarine and freshwater fish distributions, river entry, and spawning timing.

Most of the ESUs described below include multiple spawning populations of chinook salmon, and most also extend over a considerable geographic area. This result is consistent with NMFS' species definition paper, which states that, in general, ''ESUs should correspond to more comprehensive units unless there is clear evidence that evolutionarily important differences exist between smaller population segments'' (Waples, 1991, p. 20). However, considerable diversity in genetic or life history traits or habitat features exists within most ESUs, and maintaining this diversity is critical to their overall health. The descriptions below briefly summarize some of the notable types of diversity within each ESU, and this diversity is considered in the next section in evaluating risk to the ESUs as a whole.

(1) Sacramento River Winter-Run ESU

This run was determined to be a distinct population segment by NMFS in 1987, prior to development of the NMFS species policy. The NMFS concluded that this run meets the criteria to be considered an ESU. It includes chinook salmon entering the Sacramento River from November to June and spawning from late-April to mid-August, with a peak from May to June. No other chinook salmon populations have a similar life history pattern. In general, winter-run chinook salmon exhibit an ocean-type life-history strategy, with smolts emigrating to the ocean after 5 to 9 months of freshwater residence (Johnson et al., 1992) and remaining near the coasts of California and Oregon. Winter-run chinook salmon also mature at a

relatively young age (2–3 years old). DNA analysis indicates substantial genetic differences between winter-run and other chinook salmon in the Sacramento River.

Historically, winter-run populations existed in the Upper Sacramento, Pit, McCloud, and Calaveras Rivers. The spawning habitat for these stocks was primarily located in the Sierra Nevada Ecoregion (Omernik, 1987). Construction of dams on these rivers in the 1940s led to the extirpation of populations in the San Joaquin River Basin and displaced the Sacramento River population to areas below Shasta Dam.

(2) Central Valley Spring-Run ESU

Existing populations in this ESU spawn in the Sacramento River and its tributaries. Historically, spring chinook salmon were the dominant run in the Sacramento and San Joaquin River Basins (Clark, 1929), but native populations in the San Joaquin River have apparently all been extirpated (Campbell and Moyle, 1990). This ESU includes chinook salmon entering the Sacramento River from March to July and spawning from late August through early October, with a peak in September. Spring-run fish in the Sacramento River exhibit an ocean-type life history, emigrating as fry, subyearlings, and yearlings. Recoveries of hatchery chinook salmon implanted with coded-wire-tags (CWT) are primarily from ocean fisheries off the California and Oregon coast. There were minimal differences in the ocean distribution of fall- and spring-run fish from the Feather River Hatchery (as determined by CWT analysis); however, due to hybridization that may have occurred in the hatchery between these two runs, this similarity in ocean migration may not be representative of wild runs.

Substantial ecological differences in the historical spawning habitat for spring-run versus fall- and late-fall-run fish have been recognized. Spring chinook salmon run timing was suited to gaining access to the upper reaches of river systems (up to 1,500 m elevation) prior to the onset of prohibitively high water temperatures and low flows that inhibit access to these areas during the fall. Differences in adult size, fecundity, and smolt size also occur between spring- and fall/late fall-run chinook salmon in the Sacramento River.

No allozyme data are available for naturally spawning Sacramento River spring chinook salmon. A sample from Feather River Hatchery spring-run fish, which may have undergone substantial hybridization with fall chinook salmon, shows modest (but statistically significant) differences from fall-run hatchery populations. DNA data show moderate genetic differences between the spring and fall/late-fall runs in the Sacramento River; however, these data are difficult to interpret in the context of this broad status review because comparable data are not available for other geographic regions.

(3) Central Valley Fall/Late Fall-Run ESU

This ESU includes fall and late-fall chinook salmon spawning in the Sacramento and San Joaquin Rivers and their tributaries. These populations enter the Sacramento and San Joaquin Rivers from July through April and spawn from October through February.

Both runs are ocean-type chinook salmon, emigrating predominantly as fry and subyearlings and remaining off the California coast during their ocean migration.

Sacramento/San Joaquin Basin chinook salmon are genetically and physically distinguishable from all other coastal forms (Clark, 1929; Synder, 1931). Ecologically, the Central Valley also differs in many important ways from coastal areas. There were also a number of life-history differences noted between Sacramento and San Joaquin River Basin fall/late fall-run populations. In general, San Joaquin River populations tend to mature at an earlier age and spawn later in the year than Sacramento River populations. These differences could have been phenotypic responses to the generally warmer temperature and lower flow conditions found in the San Joaquin River Basin relative to the Sacramento River Basin. There was no apparent difference in the distribution of marine CWT recoveries from Sacramento and San Joaquin River hatchery populations, nor were there genetic differences between Sacramento and San Joaquin River fall/late fall-run populations (based on DNA and allozyme analysis) of a similar magnitude to that used in distinguishing other ESUs. This apparent lack of distinguishing life history and genetic characteristics may be due, in part, to large scale transfers of Sacramento River fall/late fall-run chinook salmon into the San Joaquin River Basin.

(4) Southern Oregon and California Coastal ESU

This ESU includes all naturally spawned coastal spring and fall chinook salmon spawning from Cape Blanco (inclusive of the Elk River) to the southern extent of the current range for chinook salmon at Point Bonita (the northern landmass marking the entrance to San Francisco Bay). The Cape Blanco region is a major biogeographic boundary for numerous species (e.g., steelhead and coho salmon). Chinook salmon spawn in several small tributaries to San Francisco Bay, however it is uncertain whether these small populations are part of this ESU, or wanderers from Central Valley chinook salmon ESUs.

Chinook salmon from the Central Valley and Klamath River Basin upstream from the Trinity River confluence are genetically and ecologically distinguishable from those in this ESU. Chinook salmon in this ESU exhibit an ocean-type life-history; ocean distribution (based on marine CWT recoveries) is predominantly off of the California and Oregon coasts. Life-history information on smaller populations, especially in the southern portion of the ESU, is extremely limited. Additionally, only anecdotal or incomplete information exists on abundance of several spring-run populations including, the Chetco, Winchuck, Smith, Mad, and Eel Rivers. Allozyme data indicate that this ESU is genetically distinguishable from the Oregon Coast, Upper Klamath and Trinity River, and Central Valley ESUs. This data also shows some divergence between chinook populations north and south of the Klamath River, but the available information is incomplete to describe chinook salmon south of the Klamath River as a separate ESU. Life history differences also exist between spring- and fall-run fish in this ESU, but not to the same extent as is observed in larger inland basins.

Ecologically, the majority of the river systems in this ESU are relatively small and heavily influenced by a maritime climate. Low summer flows and high temperatures in many rivers result in seasonal physical and thermal barrier bars that block movement by anadromous fish. The Rogue River is the largest river basin in this ESU and extends inland into the Sierra Nevada and Cascades Ecoregions.

(5) Upper Klamath and Trinity Rivers ESU

Included in this ESU are all Klamath River Basin populations from the Trinity River and the Klamath River upstream from the confluence of the Trinity River. These populations include both spring- and fall-run fish that enter the Upper Klamath River Basin from March through July and July through October and spawn from late August through September and September through early January, respectively. Body morphology

(vertebral counts, lateral-line scale counts, and fin-ray counts) and reproductive traits (egg size and number) for populations from the Upper Klamath River differ from those of populations in the Sacramento River Basin. Genetic analysis indicated that populations from the Upper Klamath River Basin form a unique group that is quite distinctive compared to neighboring ESUs. The Upper Klamath River crosses the Coastal Range, Sierra Nevada, and Eastern Cascades Ecoregions, although dams prevent access to the upper river headwaters of the Klamath River in the Eastern Cascades Ecoregion.

Within the Upper Klamath River Basin, there are statistically significant, but fairly modest, genetic differences between the fall and spring runs. The majority of the spring- and fall-run fish emigrate to the marine environment primarily as subyearlings. Recoveries of CWTs indicate that both runs have a coastal distribution off of the California and Oregon coasts. There was no apparent difference in the marine distribution of CWT recoveries from fall-run (Iron Gate and Trinity River Hatcheries) and spring-run populations (Trinity River Hatchery).

NMFS was concerned that the only estimate of the genetic relationship between spring and fall runs in this ESU is from a comparison of hatchery stocks that may have undergone some introgression during hatchery spawning operations, thus blurring the distinguishable traits between spring- and fall-run chinook in this ESU. NMFS acknowledges that the ESU determination should be revisited if substantial new information from natural spring-run populations becomes available.

(6) Oregon Coast ESU

This ESU contains coastal populations of spring- and fall-run chinook salmon from the Elk River north to the mouth of the Columbia River. These populations exhibit an ocean-type life-history and mature at ages 3, 4, and 5. In contrast to the more southerly ocean distribution pattern shown by populations from the lower Columbia River and farther south, CWT recoveries from populations within this ESU are predominantly from British Columbia and Alaska coastal fisheries. There is a strong genetic separation between Oregon Coast ESU populations and neighboring ESU populations. This ESU falls within the Coastal Ecoregion and is characterized by a strong maritime influence, with moderate temperatures, high precipitation levels, and easy migration access.

(7) Washington Coast ESU

Coastal populations spawning north of the Columbia River and west of the Elwha River are included in this ESU. These populations can be distinguished from those in Puget Sound by their older age at maturity and more northerly ocean distribution. Allozyme data also indicate geographical differences between populations from this area and those in Puget Sound, the Columbia River, and the Oregon coast ESUs. Populations within this ESU are ocean-type chinook salmon and generally mature at age 3, 4, and 5. Ocean distribution for these fish is more northerly than that for the Puget Sound and Lower Columbia River ESUs. The boundaries of this ESU lie within the Coastal Ecoregion, which is strongly influenced by the marine environment: high precipitation, moderate temperatures, and easy migration access.

(8) Puget Sound ESU

This ESU encompasses all naturally spawned spring, summer and fall runs of chinook salmon in the Puget Sound region from the North Fork Nooksack River to the Elwha River on the Olympic Peninsula, inclusive. Chinook salmon in this area all exhibit an ocean-type life history. Although some spring-run chinook salmon populations in the Puget Sound ESU have a high proportion of yearling smolt emigrants, the proportion varies substantially from year to year and appears to be environmentally mediated rather than genetically determined. Puget Sound stocks all tend to mature at ages 3 and 4 and exhibit similar, coastally-oriented, ocean migration patterns. There are substantial ocean distribution differences between Puget Sound and Washington coast stocks, with CWT recoveries of Washington coastal chinook found in much larger proportions from Alaskan waters. The marine distribution of Elwha River chinook salmon most closely resembled other Puget Sound stocks, rather than Washington coast stocks.

The NMFS concluded that, on the basis of substantial genetic separation, the Puget Sound ESU does not include Canadian populations of chinook salmon. Allozyme analysis of North Fork and South Fork Nooksack River spring chinook salmon identified them as outliers, but most closely allied with other Puget Sound samples. DNA analysis identified a number of markers that appear to be restricted to either the Puget Sound or Washington coastal stocks. Some allozyme markers suggested an affinity of the Elwha River population with the Washington coastal stocks, while others suggested an affinity with Puget Sound stocks.

The boundaries of the Puget Sound ESU correspond generally with the boundaries of the Puget Lowland Ecoregion. Despite being in the rainshadow of the Olympic Mountains, the river systems in the western portion of Puget Sound maintain high flow rates due to the melting snowpack in the surrounding mountains. Temperatures tend to be moderated by the marine environment. The Elwha River, which is in the Coastal Ecoregion, is the only system in this ESU which lies outside the Puget Sound Ecoregion. Furthermore, the boundary between the Washington Coast and Puget Sound ESUs (which includes the Elwha River in the Puget Sound ESU) corresponds with ESU boundaries for steelhead and coho salmon. In life history and genetic attributes, the Elwha River chinook salmon appear to be transitional between populations from Puget Sound and the Washington Coast ESU.

(9) Lower Columbia River ESU

This ESU includes all naturally spawned chinook populations from the mouth of the Columbia River to the crest of the Cascade Range, excluding populations above Willamette Falls. Celilo Falls, which corresponds to the edge of the drier Columbia Basin Ecosystem and historically may have presented a migrational barrier to chinook salmon at certain times of the year, is the eastern boundary for this ESU. Not included in this ESU are ''stream-type'' spring chinook salmon found in the Klickitat River (which are considered part of the Mid-Columbia River spring-run ESU) or the introduced Carson spring-chinook salmon. ''Tule'' fall chinook salmon in the Wind and Little White Salmon Rivers are included in this ESU, but not introduced ''upriver bright'' fall chinook salmon populations in the Wind, White Salmon, and Klickitat Rivers. Available information suggests that spring chinook salmon presently in the Clackamas and Sandy Rivers are predominantly the result of introductions from the Willamette River ESU and are thus probably not representative of spring chinook salmon found historically.

In addition to the geographic features mentioned above, genetic and life-history data were important factors in defining this ESU. Populations in this ESU are considered ocean type. Some spring-run populations have a large proportion of yearling migrants, but this trend may be biased by yearling hatchery releases. Subyearling migrants were found to contribute to the

escapement. CWT recoveries for Lower Columbia River ESU populations indicate a northerly migration route, but with little contribution to the Alaskan fishery. Populations in this ESU also tend to mature at age 3 and 4, somewhat younger than populations from the coastal, upriver, and Willamette ESUs. Ecologically, the Lower Columbia River ESU crosses several ecoregions: Coastal, Willamette Valley, Cascades and East Cascades.

(10) Upper Willamette River ESU

This ESU includes naturally spawned spring-run populations above Willamette Falls. Fall chinook salmon above the Willamette Falls are introduced and although they are naturally spawning, they are not considered a population for purposes of defining this ESU. Historic, naturally spawned populations in this ESU have an unusual life history that shares features of both the stream and ocean types. Scale analysis of returning fish indicate a predominantly yearling smolt life-history and maturity at 4 years of age, but these data are primarily from hatchery fish and may not accurately reflect patterns for the natural fish. Young-of-year smolts have been found to contribute to the returning 3 year-old year class. The ocean distribution is consistent with an ocean-type life history, and CWT recoveries occur in considerable numbers in the Alaskan and British Columbian coastal fisheries. Intra-basin transfers have contributed to the homogenization of Willamette River spring chinook salmon stocks; however, Willamette River spring chinook salmon remain one of the most genetically distinctive groups of chinook salmon in the Columbia River Basin.

The geography and ecology of the Willamette Valley is considerably different from surrounding areas. Historically, the Willamette Falls offered a narrow temporal window for upriver migration, which may have promoted isolation from other Columbia River stocks.

(11) Mid-Columbia River Spring-Run ESU

Included in this ESU are stream-type chinook salmon spawning in the Klickitat, Deschutes, John Day, and Yakima Rivers. Historically, spring-run populations from the Hood, Walla Walla, and Umatilla Rivers may have also belonged in this ESU, but these populations are now considered extinct. Chinook salmon from this ESU emigrate to the ocean as yearlings and apparently migrate far off-shore, as they do not appear in appreciable numbers in any ocean fisheries. The majority of adults spawn as 4-year-olds, with the exception of fish returning to the upper tributaries of the Yakima River, which return predominantly at age 5. Populations in this ESU are genetically distinguishable from other stream-type chinook salmon in the Columbia and Snake Rivers. Streams in this region drain desert areas east of the Cascades (Columbia Basin Ecoregion) and are ecologically differentiated from the colder, less productive, glacial streams of the upper Columbia River spring-run ESU and from the generally higher elevation streams of the Snake River.

(12) Upper-Columbia River Summer- and Fall-Run ESU

This ESU was first identified as the Mid-Columbia River summer/fall chinook salmon ESU. Previously, Waknitz et al. (1995) and NMFS (1994) identified an ESU that included all ocean-type chinook salmon spawning in areas between McNary Dam and Chief Joseph Dam (59 FR 48855, September 23, 1994). However, NMFS has now concluded that the boundaries of this ESU do not extend downstream from the Snake River. In particular, NMFS concluded that Deschutes River fall chinook salmon are not part of this ESU. The ESU status of the Marion Drain population from the Yakima River is still unresolved. NMFS also identified the importance of obtaining more definitive genetic and life history information for naturally spawning fall chinook salmon elsewhere in the Yakima River drainage.

Chinook salmon from this ESU primarily emigrate to the ocean as subyearlings but mature at an older age than ocean-type chinook salmon in the Lower Columbia and Snake Rivers. Furthermore, a greater proportion of CWT recoveries for this ESU occur in the Alaskan coastal fishery than is the case for Snake River fish. The status review for Snake River fall chinook salmon (Waples et al., 1991; NMFS, 1992) also identified genetic and environmental differences between the Columbia and Snake Rivers. Substantial life history and genetic differences distinguish fish in this ESU from stream-type spring chinook salmon from the mid- and upper-Columbia Rivers.

The ESU boundaries fall within part of the Columbia Basin Ecoregion. The area is generally dry and relies on Cascade Range snowmelt for peak spring flows. Historically, this ESU likely extended farther upstream; spawning habitat was compressed down-river following construction of Grand Coulee Dam.

(13) Upper Columbia River Spring-Run ESU

This ESU includes stream-type chinook salmon spawning above Rock Island Dam—that is, those in the Wenatchee, Entiat, and Methow Rivers. All chinook salmon in the Okanogan River are apparently ocean-type and are considered part of the Upper Columbia River summer- and fall-run ESU. These upper Columbia River populations exhibit classical stream-type life-history strategies: yearling smolt emigration with only rare CWT recoveries in coastal fisheries. These populations are genetically and ecologically well separated from the summer- and fall-run populations that exist in the lower parts of many of the same river systems.

Rivers in this ESU drain the east slopes of the Cascade Range and are fed primarily by snowmelt. The waters tend to be cooler and less turbid than the Snake and Yakima Rivers to the south. Although these fish appear to be closely related genetically to stream-type chinook salmon in the Snake River, NMFS recognized substantial ecological differences between the Snake and Columbia Rivers, particularly in the upper tributaries favored by stream-type chinook salmon. Allozyme data demonstrate even larger differences between spring chinook salmon populations from the mid- and upper-Columbia River.

Artificial propagation programs have had a considerable influence on this ESU. During the Grand Coulee Fish-Maintenance Project (GCFMP, 1939–1943), all spring chinook salmon reaching Rock Island Dam, including those destined for areas above Grand Coulee Dam, were collected and they or their progeny were dispersed into streams in this ESU (Fish and Hanavan, 1948). Some ocean-type fish were undoubtedly also incorporated into this program. Spring-run escapements to the Wenatchee, Entiat, and Methow Rivers were severely depressed prior to the GCFMP but increased considerably in subsequent years, suggesting that the effects of the program may have been substantial. Subsequently, widespread transplants of Carson stock spring chinook salmon (derived from a mixture of Columbia River and Snake River stream-type chinook salmon) have also contributed to erosion of the genetic integrity of this ESU.

In spite of considerable homogenization, this ESU still represents an important genetic resource, in part because it presumably contains the last remnants of the gene pools for populations from the headwaters of the Columbia River.

(14) Snake River Fall-Run ESU

This ESU, which includes ocean-type fish, was identified in an earlier status review (Waples et al., 1991; NMFS, 1992). In that status review and in a later review of mid-Columbia River summer chinook salmon (Waknitz et al., 1995), the ESU status of populations from Marion Drain and the Deschutes River was not resolved, so these issues were considered in the current review.

Both populations show a greater genetic affinity to Snake River fall chinook salmon than to other ocean-type Columbia River populations such as the Upper Columbia River summer/fall-run ESU. After evaluation, NMFS concluded that chinook salmon spawning in the Marion Drain could not be assigned to any historic or current ESU with any certainty.

However, after further review, NMFS has concluded that the Deschutes River chinook salmon population should be considered part of the Snake River fall-run ESU. The Deschutes River historically supported a population of fall chinook salmon, as evidenced by counts of fish at Sherars Falls in the 1940s. Genetic and life history data for the current population indicate a closer affinity to fall chinook salmon in the Snake River than to those in the Columbia River. Similarities were observed in the distribution of CWT ocean recoveries for Snake River and Deschutes River fall-run chinook salmon; however, information on Deschutes River fish was based on a limited number of releases over a relatively short time frame. CWT recovery data indicate that straying by non-native chinook salmon into the Deschutes River is very low and does not appear to be disproportionately influenced by Snake River fall-run chinook salmon (Hymer et al., 1992). Fall-run chinook populations from the John Day, Umatilla, and Walla Walla Rivers would also be included in this ESU, but are believed to have been extirpated.

(15) Snake River Spring- and Summer-Run ESU

This ESU, which includes populations of spring- and summer-run chinook salmon from the Snake River Basin (excluding the Clearwater River), was identified in a previous status review (Matthews and Waples, 1991; NMFS, 1992). These populations show modest genetic differences, but substantial ecological differences, in comparison with Mid- and Upper Columbia River spring- and summer-run chinook salmon populations. Populations from this ESU emigrate to the ocean as yearlings, mature at ages 4 and 5, and are rarely taken in ocean fisheries. The majority of the spawning habitat occurs in the Northern Rockies and Blue Mountains ecoregions.

Status of Chinook Salmon ESUs

The ESA defines the term ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' The term ''threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' In previous status reviews (e.g., Weitkamp et al., 1995), NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) Absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU.

During the coastwide status review for chinook salmon, NMFS evaluated both qualitative and quantitative information to determine whether any proposed ESU is threatened or endangered according to the ESA. The types of information used in these assessments are described below, followed by a summary of results for each ESU.

Qualitative Evaluations

Qualitative assessments of the status of chinook salmon stocks have been published by agencies or conservation groups (Nehlsen et al., 1991; Higgins et al., 1992; Nickelson et al., 1992; WDF et al., 1993; Huntington et al., 1996). Nehlsen et al. (1991) considered salmonid stocks throughout Washington, Idaho, Oregon, and California and enumerated all stocks that they found to be extinct or at risk of extinction. Nehlsen et al. (1991) classified stocks as extinct, possibly extinct, at high risk of extinction, at moderate risk of extinction, or of special concern. They considered it likely that stocks at high risk of extinction have reached the threshold for classification as endangered under the ESA. Stocks were placed in this category if they had declined from historic levels and were continuing to decline, or had spawning escapements less than 200. Stocks were classified as at moderate risk of extinction if they had declined from historic levels but presently appear to be stable at a level above 200 spawners. They felt that stocks in this category had reached the threshold for threatened under the ESA. They classified stocks as of special concern if a relatively minor disturbance could threaten them, insufficient data were available for them, they were influenced by large releases of hatchery fish, or they possess some unique characteristic.

Higgins et al. (1992) used the same classification scheme as Nehlsen et al. (1991) but provided a more detailed review of some northern California salmonid stocks. In this review, their evaluation is relevant only to the Southern Oregon and California Coastal and Upper Klamath and Trinity Rivers ESUs.

Nickelson et al. (1992) rated wild coastal (excluding Columbia River Basin) Oregon salmon and steelhead stocks on the basis of their status over the past 20 years, classifying stocks as ''healthy,'' ''depressed,'' ''of special concern,'' or ''unknown''.

WDF et al. (1993) categorized all salmon and steelhead stocks in Washington on the basis of stock origin, production type, and status (''healthy,'' ''depressed,'' ''critical,'' or ''unknown'').

Huntington et al. (1996) surveyed the condition of healthy native or wild stocks of anadromous salmonids in the Pacific Northwest and California. Stocks were classified as healthy based upon abundance, self-sustainability, and not having been previously identified as at substantial risk of extinction. Healthy stocks were described at two levels: ''adult abundance at least two-thirds as great as would be found in the absence of human impacts'' (Level I); and ''adult abundance between one-third and two-thirds as great as expected without human impacts'' (Level II).

There are problems in applying results of these studies to ESA evaluations. A major problem is that the definition of ''stock'' or ''population'' varied considerably in scale among studies, and sometimes among regions within a study. Identified units range in size from large river basins (e.g., ''Sacramento River'' in Nehlsen et al., 1991), to minor coastal streams and tributaries. A second problem is the definition of categories used to classify stock status. Only Nehlsen et al. (1991) and Higgins et al. (1992) used categories intended to relate to ESA ''threatened'' or ''endangered'' status, and they applied their own interpretations of these terms to individual stocks, not to

ESUs as defined here. WDF *et al.* (1993) used general terms describing status of stocks that cannot be directly related to the considerations important in ESA evaluations. A third problem is the selection of stocks or populations to include in the review. Nehlsen et al. (1991) and Higgins *et al.* (1992) did not discuss stocks not perceived to be at risk, so it is difficult to determine the proportion of stocks they considered to be at risk in any given area. For chinook salmon, WDF *et al.* (1993) included only stocks considered to be substantially ''wild'' and included data only for the ''wild'' component for streams that have both hatchery and natural fish escaping to spawn, giving an incomplete evaluation of chinook salmon utilizing natural habitat.

Quantitative Evaluations

Quantitative evaluations of data included comparisons of current and historical abundance of chinook salmon, calculation of recent trends in escapement, and evaluation of the proportion of natural spawning attributable to hatchery fish. Historical abundance information for these ESUs is largely anecdotal. Time series data are available for many populations, but data extent and quality varied among ESUs. NMFS compiled and analyzed this information to provide several summary statistics of natural spawning abundance, including (where available) recent total spawning escapement, percent annual change in total escapement (both long-term and most recent ten years), recent naturally produced spawning escapement, and average percentage of natural spawners that were of hatchery origin.

Although this evaluation used the best data available, there are a number of limitations to these data, and not all summary statistics were available for all populations. For example, spawner abundance was generally not measured directly; rather, it often had to be estimated from catch (which itself may not always have been measured accurately) or from limited survey data.

Sport and commercial harvest impacts were compiled from a variety of sources. In presenting this information, NMFS has tried to maintain a clear distinction between harvest rates (usually calculated as catch divided by catch plus escapement for a cohort or brood year) and exploitation rates (age-specific rates of exploitation in individual fisheries).

Stream surveys for chinook salmon spawning abundance have been conducted by various agencies within most of the ESUs considered here. The methods and time-spans of the surveys vary considerably among regions, so it is difficult to assess the general reliability of these surveys as population indices. For most streams where these surveys are conducted, they are the best local indication of population trends.

Dam counts provide quantitative estimates of run size, but in most cases, these counts cannot be resolved to the individual population level and are subject to errors stemming from fallback, run classification, and unaccounted mortality. Run reconstructions providing estimates of both adult spawning abundance and fishery recruits are being prepared for many stream-type chinook salmon populations in the Columbia River Basin (Beamsderfer et al., 1997 draft report), but were not available in final form for this review.

As noted above, NMFS attempted to distinguish natural and hatchery production in these evaluations. Doing this quantitatively would require good estimates of the proportion of natural escapement that was of hatchery origin, and knowledge of the effectiveness of spawning by hatchery fish in natural environments. Unfortunately, this type of information is rarely available, and for most ESUs NMFS is limited to reporting whatever estimates of escapement of hatchery fish to natural systems that were made available.

Computed Statistics

To represent current run size or escapement where recent data were available, NMFS computed the geometric mean of the most recent five years reported, while trying to use only estimates that reflect the total abundance for an entire river basin or tributary, avoiding index counts or dam counts that represent only a small portion of available habitat.

Recent average abundance is reported as the geometric mean of the most recent 5 years of data. Where time-series data were not available, NMFS relied on recent estimates from state agency reports; time periods included in such estimates varied considerably.

Historic run size estimates from cannery pack data were made by converting the largest number of cases of cans packed in a single season to numbers of fish in the spawning run.

NMFS calculated recent trends from the most recent 10 years, using data collected after 1984 for series having at least 7 observations since 1984. No attempt was made to account for the influence of hatchery-produced fish on these estimates, so the estimated trends include the progeny of naturally spawning hatchery fish.

After evaluating patterns of abundance drawn on these quantitative and qualitative assessments, and evaluating other risk factors for chinook salmon from these ESUs, NMFS reached the following conclusions summarized below.

(1) Sacramento River Winter-Run ESU

Presently listed as endangered under the California and Federal Endangered Species Acts, this ESU has been extensively reviewed by NMFS (NMFS 1987, 1989, 1990a,b, 1994b). That information is only summarized and updated here.

Historically the winter run was abundant and comprised populations in the McCloud, Pit, Little Sacramento, and Calaveras Rivers. Construction of Shasta Dam in the 1940s eliminated access to all of the historic spawning habitat for winter-run chinook salmon in the Sacramento River Basin. Since then, the ESU has been reduced to a single spawning population confined to the mainstem Sacramento River below Keswick Dam (Reynolds *et al.*, 1993).

The fact that this ESU is comprised of a single population with very limited spawning and rearing habitat increases risk of extinction due to local catastrophe or poor environmental conditions. There are no other natural populations in the ESU to buffer it from natural fluctuations.

Because the Sacramento River winter-run ESU is currently listed as an endangered species, NMFS did not review its previous risk conclusion here.

(2) Central Valley Spring-Run ESU

Native spring chinook salmon have been extirpated from all tributaries in the San Joaquin River Basin, which represents a large portion of the historic range and abundance of the ESU as a whole. The only streams considered to have wild spring-run chinook salmon are Mill and Deer Creeks, and possibly Butte Creek (tributaries to the Sacramento River), and these are relatively small populations with sharply declining trends. Demographic and genetic risks due to small population sizes are thus considered to be high.

Habitat problems are the most important source of ongoing risk to this ESU. Spring-run fish cannot access most of their historical spawning and rearing habitat in the Sacramento and San Joaquin River Basins (which is now above impassable dams), and current spawning is restricted to the mainstem and a few river tributaries in the Sacramento River. The remaining spawning habitat accessible to fish is severely degraded. Collectively, these

habitat problems greatly reduce the resiliency of this ESU to respond to additional stresses in the future. The general degradation of conditions in the Sacramento River Basin (including elevated water temperatures, agricultural and municipal diversions and returns, restricted and regulated flows, entrainment of migrating fish into unscreened or poorly screened diversions, and the poor quality and quantity of remaining habitat) has severely impacted important juvenile rearing habitat and migration corridors.

There appears to be serious concern for threats to genetic integrity posed by hatchery programs in the Central Valley. Most of the spring-run chinook salmon production in the Central Valley is of hatchery origin, and naturally spawning populations may be interbreeding with both fall/late fall- and spring-run hatchery fish. This problem is exacerbated by the increasing production of spring chinook salmon from the Feather River and Butte Creek Hatcheries, especially in light of reports suggesting a high degree of mixing between spring- and fall/late fall-run broodstock in the hatcheries. In addition, hatchery strays are considered to be an increasing problem due to the management practice of releasing a larger proportion of fish off station (into the Sacramento River delta and San Francisco Bay).

The only previous assessment of risk to stocks in this ESU is that of Nehlsen *et al.* (1991), who identified several stocks as being at risk or of special concern. Four stocks were identified as extinct (spring/summer-run chinook salmon in the American, McCloud, Pit, and San Joaquin (including tributaries) Rivers) and two stocks (spring-run chinook salmon in the Sacramento and Yuba Rivers) were identified as being at a moderate risk of extinction.

As discussed above, habitat problems were considered to be the most important source of ongoing risk to this ESU. However, NMFS is also quite concerned about threats to genetic integrity posed by hatchery programs in the Central Valley, as well as related harvest regimes that may not be allowing recovery of this at-risk population. Based on this risk, NMFS concluded that chinook salmon in this ESU are in danger of extinction.

(3) Central Valley Fall/Late Fall-Run ESU

Although total population abundance in this ESU is relatively high, perhaps near historic levels, NMFS identified several concerns regarding its status. The abundance of natural fall chinook salmon in the San Joaquin River Basin is low leading NMFS to conclude a large proportion of the historic range of this ESU is severely degraded. Habitat blockage is not as severe for fall/late fall-run chinook salmon as it is for winter- and spring-run chinook salmon in this region because most of fall/late fall-run spawning habitat was below dams constructed in the region. However, there has been a severe degradation of the remaining habitat, especially due to agricultural and municipal water use activities in the Central Valley (which result in point and non-point pollution, elevated water temperatures, diminished flows, and smolt and adult entrainment into poorly screened or unscreened diversions). Additionally, stray rates are high because many hatchery fish are released off-station to avoid adverse river conditions, resulting in a much larger proportion of hatchery chinook salmon present in the natural spawning population.

A mitigating factor for the overall risk to the ESU is that a few of the Sacramento and San Joaquin River Basin tributaries are showing recent, short-term increases in abundance. However, the streams supporting natural runs considered to be the least influenced by hatchery fish have the lowest abundance and the most consistently negative trends of all populations in the ESU. In general, high hatchery production combined with infrequent monitoring of natural production make assessing the sustainability of natural production problematic, resulting in substantial uncertainty in assessing the status of this ESU.

Other concerns facing chinook salmon in this ESU are the high ocean and freshwater harvest rates in recent years, which may be higher than is sustainable by natural populations given the productivity of the ESU under present habitat conditions. The mixed stock ocean salmon off California fisheries are managed to achieve spawning escapement goals for two main indicator stocks: Sacramento River fall chinook and Klamath River fall chinook. Harvest may be further constrained to meet NMFS' ESA requirements for listed species, including Sacramento River winter chinook, Central California Coastal and Southern Oregon/Northern California coho, and Snake River fall chinook. Since 1993, the need to address Indian fishing rights in the Klamath River Basin has required significant reductions in the ocean harvest rate on Klamath River fall chinook. As a result of the need to constrain ocean harvest rates on Klamath River fall chinook, commercial fisheries have not been allowed to harvest Central Valley stocks to the extent that would be permitted by the management goal for Sacramento River fall chinook alone (122,000 to 180,000 adult hatchery and natural spawners). Spawning escapements have been well above the goal range in recent years. A record number of adults (324,000) returned in 1997. The harvest rate on Central Valley stocks is indicated by the Central Valley Harvest Rate Index, which is computed as the chinook harvest south of Point Arena divided by the sum of the chinook harvest south of Point Arena and Central Valley adult chinook spawning escapement of the same year. This harvest rate index has averaged 0.73 over the past 10 years and declined somewhat in 1996 and 1997 to 0.64 and 0.66 respectively.

The only previous assessment of risk to stocks in this ESU is that of Nehlsen *et al.* (1991), who identified two stocks (San Joaquin and Cosumnes Rivers) as of special concern.

Even though total population abundance in this ESU is relatively high, perhaps near historical levels, the abundance of natural fall chinook salmon in the San Joaquin River Basin is low. Habitat problems were considered to be the most important source of ongoing risk to this ESU, although NMFS is extremely concerned about threats to genetic integrity posed by hatchery and harvest programs related to fall/late fall-run chinook salmon. Therefore, NMFS concluded that chinook salmon in this ESU are not presently in danger of extinction but are likely to become endangered in the foreseeable future.

(4) Southern Oregon and California Coastal ESU

This ESU contains chinook salmon from the Elk River, Oregon south to the northern cape forming San Francisco Bay. Chinook salmon spawning abundance in this ESU is highly variable among populations, with populations in California and spring-run chinook salmon throughout the ESU being of particular concern. There is a general pattern of downward trends in abundance in most populations for which data are available, with declines being especially pronounced in spring-run populations. The extremely depressed status of almost all coastal populations south of the Klamath River is an important source of risk to the ESU. NMFS has a general concern that no current information is available for many river systems in the southern portion of this ESU, which historically maintained numerous large populations. Although these California coastal

populations do not form a separate ESU, they represent a considerable portion of genetic and ecological diversity within this ESU.

Habitat loss and/or degradation is widespread throughout the range of the ESU. The California Advisory Committee on Salmon and Steelhead Trout (CACSST) reported habitat blockages and fragmentation, logging and agricultural activities, urbanization, and water withdrawals as the most predominant problems for anadromous salmonids in California's coastal basins (CACSST, 1988). They identified associated habitat problems for each major river system in California. CDFG (1965, Vol. III, Part B) reported that the most vital habitat factor for coastal California streams was ''degradation due to improper logging followed by massive siltation, log jams, etc.'' They cited road building as another cause of siltation in some areas. They identified a variety of specific critical habitat problems in individual basins, including extremes of natural flows (Redwood Creek and Eel River), logging practices (Mad, Eel, Mattole, Ten Mile, Noyo, Big, Navarro, Garcia, and Gualala Rivers), and dams with no passage facilities (Eel, and Russian Rivers), and water diversions (Eel and Russian Rivers). Such problems also occur in Oregon streams within the ESU. The Rogue River Basin in particular has been affected by mining activities and unscreened irrigation diversions (Rivers, 1963) in addition to the problems resulting from logging and dam construction. Kostow (1995) estimated that one-third of spring chinook salmon spawning habitat in the Rogue River was inaccessible following the construction of Lost Creek Dam (River Kilometer (RKm) 253) in 1977. Recent major flood events (February 1996 and January 1997) have probably affected habitat quality and survival of juveniles within this ESU. Although NMFS has little information on these floods specific to this ESU, effects are probably similar to those discussed below for the Oregon and Washington Coastal Region.

Artificial propagation programs in the Southern Oregon and Coastal California ESU are less extensive than those in Klamath/Trinity or Central Valley ESUs. The Rogue, Chetco and Eel River Basins and Redwood Creek have received considerable releases, derived primarily from local sources. Current hatchery contribution to overall abundance is relatively low except for the Rogue River spring run. The hatchery-to-total run ratio of Rogue River spring chinook salmon, as measured at Gold Ray Dam (RKm 201), has exceeded 60% in some years (Kostow, 1995).

Previous assessments of stocks within this ESU have identified several stocks as being at risk or of concern. Nehlsen *et al.* (1991) identified seven stocks as at high extinction risk and seven stocks as at moderate extinction risk. Higgins *et al.* (1992) provided a more detailed analysis of some of these stocks, and identified nine chinook salmon stocks as at risk or of concern. Four of these stocks agreed with the Nehlsen et al. (1991) designations, while five fall chinook salmon stocks were either reassessed from a moderate risk of extinction to stocks of concern (Redwood Creek, Mad River, and Eel River) or were additions to the Nehlsen et al. (1991) list as stocks of special concern (Little and Bear Rivers). Fall chinook salmon in the Rogue River represent the only relatively healthy population(s) NMFS could identify in this ESU (Huntington *et al.*, 1996).

There is a general pattern of downward trends in abundance in most populations for which data are available, with declines being especially pronounced in spring-run populations within this ESU. The lack of population monitoring, particularly in the California portion of the range, led to a high degree of uncertainty regarding the status of these populations. NMFS concluded that the extremely depressed status of almost all coastal populations south of the Klamath River is an important source of risk to the ESU. Overall, NMFS concluded that chinook salmon in this ESU are likely to become endangered in the foreseeable future.

(5) Upper Klamath and Trinity Rivers ESU

The question of overall risk was difficult to evaluate because of the large disparity in the status of spring- and fall-run populations within the ESU. Spring-run chinook salmon were once the dominant run type in the Klamath-Trinity River Basin. Most spring-run spawning and rearing habitat was blocked by the construction of dams in the late 1800s and early 1900s in the Klamath River Basin, and in the 1960s in the Trinity River Basin. As a result of these and other factors, spring-run populations are at less than 10 percent of their historic levels, and at least 7 spring-run populations that once existed in the basin are now considered extinct. The remaining spring runs have relatively small population sizes and are isolated in just a few areas of the basin, resulting in genetic and demographic risks.

Fall-run chinook populations in this ESU are stable or increasing slightly. Substantial numbers of fall-run chinook salmon spawn naturally in many areas of the ESU. However, natural populations have frequently failed to meet modest spawning escapement goals despite active harvest management. In addition to habitat blockages, there continues to be severe degradation of remaining habitat due to mining, agricultural and forestry activities, and water storage and transfer. Furthermore, hatchery production in the basin is substantial, with considerable potential for interbreeding between natural and hatchery fish. NMFS is concerned that hatchery fish spawning naturally may mask declines in natural populations.

Previous assessments of stocks within this ESU have identified several stocks as being at risk or of concern. Nehlsen *et al.* (1991) identified seven stocks as extinct, two stocks (Klamath River spring chinook salmon and Shasta River fall chinook salmon) as at high extinction risk, and Scott River fall chinook salmon as of special concern. Higgins *et al.* (1992) provided a more detailed analysis of some of the stocks identified by Nehlsen *et al.* (1991), classifying three chinook salmon stocks as at risk. Additionally, three chinook salmon stocks were identified as of special concern. Of these, one (Scott River fall run) agreed with Nehlsen *et al.* (1991), while two were additions (Trinity River spring run and South Fork Trinity River fall run).

In summary, the question of overall risk was difficult to evaluate because of the large disparity in the status of spring- and fall-run populations within the ESU. However, NMFS has concluded that, because of the relative health of the fall-run populations, chinook salmon in this ESU are not at significant risk of extinction, nor are they likely to become endangered in the foreseeable future.

(6) Oregon Coast ESU

Production in this ESU is mostly dependent on naturally-spawning fish, and spring-run chinook salmon in this ESU are in relatively better condition than those in adjacent ESUs. Long-term trends in abundance of chinook salmon within most populations in this ESU are upward.

In spite of a generally positive outlook for this ESU, several populations are exhibiting recent and severe (>9 percent per year) short-term declines in abundance. In addition, there are several hatchery programs and Salmon and Trout Enhancement Programs (STEP) releasing chinook salmon throughout the ESU, and many of the fish released are derived from a single stock (Trask River). Most importantly, there is a lack of clear information on

the degree of straying of these hatchery fish into naturally-spawning populations. There are also many populations within the ESU for which there are no abundance data; thus NMFS is concerned about the uncertain risk assessment given these data gaps. Finally, exploitation rates on chinook salmon from this ESU have been high in the past, and the level of harvest could be a significant source of risk if it continues at historically high rates. Also, freshwater habitats are generally in poor condition, with numerous problems such as low summer flows, high temperatures, loss of riparian cover, and streambed changes.

Previous assessments of stocks within this ESU have identified several as being at risk or of concern; however, the preponderance of stocks have been identified as healthy. Nehlsen *et al.* (1991) identified two stocks as at high extinction risk (South Umpqua River and Coquille River spring-run), one stock as at moderate extinction risk (Yachats River fall-run) and five stocks as of special concern. Of the 44 stocks within this ESU considered by Nickelson *et al.* (1992), 26 were identified as healthy, 2 as depressed (South Umpqua River and Coquille River spring chinook salmon), 7 as of special concern due to hatchery strays, and 9 of unknown status (4 of which they suggested may not be viable). Huntington *et al.* (1996) identified 18 stocks in their survey: 6 healthy Level I and 12 healthy Level II stocks.

Abundance of this ESU is relatively high, and fish are well distributed among numerous, relatively small river basins. Long-term trends in abundance of chinook salmon within most populations in this ESU are upward. NMFS has concluded that chinook salmon in this ESU are neither presently in danger of extinction nor are they likely to become endangered in the foreseeable future.

(7) Washington Coast ESU

Long-term trends in population abundance have been predominantly upward for the medium and larger populations but are sharply downward for several of the smaller populations. In general, abundance and trend indicators are more favorable for stocks in the northern portion of the ESU, and more favorable for fall-run populations than for spring- or summer-run fish. This disparity was a source of concern regarding the overall health of the ESU.

All basins are affected by habitat degradation, largely related to forestry practices. Tributaries inside Olympic National Park are generally in the best condition regarding habitat quality. Special concern was expressed regarding the status of spring-run populations throughout the ESU and fall-run populations in Willapa Bay and parts of the Grays Harbor drainage.

Hatchery production is substantial in several basins within the range of the ESU, and several populations are identified as being of composite production. There is considerable potential for hatchery fish to stray into natural populations, especially since some hatcheries are apparently unable to effectively attract returning adults. Hatchery influence is greatest in the southern part of the ESU region, especially in Willapa Bay, where there have been numerous introductions of stocks from outside of the ESU. Furthermore, the use of an exotic spring-run stock at the Sol Duc Hatchery was cited as a cause of concern.

Previous assessments of stocks within this ESU have identified several as being at risk or of concern, but more stocks have been identified as healthy than at risk. Nehlsen *et al.* (1991) identified one stock as extinct (Pysht River fall run), one as possibly extinct (Ozette River fall run), and one as at high risk of extinction (Wynoochee River spring run), although there is some question whether the Wynoochee River spring run ever existed (WDFW, 1997a). WDF *et al.* (1993) considered the status of 18 native stocks, and concluded that 11 were healthy, 4 were depressed, and 3 were unknown. Huntington *et al.* (1996) identified 12 stocks in their survey: 1 healthy Level I stock (Quillayute/Bogachiel River fall run) and 11 healthy Level II stocks.

Recent abundance has been relatively high, although it is less than estimated peak historical abundance in this region. Chinook salmon in this ESU are distributed among a relatively large number of populations, most of which are large enough to avoid serious genetic and demographic risks associated with small populations. NMFS concluded that chinook salmon in this ESU are not presently in danger of extinction nor are they likely to become endangered in the foreseeable future.

(8) Puget Sound ESU

Overall abundance of chinook salmon in this ESU has declined substantially from historical levels, and many populations are small enough that genetic and demographic risks are likely to be relatively high. Both long- and short-term trends in abundance are predominantly downward, and several populations are exhibiting severe short-term declines. Spring chinook salmon populations throughout this ESU are all depressed.

Habitat throughout the ESU has been blocked or degraded. In general, upper tributaries have been impacted by forest practices and lower tributaries and mainstem rivers have been impacted by agriculture and/or urbanization. Diking for flood control, draining and filling of freshwater and estuarine wetlands, and sedimentation due to forest practices and urban development are cited as problems throughout the ESU (WDF et al., 1993). Blockages by dams, water diversions, and shifts in flow regime due to hydroelectric development and flood control projects are major habitat problems in several basins. Bishop and Morgan (1996) identified a variety of important habitat issues for streams in the range of this ESU, including changes in flow regime (all basins), sedimentation (all basins), high temperatures (Dungeness, Elwha, Green/Duwamish, Skagit, Snohomish, and Stillaguamish Rivers), streambed instability (most basins), estuarine loss (most basins), loss of large woody debris (Elwha, Snohomish, and White Rivers), loss of pool habitat (Nooksack, Snohomish, and Stillaguamish Rivers), and blockage or passage problems associated with dams or other structures (Cedar, Elwha, Green/Duwamish, Snohomish, and White Rivers). The Puget Sound Salmon Stock Review Group (PFMC) provided an extensive review of habitat conditions for several of the stocks in this ESU (PFMC, 1997a). They concluded that reductions in habitat capacity and quality have contributed to escapement problems for Puget Sound chinook salmon, citing evidence of curtailment of tributary and mainstem habitat due to dams, and losses of slough and side-channel habitat due to diking, dredging, and hydromodification.

Nearly 2 billion fish have been released into Puget Sound tributaries since the 1950s. The preponderance of hatchery production throughout the ESU may mask trends in natural populations and makes it difficult to determine whether they are self-sustaining. This difficulty is compounded by the dearth of data pertaining to proportion of naturally-spawning fish that are of hatchery origin. There has also been widespread use of a limited number of hatchery stocks, resulting in increased risk of loss of fitness and diversity among populations. WDF *et al.* (1993) classified 11 out of 29 stocks in this ESU as being sustained, in part, through artificial propagation. The vast majority of these have been derived from local returning fall-run adults. Returns to hatcheries have accounted for over half of the total spawning escapement,

although the hatchery contribution to spawner escapement is probably much higher than that, due to hatchery-derived strays on the spawning grounds. In the Stillaguamish River, summer chinook have been supplemented under a wild broodstock program for the last decade. In some years, returns from this program have comprised up to 30–50% of the natural spawners, suggesting that the unaided stock is not able to maintain itself (NWIFC, 1997). Almost all of the releases into this ESU have come from stocks within this ESU, with the majority of within ESU transfers coming from the Green River Hatchery or hatchery broodstocks that have been derived from Green River stock (Marshall *et al.,* 1995). The electrophoretic similarity between Green River fall-chinook salmon and several other fall chinook salmon stocks in Puget Sound (Marshall *et al.,* 1995) suggests that there may have been a significant effect from some hatchery transplants. Overall, the pervasive use of Green River stock throughout much of the extensive hatchery network that exists in this ESU may reduce the genetic diversity and fitness of naturally spawning populations.

Harvest impacts on Puget Sound chinook salmon stocks are quite high. Ocean exploitation rates on natural stocks averaged 56–59%; total exploitation rates average 68–83% (1982–89 brood years) (Pacific Salmon Commission (PSC), 1994). Total exploitation rates on some stocks have exceeded 90% (PSC, 1994).

Previous assessments of stocks within this ESU have identified several stocks as being at risk or of concern. Nehlsen et al. (1991) identified four stocks as extinct, four stocks as possibly extinct, six stocks as at high risk of extinction, one stock as a moderate risk (White River spring run), and one stock (Puyallup River fall run) as of special concern. WDF et al. (1993) considered 28 stocks within the ESU, of which 13 were considered to be of native origin and predominantly natural production. The status of these 13 stocks was: 2 healthy (Upper Skagit River summer run and Upper Sauk River spring run), 5 depressed, 2 critical (South-Fork Nooksack River spring/summer run and Dungeness River spring/summer run), and 4 unknown.

Overall abundance of chinook salmon in this ESU has declined substantially from historical levels, and both long-and short-term trends in abundance are predominantly downward. Several populations are exhibiting severe short-term declines. Spring chinook salmon populations throughout this ESU are all depressed. NMFS concluded that chinook salmon in this ESU are not presently in danger of extinction, but they are likely to become endangered in the foreseeable future.

(9) Lower Columbia River ESU

Apart from the relatively large and apparently healthy fall-run population in the Lewis River, production in this ESU appears to be predominantly hatchery-driven with few identifiable naturally spawned populations.

All basins are affected (to varying degrees) by habitat degradation. Major habitat problems are primarily related to blockages, forest practices, urbanization in the Portland and Vancouver areas, and agriculture in floodplains and low-gradient tributaries. Substantial chinook salmon spawning habitat has been blocked (or passage substantially impaired) in the Cowlitz (Mayfield Dam 1963, RKm 84), Lewis (Merwin Dam 1931, RKm 31), Clackamas (North Fork Dam 1958, RKm 50), Hood (Powerdale Dam 1929, RKm 7), and Sandy (Marmot Dam 1912, RKm 48; Bull Run River dams early 1900s) Rivers (WDF *et al.,* 1993; Kostow, 1995).

Hatchery programs to enhance chinook salmon fisheries abundance in the lower Columbia River began in the 1870s, expanded rapidly, and have continued throughout this century. Although the majority of the stocks have come from within this ESU, over 200 million fish from outside the ESU have been released since 1930. A particular concern at the present time is the straying by Rogue River fall chinook salmon, which are released into the lower Columbia River to augment harvest opportunities. Available evidence indicates a pervasive influence of hatchery fish on natural populations throughout this ESU, including both spring-and fall-run populations (Howell *et al.,* 1985; Marshall *et al.,* 1995). In addition, the exchange of eggs between hatcheries in this ESU has led to the extensive genetic homogenization of hatchery stocks (Utter *et al.,* 1989). The large numbers of hatchery fish in this ESU make it difficult to determine the proportion of naturally produced fish. In spite of the heavy impact of hatcheries, genetic and life history characteristics of populations in this ESU still differ from those in other ESUs. The loss of fitness and diversity within the ESU as an important concern.

Harvest rates on fall-run stocks are moderately high, with an average total exploitation rate of 65 percent (1982–89 brood years) (PSC, 1994). The average ocean exploitation rate for this period was 46 percent, while the freshwater harvest rate on the fall run has averaged 20 percent, ranging from 30 percent in 1991 to 2.4 percent in 1994. Harvest rates are somewhat lower for spring run stocks, with estimates for the Lewis River averaging 24 percent ocean and 50 percent total exploitation rates in 1982–89 (PSC, 1994). In inriver fisheries, approximately 15 percent of the lower river hatchery stock was harvested, 29 percent of the lower river wild stock was harvested, and 58 percent of the Spring Creek hatchery stock was harvested, while the average inriver exploitation rate on the stock as a whole was 29 percent during the 1991–1995 period (PFMC, 1996b).

Previous assessments of stocks within this ESU have identified several stocks as being at risk or of concern. Nehlsen *et al.* (1991) identified two stocks as extinct (Lewis River spring run and Wind River fall run), four stocks as possibly extinct, and four stocks as at high risk of extinction. WDF et al. (1993) considered 20 stocks within the ESU, of which only 2 (Lewis River and East Fork Lewis River fall runs) were considered to be of native origin, predominantly natural production, and healthy. Huntington *et al.* (1996) identified one healthy Level I stock in their survey (Lewis River fall run).

There have been at least six documented extinctions of populations in this ESU, and it is possible that extirpation of other native populations has occurred but has been masked by the presence of naturally spawning hatchery fish. Long-and short-term trends in abundance of individual populations are mostly negative, some severely so. About half of the populations comprising this ESU are very small, increasing the likelihood that risks due to genetic and demographic drift processes in small populations will be important. NMFS concluded that chinook salmon in this ESU are not presently in danger of extinction but are likely to become endangered in the foreseeable future.

(10) Upper Willamette River ESU

While the abundance of Willamette River spring chinook salmon has been relatively stable over the long term, and there is evidence of some natural production, it is apparent that at present production and harvest levels the natural population is not replacing itself. With natural production accounting for only ⅓ of the natural spawning escapement, it is questionable whether natural spawners would be capable of replacing themselves even in the absence of fisheries. While hatchery programs in the Willamette River Basin have maintained broodlines that are

relatively free of genetic influences from outside the basin, they may have homogenized the population structure within the ESU. The introduction of fall-run chinook salmon into the basin and laddering of Willamette Falls have increased the potential for genetic introgression between wild spring-and hatchery fall-run chinook salmon, but there is no direct evidence of hybridization (other than an overlap in spawning times and spawning location) between these two runs. Prolonged artificial propagation of the majority of the production from this ESU may also have had deleterious effects on the ability of Willamette River spring chinook salmon to reproduce successfully in the wild.

Habitat blockage and degradation are significant problems in this ESU. Available habitat has been reduced by construction of dams in the Santiam, McKenzie, and Middle Fork Willamette River Basins, and these dams have probably adversely affected remaining production via thermal effects. Agricultural development and urbanization are the main activities that have adversely affected habitat throughout the basin (Bottom *et al.*, 1985, Kostow, 1995).

Another concern for this ESU is that commercial and recreational harvests are high relative to the apparent productivity of natural populations. The average total harvest mortality rate was estimated to be 72 percent in 1982–89, with a corresponding ocean exploitation rate of 24 percent (PSC, 1994). This estimate does not fully account for escapement, and ODFW is in the process of revising harvest rate estimates for this stock; revised estimates may average 57 percent total harvest rate, with 16 percent ocean and 48 percent freshwater components (Kostow,1995). The inriver recreational harvest rate (Willamette River sport catch/estimated run size) for the period from 1991 through 1995 was 33 percent (data from PFMC, 1996b).

The only previous assessment of risk to stocks in this ESU is that of Nehlsen *et al.* (1991), who identified the Willamette River spring-run chinook salmon as of special concern. They noted vulnerability to minor disturbances, insufficient information on population trend, and the special character of this stock as causes for concern.

NMFS concluded that chinook salmon in this ESU are not presently in danger of extinction but are likely to become endangered in the foreseeable future. Total abundance has been relatively stable at approximately 20,000 to 30,000 fish; however, recent natural escapement is less than 5,000 fish and has been declining sharply. Furthermore, it is estimated that about two-thirds of the natural spawners are first-generation hatchery fish, suggesting that the natural population is falling far short of replacing itself. Another concern for this ESU is that commercial and recreational harvest are high relative to the apparent productivity of natural populations.

(11) Middle Columbia River Spring-Run ESU

Total abundance of this ESU is low relative to the total basin area, and 1994–96 escapements have been very low. Several historical populations have been extirpated, and the few extant populations in this ESU are not widely distributed geographically. In addition, there are only two populations (John Day and Yakima Rivers) with substantial run sizes. However, these major river basins are predominantly comprised of naturally produced fish, and both of these exhibit long-term increasing trends in abundance. Additionally, recent analyses done as part of the PATH process indicates that productivity of natural populations in the Deschutes and John Day Rivers has been more robust than most other stream-type chinook salmon in the Columbia River (Schaller *et al.*, 1995).

Habitat problems are common in the range of this ESU. The only large blockage of spawning area for spring chinook salmon is at the Pelton/Round Butte dam complex on the Deschutes River, which probably eliminated a natural population utilizing the upper Deschutes River Basin (Kostow, 1995; Nehlsen, 1995). Spawning and rearing habitat are affected by agriculture including water withdrawals, grazing, and riparian vegetation management. Mainstem Columbia River hydroelectric development has resulted in a major disruption of migration corridors and affected flow regimes and estuarine habitat.

Hatchery production accounts for a substantial proportion of total escapement to the region. However, screening procedures at the Warm Springs River weir apparently minimize the potential for hatchery-wild introgression in the Deschutes River basin. Although straying is less of a problem with returning spring-run adults, the use of the composite, out-of-ESU Carson Hatchery stock to reestablish the Umatilla River spring run would be a cause for concern if fish from that program stray out of the basin.

Stocks in this ESU experience very low ocean harvest rates and only moderate instream harvest. Harvest rates have been declining recently (PSC, 1996).

Previous assessments of stocks within this ESU have identified several as being at risk or of concern. Nehlsen *et al.* (1991) identified five stocks as extinct, one as possibly extinct (Klickitat River spring chinook salmon), and one as of special concern (John Day River spring chinook salmon). WDF *et al.* (1993) considered five stocks within the ESU, of which three, all within the Yakima River Basin, were considered to be of native origin and predominantly natural production (Upper Yakima, Naches, and American Rivers). Despite increasing trends in these three stocks, these stocks and the two remaining (not native/natural) stocks were considered to be depressed on the basis of chronically low escapement numbers (WDF *et al.*, 1993).

Despite low abundances relative to estimated historical levels, long-term trends in abundance have been relatively stable, with an approximately even mix of upward and downward trends in populations. NMFS concluded that chinook salmon in this ESU are not presently in danger of extinction, nor is it likely to become endangered in the foreseeable future.

(12) Upper Columbia River Summer- and Fall-Run ESU

The status of this ESU was recently reviewed by NMFS (Waknitz *et al.*, 1995). In the earlier review, this ESU was determined to be neither at risk of extinction nor likely to become so. However, new data shows the proportion of naturally spawning summer chinook salmon of hatchery origin has been increasing rapidly in areas above Wells Dam. There is corresponding concern about the possible genetic and/or life-history consequences to the sustainability of natural populations in that area from the shift in hatchery releases from subyearlings to yearlings.

Nearly 38 million summer-run fish have been released from the Wells Dam Hatchery since 1967. Efforts to establish the Wells Dam summer-run broodstock removed a large proportion of the spawners (94 percent of the run in 1969) destined for the Methow River and other upstream tributaries (Mullan *et al.*, 1992). Additionally, a number of fall-run fish have been incorporated into the summer-run program, especially during the 1980s (Marshall et al., 1995). Large numbers of fall chinook salmon have been released into the mainstem Columbia River and into the Yakima River. Although no hatcheries operate on the Yakima River, releases of upriver bright fall-run chinook salmon into the

lower Yakima River (below Prosser Dam) are thought to have overwhelmed local naturally spawning stocks (WDF *et al.,* 1993; Marshall *et al.,* 1995). Fall chinook salmon also spawn in the mainstem Columbia River; this occurs primarily in the Hanford Reach portion of the Columbia River, with additional spawning sites in the tailrace areas of mainstem dams. Upriver bright fall chinook salmon hatchery stocks represent a composite of stocks intercepted at various dams. This stock has also been released in large numbers by hatcheries on the mainstem Columbia River. Although the upriver bright stocks incorporated representatives from the mainstem spawning populations in the Hanford Reach and those displaced by the construction of Grand Coulee Dam and other mainstem dams, they have also incorporated individuals from the Snake River fall-run ESU (Howell *et al.,* 1985). The mixed genetic background of upriver bright stocks may result in less accurate homing (McIssac and Quinn 1988; Chapman *et al.,* 1994). However, the naturally spawning Hanford Reach fall-run population appears to stray at very low levels (Hymer *et al.,* 1992b).

Previous assessments of stocks within this ESU have identified several as being at risk or of concern. Nehlsen *et al.* (1991) identified six stocks as extinct, one as a moderate extinction risk (Methow River summer chinook salmon), and one as of special concern (Okanogan River summer chinook salmon). WDF *et al.* (1993) considered 10 stocks within the ESU, of which 3 were considered to be of native origin and predominantly natural production. The status of these three stocks was two healthy (Marion Drain and Hanford Reach fall-runs) and one depressed (Okanogan River summer-run). Huntington *et al.* (1996) identified one healthy Level I stock in their survey (Hanford Reach fall run).

In an earlier review, NMFS concluded that this ESU was not in danger of extinction, nor likely to become endangered in the foreseeable future. None of the information reviewed in this assessment provides a basis for NMFS to change this earlier conclusion. However, if negative trends in this ESU continue, NMFS will reevaluate the status of these chinook salmon.

(13) Upper Columbia River Spring-Run ESU

Access to a substantial portion of historical habitat was blocked by Chief Joseph and Grand Coulee Dams. There are local habitat problems related to irrigation diversions and hydroelectric development, as well as degraded riparian and instream habitat from urbanization and livestock grazing. Mainstem Columbia River hydroelectric development has resulted in a major disruption of migration corridors and affected flow regimes and estuarine habitat. Some populations in this ESU must migrate through nine mainstem dams.

Artificial propagation efforts have had a significant impact on spring-run populations in this ESU, either through hatchery-based enhancement or the extensive trapping and transportation activities associated with the GCFMP. Prior to the implementation of the GCFMP, spring-run chinook salmon populations in the Wenatchee, Entiat, and Methow Rivers were at severely depressed levels (Craig and Suomela, 1941). Therefore, it is probable that the majority of returning spring-run adults trapped at Rock Island Dam for use in the GCFMP were probably not native to these three rivers (Chapman et al., 1995). All returning adults were either directly transported to river spawning sites or spawned in one of the National Fish Hatcheries (NFHs) built for the GCFMP.

In the years following the GCFMP, several stocks were transferred to the NFHs in this area. Naturally spawning populations in tributaries upstream of hatchery release sites have apparently undergone limited introgression by hatchery stocks, based on CWT recoveries and genetic analysis (Chapman *et al.* 1995). Artificial propagation efforts have recently focused on supplementing naturally spawning populations in this ESU (Bugert, 1998), although it should be emphasized that these naturally spawning populations were founded by the same GCFMP homogenized stock. Furthermore, the potential for hatchery-derived non-native stocks to genetically impact naturally spawning populations exists, especially given the recent low numbers of fish returning to rivers in this ESU. Risks associated with interactions between wild and hatchery chinook salmon are a concern, because there continues to be substantial production of the composite, non-native Carson stock for fishery enhancement and hydropower mitigation.

Harvest rates are low for this ESU, with very low ocean and moderate instream harvest. Harvest rates have been declining recently (ODFW and WDFW, 1995).

Previous assessments of stocks within this ESU have identified several as being at risk or of concern. Nehlsen *et al.* (1991) identified six stocks as extinct. Due to lack of information on chinook salmon stocks that are presumed to be extinct, the relationship of these stocks to existing ESUs is uncertain. They are listed here based on geography and to give a complete presentation of the stocks identified by Nehlsen et al. (1991). WDF *et al.* (1993) considered nine stocks within the ESU, of which eight were considered to be of native origin and predominantly natural production. The status of all nine stocks was considered depressed. Populations in this ESU have experienced record low returns for the last few years.

Recent total abundance of this ESU is quite low, and escapements in 1994–1996 were the lowest in at least 60 years. At least 6 populations of spring chinook salmon in this ESU have become extinct, and almost all remaining naturally-spawning populations have fewer than 100 spawners. In addition to extremely small population sizes, both recent and long-term trends in abundance are downward, some extremely so. NMFS concluded that chinook salmon in this ESU are in danger of extinction.

(14) Snake River Fall-Run ESU

Snake River fall-run chinook salmon are currently listed as a threatened species under the ESA (57 FR 14653, April 22, 1992). As discussed above, NMFS concluded that the Snake River fall-run ESU also includes fall chinook salmon in the Deschutes River and, historically, populations from the John Day, Umatilla, and Walla Walla Rivers that have been extirpated in the twentieth century.

Almost all historical Snake River fall-run chinook salmon spawning habitat in the Snake River Basin was blocked by the Hells Canyon Dam complex; other habitat blockages have also occurred in Columbia River tributaries. Hydroelectric development on the mainstem Columbia and Snake Rivers continues to affect juvenile and adult migration. Remaining habitat has been reduced by inundation in the mainstem Snake and Columbia Rivers, and the ESU's range has also been affected by agricultural water withdrawals, grazing, and vegetation management.

The continued straying by non-native hatchery fish into natural production areas is an additional source of risk to the Snake River chinook salmon.

Assessing extinction risk to the newly-configured ESU is difficult because of the geographic discontinuity and the disparity in the status of the two remaining populations. NMFS also notes considerable uncertainty regarding the origins of fall chinook salmon in the lower Deschutes River and their relationship to fish in the upper Deschutes River. Historically, the

Snake River populations dominated production in this ESU; total abundance is estimated to have been about 72,000 in the 1930s and 1940s, and it was probably substantially higher before that. Production from the Deschutes River was presumably only a small fraction of historic production in the ESU. In contrast, recent (1990–96) returns of naturally spawning fish to the Deschutes River (about 6,000 adults per year) have been much higher than in the Snake River (5-year mean about 500 adults per year, including hatchery strays). The relatively recent extirpation of fall-run chinook in the John Day, Umatilla and Walla Walla Rivers is also a factor in assessing the risk to the overall ESU.

Long term trends in abundance are mixed—slightly upward in the Deschutes River and downward in the Snake River. Short-term trends in both remaining populations are upward. After considering the addition of the Deschutes River fall chinook populations to the listed Snake River fall-run chinook salmon ESU, NMFS concluded that the ESU as a whole is likely to become an endangered species within in the foreseeable future throughout all or a significant portion of its range, in spite of the relative health of the Deschutes River population.

(15) Snake River Spring- and Summer-Run ESU

This ESU has been extensively reviewed by NMFS (Matthews and Waples, 1991; NMFS, 1995b). The Snake River Spring and summer-run ESU is listed as a threatened species and NMFS did not review its previous risk conclusion here.

Summary of Factors Affecting the Species

Section 2(a) of the ESA states that various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern for ecosystem conservation. Section 4(a)(1) of the ESA and the listing regulations (50 CFR Part 424) set forth procedures for listing species. NMFS must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

NMFS has prepared two supporting documents which address the factors that have led to the decline of chinook salmon and other salmonids. The first is entitled ''Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead'' (NMFS, 1996). That report, available upon request (see **ADDRESSES**), concluded that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of steelhead and other salmonids, including chinook salmon. The report identifies destruction and modification of habitat, overutilization for commercial and recreational purposes, and natural and human-made factors as being the primary reasons for the decline of west coast steelhead, and other salmonids including chinook salmon. The second document is a supplement to the document referred to above. This document, entitled ''Factors Contributing to the Decline of West Coast Chinook Salmon: An Addendum to the 1996 West Coast Steelhead Factors for Decline Report'' (NMFS, 1998 In prep.) discusses specific factors affecting chinook salmon. In this report, NMFS concludes that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of chinook salmon, and other salmonids. The report identifies destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary reasons for the decline of chinook salmon.

The following discussion summarizes findings regarding factors for decline across the range of chinook salmon. While these factors have been treated here in general terms, it is important to underscore that impacts from certain factors are more acute for specific ESUs. For example, impacts from hydropower development are more pervasive for ESUs in the Columbia River Basin than for some coastal ESUs.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Chinook salmon on the west coast of the United States have experienced declines in abundance in the past several decades as a result of loss, damage or change to their natural environment. Water diversions for agriculture, flood control, domestic, and hydropower purposes (especially in the Columbia River and Sacramento-San Joaquin Basins) have greatly reduced or eliminated historically accessible habitat, and degraded remaining habitat.

Forestry, agriculture, mining, and urbanization have degraded, simplified, and fragmented habitat. Studies indicate that in most western states, about 80 to 90 percent of the historic riparian habitat has been eliminated (Botkin *et al.*, 1995; Norse, 1990; Kellogg, 1992; California State Lands Commission, 1993). Washington and Oregon wetlands are estimated to have diminished by one-third, while California has experienced a 91 percent loss of its wetland habitat. Loss of habitat complexity and habitat fragmentation have also contributed to the decline of chinook salmon. For example, in national forests within the range of the northern spotted owl in western and eastern Washington, there has been a 58 percent reduction in large, deep pools due to sedimentation and loss of pool-forming structures such as boulders and large wood (Forest Ecosystem Management Assessment Team (FEMAT), 1993). Similarly, in Oregon, the abundance of large, deep pools on private coastal lands has decreased by as much as 80 percent (FEMAT, 1993). Sedimentation from extensive and intensive land use activities (timber harvests, road building, livestock grazing, and urbanization) is recognized as a primary cause of habitat degradation in the range of west coast chinook salmon.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Historically, chinook salmon were abundant in many western coastal and interior waters of the United States. Chinook salmon have supported, and still support important tribal, commercial and recreational fisheries throughout their range, contributing millions of dollars to numerous local economies, as well as providing important cultural and subsistence needs for Native Americans. Overfishing in the early days of European settlement led to the depletion of many stocks of chinook and other salmonids even before extensive habitat degradation. However, following the degradation of many west coast aquatic and riparian ecosystems, exploitation rates were higher than many chinook populations could sustain. Therefore, harvest may have contributed to the further decline of some populations.

C. Disease or Predation

Introductions of non-native species and habitat modifications have resulted in increased predator populations in numerous rivers. Predation by marine mammals is also of concern in areas experiencing dwindling chinook salmon

runsizes. However, salmonids appear to be a minor component of the diet of marine mammals (Scheffer and Sperry, 1931; Jameson and Kenyon, 1977; Graybill, 1981; Brown and Mate, 1983; Roffe and Mate, 1984; Hanson, 1993). Principal food sources are small pelagic schooling fish, juvenile rockfish, lampreys (Jameson and Kenyon, 1977; Roffe and Mate, 1984), benthic and epibenthic species (Brown and Mate, 1983) and flatfish (Scheffer and Sperry, 1931; Graybill, 1981). Predation may significantly influence salmonid abundance in some local populations when other prey are absent and physical conditions lead to the concentration of adults and juveniles (Cooper and Johnson, 1992).

Infectious disease is one of many factors that can influence adult and juvenile chinook salmon survival. Chinook salmon are exposed to numerous bacterial, protozoan, viral, and parasitic organisms in spawning and rearing areas, hatcheries, migratory routes, and the marine environment. Specific diseases such as bacterial kidney disease (BKD), ceratomyxosis, columnaris, furunculosis, infectious hematopoietic necrosis virus, redmouth and black spot disease, erythrocytic inclusion body syndrome, and whirling disease, among others, are present and are known to affect chinook salmon (Rucker *et al.,* 1953; Wood, 1979; Leek, 1987; Foott *et al.,* 1994; Gould and Wedemeyer, undated). Very little current or historical information exists to quantify changes in infection levels and mortality rates attributable to these diseases for chinook salmon. However, studies have shown that naturally spawned fish tend to be less susceptible to pathogens than hatchery-reared fish (Buchanon *et al.,* 1983; Sanders *et al.,* 1992). Native chinook salmon have evolved with certain of these organisms, but the widespread use of artificial propagation has introduced exotic organisms not historically present in particular watersheds. Scientific studies may indicate that chinook salmon are more susceptible to disease organisms than other salmonids. Habitat conditions such as low water flows and high temperatures can exacerbate susceptibility to disease.

D. The Inadequacy of Existing Regulatory Mechanisms

A variety of Federal, state, tribal, and local laws, regulations, treaties and measures affect the abundance and survival of west coast chinook salmon and the quality of their habitat. NMFS prepared a separate report entitled ''West Coast Steelhead Conservation Measures, A Supplement to the Notice of Determination for West Coast Steelhead Under the Endangered Species'' which summarizes many of these existing measures and their effect on steelhead and other salmonids, including chinook salmon. This report is available from NMFS (see **ADDRESSES** section). The following sections briefly discuss other regulatory measures designed to conserve chinook and other salmonids (see also Efforts Being Made to Protect West Coast Chinook Salmon and Conservation Measures sections).

1. Federal Land and Water Management

The Northwest Forest Plan (NFP) is a Federal management policy with important benefits for chinook salmon. While the NFP covers a very large area, the overall effectiveness of the NFP in conserving chinook salmon is limited by the extent of Federal lands and the fact that Federal land ownership is not uniformly distributed in watersheds within the affected ESUs. The extent and distribution of Federal lands limits the NFP's ability to achieve its aquatic habitat restoration objectives at watershed and river basin scales and highlights the importance of complementary salmon habitat conservation measures on nonfederal lands within the subject ESUs.

On February 25, 1995, the U.S. Forest Service and Bureau of Land Management adopted Implementation of Interim Strategies for Managing Anadromous Fish-producing Watersheds in eastern Oregon and Washington, Idaho, and portions of California (known as PACFISH). The strategy was developed in response to significant declines in naturally-reproducing salmonid stocks, including chinook salmon, and widespread degradation of anadromous fish habitat throughout Federal lands in Idaho, Washington, Oregon, and California outside the range of the northern spotted owl. Like the NFP, PACFISH is an attempt to provide a consistent approach for maintaining and restoring aquatic and riparian habitat conditions which, in turn, are expected to promote the sustained natural production of anadromous fish. However, as with the NFP, PACFISH is limited by the extent of Federal lands and Federal land ownership is not uniformly distributed in watersheds within all the affected ESUs.

Within the range of several chinook salmon ESUs (*i.e.,* Southern Oregon and California Coastal, Lower Columbia River, and Puget Sound), much of available chinook salmon habitat is covered by the requirements of the NFP. These existing conservation efforts have resulted in improvements in aquatic habitat conditions for salmonids within this region.

Since the adoption of the NFP, NMFS has consulted with the BLM and USFS on ongoing and proposed activities that may affect anadromous salmonids, including chinook salmon and their habitats. During this period of time, NMFS has reviewed thousands of activities throughout northern California, Oregon, and Washington and helped develop numerous programmatic biological assessments (BAs) with the BLM and the USFS. These BAs cover a wide range of management activities, including forest and/or resource area-wide routine and non-routine road maintenance, hazard tree removal, range allotment management, watershed and instream restoration, special use permits (*e.g.,* mining, ingress/egress), timber sale programs (*e.g.,* green tree, fuel reduction, thinning, regeneration, and salvage), and BLM's land tenure adjustment program. Numerous other project-specific BAs were also consulted and conferenced upon. These National Forest and BLM Resource Area-wide BAs include region-specific best management practices, all necessary measures to minimize impacts for all listed or proposed anadromous salmonids, monitoring, and environmental baseline checklists for each project. These BA's have resulted in a more consistent approach to management of Federal lands throughout the NFP and PACFISH areas.

2. Federal/State Land and Water Management in California

California's Central Valley chinook salmon have been the subject of many conservation efforts aimed at restoring the Sacramento and San Joaquin Rivers over several decades. Past efforts have generally been unsuccessful at reducing the risks facing Central Valley chinook salmon. Despite a long history of unproductive conservation and protection efforts, Federal, state and private stakeholders joined to urge Congressional passage of the Central Valley Project Improvement Act (CVPIA) in 1992, followed by the signing of the CALFED Bay-Delta Accord (Accord) in December 1994. The Bay-Delta Accord detailed interim measures for environmental protection and paved the way for the development of the long-term CALFED Bay-Delta Program. The CALFED Bay-Delta Program which began in June of 1995 is a planning effort between state and federal agencies for developing a long-range, comprehensive solution for the Bay-Delta Estuary and its watershed. Collectively, the CVPIA and CALFED Bay-Delta conservation programs may

provide a comprehensive conservation response to the extensive ecologic problems facing at-risk salmonids. The CVPIA and the CALFED Bay-Delta Program are described in more detail in the Efforts Being Made to Protect West Coast Chinook Salmon section.

3. State Land Management

The California Department of Forestry and Fire Protection (CDF) enforces the State of California's forest practice rules (CFPRs) which are promulgated through the Board of Forestry (BOF). The CFPRs contain provisions that provide significant protection for chinook salmon if fully implemented. However, NMFS believes the CFPRs do not secure properly functioning riparian habitat. Specifically, the CFPRs do not adequately address large woody debris recruitment, streamside tree retention to maintain bank stability, and canopy retention standards that assure stream temperatures are properly functioning for all life stages of chinook salmon. The current process for approving Timber Harvest Plans (THPs) under the CFPRs does not include monitoring of timber harvest operations to determine whether a particular operation damaged habitat and, if so, how it might be mitigated in future THPs. The CFPR rule that permits salvage logging is also an area where better environmental review and monitoring could ensure better protection for chinook salmon. For these reasons, NMFS is working to improve the condition of riparian buffers in ongoing habitat conservation plan negotiations with private landowners.

The Oregon Forest Practices Act (OFPA), while modified in 1995 and improved over the previous OFPA, does not have implementing rules that adequately protect salmonid habitat. In particular, the current OFPA does not provide adequate protection for the production and introduction of large woody debris (LWD) to medium, small and non-fish bearing streams. Small non-fish bearing streams are vitally important to the quality of downstream habitats. These streams carry water, sediment, nutrients, and LWD from upper portions of the watershed. The quality of downstream habitats is determined, in part, by the timing and amount of organic and inorganic materials provided by these small streams (Chamberlin *et al.* in Meehan, 1991). Given the existing depleted condition of most riparian forests on non-Federal lands, the time needed to attain mature forest conditions, the lack of adequate protection for non-riparian LWD sources in landslide-prone areas and small headwater streams (which account for about half the wood found naturally in stream channels) (Burnett and Reeves, 1997 citing Van Sickle and Gregory, 1990; McDade *et al.*, 1990; and McGreary, 1994), and current rotation schedules (approximately 50 years), there is a low probability that adequate LWD recruitment could be achieved under the current requirements of the OFPA. Also, the OFPA does not adequately consider and manage timber harvest and road construction on sensitive, unstable slopes subject to mass wasting, nor does it address cumulative effects. These issues, and other concerns about the OFPA have been analyzed in detail in a recent document prepared by NMFS. The document, entitled ''A Draft Proposal Concerning Oregon Forest Practices'' was submitted to the Oregon Board of Forestry Memorandum of Agreement Advisory Committee and to the Oregon Governor's Office to advance potential improvements in Oregon forest practices (OFP) (NMFS OFP Draft, February 17, 1998).

The Washington Department of Natural Resources implements and enforces the State of Washington's forest practice rules (WFPRs) which are promulgated through the Forest Practices Board. These WFPRs contain provisions that can be protective of chinook salmon if fully implemented. This is possible given that the WFPRs are based on adaptive management of forest lands through watershed analysis, development of site-specific land management prescriptions, and monitoring. Watershed Analysis prescriptions can exceed WFPR minimums for stream and riparian protection. However, NMFS believes the WFPRs, including watershed analysis, do not provide properly functioning riparian and instream habitats. Specifically, the base WFPRs do not adequately address LWD recruitment, tree retention to maintain stream bank integrity and channel networks within floodplains, and chronic and episodic inputs of coarse and fine sediment that maintain habitats that are properly functioning for all chinook salmon life stages.

4. Dredge, Fill, and Inwater Construction Programs

The Army Corps of Engineers (COE) regulates removal/fill activities under section 404 of the Clean Water Act (CWA), which requires that the COE not permit a discharge that would ''cause or contribute to significant degradation of the waters of the United States.'' One of the factors that must be considered in this determination is cumulative effects. However, the COE guidelines do not specify a methodology for assessing cumulative impacts or how much weight to assign them in decision-making. Furthermore, the COE does not have in place any process to address the additive effects of the continued development of waterfront, riverine, coastal, and wetland properties.

5. Water Quality Programs

The Federal Clean Water Act (CWA), enforced in part by the Environmental Protection Agency (EPA), is intended to protect beneficial uses, including fishery resources. To date, implementation has not been effective in adequately protecting fishery resources, particularly with respect to non-point sources of pollution.

Section 303(d)(1)(C) and (D) of the CWA requires states to prepare Total Maximum Daily Loads (TMDLs) for all water bodies that do not meet State water quality standards. TMDLs are a method for quantitative assessment of environmental problems in a watershed and identifying pollution reductions needed to protect drinking water, aquatic life, recreation, and other use of rivers, lakes, and streams. TMDLs may address all pollution sources including point sources such as sewage or industrial plant discharges, and non-point discharges such as runoff from roads, farm fields, and forests.

The CWA gives state governments the primary responsibility for establishing TMDLs. However, EPA is required to do so if a state does not meet this responsibility. In California, as a result of recent litigation, the EPA has made a legal commitment guaranteeing that either EPA or the State will establish TMDLs that identify pollution reduction targets for 18 impaired river basins in northern California by the year 2007. California has made a commitment to establish TMDLs for approximately half the 18 river basins by 2007. The EPA will develop TMDLs for the remaining basins and has also agreed to complete all TMDLS if the State fails to meet its commitment within the agreed upon time frame.

State agencies in Oregon are committed to completing TMDLs for coastal drainages within 4 years, and all impaired waters within 10 years. Similarly ambitious schedules are being developed for Washington and California.

The ability of these TMDLs to protect chinook salmon should be significant in the long term; however, it will be difficult to develop them quickly in the short term and their efficacy in protecting chinook salmon habitat will be unknown for years to come.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural climatic conditions have exacerbated the problems associated with degraded and altered riverine and estuarine habitats. Persistent drought conditions have reduced already limited spawning, rearing and migration habitat. Climatic conditions appear to have resulted in decreased ocean productivity which, during more productive periods, may offset poor productivity caused by degraded freshwater habitat conditions.

In an attempt to mitigate the loss of habitat, extensive hatchery programs have been implemented throughout the range of west coast chinook salmon. While some of these programs have succeeded in providing fishing opportunities, the impacts of these programs on native, naturally-reproducing stocks are not well understood. Competition, genetic introgression, and disease transmission resulting from hatchery introductions may significantly reduce the production and survival of native, naturally-reproducing chinook salmon (NMFS, 1996a). Collection of native chinook salmon for hatchery broodstock purposes often harms small or dwindling natural populations. Artificial propagation may play an important role in chinook salmon recovery and some hatchery populations of chinook salmon may be deemed essential for the recovery of threatened or endangered chinook salmon ESUs (see Proposed Determination section).

In the past, non-native chinook salmon stocks have been introduced as broodstock in hatcheries and widely transplanted in many coastal rivers and streams throughout the range of the proposed chinook salmon ESUs (Bryant, 1994; Myers *et al.*, 1998). Because of problems associated with this practice, California Department of Fish and Game (CDFG) developed its Salmon and Steelhead Stock Management Policy. This policy recognizes that such stock mixing is detrimental and seeks to maintain the genetic integrity of all identifiable California stocks of chinook salmon and other salmonids, as well as minimize interactions between hatchery and natural populations. To protect the genetic integrity of salmon and steelhead stocks, this policy directs CDFG to evaluate each salmon and steelhead stream and classify it according to its probable genetic source and degree of integrity.

Hatchery programs and harvest management have strongly influenced chinook salmon populations in the Central Valley, California ESU, the Puget Sound ESU, the Lower Columbia River ESU, the Upper Willamette ESU, and the Upper Columbia River spring-run ESU. Hatchery programs intended to compensate for habitat losses have masked declines in natural stocks and have created unrealistic expectations for fisheries.

The three state agencies (California Department of Fish and Game, Oregon Department of Fish and Wildlife, and the Washington Department of Fish and Wildlife) have adopted and are implementing natural salmonid policies designed to limit hatchery influences on natural, indigenous chinook salmon. While some limits have been placed on hatchery production of anadromous salmonids, more careful management of current programs and scrutiny of proposed programs is necessary in order to minimize impacts on listed species.

Efforts Being Made To Protect West Coast Chinook Salmon

Section 4(b)(1)(A) of the ESA requires the Secretary of Commerce to make listing determinations solely on the basis of the best scientific and commercial data available and after taking into account efforts being made to protect a species. Therefore, in making its listing determinations, NMFS first assesses chinook salmon status and identifies factors that have lead to its decline. NMFS then assesses existing conservation actions to determine if those measures ameliorate the risks faced by chinook salmon.

In judging the efficacy of existing conservation efforts, NMFS considers the following: (1) The substantive, protective, and conservation elements of such efforts; (2) the degree of certainty such efforts will be reliably implemented; and (3) the presence of monitoring provisions that permit adaptive management (NMFS 1996b). In some cases, conservation efforts may be relatively new and may not have had time to demonstrate their biological benefit. In such cases, provisions for adequate monitoring and funding of conservation efforts are essential to ensure intended conservation benefits are realized (see NMFS 1996b, see also 62 FR 24602–24607, May 6, 1997).

During a previous status review for west coast steelhead, NMFS reviewed an array of protective efforts for steelhead and other salmonids, including chinook salmon, ranging in scope from regional strategies to local watershed initiatives. NMFS summarized some of the major efforts in a document entitled ''Steelhead Conservation Efforts: A Supplement to the Notice of Determination for West Coast Steelhead Under the Endangered Species Act.'' (NMFS, 1996). This document is available upon request (see **ADDRESSES**).

Several more recently developed protective efforts have been directed towards the conservation of various salmonids and the watersheds supporting them. These efforts may affect recovery of chinook salmon in California, Oregon and Washington.

State of California Protective Measures for Central Valley Chinook

Spring- and fall/late fall-run chinook salmon in California's Central Valley are beginning to benefit from two major conservation initiatives that are under development and simultaneously being implemented to conserve and restore salmonid and other fishery resources in the rivers and streams of the Central Valley, including the Bay-Delta region. The first of these initiatives is the Central Valley Project Improvement Act (CVPIA) which Congress passed in 1992. The CVPIA is intended to remedy habitat and other problems associated with the construction and operation of the Bureau of Reclamation's (BOR) Central Valley Project. The CVPIA has two key habitat restoration features related to the recovery of chinook salmon in the Central Valley. First, it directs the Secretary of the Interior to develop and implement a program that makes all reasonable efforts to double natural production of anadromous fish in Central Valley streams (Section 3406(b)(1)) by the year 2002. The U.S. Fish and Wildlife Service (FWS) approached implementation of this CVPIA directive through development of the Anadromous Fish Restoration Program (AFRP). The AFRP contains a total of 172 actions and 117 evaluations. The Department of the Interior (DOTI) intends to finalize the AFRP in 1998 upon completion of the Programmatic Environmental Impact Statement, which is required by Section 3409 of the CVPIA. Secondly, the CVPIA annually dedicates up to 800,000 acre feet (AF) of water flows for fish, wildlife, and habitat restoration purposes (Section 3406(b)(2)), and provides for the acquisition of additional water to supplement the 800,000 AF (Section 3406(b)(3)). The FWS, in consultation with other Federal and State agencies, directs the use of these dedicated water flows.

On November 20, 1997, DOI released its final administrative proposal on the management of Section 340(b)(2) water and a set of flow-related actions for the use of so-called (b)(2) water during the next five years. These plans will be continuously updated to include new information, consistent with the

adaptive management approach described in the AFRP. To make restoration efforts as efficient as possible, the AFRP has committed to coordinate restoration efforts with those developed and implemented by other groups or programs, including the CALFED Bay-Delta program.

Federal funding has been appropriated since 1995 to implement restoration projects identified through the AFRP planning and development process, or through complementary programs such as the CALFED Bay-Delta Program. In 1996, a total of $1.9 million was obligated for 11 restoration projects or evaluations identified through the AFRP planning process. These projects included restoration management planning efforts in the lower Tuolumne River, Deer Creek, and Butte Creek, modification of a fish ladder on the Yuba River, acquisition of riparian property and easements on Pine Creek and Big Chico Creek, water exchange pump and riparian restoration projects on Mill Creek, and several monitoring and evaluation projects. In 1997, $9.7 million was obligated for over 30 projects located throughout the Central Valley. The AFRP's projected budget for restoration projects in the Central Valley in 1998 is $8.2 million. The ARFP's 1998 work plan identifies 27 high priority projects for funding, and an additional 14 projects which will proceed contingent on additional funding. An estimated $20 million to $35 million will be spent on AFRP restoration actions per year for 25 years ($500 million to $875 million estimated total), most of which will be closely integrated with funding for habitat restoration activities as part of the CALFED Bay-Delta program.

During 1996 and 1997, the AFRP implemented several fish flow and habitat restoration actions using the CVPIA provisions. Specific actions included limiting Delta water exports for fisheries protection, closing the Delta Cross Channel gates to minimize the diversion of juvenile chinook salmon from the Sacramento River into the Delta, and modifying the operation of water project facilities in the Delta to evaluate the benefits of actions taken to protect juvenile chinook salmon. NMFS expects that similar fisheries protection measures will be implemented in 1998 depending on actual hydrological conditions.

The second and very ambitious initiative that benefits Central Valley spring and fall/late-fall chinook salmon is the CALFED Bay-Delta Program. In June 1994, state and Federal agencies signed a framework agreement that pledged all agencies to work together to formulate water quality standards to protect the Bay-Delta, coordinate state and Federal water project operations, and develop a long-term Bay-Delta restoration program. In December 1994, a diverse group of State and Federal agencies, water agencies and environmental organizations signed The Bay-Delta Accord which set out specific interim (3-year) measures for environmental protection, including protection for Central Valley chinook stocks. The CALFED Bay-Delta Program, which began in June, 1995, is charged with developing the long-term Bay-Delta solution and restoration program.

Three types of environmental protection and restoration measures are detailed in the 1994 Bay-Delta Accord: (1) The control of freshwater outflow in the Delta to improve estuarine conditions in the shallow-water habitat of the Bay-Delta estuary (Category I measures), (2) the regulation of water project operations and flows to minimize harmful environmental impacts of water exports (Category II measures), and (3) the funding and implementation of projects to address non-flow related factors affecting the Bay-Delta ecosystem such as unscreened diversions, physical habitat degradation, and pollution (Category III measures). Many of the Category I and II measures identified in the agreement were implemented by a Water Quality Control Plan that was adopted by the State Water Resources Control Board in 1995. Efforts were also initiated to implement Category III non-flow projects beginning in 1995 and these have continued to the present.

In 1995 and 1996, the Category III program approved a total of $21.1 million in funding for a large number of habitat restoration, fish screening, land acquisition, research and monitoring, watershed planning, and fish passage projects distributed throughout the Sacramento/San Joaquin River basins, their tributaries and the Bay-Delta system. Additional funding was provided for most of these projects from the CVPIA or other funding sources, and many constitute specific restoration actions identified in the draft Ecosystem Restoration Program Plan (ERPP) that is being developed as part of the comprehensive long-term CALFED Bay-Delta program. The total funding obligation for these projects exceeded $40 million. A description of these projects, the project proponent, the funding commitments, and the project status are described in a March 1997 summary document. In 1997, the CALFED Bay-Delta program announced its intention to fund a total of 51 additional projects using nearly $61 million in Category III funding. Additional funding of nearly $40 million was also available as a cost share for other projects if additional high priority projects could be identified. The selection of these 51 projects were intended to address specific stressors or factors for decline that were identified in the planning process leading to development of the ERPP. The vast majority of these funds (nearly 77 percent) were allocated to projects addressing floodplain/marsh plain changes and changes in river channel form. An additional 10 percent was targeted at entrainment problems, while 8 percent addressed water quality problems. Of the total funds committed to new projects, 87 percent will be expended for implementation projects, with the balance expended for watershed planning, monitoring, and research.

Central Valley spring and fall/late-fall chinook salmon have benefited from the expenditure of these restoration program funds through the placement of new fish screens, modifications of barriers to fish passage, and habitat restoration projects, and additional benefits are expected to accrue to these populations in the future as new projects are implemented. In the long-term, NMFS is hopeful that the CVPIA and CALFED Bay-Delta conservation programs described above can be focused and implemented to provide a comprehensive conservation response to the extensive habitat problems facing chinook salmon and other species in the Central Valley. To date, however, projects funded by these programs have focused on addressing habitat problems facing these and other species, and have placed an emphasis on problems associated with freshwater and ocean harvest or hatchery management practices. The CALFED Bay-Delta Program's draft ERPP acknowledges that current hatchery practices and freshwater and ocean harvest management practices are stressors (or risk factors) that are adversely affecting natural chinook salmon populations in the Central Valley. It also identifies general changes that may be needed to reduce the impacts of these stressors, and incorporates the need for improved harvest and hatchery management in its programmatic implementation plan. However, no Category III funding has been targeted at these problems to date, and a focused plan with both a near- and long-term implementation strategy to deal with these problems still needs to be developed. Many habitat restoration projects or activities identified in the ERPP have been funded and are in the

process of being implemented as discussed above. Other components of the restoration plan will be carried out as part of its long-term implementation. NMFS is encouraged by the ecosystem planning and restoration strategy developed for chinook salmon in Central Valley and Bay-Delta ecosystem. However, several risk factors that have been identified by NMFS as adversely affecting chinook salmon in the Central Valley have not been adequately addressed, and plans for their implementation needs to be developed. These risk factors include large hatchery programs and practices that are adversely affecting natural populations of spring and fall/late-fall chinook salmon, and masking our ability to confidently assess the status of naturally spawning populations; and ocean and freshwater harvest rates on natural stocks of spring and fall/late-fall chinook salmon stocks (hatchery and natural) that may exceed the basin's ability to naturally sustain these ESUs.

Because the full scope and implementation strategy for the CALFED Bay-Delta Program's long-term restoration program have yet to be finalized and a focused strategy to address impacts from harvest and hatchery practices has yet to be adequately developed, NMFS believes that the conservation benefits provided for by the CALFED restoration program and other complementary programs are not currently sufficient to reduce the substantial risks facing Central Valley spring-run and fall/late fall-run chinook salmon. NMFS is committed to working closely with the State and the CALFED Bay-Delta Program to build on the draft ERPP and its implementation strategy to ensure that all risks to spring-run and fall/late fall-run chinook salmon, including those resulting from current hatchery and harvest practices, are properly addressed in the future.

State of Oregon Conservation Measures

In April 1996, the Governor of Oregon completed and submitted to NMFS a comprehensive conservation plan directed specifically at coho salmon stocks on the Coast of Oregon. This plan, termed the Oregon Plan for Salmon and Watersheds (OPSW) (formerly known as the Oregon Coastal Salmon Restoration Initiative) has recently been expanded to include conservation measures for coastal steelhead stocks (Oregon, 1998). For a detailed description of the OPSW, refer to the May 6, 1997, listing determination for Southern Oregon/Northern California coho salmon (62 FR 24602–24606). The essential features of the OPSW include the following:

1. Identifies and addresses all factors for decline of coastal coho and steelhead, most notably, those factors relating to harvest, habitat, and hatchery activities.
2. State agencies whose activities affect salmon are held accountable for coordinating their programs in a manner that conserves and restores the species and their habitat.
3. Developed a framework for prioritizing conservation and restoration efforts.
4. Developed a comprehensive monitoring plan that coordinates Federal, state, and local efforts to improve current knowledge of freshwater and marine conditions, determine populations trends, evaluate the effects of artificial propagation, and rate the OPSW's success or failure in restoring the salmon.
5. Actions to conserve and restore salmon must be worked out by communities and landowners—those who possess local knowledge of problems and who have a genuine stake in the outcome.
6. The principle of adaptive management coordinates the prioritization, monitoring and implementation elements of this conservation plan. Through this process, there is an explicit mechanism for learning from experience, evaluating alternative approaches, and making needed changes in the programs and measures.
7. The Independent Multidisciplinary Science Team (IMST) provides an independent audit of the OPSW's strengths and weaknesses. The IMST assists the adaptive management process by compiling new information into an annual review of goals, objectives, and strategies, and by recommending changes.
8. The annual report made to the Governor, the legislature, and the public will help the agencies make the adjustments described for the adaptive management process.

While NMFS recognizes that many of the ongoing protective efforts are likely to promote the conservation of chinook and other salmonids, in the aggregate, they have not yet achieved chinook salmon conservation at a scale that is adequate to protect and conserve the eight ESUs proposed for listing (seven newly defined ESUs and one redefined ESU). NMFS believes that most existing efforts lack some of the critical elements needed to provide a high degree of certainty that the efforts will be successful. These elements include: (1) identification of specific factors for decline; (2) immediate measures required to protect the best remaining populations and habitats and priorities for restoration activities; (3) explicit and quantifiable objectives and time lines; (4) adequate and reliable funding; and (5) monitoring programs to determine the effectiveness of actions, including methods to measure whether recovery objectives are being met (NMFS Coastal Salmon Conservation: Working Guidance For Comprehensive Salmon Restoration Initiatives on the Pacific Coast, September 15, 1996).

The best available scientific information on the biological status of the species supports a proposed listing of eight chinook salmon ESUs under the ESA (see Proposed Determination). NMFS concludes that existing protective efforts at this time are inadequate to alter the proposed determination of threatened or endangered for these eight chinook salmon ESUs. However, during the period between publication of this proposed rule and publication of a final rule, NMFS will continue to solicit information regarding existing protective efforts (see Public Comments Solicited). NMFS also will work with Federal, state and tribal fisheries managers to evaluate and enhance the efficacy of the various salmonid conservation efforts.

Proposed Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. § 1532(6) and (20)). Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Based on results from its coastwide assessment, NMFS has concluded that on the west coast of the United States, there are 15 ESUs of chinook salmon which constitute ''species'' under the ESA, including 12 newly identified ESUs. After evaluating the status of these 12 ESUs, NMFS has determined that two ESUs (Central Valley spring-run and the Upper Columbia River spring-run ESUs) are in danger of extinction throughout all or a significant portion of their ranges. NMFS has also determined that five ESUs (Central Valley fall/late fall-run, Southern Oregon and California Coastal, Puget Sound, Lower Columbia River, Upper Willamette River ESUs) are likely to

become an endangered species within the foreseeable future throughout all or a significant portion of their range. NMFS proposes to list these ESUs as such at this time.

The listed Snake River fall-run chinook salmon ESU is proposed to be redefined to include additional fall-run chinook populations from the Deschutes River. NMFS has determined this redefined ESU is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. This proposed reclassification of the Snake River fall-run chinook salmon ESU does not affect the threatened status of the currently defined ESU (see 63 FR 1807, January 12, 1998).

NMFS has also renamed one ESU which was previously reviewed for listing. The Middle Columbia summer and fall-run ESU is renamed the Upper Columbia River summer and fall-run ESU to reflect the inclusion of the fall-run chinook salmon populations from the Columbia River above The Dalles Dam in the newly configured Snake River fall-run ESU. The geographic boundaries for these ESUs (i.e., the watersheds within which the members of the ESU spend their freshwater residence) are described under ''ESU Determinations.''

NMFS also proposes to designate critical habitat for each of the proposed chinook salmon ESUs, as described in the following section entitled Critical Habitat for Pacific Coast Chinook Salmon. Proposed critical habitat for each chinook salmon ESU proposed for listing has been characterized in that section, as well as in tables attached to this notice. Existing critical habitat for Snake River fall-run chinook salmon is proposed to be revised to include the geographic areas of the redefined Snake River fall-run ESU.

Only naturally spawned chinook salmon are being proposed for listing as threatened or endangered species in each of the 8 ESUs. Prior to the final listing determination, NMFS will examine the relationship between hatchery and natural chinook salmon populations in these ESUs, and assess whether any hatchery populations are essential for their recovery. This may result in the inclusion of specific hatchery populations as part of a listed ESU in NMFS' final determination.

Conservation Measures

Conservation measures that may apply to listed species as endangered or threatened under the ESA include conservation measures by tribes, states, local governments, and private organizations, Federal, tribal, and state recovery actions, Federal agency consultation requirements, prohibitions on taking, and recognition. Recognition through listing promotes public awareness and conservation actions by Federal, state, tribal, and local agencies, private organizations, and individuals.

Based on information presented in this proposed rule, general protective measures that could be implemented to help conserve the species are listed below. This list does not constitute NMFS' interpretation of a recovery plan under section 4(f) of the ESA.

1. Measures could be taken to promote land management practices that protect and restore chinook salmon habitat. Land management practices affecting chinook salmon habitat include timber harvest, road building, agriculture, livestock grazing, and urban development.

2. Evaluation of existing harvest regulations could identify any changes necessary to protect chinook salmon populations.

3. Artificial propagation programs could be required to incorporate practices that minimize adverse impacts upon native populations of chinook salmon.

4. Efforts could be made to ensure that existing and proposed dam facilities are designed and operated in a manner that will not adversely affect chinook salmon populations. For example, NMFS could require that fish passage facilities at dams effectively pass migrating juvenile and adult chinook salmon.

5. Water diversions could have adequate headgate and staff gauge structures installed to control and monitor water usage accurately. Water rights could be enforced to prevent irrigators from exceeding the amount of water to which they are legally entitled.

6. Irrigation diversions affecting downstream migrating chinook salmon could be screened. A thorough review of the impact of irrigation diversions on chinook salmon could be conducted.

NMFS recognizes that, to be successful, protective regulations and recovery programs for chinook salmon will need to be developed in the context of conserving aquatic ecosystem health. NMFS believes in some cases, Federal lands and Federal activities may bear a preponderance of the burden in preserving proposed populations and the ecosystems upon which they depend. However, throughout the range of the eight ESUs proposed for listing, chinook salmon habitat occurs and is affected by activities on state, tribal or private land. Agricultural, timber, and urban management activities on nonfederal land could and should be conducted in a manner that avoids adverse effects to chinook salmon habitat.

NMFS encourages nonfederal landowners to assess the impacts of their actions on potentially threatened or endangered salmonids. In particular, NMFS encourages the formulation of watershed partnerships to promote conservation in accordance with ecosystem principles. These partnerships will be successful only if state, tribal, and local governments, landowner representatives, conservationists, and Federal and nonfederal biologists all participate and share the goal of restoring chinook salmon to the watersheds.

Several conservation efforts are underway that may reverse the decline of west coast chinook salmon and other salmonids. These include the Northwest Forest Plan (on Federal lands within the range of the northern spotted owl), PACFISH (on all additional Federal lands with anadromous salmonid populations), Oregon's Plan for Salmon and Watersheds focussing on coho salmon and steelhead, Washington's Wild Stock Restoration Initiative, the Central Valley Project Improvement Act and the CALFED Bay-Delta Program (a joint effort by California and several Federal agencies to restore the Sacramento and San Joaquin River estuary), Wy-Kam-Ush-Mi Wa-Kish-Wit (The Spirit of the Salmon): The Columbia River Anadromous Fish Restoration Plan from the four Native American treaty tribes that configure the Columbia River Inter-tribal Fish Commission (CRITFC) (CRITFC, 1996), and NMFS'' Proposed Recovery Plan for Snake River Salmon, and a Draft Recovery Plan for Sacramento winter-run Chinook Salmon.

State of California Conservation Measures

As discussed in the section entitled Efforts Being Made to Protect West Coast Chinook Salmon above, the CALFED Bay-Delta program is developing a comprehensive long-term restoration plan and implementation strategy that is intended to restore the ecosystem health and improve water management for the beneficial uses of the Bay-Delta ecosystem. This planning effort is focused on addressing four critical resource areas: ecosystem quality, water quality, system integrity, and water supply reliability. In addition, substantial planning has been directed at developing alternatives for water conveyance and storage that are consistent with the objectives of the long-term plan. A draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) is under

development by the CALFED Bay-Delta Program that will assess the impacts of the entire CALFED Bay-Delta long-term plan and provide additional public opportunity for comment. The DEIS/EIR is expected to be released during the spring of 1998.

A major component of the long-term CALFED Bay-Delta Program is the Ecosystem Restoration Program Plan (ERPP) which is being developed to address the ecosystem quality element of the long-term plan. The draft ERPP is comprised of three components. The first component, Visions for Ecosystem Elements (CALFED Bay-Delta Program, ERPP Volume I, June 1997), presents the visions for ecological processes and functions, fish and wildlife habitats, and stressors that impair the health of the processes, habitats, and species. The second component, Visions for Ecological Zones (CALFED Bay-Delta Program, ERPP Volume II, July 1997), presents the visions for the 14 ecological zones and their respective ecological units throughout the Sacramento-San Joaquin River basins and Delta and contains implementation objectives, targets, and programmatic actions. The third component, Vision for Adaptive Management (CALFED Bay-Delta Program, ERPP Volume III, August 1997) provides the ERPP approach to adaptive management and contains the proposed plans to address indicators of ecological health, a monitoring program to acquire and evaluate the data needed regarding indicators, a program of focused research to acquire additional data needed to evaluate program alternatives and options, and the approach to phasing the implementation of the ERPP over its 25 year time span.

The draft ERPP addresses the Sacramento and San Joaquin Rivers, their upper watersheds, and the Bay-Delta ecosystem. Within this large geographic area, the ERPP identifies 14 ecological zones where the majority of restoration actions will occur. Ecosystem functions that are important to anadromous salmonids and that are addressed in the ERPP include: the quantity and quality of Central Valley streamflow and temperatures, natural sediment supply, stream meander corridor, natural floodplain, flood and watershed processes, Bay-Delta hydraulics and aquatic food chain, tidal and nontidal perennial aquatic habitat, sloughs, quantity and quality of estuarine, wetland, riverine, and riparian habitats. Environmental stressors, or risk factors, that are identified and addressed in the ERPP include: water diversions, quality and quantity of water, habitat blockages due to dams and other manmade structures, dredging and sediment disposal, gravel mining, encroachment of nonendemic species, predation and competition, contaminants, legal and illegal harvest, artificial fish propagation, and land disturbance.

The total cost for implementing the ERPP has been estimated at $1.5 billion, of which about half should be available through state Proposition 204 bonds and expected federal appropriations. These funds will be used to provide the initial infusion of funding to move the implementation of the ERPP forward. The ERPP implementation assumes that the $390 million identified in Proposition 204 will become available for expenditure after the CALFED Bay-Delta Program long-term restoration plan is formally adopted by the CALFED agencies through filing of a Record of Decision for the Federal EIS and certification of the EIR by the California Resources Agency by late 1998. The ERPP assumes that these funds will be encumbered and expended during the 25 year period of implementation which provides for a pro-rated availability of $15 million per year. Category III funding is assumed to complete the expenditure of $180 million during the first five years on actions identified for early implementation. Other sources of funding are expected to be available through Federal appropriations and through the CVPIA.

NMFS intends to continue working closely with the State of California through the CALFED Bay-Delta Program in their efforts to formulate a long-term restoration plan and an associated implementation strategy for the Bay-Delta ecosystem restoration. This habitat-focused conservation effort, if combined with State efforts addressing hatchery and harvest reform (i.e., reductions in hatchery production, increased marking of hatchery fish, changes in release practices to reduce straying, improved monitoring of escapement and stray rates, and reductions in ocean and freshwater harvest rates) could ameliorate the risks facing fall/late-fall chinook salmon stocks in the Central Valley. The degree to which these conservation efforts provide reliable, measurable and predictable reductions in the identified factors for decline, may provide NMFS with direct and substantial information pertinent to making final listing determinations for Central Valley chinook stocks.

In the San Joaquin River Basin, collaboration between water interests and State/Federal resources agencies has led to a scientifically-based adaptive fisheries management plan known as the Vernalis Adaptive Management Plan (VAMP). The VAMP proposes to use current knowledge to provide interim protections for San Joaquin fall-run chinook salmon smolts; to gather scientific information on the effects of various San Joaquin River flows and Delta water export rates on the survival of salmon smolts through the Delta; and to provide environmental benefits in the San Joaquin River tributaries, lower San Joaquin River, and Delta. This 12-year plan will be implemented through experimental flows in the San Joaquin Basin and operational changes at the Delta pumping plants during the peak salmon smolt outmigration period, approximately April 15 to May 15. Additional attraction flows for adult fall-run chinook upstream passage are targeted for October. In coordination with VAMP, the California Department of Water Resources will be installing and operating a barrier at the Head of Old River to improve the survival of juvenile chinook emigrating from the lower San Joaquin River. Although initial implementation of the VAMP is scheduled for spring 1998, negotiations regarding some aspects of the program continue. Although the VAMP does address flow conditions in the lower San Joaquin River during the spring smolt outmigration period, water quality concerns in the San Joaquin Basin still remain. NMFS expects that additional information regarding the long-term commitment of all participating parties to fully implement the plan will be available to prior to the final listing determination for Central Valley fall/late-fall chinook salmon.

State of California Conservation Measures for Coastal Chinook

In 1997, the California State legislature introduced and passed Senate Bill (SB) 271 which initiated a north coast salmonid habitat restoration program in California. This program is expected to provide significant benefits for coastal chinook salmon populations, in addition to other coastal salmonids beginning this year. SB 271 specifically created the Salmon and Steelhead Trout Restoration Account, and directed the California Department of Fish and Game (CDFG) to expend these funds on a wide range of watershed planning, on-the-ground habitat restoration projects, and other restoration-related efforts for the purpose of restoring anadromous salmonid populations in California's coastal watersheds, primarily north of San Francisco. SB 271 immediately transferred $3 million to the Account for CDFG to expend on the program in 1997 and 1998, and directed that $8 million be transferred to the Account annually for five years (beginning in fiscal year

1998–99 and continuing through fiscal year 2002–03) to continue funding this program. In total, SB 271 will provide $43 million in funding for north coast restoration projects over this six year period.

SB 271 requires that nearly 90 percent of the $43 million in funding be spent on project grants issued through CDFG's existing Fishery Restoration Grants Program, and allows CDFG to use the remaining funds for project contract administration activities and biological support staff necessary to achieve the restoration objectives of the legislation. SB 271 specifies that: (1) funded projects emphasize the development of coordinated watershed improvement activities, (2) the highest priority be given to funding projects that restore habitat for salmon and/or steelhead that are eligible for protection as listed or candidate species under the State or Federal ESA, and (3) funded projects treat causes of fish habitat degradation and be designed to restore the structure and function of fish habitat. In addition, SB 271 specifically allocates: (1) at least 65 percent of all Account funding for salmonid habitat protection and restoration projects, with at least 75 percent of that funding used for upslope watershed and riparian area protection and restoration activities, and (2) up to 35 percent of the Account funding for projects such as watershed evaluation, assessment, and planning, project monitoring and evaluations, support to watershed organizations, project maintenance and monitoring, private sector training, and watershed/fishery education.

In July 1997, California's Governor also signed Executive Order W–159–97 that created a Watershed Restoration and Protection Council (WPRC) that was charged with: (1) providing oversight of State activities aimed at watershed protection and enhancement including the conservation and restoration of anadromous salmonids in California, and (2) directing the development of a Watershed Protection Program which provides for anadromous salmonid conservation. In furtherance of implementing the Governor's Executive Order and the development of a Watershed Protection Program for anadromous salmonids, CDFG established and began implementing its own Watershed Initiative in 1997 and 1998. As described above, CDFG received $3 million in funding from SB 271 in 1997–98 which was used to fund its Watershed Initiative for coastal anadromous salmonids. These funds are currently in the process of being dispersed, together with a relatively limited amount of funds from other sources (e.g. Proposition 70, Proposition 99, Commercial Salmon Stamp Account, Steelhead Catch-Restoration Card, and Wildlife Conservation Board), in the form of grants through CDFG's Fishery Restoration Grants Program.

CDFG expects to allocate these grant funds as follows: (1) at least $1.3 million for watershed and riparian habitat restoration, (2) up to $425,000 for instream habitat restoration, and (3) up to $900,000 for watershed evaluation, assessment, planning, restoration project maintenance and monitoring, and a wide range of other activities. Other State agencies that have responsibilities as a result of the Governor's Executive Order are modifying existing budgets and preparing budget proposals for the upcoming fiscal year (1998–99) to assist in implementing the State's coastal watershed initiative. For fiscal year 1998–99, CDFG has submitted a Budget Change Proposal for its Watershed Initiative which calls for the expenditure of $8.0 million in SB 271 funds for: (1) eight new positions to assist in watershed planning efforts and grant proposal development ($1.0 million), and (2) habitat restoration and watershed planning projects in the form of grants ($7.0 million). CDFG anticipates that SB 271 funding will be expended in a similar manner and level through fiscal year 2002–03 to support the new staff resources created in the current year. The funding of these current and near term watershed planning and habitat restoration efforts is expected to provide significant benefits to chinook salmon stocks in California's coastal watersheds and in the Klamath/Trinity Basin. Over the next year, NMFS expects to work with the State in the development of its Watershed Protection Program and the implementation of its Watershed Initiative. NMFS is encouraged by their efforts and will consider them in its final listing determination for the Southern Oregon and California Coastal ESU.

State of Washington Conservation Measures

The State of Washington is currently in the process of developing a statewide strategy to protect and restore wild steelhead and other salmon and trout species. In May of 1997, Governor Gary Locke and other State officials signed a Memorandum of Agreement creating the Joint Natural Resources Cabinet (Joint Cabinet). This body is comprised of State agency directors or their equivalents from a wide variety of agencies whose activities and constituents influence Washington's natural resources. The goal of the Joint Cabinet is to restore healthy salmon, steelhead and trout populations by improving those habitats on which the fish rely. The Joint Cabinet's current activities include development of the Lower Columbia Steelhead Conservation Initiative (LCSCI), which is intended to comprehensively address protection and recovery of steelhead in the lower Columbia River area.

The scope of the LCSCI includes Washington's steelhead stocks in two transboundary ESUs that are shared by both Washington and Oregon. The initiative area includes all of Washington's stocks in the Lower Columbia River ESU (Cowlitz to Wind rivers) and the portion of the Southwest Washington ESU in the Columbia River (Grays River to Germany Creek). When completed, conservation and restoration efforts in the LCSCI area will form a comprehensive, coordinated, and timely protection and rebuilding framework. Benefits to steelhead and other fish species in the LCSCI area will also accrue due to the growing bi-state partnership with Oregon.

Advance work on the Initiative was performed by the Washington Department of Fish and Wildlife (WDFW). That work emphasized harvest and hatchery issues and related conservation measures. Consistent with creation of the Joint Cabinet, conservation planning has recently been expanded to include major involvement by other state agencies and stakeholders, and to address habitat and tributary dam/hydropower components.

The utility of the LCSCI is to provide a framework to describe concepts, strategies, opportunities, and commitments that will be critically needed to maintain the diversity and long term productivity of steelhead in the lower Columbia River for future generations. The initiative does not represent a formal watershed planning process; rather, it is intended to be complementary to such processes as they may occur in the future. The LCSCI details a range of concerns including natural production and genetic conservation, recreational harvest and opportunity, hatchery strategies, habitat protection and restoration goals, monitoring of stock status and habitat health, evaluation of the effectiveness of specific conservation actions, and an adaptive management structure to implement and modify the plan's trajectory as time progresses. It also addresses improved enforcement of habitat and fishery regulations, and strategies for outreach and education.

The LCSCI is currently a ''work-in-progress'' and will evolve and change

over time as new information becomes available. Input will be obtained through continuing outreach efforts by local governments and stakeholders. Further refinements to strategies, actions, and commitments will occur using public and stakeholder review and input, and continued interaction with the State of Oregon, tribes, and other government entities, including NMFS. The LCSCI will be subjected to independent technical review. In sum, these input and coordination processes will play a key role in determining the extent to which the eventual conservation package will benefit wild steelhead.

NMFS intends to continue working with the State of Washington and stakeholders involved in the formulation of the LCSCI. Ultimately, when completed, this conservation effort may ameliorate risks facing many salmonid species in this region. In the near term, for steelhead and other listed species, individual components of the conservation effort may be utilized in promulgating protective regulations under section 4(d) of the ESA.

State of Oregon Conservation Measures

As discussed in the section entitled Efforts Being Made to Protect West Coast Chinook Salmon, the Governor of Oregon completed and submitted to NMFS a comprehensive conservation plan directed specifically at coho salmon and steelhead stocks on the Coast of Oregon. The OPSW contains conservation elements that may apply to the needs of chinook salmon in Oregon streams.

The elements of the OPSW most likely to benefit chinook salmon conservation include: (1) a framework for prioritizing conservation and restoration efforts; (2) a comprehensive monitoring plan that coordinates Federal, state, and local efforts to improve current knowledge of freshwater and marine conditions, determine populations trends, evaluate the effects of artificial propagation, and evaluate the OPSW's success or failure in restoring chinook salmon; (3) a recognition that actions to conserve and restore salmon must be worked out by communities and landowners—those who possess local knowledge of problems and who have a genuine stake in the outcome. Watershed councils, soil and water conservation districts, and other grassroots efforts are the vehicles for getting this work done; (4) an explicit mechanism for learning from experience, evaluating alternative approaches, and making needed changes in the programs and measures; (5) the IMST whose purpose is to provide an independent audit of the OPSW's strengths and weaknesses; and (6) a yearly report be made to the Governor, the legislature, and the public. This will help the agencies make the adjustments prescribed for the adaptive management process.

Native American Tribal Conservation Efforts

A comprehensive salmon restoration plan for Columbia Basin salmon was prepared by the Nez Perce, Warm Springs, Umatilla and Yakama Indian Nations. This plan, Wy-Kan-Ush-Mi Wa-Kish-Wit (The Spirit of the Salmon)(CRITFC, 1996) is more comprehensive than past draft recovery plans for Columbia River basin salmon in that it proposes actions to protect salmon not currently listed under the ESA. The tribal plan sets goals and objectives to meet the restoration needs of the fish, as well as some of the multiple needs of these sovereign nations. The plan also provides some guidance for management of tribal lands within the range of anadromous salmon. NMFS will work closely with the four tribes as conservation measures related to at-risk Columbia Basin salmonids are further developed and implemented.

NMFS is encouraged by these efforts and believes they may constitute significant strides in regional efforts to develop a scientifically well grounded conservation plan for these stocks, and for chinook salmon. NMFS intends to support and work closely with these efforts. The degree to which these conservation efforts are able to provide reliable, scientifically well grounded improvements through a variety of measures to provide for the conservation of these stocks may have a direct and substantial effect on any final listing determination of NMFS.

Prohibitions and Protective Measures

Section 4(d) of the ESA requires NMFS to issue regulations it finds necessary and advisable to provide for the conservation of a listed species. Section 9 of the ESA prohibits violations of protective regulations for threatened species promulgated under section 4(d). The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. These 9(a) prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. NMFS intends to have final 4(d) protective regulations in effect at the time of final listing determinations for eight proposed west coast chinook salmon ESUs. The process for completing the 4(d) rule will provide the opportunity for public comment on the proposed protective regulations.

In the case of threatened species, NMFS also has flexibility under section 4(d) to tailor protective regulations based on the contents of available conservation measures. Even though, in several ESUs, existing conservation efforts and plans are not sufficient to preclude the need for listings at this time, they are nevertheless valuable for improving watershed health and restoring fishery resources. In those cases where well-developed, reliable conservation plans exist, NMFS may choose to incorporate them into the recovery planning process, starting with the protective regulations. NMFS has already adopted 4(d) rules that exempt a limited range of activities from take prohibitions. For example, the interim 4(d) rule for the Southern Oregon/Northern California coho (62 FR 24588, May 7, 1997) exempts habitat restoration activities conducted in accordance with approved plans and fisheries conducted in accordance with an approved state management plan. In the future, 4(d) rules may contain limited take prohibitions applicable to activities such as forestry, agriculture, and road construction when such activities are conducted in accordance with approved conservation plans.

These are all examples where NMFS may apply take prohibitions in light of the protections provided in a strong conservation program. There may be other circumstances as well in which NMFS would use the flexibility of section 4(d). For example, in some cases there may be a healthy population of salmon or steelhead within an overall ESU that is listed. In such a case, it may not be necessary to apply the full range of prohibitions available in section 9. NMFS intends to use the flexibility of the ESA to respond appropriately to the biological condition of each ESU and to the strength of programs to protect them.

Section 7(a)(4) of the ESA requires that Federal agencies confer with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal

agency must enter into consultation with NMFS.

Examples of Federal actions likely to affect chinook salmon include authorized land management activities of the USFS and BLM, as well as operation of hydroelectric and storage projects of the BOR and COE. Such activities include timber sales and harvest, permitting livestock grazing, hydroelectric power generation, and flood control. Federal actions, including the COE section 404 permitting activities under the CWA, COE permitting activities under the River and Harbors Act, FERC licenses for non-Federal development and operation of hydropower, and Federal salmon hatcheries, may also require consultation.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''taking'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species. A directed take refers to the intentional take of listed species. NMFS has issued section 10(a)(1)(A) research/enhancement permits for currently listed chinook salmon (e.g., Snake River chinook salmon and Sacramento River winter-run chinook salmon) for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches, and collection of adult fish for artificial propagation programs.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities which may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state or academic research not receiving Federal authorization or funding, the implementation of state fishing regulations, logging, road building, grazing, and diverting water into private lands.

NMFS Policies on Endangered and Threatened Fish and Wildlife

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

Role of Peer Review

The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, NMFS will solicit the expert opinions of at least three qualified specialists, concurrent with the public comment period. Independent peer reviewers will be selected from the academic and scientific community, Native American tribal groups, Federal and state agencies, and the private sector.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

NMFS and the FWS published in the **Federal Register** on July 1, 1994 (59 FR 34272), a policy that NMFS shall 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 ESA. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. At the time of the final rule, NMFS will identify to the extent known specific activities that will not be considered likely to result in violation of section 9, as well as activities that will be considered likely to result in violation. NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9:

1. Possession of chinook salmon from any chinook salmon ESU listed as threatened which are acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA.

2. Federally funded or approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which section 7 consultation has been completed, and when activities are conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanying a biological opinion.

Activities that NMFS believes could potentially harm chinook salmon in any of the proposed ESUs, and result in a violation of the section 9 take prohibition include, but are not limited to:

1. Land-use activities that adversely affect chinook salmon habitat in any proposed ESU (e.g., logging, grazing, farming, urban development, road construction in riparian areas and areas susceptible to mass wasting and surface erosion).

2. Destruction/alteration of the chinook salmon habitat in any proposed ESU, such as removal of large woody debris and ''sinker logs'' or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow.

3. Discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting the chinook salmon in any proposed ESU.

4. Violation of discharge permits.

5. Pesticide applications.

6. Interstate and foreign commerce of chinook salmon from any of the proposed ESUs and import/export of chinook salmon from any ESU without a threatened or endangered species permit.

7. Collecting or handling of chinook salmon from any of the proposed ESUs. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species.

8. Introduction of non-native species likely to prey on chinook salmon in any proposed ESU or displace them from their habitat.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of chinook salmon in any of the proposed ESUs under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of the section 9 take prohibition, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. NMFS has determined that sufficient information exists to propose designating critical habitat for the seven proposed chinook salmon ESUs. NMFS will consider all available information and data in finalizing this proposal.

Use of the term ''essential habitat'' within this Notice refers to critical habitat as defined by the ESA and should not be confused with the requirement to describe and identify Essential Fish Habitat (EFH) pursuant to the Magnuson-Stevens Fishery

Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as ''(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species.'' (see 16 U.S.C. 1532(5)(A)). The term ''conservation,'' as defined in section 3(3) of the ESA, means '' * * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.'' (see 16 U.S.C. 1532(3)).

In proposing to designate critical habitat, NMFS considers the following requirements of the species: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing of offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of this species (see 50 CFR 424.12(b)). In addition to these factors, NMFS also focuses on the known physical and biological features (primary constituent elements) within the designated area that are essential to the conservation of the species and may require special management considerations or protection. These essential features may include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation (see 50 CFR 424.12(b)).

Consideration of Economic and Other Factors

The economic and other impacts of a critical habitat designation will be considered and evaluated in this proposed rulemaking. NMFS will identify present and anticipated activities that may adversely modify the area(s) being considered or be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species (see 16 U.S.C. 1533(b)(2)).

The impacts considered in this analysis are only those incremental impacts specifically resulting from a critical habitat designation, above the economic and other impacts attributable to listing the species or resulting from other laws and regulations. Since listing a species under the ESA provides significant protection to a species' habitat, the economic and other impacts resulting from the critical habitat designation, over and above the impacts of the listing itself, are minimal. In general, the designation of critical habitat highlights geographical areas of concern and reinforces the substantive protection resulting from the listing itself.

Impacts attributable to listing include those resulting from the ''take'' prohibitions contained in section 9 of the ESA and associated regulations. ''Take,'' as defined in the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (see 16 U.S.C. 1532(19)). Harm can occur through destruction or modification of habitat (whether or not designated as critical) that significantly impairs essential behaviors, including breeding, feeding, rearing, or migration.

Significance of Designating Critical Habitat

The designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery actions. A critical habitat designation contributes to species conservation primarily by identifying important areas and by describing the features within those areas that are essential to the species, thus alerting public and private entities to the area's importance. Under the ESA, the only regulatory impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, or conducted by a Federal agency) and does not affect exclusively state or private activities.

Under the section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that ''appreciably diminish the value of critical habitat for both the survival and recovery'' of the species (see 50 CFR 402.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the proposed species. Activities that jeopardize a species are defined as those actions that ''reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery'' of the species (see 50 CFR 402.02). Using these definitions, activities that would destroy or adversely modify critical habitat would also be likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision. Critical habitat may provide additional benefits to a species in cases where areas outside the species' current range have been designated. When actions may affect these areas, Federal agencies are required to consult with NMFS under section 7 (see 50 CFR 402.14(a)), a requirement which may not have been recognized but for the critical habitat designation.

A designation of critical habitat provides a clear indication to Federal agencies as to when section 7 consultation is required, particularly in cases where the action would not result in immediate mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present). The critical habitat designation, describing the essential features of the habitat, also assists in determining which activities conducted outside the designated area are subject to section 7 (i.e., activities that may affect essential features of the designated area).

A critical habitat designation will also assist Federal agencies in planning future actions, since the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. With a designation of critical habitat, potential conflicts between Federal actions and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Another indirect benefit of a critical habitat designation is that it helps focus Federal, state, and private conservation and management efforts in such areas. Management efforts may address special considerations needed in critical habitat areas, including conservation regulations to restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time of those proposed regulations and, therefore, are not considered in the critical habitat

designation process. Other Federal, state, tribal and local management programs, such as zoning or wetlands and riparian lands protection, may also provide special protection for critical habitat areas.

Process for Designating Critical Habitat

Developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated and habitat areas and features that are essential to the conservation of the species are identified. If alternative areas exist that would provide for the conservation of the species, such alternatives are also identified. Second, the need for special management considerations or protection of the area(s) or features is evaluated. Finally, the probable economic and other impacts of designating these essential areas as ''critical habitat'' are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, the proposed critical habitat is published in the **Federal Register** for comment. The final critical habitat designation, considering comments on the proposal and impacts assessment, is typically published within one year of the proposed rule. Final critical habitat designations may be revised, using the same process, as new information becomes available.

A description of the critical habitat, need for special management, impacts of designating critical habitat, and the proposed action are described in the following sections.

Critical Habitat of Pacific Coast Chinook Salmon

Biological information for proposed chinook salmon can be found in NMFS species' status reviews (Myers *et al.*, 1998; Waknitz *et al.*, 1995; Waples *et al.*, 1991); species life history summaries (Ricker, 1972; Taylor, 1991; Healey, 1991; Burgner, 1991); and in **Federal Register** notices of proposed and final listing determinations (55 FR 102260, March 20, 1990; 56 FR 29542 and 29544, June 27, 1991; 57 FR 36626, August 14, 1992; 57 FR 57051, December 2, 1992; 59 FR 42529, August 18, 1994; 59 FR 48855, September 23, 1994; 59 FR 66784, December 28, 1994; 63 FR 1807, January 12, 1998).

The current geographic range of chinook salmon from California, Oregon, Washington, and Idaho includes vast areas of the North Pacific Ocean, nearshore marine zone, and extensive estuarine and riverine areas. The marine distribution for stream-type chinook salmon includes extensive areas far from the coast in the central North Pacific. Ocean-type chinook salmon typically migrate along coastal waters. Coastal chinook populations originating from south of Cape Blanco tend to migrate south, while those chinook salmon populations originating in coastal streams north of Cape Blanco tend to migrate northerly (Bakun 1973, 1975; Nicholas and Hankin, 1988; Healey 1983 and 1991; Myers *et al.*, 1984).

In California, major estuaries and bays known to support Central Valley chinook salmon include San Francisco Bay, San Pablo Bay, and Suisun Bay. Within the Central Valley spring-run chinook salmon ESU, major rivers and estuaries known to support chinook salmon include the Sacramento River, American River, Feather River, Yuba River, and Deer, Mill, Butte, Clear and Antelope Creeks. Within California's Central Valley fall/late fall-run chinook salmon ESU, major rivers and estuaries known to support chinook salmon include the Sacramento River; its tributaries including but not limited to the American River, Feather River, Yuba River, and Deer, Mill, Battle and Clear Creeks; as well as the San Joaquin River and its tributaries, including but not limited to the Mokelumne, Consumnes, Stanislaus, Tuolumne and Merced Rivers. Within the California portion of the Southern Oregon and California Coastal chinook salmon ESU, major rivers, estuaries, and bays known to support chinook salmon include the Smith River, lower Klamath River, Mad River, Redwood Creek, Humboldt Bay, Eel River, Mattole River, and the Russian River. Many smaller streams in the California portion of this ESU also contain chinook salmon.

In Oregon, major rivers, estuaries, and bays known to support chinook salmon within the Oregon portion of the Southern Oregon and California Coastal chinook salmon ESU include the Rogue River and several of its tributaries, and the Pistol, Chetco and Winchuck Rivers. Within the range of the Oregon portion of the lower Columbia River chinook salmon ESU, major rivers, estuaries, and bays known to support chinook salmon include Youngs Bay, Klaskanine River, and the Clackamas, Sandy and Hood Rivers. Major rivers known to support chinook salmon within the upper Willamette River ESU include the Mollala River, North Santiam River and McKenzie River. Major rivers known to support chinook salmon within the Oregon portion of the Snake River fall-run chinook salmon ESU include the Deschutes River, the lower Grande Ronde River, the Imnaha River, and the Oregon portion of the Columbia and Snake Rivers.

In Washington, major rivers, estuaries, and bays known to support chinook salmon within the lower Columbia River ESU include the Grays River, Elochoman River, Kalama River, Lewis River, Washougal River and White Salmon River. Major rivers, estuaries, and bays known to support chinook salmon within the Puget Sound ESU include the Nooksack River, Skagit River and many of its tributaries, the Stilliguamish River, Snohomish River, Duwamish River, Puyallup River, and the Elwha River. Major estuarine, bay and marine areas known to support chinook salmon within the Puget Sound ESU also include the South Sound, Hood Canal, Elliott Bay, Possession Sound, Admiralty Inlet, Saratoga Passage, Rosario Strait, Strait of Georgia, Haro Strait, and the Strait of Juan De Fuca. Major rivers known to support chinook salmon within the upper Columbia River spring-run ESU include the Wenatchee River, Entiat River, and Methow River.

In parts of Oregon, Washington and Idaho, major rivers known to support chinook salmon within the Snake River fall-run ESU include the lower Grande Ronde River, the Columbia River, the Snake River, the lower Salmon River, and the lower Clearwater River below its confluence with Lolo Creek.

Many smaller rivers and streams in each ESU also provide essential spawning, rearing and estuarine habitat for chinook salmon, but use and access can be constrained by seasonal fluctuations in hydrologic conditions.

Defining specific river reaches that are critical for chinook salmon is difficult because of the current low abundance of the species and of our imperfect understanding of the species' freshwater distribution, both current and historical. This is due, in large part, to the lack of comprehensive sampling effort dedicated to monitoring the species.

In California, Oregon, Washington and Idaho, several recent efforts have been made to characterize the species' distribution (Healey, 1983 and 1991, Bryant and Olson, in prep.; The Wilderness Society (TWS), 1993; Bryant, 1994; McPhail and Lindsey 1970; Yoshiyama et al., 1996; Myers et al., 1998) or to identify watersheds important to at-risk populations of salmonids and resident fishes (FEMAT, 1993). However, the limited data across the range of all ESUs, as well as dissimilarities in data types within the ESUs, make it difficult to define this species' distribution at a fine scale. Chinook salmon, though considerably reduced in population size, are still

distributed or have the potential for distribution throughout nearly all watersheds within the geographic range of each ESU. Notable exceptions are areas above several impassable dams (see Barriers Within the Species' Range).

Any attempt to describe the current distribution of chinook salmon must take into account the fact that existing populations and densities are a small fraction of historical levels. Many chinook salmon stocks are extremely depressed relative to past abundance and there are limited data to assess population numbers or trends. Several of these stocks are heavily influenced by hatcheries and apparently have little natural production in mainstem reaches.

Within the range of all chinook salmon ESUs, the species' life cycle can be separated into five essential habitat types: (1) Juvenile summer and winter rearing areas; (2) juvenile migration corridors; (3) areas for growth and development to adulthood; (4) adult migration corridors; and (5) spawning areas. Areas 1 and 5 are often located in small headwater streams, while areas 2 and 4 include these tributaries as well as mainstem reaches and estuarine zones. Growth and development to adulthood (area 3) occurs primarily in near- and off-shore marine waters, although final maturation takes place in freshwater tributaries when the adults return to spawn. Within all of these areas, essential features of chinook salmon critical habitat include adequate: (1) substrate, (2) water quality, (3) water quantity, (4) water temperature, (5) water velocity, (6) cover/shelter, (7) food, (8) riparian vegetation, (9) space, and (10) safe passage conditions. Given the vast geographic range occupied by each of these chinook salmon ESUs and the diverse habitat types used by the various life stages, it is not practical to describe specific values or conditions for each of these essential habitat features. However, good summaries of these environmental parameters and freshwater factors that have contributed to the decline of this and other salmonids can be found in reviews by CDFG, 1965; CACSST, 1988; Brown and Moyle, 1991; Bjornn and Reiser, 1991; Nehlsen *et al.*, 1991; Higgins *et al.*, 1992; California State Lands Commission (CSLC), 1993; Botkin *et al.*, 1995; NMFS, 1996; and Spence *et al.*, 1996.

At the time of this proposed rule, NMFS believes that chinook salmon's current freshwater, estuarine, and certain marine range encompasses all essential habitat features and is adequate to ensure the species' conservation. Therefore, designation of habitat areas outside the species' current range is not indicated. Habitat quality in this current range is intrinsically related to the quality of upland areas and of inaccessible headwater or intermittent streams which provide key habitat elements (e.g., large woody debris, gravel, water quality) crucial for chinook salmon in downstream reaches. NMFS recognizes that estuarine habitats are important for rearing and migrating chinook salmon and has included them in this designation. Marine habitats (i.e., oceanic or nearshore areas seaward of the mouth of coastal rivers) are also vital to the species, and ocean conditions are believed to have a major influence on chinook salmon survival (see review in Pearcy, 1992). In most cases, NMFS believes there is no need for special management consideration or protection of this habitat. In the case of the Puget Sound ESU, due to the unique combination of geographic features, proximity to a large number of rivers and streams supporting chinook salmon, and wide range of human activities occurring within Puget Sound's marine area, it appears to be necessary to include the marine areas described above. NMFS is not proposing to designate other critical habitat in marine areas at this time. If additional information becomes available that supports the inclusion of such areas, NMFS may revise this designation.

Based on consideration of the best available information regarding the species' current distribution, NMFS believes that the preferred approach to identifying the freshwater and estuarine portion of critical habitat is to designate all areas (and their adjacent riparian zones) accessible to the species within the range of each ESU. NMFS has taken this approach in previous critical habitat designations for other species (e.g., Snake River salmon, Umpqua River cutthroat trout, and proposed for two coho salmon ESUs) which inhabit a wide range of freshwater habitats, in particular small tributary streams (58 FR 68543, December 28, 1993; 63 FR 1388, January 9, 1998; 62 FR 62741, November 25, 1997). NMFS believes that adopting a more inclusive, watershed-based description of critical habitat is appropriate because it (1) recognizes the species' use of diverse habitats and underscores the need to account for all of the habitat types supporting the species' freshwater and estuarine life stages, from small headwater streams to migration corridors and estuarine rearing areas; (2) takes into account the natural variability in habitat use (e.g., some streams may have fish present only in years with plentiful rainfall) that makes precise mapping difficult; and (3) reinforces the important linkage between aquatic areas and adjacent riparian/upslope areas.

An array of management issues encompasses these habitats and their features, and special management considerations will be needed, especially on lands and streams under Federal ownership (see Activities that May Affect Critical Habitat and Need for Special Management Considerations or Protection sections). While marine areas are also a critical link in this cycle, NMFS does not believe that special management considerations are needed to conserve the habitat features in these areas. Hence, except for the Puget Sound ESU, only the freshwater and estuarine areas are being proposed for critical habitat at this time.

Barriers Within the Species' Range

Within the range of all threatened and endangered ESUs, chinook salmon face a multitude of barriers that limit the access of juvenile and adult fish to essential freshwater habitats. While some of these are natural barriers (e.g., waterfalls or high-gradient velocity barriers) that have been in existence for hundreds or thousands of years, more significant are the manmade barriers that have been created in the past century (CACSST, 1988; FEMAT, 1993; Botkin *et al.*, 1995; National Research Council, 1996). The extent of such barriers as culverts and road crossing structures that impede or block fish passage appears to be substantial. For example, of 532 fish presence surveys conducted in Oregon coastal basins during the 1995 survey season, nearly 15 percent of the confirmed ''end of fish use'' were due to human barriers, principally road culverts (OCSRI, 1997). Pushup dams/diversions and irrigation withdrawals also present significant barriers or lethal conditions (e.g., high water temperatures) to chinook salmon in California, Oregon, Washington and Idaho. However, because these manmade barriers can, under certain flow conditions, be surmounted by fish or present only a temporary/seasonal barrier, NMFS does not consider them to delineate the upstream extent of critical habitat.

Since these man-made impassible barriers are widely distributed throughout the range of each ESU, they can have a major downstream influence on chinook salmon. Such impacts can include the following: Depletion and storage of natural flows, which can drastically alter natural hydrological cycles; increase juvenile and adult mortality due to migration delays resulting from insufficient flows or

habitat blockages; stranding of fish resulting from rapid flow fluctuations; entrainment of juveniles into poorly screened or unscreened diversions; and increased mortality resulting from increased water temperatures (CACSST, 1988; Bergren and Filardo, 1991; CDFG, 1991; Reynolds *et al.*, 1993; Chapman *et al.*, 1994; Cramer *et al.*, 1995; NMFS, 1996). In addition to these factors, reduced flows negatively affect fish habitats due to increased deposition of fine sediments in spawning gravels, decreased recruitment of large woody debris and spawning gravels, and encroachment of riparian and non-endemic vegetation into spawning and rearing areas, resulting in reduced available habitat (CACSST, 1988; FEMAT, 1993; Botkin *et al.*, 1995; NMFS, 1996). These dam-related factors will be effectively addressed through section 7 consultations and the recovery planning process.

Numerous hydropower and water storage projects have been built which block access to former spawning and rearing habitats used by chinook salmon, or alter the timing and quantity of waterflow to downstream river reaches. NMFS has identified a total of 44 dams within the range of the ESUs that currently block upstream or downstream passage for chinook salmon (see Hydrolic Unit Tables 10–17). Blocked habitat can constitute as much as 90 percent of the historic range of each ESU. While these blocked areas are proportionally significant in certain basins (e.g., California's Central Valley and the Snake River), NMFS concludes at this time that currently available habitat may be sufficient for the conservation of the affected chinook salmon ESUs. NMFS solicits comments and scientific information on this issue and will consider such information prior to issuing any final critical habitat designation. This may result in the inclusion of areas above some man-made impassible barriers in a future critical habitat designation. NMFS may also re-evaluate this conclusion during the recovery planning process and in section 7 consultations.

Need for Special Management Considerations or Protection

In order to assure that the essential areas and features are maintained or restored, special management may be needed. Activities that may require special management considerations for freshwater, estuarine, and marine life stages of proposed chinook salmon include, but are not limited to (1) land management; (2) timber harvest; (3) point and non-point water pollution; (4) livestock grazing; (5) habitat restoration; (6) irrigation water withdrawals and returns; (7) mining; (8) road construction; (9) dam operation and maintenance; and (10) dredge and fill activities. Not all of these activities are necessarily of current concern within every watershed, estuary, or marine area; however, they indicate the potential types of activities that will require consultation in the future. No special management considerations have been identified for proposed chinook salmon while they are residing in the ocean environment, except as noted for the Puget Sound ESU.

Activities That May Affect Critical Habitat

A wide range of activities may affect the essential habitat requirements of proposed chinook salmon (see Summary of Factors for Decline section above for a more in-depth discussion). These activities include water and land management actions of Federal agencies, including the USFS, BLM, COE, BOR, the Federal Highway Administration (FHA), the EPA, and the Federal Energy Regulatory Commission (FERC) and related or similar actions of other federally regulated projects and lands, including livestock grazing allocations by the USFS and BLM; hydropower sites licensed by the FERC; dams built or operated by the COE or BOR; timber sales conducted by the USFS and BLM; road building activities authorized by the FHA, USFS, and BLM; and mining and road building activities authorized by the states of California, Oregon, Washington, and Idaho. Other actions of concern include dredge and fill, mining, and bank stabilization activities authorized or conducted by the COE. Additionally, actions of concern could include approval of water quality standards and pesticide labeling and use restrictions administered by the EPA.

The Federal agencies that will most likely be affected by this critical habitat designation include the USFS, BLM, BOR, COE, FHA, EPA, and FERC. This designation will provide these agencies, private entities, and the public with clear notification of critical habitat designated for proposed chinook salmon and the boundaries of the habitat and protection provided for that habitat by the section 7 consultation process. This designation will also assist these agencies and others in evaluating the potential effects of their activities on proposed chinook salmon and their critical habitat and in determining when consultation with NMFS is appropriate.

Expected Economic Impacts

The economic impacts to be considered in a critical habitat designation are the incremental effects of critical habitat designation above the economic impacts attributable to either listing or to laws and regulations other than the ESA (see Consideration of Economic and Other Factors section of this notice). Incremental impacts result from special management activities in areas outside the present distribution of the proposed species that have been determined to be essential to the conservation of the species. However, NMFS has determined that the species' present freshwater, estuarine, as well as certain marine areas within the species' range, contains sufficient habitat for conservation of the species. Therefore, the economic impacts associated with this critical habitat designation are expected to be minimal.

USFS, BLM, BOR, and the COE manage areas of proposed critical habitat for the proposed chinook salmon ESUs. The COE and other Federal agencies that may be involved with funding or permits for projects in critical habitat areas may also be affected by this designation. Because NMFS believes that virtually all ''adverse modification'' determinations pertaining to critical habitat would also result in ''jeopardy'' conclusions, designation of critical habitat is not expected to result in significant incremental restrictions on Federal agency activities. Critical habitat designation will, therefore, result in few, if any, additional economic effects beyond those that may have been caused by listing and by other statutes.

Public Comments Solicited

NMFS has exercised its best professional judgement in developing this proposal to list eight chinook salmon ESUs and designate their critical habitat under the ESA. To ensure that the final action resulting from this proposal will be as accurate and effective as possible, NMFS is soliciting comments and suggestions from the public, other governmental agencies, the scientific community, industry, and any other interested parties. NMFS will appreciate any additional information regarding, in particular: (1) the biological or other relevant data concerning any threat to chinook salmon; (2) the range, distribution, and population size of chinook salmon in all identified ESUs; (3) current or planned activities in the subject areas and their possible impact on this species; (4) chinook salmon escapement, particularly escapement data partitioned

into natural and hatchery components; (5) the proportion of naturally-reproducing fish that were reared as juveniles in a hatchery; (6) homing and straying of natural and hatchery fish; (7) the reproductive success of naturally-reproducing hatchery fish (i.e., hatchery-produced fish that spawn in natural habitat) and their relationship to the identified ESUs; (8) efforts being made to protect native, naturally-reproducing populations of chinook salmon in Washington, Oregon, Idaho and California; and (9) suggestions for specific regulations under section 4(d) of the ESA that should apply to threatened chinook salmon ESUs. Suggested regulations may address activities, plans, or guidelines that, despite their potential to result in the take of listed fish, will ultimately promote the conservation and recovery of threatened chinook salmon.

NMFS is also requesting quantitative evaluations describing the quality and extent of freshwater, estuarine, and marine habitats for juvenile and adult chinook salmon as well as information on areas that may qualify as critical habitat in Washington, Oregon, Idaho, and California for the proposed ESUs. Areas that include the physical and biological features essential to the recovery of the species should be identified. NMFS recognizes that there are areas within the proposed boundaries of some ESUs that historically constituted chinook salmon habitat, but may not be currently occupied by chinook salmon. NMFS is requesting information about chinook salmon in these currently unoccupied areas (in particular) and whether these habitats should be considered essential to the recovery of the species, or else be excluded from designation. Essential features include, but are not limited to: (1) Habitat for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS is requesting information describing: (1) The activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact ''of the [critical habitat] designation upon proposed or ongoing activities'' (50 CFR 424.19). NMFS must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be attributed to the designation of specific areas as critical habitat.

NMFS will review all public comments and any additional information regarding the status of the chinook salmon ESUs described herein and, as required under the ESA, will complete a final rule within 1 year of this proposed rule. The availability of new information may cause NMFS to reassess the status of chinook salmon ESUs, or to reassess the geographic extent of critical habitat.

Joint Commerce-Interior ESA implementing regulations state that the Secretary ''shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list * * * or to designate or revise critical habitat.'' (see 50 CFR 424.16(c)(3)). Public hearings on the proposed rule will be scheduled and announced in a forthcoming **Federal Register** Notice. These hearings will provide the opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS encourages the public's involvement in such ESA matters. Written comments on the proposed rule may also be submitted to Garth Griffin (see **ADDRESSES** and **DATES**).

References

A complete list of all cited references is available upon request (see **ADDRESSES**).

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir. 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of the National Environmental Policy Act under NOAA Administrative Order 216–6.

NMFS has also determined that an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for this critical habitat designation. See *Douglas County* v. *Babbitt*, 48 F.3D 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is not significant for purposes of E.O. 12866.

NMFS is proposing to designating only the current range of this species as critical habitat. The current range encompasses a wide range of habitats, including small tributary reaches, as well as mainstem, off-channel, estuarine and marine areas. Areas excluded from this proposed designation include historically occupied areas above impassible dams, and headwater areas above impassable natural barriers (e.g., long-standing, natural waterfalls). NMFS has concluded that at the time of this proposal, currently inhabited areas within the range of west coast chinook salmon are the minimum habitat necessary to ensure conservation and recovery of the species.

Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects upon small entities, beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to ensure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat (16 U.S.C. Sec. 1536(a)(2)). The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a species once it is listed, regardless of whether critical habitat is designated.

In the future, if NMFS determines that designation of habitat areas outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act. Until that time, a more detailed analysis would be premature and would not reflect the true economic impacts of the proposed action on local businesses, organizations, and governments.

Accordingly, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact of a substantial number of small entities, as described in the Regulatory Flexibility Act.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

At this time NMFS is not promulgating protective regulations pursuant to ESA section 4(d). In the future, prior to finalizing its 4(d) regulations for these threatened ESUs, NMFS will comply with all relevant NEPA and RFA requirements.

The AA has determined that the proposed listing and designation is consistent, to the maximum extent practicable, with the approved Coastal Zone Management Program of the States of California, Oregon, and Washington. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened wildlife, Exports, Imports, Reporting and record-keeping requirements, Transportation.

50 CFR Part 226

Endangered and threatened species.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: February 26, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 222, 226, and 227 are amended to read as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation of part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart D, § 222.32 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 222.23, paragraph (a) is amended by removing the second sentence and by adding five sentences in its place to read as follows:

§ 222.23 Permits for scientific purposes or to enhance the propagation or survival of the affected endangered species.

(a) * * * The species listed as endangered under either the Endangered Species Conservation Act of 1969 or the Endangered Species Act of 1973 and currently under the jurisdiction of the Secretary of Commerce are: Shortnose sturgeon (*Acipenser brevirostrum*); Totoaba (*Cynoscian macdonaldi*), Snake River sockeye salmon (*Oncorhynchus nerka*), Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*); Southern California steelhead (*Oncorhynchus mykiss*), which includes all naturally spawned populations of steelhead (and their progeny) in streams from the Santa Maria River, San Luis Obispo County, California (inclusive) to Malibu Creek, Los Angeles County, California (inclusive); Upper Columbia River steelhead (*Oncorhynchus mykiss*), which includes the Wells Hatchery stock and all naturally spawned populations of steelhead (and their progeny) in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the United States—Canada Border; Central Valley spring-run chinook salmon (*Oncorhynchus tshawytscha*), which includes all naturally spawned populations of chinook (and their progeny) in the Sacramento River and its tributaries in California. Also included are river reaches and estuarine areas of the Sacramento-San Joaquin Delta, all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, all waters of San Pablo Bay westward of the Carquinez Bridge, and all waters of San Francisco Bay (north of the San Francisco/Oakland Bay Bridge) from San Pablo Bay to the Golden Gate Bridge. Excluded are areas above specific dams identified in Table 10 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years); Upper Columbia River spring-run chinook salmon (*Oncorhynchus tshawytscha*), which includes all naturally spawned populations of chinook (and their progeny) in all river reaches accessible to chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington, excluding the Okanogan River. Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington. Excluded are areas above specific dams identified in Table 16 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years); Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*); Western North Pacific (Korean) gray whale (*Eschrichtius robustus*), Blue whale (*Balaenoptera musculus*), Humpback whale (*Megaptera novaeangliae*), Bowhead whale (*Balaena mysticetus*), Right whales (*Eubalaena* spp.), Fin or finback whale (*Balaenoptera physalus*), Sei whale (*Balaenoptera borealis*), Sperm whale (*Physeter catodon*); Cochito (*Phocoena Sinus*), Chinese river dolphin (*Lipotes vexillifer*); Indus River dolphin (*Platanista minor*); Caribbean monk seal (*Monachus tropicalis*); Hawaiian monk seal (*Monachus schauinslandi*); Mediterranean monk seal (*Monachus monachus*); Saimaa seal (*Phoca hispida saimensis*); Steller sea lion (*Eumetopias jubatus*), western population, which consists of Steller sea lions from breeding colonies located west of 144° W. long.; Leatherback sea turtle (*Dermochelys coriacea*); Pacific hawksbill sea turtle (*Eretmochelys imbricata bissa*); Atlantic hawksbill sea turtle (*Eretmochelys imbricata imbricata*); and Atlantic ridley sea turtle (*Lepidochelys kempii*). * * *

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PART 226—DESIGNATED CRITICAL HABITAT

3. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

4. Section 226.28 is added to subpart C to read as follows:

§ 226.28 Central Valley spring-run chinook salmon (*Oncorhynchus tshawytscha*), Central Valley fall/late fall-run chinook salmon (*Oncorhynchus tshawytscha*), Southern Oregon and California coastal chinook salmon (*Oncorhynchus tshawytscha*), Puget Sound chinook salmon (*Oncorhynchus tshawytscha*), Lower Columbia River chinook salmon (*Oncorhynchus tshawytscha*), Upper Willamette River chinook salmon (*Oncorhynchus tshawytscha*), Upper Columbia River spring-run chinook salmon (*Oncorhynchus tshawytscha*), Snake River fall-run chinook salmon (*Oncorhynchus tshawytscha*).

Critical habitat consists of the water, substrate, and adjacent riparian zone of accessible estuarine and riverine reaches, as well as some marine areas, in hydrologic units and counties identified in Tables 10 through 17 of this part for all of the chinook salmon ESUs listed above. Accessible reaches

are those within the historical range of the ESUs that can still be occupied by any life stage of chinook salmon. Inaccessible reaches are those above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years) and specific dams within the historical range of each ESU identified in Tables 10 through 17 of this part. Adjacent riparian zones are defined as those areas within a slope distance of 300 ft (91.4 m) from the normal line of high water of a stream channel or adjacent off-channel habitats (600 ft or 182.8 m, when both sides of the channel are included). Hydrologic units are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, ''Hydrologic Unit Maps, Water Supply Paper 2294, 1986,'' and the following DOI, USGS, 1:500,000 scale hydrologic unit maps: State of California (1978), State of Idaho (1981), State of Oregon (1974), and State of Washington (1974) which are incorporated by reference. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(a) *Central Valley Spring-run chinook salmon (Oncorhynchus tshawytscha) geographic boundaries.* Critical habitat is designated to include all river reaches accessible to chinook salmon in the Sacramento River and its tributaries in California. Also included are river reaches and estuarine areas of the Sacramento-San Joaquin Delta, all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, all waters of San Pablo Bay westward of the Carquinez Bridge, and all waters of San Francisco Bay (north of the San Francisco/Oakland Bay Bridge) from San Pablo Bay to the Golden Gate Bridge. Excluded are areas above specific dams identified in Table 10 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(b) *Central Valley Fall/Late Fall-run chinook salmon (Oncorhynchus tshawytscha) geographic boundaries.* Critical habitat is designated to include all river reaches accessible to chinook salmon in the Sacramento and San Joaquin Rivers and their tributaries in California. Also included are river reaches and estuarine areas of the Sacramento-San Joaquin Delta, all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, all waters of San Pablo Bay westward of the Carquinez Bridge, and all waters of San Francisco Bay (north of the San Francisco/Oakland Bay Bridge from San Pablo Bay to the Golden Gate Bridge. Excluded are areas upstream of the Merced River and areas above specific dams identified in Table 11 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(c) *Southern Oregon and California Coastal chinook salmon (Oncorhynchus tshawytscha) geographic boundaries.* Critical habitat is designated to include all river reaches and estuarine areas accessible to chinook salmon in the drainages of San Francisco and San Pablo Bays, westward to the Golden Gate Bridge, and includes all estuarine and river reaches accessible to proposed chinook salmon on the California and southern Oregon coast to Cape Blanco (inclusive). Excluded are the Klamath and Trinity Rivers upstream of their confluence. Also excluded are areas above specific dams identified in Table 12 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(d) *Pudget Sound chinook salmon (Oncorhynchus tshawytscha) geographic boundaries.* Critical habitat is designated to include all marine, estuarine and river reaches accessible to chinook salmon in Puget Sound. Puget Sound marine areas include South Sound, Hood Canal, and North Sound to the international boundary at the outer extent of the Strait of Georgia, Haro Strait and the Straits of Juan De Fuca to a straight line extending north from the west end of Freshway Bay, inclusive. Excluded are areas above specific dams identified in Table 13 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(e) *Lower Columbia River Chinook Salmon (Oncorhynchus tshawytscha) Geographic boundaries.* Critical habitat is designated to include all river reaches accessible to chinook salmon in Columbia River tributaries between the Grays and White Salmon Rivers in Washington and the Willamette and Hood Rivers in Oregon, inclusive. Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to The Dalles Dam. Excluded are areas above specific dams identified in Table 14 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(f) *Upper Willamette River chinook salmon (Oncorhynchus tshawytscha) geographic boundaries.* Critical habitat is designated to include all river reaches accessible to chinook salmon in the Willamette River and its tributaries above Willamette Falls. Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to and including the Willamette River in Oregon. Excluded are areas above specific dams identified in Table 15 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(g) *Upper Columbia River Spring-run Chinook salmon (Oncorhynchus tshawytscha) Geographic boundaries.* Critical habitat is designated to include all river reaches accessible to chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington, excluding the Okanogan River. Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington. Excluded are areas above specific dams identified in Table 16 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(h) *Snake River Fall-run Chinook Salmon (Oncorhynchus tshawytscha) Geographic boundaries.* Critical habitat is designated to include all river reaches accessible to chinook salmon in the Columbia River from The Dalles Dam upstream to the confluence with the Snake River in Washington (inclusive). Critical habitat in the Snake River includes its tributaries in Idaho, Oregon, and Washington (exclusive of the upper Grande Ronde River and the Wallowa

River in Oregon, the Clearwater River above its confluence with Lolo Creek in Idaho, and the Salmon River upstream of its confluence with French Creek in Idaho). Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to The Dalles Dam. Excluded are areas above specific dams identified in Table 17 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

5. Tables 10 through 17 are added to part 226 to read as follows:

TABLE 10 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES[1] Containing Critical Habitat for Endangered Central Valley, California Spring-Run Chinook Salmon, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU	Dams (reservoirs)
San Pablo Bay	18050002	San Mateo, CA, Alameda (CA), Contra Costa (CA), Marin (CA), Somona (CA), Napa (CA), Solano (CA).	San Pablo Reservoir.
San Francisco Bay	18050004	Santa Clara (CA), San Mateo (CA), Alameda (CA), Contra Costa (CA), Marin (CA).	
Coyote	18050003	Santa Clara (CA), San Mateo (CA), Alameda (CA)	Calavera Reservoir.
Suisun Bay	18050001	Contra Costa (CA), Solano (CA), Napa (CA)	
Lower Sacramento	18020109	Solano (CA), Sacramento (CA), Yolo (CA), Placer (CA), Sutter (CA).	
Lower American	18020111	Sacramento (CA), El Dorado (CA), Placer (CA)	Nimbus Dam.
Upper Coon-Upper Auburn	18020127	Placer (CA)	
Lower Bear	18020108	Placer (CA), Sutter (CA), Yuba (CA)	Camp Far West Dam.
Lower Feather	18020106	Sutter (CA), Yuba (CA), Butte (CA)	Oroville Dam.
Lower Yuba	18020107	Yuba (CA)	Englebright Dam.
Lower Butte	18020105	Sutter (CA), Butte (CA), Colusa (CA), Glenn (CA)	
Sacramento-Stone Corral	18020104	Yolo (CA), Colusa (CA), Sutter (CA), Glenn (CA), Butte (CA).	
Upper Butte	18020120	Butte (CA), Tehama (CA)	
Sacramento-Lower Thomes	18020103	Glenn (CA), Butte (CA), Tehama (CA)	Black Butte Dam.
Mill-Big Chico	18020119	Butte (CA), Tehama (CA), Shasta (CA)	
Upper Elder-Upper Thomes	18020114	Tehama (CA)	
Cottonwood Headwaters	18020113	Tehama (CA), Shasta (CA)	
Lower Cottonwood	18020102	Tehama (CA), Shasta (CA).	
Sacramento-Lower Cow-Lower Clear	18020101	Tehama (CA), Shasta (CA)	Keswick Dam, Shasta Dam.
Upper Cow-Battle	18020118	Tehama (CA), Shasta (CA)	Whiskeytown Dam.
Sacramento-Upper Clear	18020112	Shasta (CA)	

[1] Some counties have very limited overlap with estuarine, riverine and riparian habitats indentified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

TABLE 11 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES[1] CONTAINING CRITICAL HABITAT FOR THREATENED CENTRAL VALLEY, CALIFORNIA FALL-RUN CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties within hydrologic unit and within range of ESU	Dams (reservoirs)
San Pablo Bay	18050002	San Mateo, CA, Alameda (CA), Contra Costa (CA), Marin (CA), Somona (CA), Napa (CA), Solano (CA).	San Pablo Reservoir.
San Francisco Bay	18050004	Santa Clara (CA), San Mateo (CA), Alameda (CA), Contra Costa (CA), Marin (CA).	
Coyote	18050003	Santa Clara (CA), San Mateo (CA), Alameda (CA)	Calavera Reservoir.
Suisun Bay	18050001	Contra Costa (CA), Solano (CA), Napa (CA)	
San Joaquin Delta	18040003	Stanislaus (CA), San Joaquin (CA), Alameda (CA), Contra Costa (CA), Sacramento (CA).	
Middle San Joaquin-Lower Merced-Lower Stanislaus.	18040002	Merced (CA), Stanislaus (CA), San Joaquin (CA)	Crocker Diversion La Grange.
Lower Calaveras-Mormon Slough	18040004	Stanislaus (CA), San Joaquin (CA), Calaveras (CA)	New Hogan.
Lower Consumnes-Lower Mokelumne	18040005	San Joaquin (CA), Calaveras (CA), Amador (CA), Sacramento (CA), El Dorado (CA).	Camanche.
Upper Consumnes	18040013	Sacramento (CA), Amador, (CA), El Dorado (CA)	
Lower Sacramento	18020109	Solano (CA), Sacramento (CA), Yolo (CA), Placer (CA), Sutter (CA).	
Lower American	18020111	Sacramento (CA), El Dorado (CA), Placer (CA)	Nimbus.
Upper Coon-Upper Auburn	18020127	Placer (CA).	
Lower Bear	18020108	Placer (CA), Sutter (CA), Yuba (CA)	Camp Far West.
Lower Feather	18020106	Sutter (CA), Yuba (CA), Butte (CA)	Oroville.
Lower Yuba	18020107	Yuba (CA)	Englebright.
Lower Butte	18020105	Sutter (CA), Butte (CA), Colusa (CA), Glenn (CA)	

TABLE 11 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES [1] CONTAINING CRITICAL HABITAT FOR THREATENED CENTRAL VALLEY, CALIFORNIA FALL-RUN CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties within hydrologic unit and within range of ESU	Dams (reservoirs)
Sacramento-Stone Corral	18020104	Yolo (CA), Colusa (CA), Sutter (CA), Glenn (CA), Butte (CA).	
Upper Butte	18020120	Butte (CA), Tehama (CA).	
Sacramento-Lower Thomes	18020103	Glenn (CA), Butte (CA), Tehama (CA)	Black Butte.
Mill-Big Chico	18020119	Butte (CA), Tehama (CA), Shasta (CA)	
Upper Elder-Upper Thomes	18020114	Tehama (CA).	
Cottonwood Headwaters	18020113	Tehama (CA), Shasta (CA).	
Lower Cottonwood	18020102	Tehama (CA), Shasta (CA).	
Sacramento-Lower Cow-Lower Clear	18020101	Tehama (CA), Shasta (CA).	Keswick Dam Shasta.
Upper Cow-Battle	18020118	Tehama (CA), Shasta (CA)	Whiskeytown.
Sacramento-Upper Clear	18020112	Shasta (CA).	

[1] Some counties have very limited overlap with estuarine, riverine and riparian habitats indentified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

TABLE 12 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES [1] CONTAINING CRITICAL HABITAT FOR THREATENED SOUTHERN OREGON AND CALIFORNIA COASTAL CHINOOK SALMON; DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU	Dams (reservoirs)
Tomales-Drakes Bay	18050005	Marin (CA), Somona (CA)	Kent Lake Dam Nicasio Reservoir.
Bodega Bay	18010111	Marin (CA), Sonoma (CA).	
Russian	18010110	Somona (CA), Mendocino (CA)	Lake Mendocino.
Gualala-Salmon	18010109	Somona (CA), Mendocino (CA).	
Big-Navarro-Garcia	18010108	Mendocino (CA).	
Upper Eel	18010103	Mendocino (CA), Lake (CA), Glenn (CA), Trnity (CA).	
Middle Fork Eel	18010104	Mendocino (CA), Trinity (CA), Humboldt (CA)	Lake Pillsbury.
Lower Eel	18010105	Mendocino (CA), Humboldt (CA).	
South Fork Eel	18010106	Mendocino (CA), Humboldt (CA).	
Mattole	18010107	Lake (CA), Mendocino (CA).	
Mad-Redwood	18010102	Humboldt (CA), Trinity (CA).	
Lower Klamath	18010209	Humboldt, (CA), Del Norte (CA), Siskiyou (CA).	
Smith	18010101	Del Norte (CA), Curry (OR).	
Chetco	17100312	Curry (OR), Del Norte (CA).	
Sixes	17100306	Curry (OR), Coos (OR).	
Illinois	17100311	Josephine (OR), Del Norte (CA).	
Lower Rogue	17100310	Curry (OR), Josephine (OR) Jackson (OR).	
Applegate	17100309	Josephine (OR), Jackson (OR) Del Norte (CA)	Applegate Dam.
Middle Rogue	17100308	Jackson (OR), Douglas (OR)	Savage Rapids Dam.
Upper Rogue	17100307	Jackson (OR), Klamath (OR)	Lost Creek Dam.

[1] Some counties have very limited overlap with estuarine, riverine and riparian habitats indentified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

TABLE 13 TO PART 226—HYDROLOGIC UNITS AND COUNTIES[1] CONTAINING CRITICAL HABITAT FOR THREATENED PUGET SOUND CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU	Dams (reservoirs)
Nisqually	17110015	Pierce (WA), Thurston (WA).	
Deschutes	17110016	Thurston (WA), Lewis (WA).	
Puyallup	17110014	Pierce (WA), King (WA).	
Duwamish	17110013	King (WA), Pierce (WA)	Howard Hanson.
Lake Washington	17110012	King (WA), Snohomish (WA)	Cedar Falls Dam.
Puget Sound	17110019	Thurston (WA), Mason (WA), Kitsap (WA), Pierce (WA), King (WA), Snohomish (WA), Jefferson (WA), Skagit (WA).	
Skokomish	17110017	Mason (WA), Jefferson (WA), Grays Harbor (WA)	Cushman Dam.
Hood Canal	17110018	Mason (WA), Jefferson (WA), Kitsap (WA).	
Snoqualmie	17110010	King (WA), Snohomish (WA)	Tolt Dam.
Skyhomish	17110009	King (WA), Snohomish (WA).	
Snohomish	17110011	Snohomish (WA).	
Stillaguamish	17110008	Snohomish (WA), Skagit (WA).	

TABLE 13 TO PART 226—HYDROLOGIC UNITS AND COUNTIES[1] CONTAINING CRITICAL HABITAT FOR THREATENED PUGET SOUND CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT—Continued

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU	Dams (reservoirs)
Sauk	17110006	Snohomish (WA), Skagit (WA).	
Upper Skagit	17110005	Skagit (WA), Whatcom (WA).	
Lower Skagit	17110007	Skagit (WA), Snohomish (WA).	
Nooksack	17110004	Skagit (WA), Whatcom (WA).	
Fraser	17110001	Whatcom (WA).	
Strait of Georgia	17110002	Skagit (WA), Whatcom (WA).	
San Juan Islands	17110003	San Juan (WA).	
Dungeness-Elwha	17110020	Jefferson (WA), Clallam (WA)	Elwha Dam.
Crescent-Hoko	17110021	Clallam (WA).	

[1] Some counties have very limited overlap with estuarine, riverine and riparian habitats indentified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

TABLE 14 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES[1] CONTAINING CRITICAL HABITAT FOR THREATENED LOWER COLUMBIA RIVER CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties within hydrologic unit and within range of ESU	Dams (reservoirs)
Lower Columbia	17080006	Pacific (WA), Wahkiakum (WA), Clatsop (OR).	
Lower Columbia-Clatskanie	17080003	Wahkiakum (WA), Cowlitz (WA), Skamania (WA), Clatsop (OR), Columbia (OR).	
Lower Cowlitz	17080005	Cowlitz (WA), Lewis (WA), Skamania (WA)	Mayfield Dam.
Lewis	17080002	Cowlitz (WA), Clark (WA), Skamania (WA), Klickitat (WA).	Merwin Dam, Yale Dam Cougar Dam.
Lower Columbia-Sandy	17080001	Clark (WA), Skamania (WA), Multnomah (OR), Clackamas (OR).	Bull Run Dam.
Lower Willamette	17090012	Columbia (OR), Multnomah (OR), Clackamas (OR).	
Clackamas	17090011	Clackamas (OR), Marion (OR)	Oak Grove Dam.
Middle Columbia—Hood	17070105	Hood River (OR), Wasco (OR), Klickitat (WA), Skamania (WA).	Condit Dam.

[1] Some counties have very limited overlap with estuarine, riverine and riparian habitats indentified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

TABLE 15 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES[1] CONTAINING CRITICAL HABITAT FOR THREATENED UPPER WILLAMETTE RIVER CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties within hydrologic unit and within range of ESU	Dams (reservoirs)
Lower Columbia	17080006	Pacific (WA), Wahkiakum (WA), Clatsop (OR).	
Lower Columbia-Clatskanie	17080003	Wahkiakum (WA), Cowlitz (WA), Skamania (WA), Clatsop (OR), Columbia (OR).	
Lower Columbia-Sandy	17080001	Clark (WA), Skamania (WA), Multnomah (OR), Clackamas (OR).	
Lower Willamette	17090012	Columbia (OR), Multnomah (OR), Clackamas (OR).	
Tualatin	17090010	Yamhill (OR), Washington (OR), Tillamook (OR), Clakamas (OR), Multnomah (OR), Columbia (OR).	
Middle Willamette	17090007	Polk (OR), Marion (OR), Yamhill (OR), Washington (OR), Clakamas (OR).	
Yamhill	17090008	Lincoln (OR), Polk (OR), Yamhill (OR), Tillamook (OR), Washington (OR).	
Molalla-Pudding	17090009	Marion (OR), Clakamas (OR).	
North Santiam	17090005	Marion (OR), Linn (OR).	
Upper Willamette	17090003	Polk (OR), Benton (OR), Lane (OR), Linn (OR), Lincoln (OR).	
South Santiam	17090006	Linn (OR)	Green Peter Dam, Foster Dam.
McKenzie	17090004	Lane (OR), Linn (OR)	Cougar Dam.
Middle Fork Willamette	17090001	Lane (OR), Douglas (OR)	Dexter Dam.
Coast Fork Willamette	17090002	Lane (OR), Douglas (OR).	

[1] Some counties have very limited overlap with estuarine, riverine and riparian habitats indentified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

TABLE 16 TO PART 226—HYDROLOGIC UNITS AND COUNTIES [1] CONTAINING CRITICAL HABITAT FOR ENDANGERED UPPER COLUMBIA RIVER SPRING-RUN CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU	Dams (reservoirs)
Lower Columbia	17080006	Pacific (WA), Wahkiakum (WA), Clatsop (OR)	
Lower Columbia-Clatskanie	17080003	Wahkiakum (WA), Cowlitz (WA), Skamania (WA), Clatsop (OR), Columbia (OR).	
Lower Columbia-Sandy	17080001	Clark (WA), Skamania (WA), Multnomah (OR), Clackamas (OR).	Bull Run Dam.
Middle Columbia-Hood	17070105	Hood River (OR), Wasco (OR), Klickitat (WA), Skamania (WA).	Condit Dam.
Middle Columbia-Lake Wallula	17070101	Gilliam (OR), Morrow (OR), Sherman (OR), Umatilla (OR), Benton (A), Klickitat (WA), Walla Walla (WA).	
Upper Columbia-Priest Rapids	17020016	Benton (WA), Franklin (WA), Grant (WA)	
Upper Columbia—Entiat	17020010	Chelan (WA), Douglas (WA), Grant (WA), Kittias (WA)	
Wenatchee	17020011	Chelan (WA).	
Chief Joseph	17020005	Chelan (WA), Douglas (WA), Okanogan (WA)	Chief Joseph.
Methow	17020008	Okanogan (WA).	
Okanogan	17020006	Okanogan (WA).	
Similkameen	17020007	Okanogan (WA).	

[1] Some counties have very limited overlap with estuarine, riverine and riparian habitats indentified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

TABLE 17 TO PART 226—HYDROLOGIC UNITS AND COUNTIES [1] CONTAINING CRITICAL HABITAT FOR THREATENED SNAKE RIVER FALL-RUN CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU	Dams (reservoirs)
Lower Columbia	17080006	Pacific (WA), Wahkiakum (WA), Clatsop (OR).	
Lower Columbia-Clatskanie	17080003	Wahkiakum (WA), Cowlitz (WA), Skamania (WA), Clatsop (OR), Columbia (OR).	
Lower Columbia-Sandy	17080001	Clark (WA), Skamania (WA), Multnomah (OR), Clackamas (OR).	Bull Run Dam.
Middle Columbia-Hood	17070105	Hood River (OR), Wasco (OR) Klickitat (WA), Skamania (WA).	Condit Dam.
Middle Columbia-Lake Wallula	17070101	Gilliam (OR), Morrow (OR), Sherman (OR), Umatilla (OR), Benton (A), Klickitat (WA), Walla Walla (WA).	
Lower Deschutes	17070306	Jefferson (OR), Wasco (OR), Sherman (OR)	Pelton Dam Round Butte.
Trout	17070307	Crook (OR), Jefferson (OR), Wasco (OR)	
Lower John Day	17070204	Crook (OR), Wheeler (OR), Jefferson (OR), Grant (OR), Gilliam (OR), Morrow (OR) Sherman (OR), Wasco (OR).	
Upper John Day	17070201	Wheeler (OR), Grant (OR), Harney (OR)	
North Fork—John Day	17070202	Grant (OR), Wheeler (OR), Morrow (OR), Umatilla (OR).	
Middle Fork—John Day	17070203	Grant (OR).	
Willow	17070104	Morrow (OR), Gilliam (OR).	
Umatilla	17070103	Morrow (OR), Umatilla (OR).	
Walla Walla	17070102	Umatilla (OR), Wallowa (OR), Walla Walla (WA), Columbia (WA).	
Lower Snake	17060110	Franklin (WA), Columbia (WA), Walla Walla (WA)	
Lower Snake-Tucannon	7060107	Columbia (WA), Whitman (WA) Garfield (WA), Asotin (WA).	
Lower Snake—Asotin	17060103	Wallowa (OR), Garfield (WA), Asotin (WA) Nez Perce (ID).	
Lower Salmon	17060209	Valley (ID), Idaho (ID), Lewis (ID), Nez Perce (ID)	
Clearwater	17060306	Nez Perce (ID), Lewis (ID), Clearwater (ID) Latah (ID).	
Lower Grande Ronde	17060106	Union (OR), Wallowa (OR), Columbia (WA), Garfield (WA), Asotin (WA).	
Imnaha	17060102	Baker (OR), Union (OR), Wallowa (OR), Columbia (WA), Walla Walla (WA).	
Hells Canyon	17060101	Wallowa (OR), Idaho (ID)	Hells Canyon, Oxbow Dam Brownlee.

[1] Some counties have very limited overlap with estuarine, riverine and riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

PART 227—THREATENED FISH AND WILDLIFE

6. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 227.12 also issued under 16 U.S.C. 1361 *et seq.*

7. In § 227.4, paragraph (g) is revised, paragraph (p) is added and reserved, and paragraphs (q) through (u) are added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(g) Snake River fall-run chinook salmon (*Oncorhynchus tshawytscha*). Includes all naturally spawned populations of chinook salmon (and their progeny) from the Columbia River and its tributaries upstream from a transitional point between Washington and Oregon east of the Hood River and the White Salmon River, to its confluence with the Snake River, and also includes the Snake River and its tributaries upstream to Hells Canyon Dam. These tributaries include the lower Grande Ronde, Imnaha, lower Salmon and lower Clearwater Rivers in parts of Oregon, Washington and Idaho.

* * * * *

(p) [Reserved]

(q) Central Valley fall/late fall-run chinook salmon (*Oncorhynchus tshawytscha*). Includes all naturally spawned populations of chinook salmon (and their progeny) in the Sacramento and San Joaquin River Basins and their tributaries, east of Carquinez Strait, California.

(r) Southern Oregon and California coastal chinook salmon (*Oncorhynchus tshawytscha*). Includes all naturally spawned populations of chinook salmon (and their progeny) from rivers and streams between Cape Blanco, Oregon south to the northern entrance of San Francisco Bay, California.

(s) Puget Sound chinook salmon (*Oncorhynchus tshawytscha*). Includes all naturally spawned populations of chinook salmon (and their progeny) from rivers and streams flowing into Puget Sound including the Straits of Juan De Fuca from the Elwha River, eastward, including rivers and streams flowing into Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington.

(t) Lower Columbia River chinook salmon (*Oncorhynchus tshawytscha*). Includes all naturally spawned populations of chinook salmon (and their progeny) from the Columbia River and its tributaries from its mouth at the Pacific Ocean upstream to a transitional point between Washington and Oregon east of the Hood River and the White Salmon River, and includes the Willamette River to Willamette Falls, Oregon.

(u) Upper Willamette River chinook salmon (*Oncorhynchus tshawytscha*). Includes all naturally spawned spring-run populations of chinook salmon (and their progeny) in the Willamette River, and its tributaries, above Willamette Falls, Oregon.

[FR Doc. 98–5484 Filed 3–2–98; 2:49 pm]

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federal register

Monday
March 9, 1998

Part III

Department of Defense

48 CFR Parts 201, et al.

Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments; Interim and Final Rules

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 202, 204, 209, 212, 214, 215, 216, 217, 219, 223, 225, 226, 227, 229, 231, 232, 233, 234, 235, 236, 237, 239, 241, 242, 243, 250, 252, 253, and Appendices G and I to Chapter 2

[Defense Acquisition Circular 91–13]

Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Interim and final rules.

SUMMARY: Defense Acquisition Circular 91–13 amends the Defense Federal Acquisition Regulation Supplement (DFARS) to revise, finalize, or add language on the Defense Acquisition Regulations System, acquisition of commercial items, multiyear contracting, interagency acquisitions under the Economy Act, small business programs, the environment, foreign acquisition, utilization of Indian organizations, foreign patent interchange agreements, taxes, contract cost principles and procedures, contract financing, disputes and appeals, major system acquisition, research and development contracting, construction and architect-engineer contracts, service contracting, acquisition of information technology, acquisition of utility services, contract administration, extraordinary contractual actions, and contract reporting.

DATES: Effective date: March 9, 1998.

Comment date: Comments on the interim rule (Item XXIII: Sections 236.102, 236.274, 236.570, 252.236–7010, and 252.236–7012) should be submitted in writing to the address shown below on or before May 8, 1998 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments on the interim rule (Item XXII) to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil. Please cite DFARS Case 97–D307 in all correspondence related to this rule. E-mail comments should cite DFARS Case 97–D307 in the subject line.

FOR FURTHER INFORMATION CONTACT: Item XXIII—Ms. Amy Williams, (703) 602–0131.

All other items—Ms. Susan Buckmaster, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Defense Acquisition Circular (DAC 91–13) includes 31 rules and miscellaneous editorial amendments. Eight of the rules (Items II, III, IV, V, XIII, XVI, XVII, and XXIX) were published previously in the **Federal Register** and thus are not included as part of this notice of amendments to the Code of Federal Regulations. These eight rules are included in the DAC to incorporate the previously published amendments into the loose-leaf edition of the DFARS.

B. Determination to Issue an Interim Rule

DAC 91–13, Item XXIII

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This rule amends the DFARS to implement Section 112 of the Military Construction Appropriations Act for Fiscal Year 1998 (Public Law 105–45). Section 112 provides that no military construction appropriations may be used to award, to a foreign contractor, any contract estimated to exceed $1,000,000 for military construction in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf; except for contract awards for which the lowest responsive and responsible bid of a United States firm exceeds the lowest responsive and responsible bid of a foreign firm by greater than 20 percent; and except for contract awards for military construction on Kwajalein Atoll for which the lowest responsive and responsible bid is submitted by a Marshallese firm. Section 112 was effective upon enactment on September 30, 1997. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

DAC 91–13, Items I, VII, VIII, IX, XII, XV, XXI, XXII, XXV, XXVI, and XXVII

These final rules do not constitute significant revisions within the meaning of Federal Acquisition Regulation 1.501 and Public Law 98–577, and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). Please cite the applicable DFARS case number in correspondence.

DAC 91–13, Items VI, XI, XIV, XVIII, XX, XXIV, and XXXI

DoD certifies that these rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because:

Item VI, Multiyear Contracting and Other Miscellaneous Provisions—The rule primarily reorganizes and clarifies existing DFARS guidance pertaining to multiyear contracting, updates internal Government operating procedures for processing Economy Act orders, and makes minor amendments to reflect existing statutory and regulatory requirements.

Item XI, Duty-Free Entry—The rule does not constitute a change in policy but is a clarification of implementing procedures pertaining to duty-free entry of supplies and the North American Free Trade Agreement.

Item XIV, Contingent Fees—Foreign Military Sales—Most firms that pay or receive contingent fees on foreign military sales are not small business concerns.

Item XVIII, Cost Reimbursement Rules for Indirect Costs—Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require application of the FAR or DFARS cost principles.

Item XX, Earned Value Management Systems—The rule only applies to contractors for certain major defense programs, and eliminates the requirement that such contractors use a unique management control system for DoD contracts.

Item XXIV, Architect-Engineer Selection Process—The rule streamlines, but does not significantly alter, the process for selection of firms for architect-engineer contracts.

Item XXXI, Reporting of Contract Performance Outside the United States—Most contractors that submit reports of contract performance outside the United States are not small business concerns.

DAC 91–13, Item XXIII

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the DFARS changes contained in this rule apply only to contracts for military construction on Kwajalein Atoll that are estimated to exceed $1,000,000; DoD awards approximately two such

contracts annually. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D307 in correspondence.

DAC 91–13, Items X, XIX, XXVIII, and XXX

A final regulatory flexibility analysis has been performed for each of these rules. A copy of the analyses may be obtained from the address specified herein. Please cite the applicable DFARS case number in correspondence. The analyses are summarized as follows:

Item X, Buy American Act Exception for Information Technology Products (DFARS Case 97–D022)

This final rule implements the determination by the Under Secretary of Defense (Acquisition and Technology) (USD(A&T)) that it is not in the public interest to apply the restrictions of the Buy American Act to U.S. made information technology products, in acquisitions subject to the Trade Agreements Act. The legal basis for the rule is 41 U.S.C. 10a, which provides an exception to the requirements of the Buy American Act if the head of the agency determines that application of the restrictions is not in the public interest. The objective of the rule is to reduce burdensome recordkeeping and tracking requirements imposed on U.S. manufacturers of information technology products and to remove the competitive disadvantage imposed on some U.S. manufacturers of information technology products, when competing with foreign offerors of eligible information technology products against an offeror of an information technology product that qualifies as a domestic product under the Buy American Act. In acquisitions subject to the Trade Agreements Act, the rule provides that offers of U.S. made information technology products in Federal Supply Group 70 or 74 will be evaluated without regard to whether the product qualifies as a domestic product. The different rules of origin under the Buy American Act and the Trade Agreements Act result in disproportionately burdensome recordkeeping requirements on firms offering information technology products, because eligible offers under the Trade Agreements Act are exempt from the Buy American Act, but offers of U.S. made products are not exempt. This rule will relieve U.S. manufacturers of information technology products from the burden of researching and documenting the origin of components for information technology products, because the Buy American Act component test no longer applies. The rule will also simplify the evaluation of offers because, for acquisitions subject to the determination, there is only one class of U.S. made products, and no preference for domestic products. There were no public comments in response to the initial regulatory flexibility analysis prepared for the proposed rule published in the **Federal Register** at 62 FR 47407 on September 9, 1997. The rule will apply to all offerors/contractors offering information technology products in Federal Supply Group 70 or 74 to DoD, in acquisitions valued at $190,000 or more. Based on DD Form 350 data from the Washington Headquarters Services, in fiscal year 1996, DoD awarded 735 contracts meeting these criteria to 612 contractors, of which 214 were small businesses. The final rule does not impose any new reporting or recordkeeping requirements. The rule will result in a reduction of paperwork burden on offerors. There are no significant alternatives to the rule that would accomplish the stated objectives yet reduce any negative impact on small entities. This rule is expected to have a generally positive impact on small entities, because USD(A&T) has determined that removal of the competitive disadvantage for some U.S. made information technology end products, and the removal of burdensome requirements on U.S. manufacturers to separately track domestic and foreign components, outweighs the possible increase in use of foreign components.

Item XIX, Finance (DFARS Case 95–D710)

This final rule supplements the FAR rules published as Item VII of Federal Acquisition Circular 90–32 on September 18, 1995 (60 FR 48272), and Items I and IV of Federal Acquisition Circular 90–33 on September 26, 1995 (60 FR 49707 and 60 FR 49728). These DFARS revisions include the addition of 232.2, Commercial Item Purchase Financing, and 232.10, Performance-Based Payments; the deletion of 232.173, Reduction or Suspension of Contract Payments Upon Finding of Fraud, and 232.970, Payment of Subcontractors, since equivalent coverage is now provided in the FAR; and a number of editorial changes to reflect revisions made in the FAR. One of the issues raised by several respondents relates to the prompt payment periods specified in the rule: 30 days for commercial advance payments, and 14 days for commercial interim and performance-based payments. The respondents advocate the 7 days now allowed for progress payments. The DoD Contract Finance Committee made an assessment that no changes should be made to the prompt payment times in the DFARS rule. The payment period (14 days) for performance-based payments reflects the likely additional time required for verification of the contractor's claimed performance and analysis of what often will be a relatively extensive compilation of performance events. Thus, more time is allowed than for cost-based progress payments (7 days). The commercial advance payments period reflects the anticipated timing of most such requests. These requests for payment are expected to occur at the beginning of the contract, possibly being keyed to the actual contract signing date. Thus, a 30-day period has been allowed to enable the payment office to receive the contract, enter it into the payment office computer system, and process the contractor's request for payment. The commercial interim payment normally is expected to be submitted during the life of the contract, and after the payment office is prepared to process payment of such requests. A 14-day payment period has been adopted as a payment time reasonably capable of accommodating the wide diversity anticipated for commercial payment terms. The prompt payment periods established in the DFARS are shorter than the equivalent standard prompt payment periods (30 days) in FAR 32.906, and, thus, are more beneficial for small entities than the existing FAR policy. A second issue raised by several respondents concerns the provisions relating to the list of financial and other information that the Government must obtain to determine the financial responsibility of contractors. One respondent indicated its ''concern with the substantial burdens that will be placed on the contracting officer and offeror.'' The requirement, stated in section 232.072 of the rule, was transferred verbatim from DFARS 232.172. This DFARS rule makes no policy change, only an editorial change to move the DFARS language to correspond to certain changes made to the FAR. In addition, the contracting officer is only required to obtain information sufficient to make a determination of the contractor's

financial responsibility. The changes made to the DFARS by this rule will apply to large and small entities whose DoD contracts include performance-based or commercial (advance or interim) type of financing. For the 11 months of available fiscal year 1997 DD Form 350 data (October 1996 through August 1997), less than 0.5 percent of small business contracts (98 out of a total of 40,102) used commercial or performance-based financing. Accordingly, the final rule does not impact a significant number of small entities. The rule imposes no reporting, recordkeeping, or other compliance requirements. Various alternatives involving shorter prompt payment periods were considered, but, as previously explained, were rejected since their implementation would be exceptionally costly and burdensome on payment offices.

Item XXVIII, Certification of Requests for Equitable Adjustment (DFARS Case 97–D302)

This rule finalizes, with changes, the interim rule published in the **Federal Register** on July 11, 1997 (62 FR 37146). The interim rule amended the DFARS to implement 10 U.S.C. 2410(a), which requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete. There were no comments in response to the initial regulatory flexibility analysis prepared for the interim rule. The primary impact of the rule relates to requests in the range of $100,000 to $500,000, because requests in excess of $500,000 generally require submission of cost or pricing data and certification thereof. Many of the firms requesting equitable adjustment in amounts of $100,000 to $500,000 are construction contractors. It is estimated that the rule will affect approximately 330 small entities annually. Accounting skills will be necessary to provide the cost data to support the certification. The rule minimizes the economic impact on small entities, because the certification requirements of the rule apply only to requests exceeding the simplified acquisition threshold, and because the certification is limited to only that which is specifically required by 10 U.S.C. 2410(a). There is no other known alternative that would be consistent with the stated objective yet further reduce the burden on small entities.

Item XXX, Specialty Metals—Agreements With Qualifying Countries (DFARS Case 97–D007)

This final rule amends the clause at DFARS 252.225–7014 to make the exception in the clause consistent with the Berry Amendment (10 U.S.C. 2241 Note) and with the existing DFARS text at 225.7001–2(i). The objective of the rule is to clearly and accurately implement the Berry Amendment, which provides an exception to domestic source restrictions for the procurement of specialty metals, where such procurement is necessary in furtherance of agreements with foreign governments in which both governments agree to remove barriers to purchase of supplies produced in the other country. There were no public comments in response to the initial regulatory flexibility analysis or the proposed rule published in the **Federal Register** at 62 FR 23741 on May 1, 1997. The clause at DFARS 252.225–7014, Preference for Domestic Specialty Metals, is prescribed for use in all solicitations and contracts exceeding the simplified acquisition threshold that require delivery of an article containing specialty metals. The clause is prescribed for use with its Alternate I if the article containing specialty metals is for one of certain major programs. The basic clause only restricts the direct acquisition of specialty metals by the prime contractor, whereas Alternate I flows down the restriction to subcontractors at any tier. The rule does not affect the already unrestricted sources of specialty metals when acquiring qualifying country end products or when acquiring components including specialty metals for use in an end product for other than a major program. The rule does loosen the restriction on domestic specialty metals for prime contractors providing domestic or nonqualifying country end products, permitting them to incorporate specialty metals melted in a qualifying country (for both major and nonmajor programs); or qualifying country components containing specialty metals of unrestricted source for use in end products for major programs. Because the components subject to increased foreign competition are at a subcontract level, it is not possible to more specifically identify the items or whether they are produced by small business concerns. The rule imposes no new reporting, recordkeeping, or compliance requirements on offerors or contractors. One alternative considered was to require that the specialty metals incorporated in articles manufactured in a qualifying country also be melted in a qualifying country. This approach could slightly reduce the extent of foreign competition facing domestic entities. However, this approach appeared to go beyond the requirements of the statute being implemented.

D. Paperwork Reduction Act

DAC 91–13, Items I, VI, VII, VIII, IX, XII, XIV, XV, XVIII, XIX, XX, XXI, XXII, XXIV, XXV, XXVI, XXVII, and XXX

The Paperwork Reduction Act does not apply, because these rules contain no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

DAC 91–13, Items X, XI, XXIII, XXVIII, and XXXI

The Paperwork Reduction Act applies. The Office of Management and Budget (OMB) has approved the information collection requirements as follows:

Item	OMB Control No.
X	0704–0187; 0704–0259
XI	0704–0229
XXIII	0704–0255
XXVIII	0704–0397
XXXI	0704–0229

E. Summary of Amendments

Defense Acquisition Circular (DAC) 91–13 amends the Defense Federal Acquisition Regulation Supplement (DFARS) 1991 edition. The amendments are summarized as follows:

Item I—Approval of Nonstatutory Certification Requirements (DFARS Case 97–D301)

This final rule adds a new section at DFARS 201.107 and amends 201.304 to implement Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), as amended by Section 4301 of the Clinger-Cohen Act of 1996 (Public Law 104–106). Section 29 provides that a requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless the certification requirement is specifically imposed by statute or approved in writing by the head of the executive agency.

Item II—Contract Action Reporting (DFARS Case 97–D013)

This final rule was issued by Departmental Letter 97–016, effective October 1, 1997 (62 FR 44221, August 20, 1997). The rule amends DFARS 204.670–2, 253.204–70 and 253.204–71 to revise DD Form 350 and DD Form

1057 contract action reporting requirements for compliance with the Clinger-Cohen Act of 1996 (Public Law 104–106) and to enhance data collection procedures.

Item III—Data Universal Numbering System (DUNS) Number (DFARS Case 97–D019)

This final rule was issued by Departmental Letter 97–020, effective October 1, 1997 (62 FR 48181, September 15, 1997). The rule amends DFARS 204.72 and 253.204–70 to replace guidance on use of DUNS numbers with references to the FAR guidance on that subject, and to remove guidance on locally developed coding systems that are no longer used.

Item IV—Single Process Initiative (DFARS Case 97–D014)

This interim rule was issued by Departmental Letter 97–017, effective August 20, 1997 (62 FR 44223, August 20, 1997). The rule adds guidance at DFARS 211.273 and 242.302(a) (S–70), and a contract clause at 252.211–7005, to implement the policy set forth in OUSD(A&T) memorandum dated April 30, 1997, as it relates to the Single Process Initiative (SPI) and new contracts. The rule encourages offerors to propose the use of nongovernment specifications and industrywide practices that meet the intent of military or Federal specifications and standards, and establishes that, in procurements of previously developed items, SPI processes shall be considered valid replacements for military or Federal specifications or standards, absent a specific determination to the contrary.

Item V—Truth in Negotiations and Related Changes (DFARS Case 95–D708)

This final rule was issued by Departmental Letter 97–015, effective July 29, 1997 (62 FR 40471, July 29, 1997). The rule amends DFARS parts 204, 215, 216, 232, 239, and 252 to update requirements pertaining to the submission of cost or pricing data. The rule also removes requirements pertaining to work measurement systems, as Section 2201(b) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) repealed 10 U.S.C. 2406, which was the primary statute governing work measurement systems.

Item VI—Multiyear Contracting and Other Miscellaneous Provisions (DFARS Case 95–D703)

This final rule removes obsolete language at DFARS 216.301–3; revises subpart 217.1 to reorganize and clarify guidance on multiyear contracting; revises Subpart 217.5 to update guidance on processing interagency orders under the Economy Act; adds guidance at 233.204–70 and 250.102–70 pertaining to statutory limitations on Congressionally directed payment of a claim or request for equitable adjustment or relief; and amends subpart 237.2 to reflect the current numbering of FAR subpart 37.2.

Item VII—Qualified Nonprofit Agencies for the Blind or Severely Disabled (DFARS Case 97–D310)

This final rule amends DFARS 219.703 to implement Section 835 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). Section 835 amends 10 U.S.C. 2410d to extend, through September 30, 1999, the authority for contractors to claim credit toward their small business subcontracting goals for subcontracts awarded to qualified nonprofit agencies for the blind or severely disabled.

Item VIII—Pilot Mentor-Protégé Program (DFARS Case 97–D322)

This final rule amends DFARS 219.7104 and Appendix I to implement Section 821 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). Section 821 extends to September 30, 1999, the date by which an interested company must apply for participation as a mentor firm under the DoD Pilot Mentor-Protégé Program; and extends to September 30, 2000, the date by which a mentor firm must incur costs in order to be eligible for reimbursement under the Program.

Item IX—Recovered Material Certification (DFARS Case 97–D031)

This final rule amends DFARS 223.404 to reflect the FAR revisions that were published as Item V of Federal Acquisition Circular 97–01. The FAR revisions eliminated the requirement for agencies other than the Environmental Protection Agency (EPA) to specify minimum recovered material content standards for designated items, and eliminated the requirement for contractors to provide annual certifications under the clause at FAR 52.223–9, Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Items.

Item X—Buy American Act Exception for Information Technology Products (DFARS Case 97–D022)

This final rule adds a new provision at DFARS 252.225–7020, Trade Agreements Certificate, and a new clause at 252.225–7021, Trade Agreements, and makes other amendments in parts 212, 225, and 252 to implement the determination made by the Under Secretary of Defense (Acquisition and Technology), on May 16, 1997, that it is not in the public interest to apply the restrictions of the Buy American Act to U.S. made information technology products, in acquisitions subject to the Trade Agreements Act.

Item XI—Duty-Free Entry (DFARS Case 96–D020)

This final rule amends DFARS Parts 225, 242, and 252 to clarify guidance regarding duty-free entry of supplies and implementation of the North American Free Trade Agreement.

Item XII—Trade Agreements Threshold (DFARS Case 97–D040)

This final rule amends DFARS 225.408(a) to increase, from $50,000 to $53,150, the threshold for use of the clause at 252.225–7036, North American Free Trade Agreement Implementation Act. The increase is based on the cumulative rate for the Producer Price Index for Finished Goods, as reported by the U.S. Bureau of Labor Statistics, and as notified to the NAFTA parties by the U.S. Department of State.

Item XIII—Application of Berry Amendment (DFARS Case 96–D333)

This final rule was issued by Departmental Letter 97–018, effective September 8, 1997 (62 FR 47153, September 8, 1997). The rule revises and finalizes the interim rule published as Item XXII of DAC 91–12, which implemented Section 8109 of the National Defense Appropriations Act for Fiscal Year 1997 (Public Law 104–208). Section 8109 provides that, in applying the domestic source restrictions of the Berry Amendment, the term ''synthetic fabric and coated synthetic fabric'' shall be deemed to include all textile fibers and yarns that are for use in such fabrics; and that the domestic source restrictions of the Berry Amendment shall apply to contracts and subcontracts for the procurement of commercial items. The final rule differs from the interim rule in that it amends DFARS 225.7002 and 252.225–7012 to expand the list of products that are exempt from the Berry Amendment restrictions on synthetic fabrics.

Item XIV—Contingent Fees—Foreign Military Sales (DFARS Case 96–D021)

The interim rule published as Item XXVII of DAC 91–12 is revised and finalized. The rule amends DFARS guidance pertaining to contingent fees for foreign military sales. The final rule differs from the interim rule in that it revises DFARS 225.7303–4 and

252.225–7027 to permit payment of contingent fees exceeding $50,000 under foreign military sales contracts if the foreign customer agrees to such fees in writing before contract award.

Item XV—Subcontracting Plans—Indian Incentives (DFARS Case 97–D309)

This final rule amends DFARS Subpart 226.1 to implement Section 8024 of the National Defense Appropriations Act for Fiscal Year 1998 (Public Law 105–56). Section 8024 provides that incentive payments under the Indian Incentive Program shall be available only to contractors that have submitted subcontracting plans pursuant to 15 U.S.C. 637, including comprehensive subcontracting plans submitted in accordance with the DoD test program.

Item XVI—Cost Principles (DFARS Case 95–D714)

This final rule was issued by Departmental Letter 97–019, effective September 8, 1997 (62 FR 47154, September 8, 1997). The rule amends DFARS Part 231 to implement Section 7202 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355). Section 7202 prohibits the expenditure of funds to assist any DoD contractor in preparing any material, report, list, or analysis with respect to the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed.

Item XVII—Allowability of Costs for Restructuring Bonuses (DFARS Case 97–D312)

This interim rule was issued by Departmental Letter 97–021, effective November 26, 1997 (62 FR 63035, November 26, 1997). The rule amends DFARS 231.205–6 to implement Section 8083 of the National Defense Appropriations Act for Fiscal Year 1998 (Public Law 105–56). Section 8083 prohibits the use of fiscal year 1998 funds to reimburse a contractor for costs paid by the contractor to an employee for a bonus or other payment in excess of the normal salary paid by the contractor to the employee, when such payment is part of restructuring costs associated with a business combination.

Item XVIII—Cost Reimbursement Rules for Indirect Costs (DFARS Case 96–D303)

This final rule removes the cost principle at DFARS 231.205–71 pertaining to defense capability preservation agreements. Section 1027 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) repealed the statute upon which this cost principle was based (Section 808 of Public Law 104–106).

Item XIX—Finance (DFARS Case 95–D710)

This final rule amends DFARS Part 232 to conform to the FAR revisions published as Item VII of FAC 90–32 and Items I and IV of FAC 90–33, which implemented provisions of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355). The rule adds a new subpart 232.2, Commercial Item Purchase Financing, and a new subpart 232.10, Performance-Based Payments; removes 232.173, Reduction or Suspension of Contract Payments Upon Finding of Fraud, and 232.970, Payment of Subcontractors, as equivalent guidance is now provided in FAR Part 32; and moves guidance pertaining to responsibility of contractors from 232.172 to 232.072, with no change in policy.

Item XX—Earned Value Management Systems (DFARS Case 96–D024)

The interim rule published in Item XXXIII of DAC 91–12 is revised and finalized. The rule amends DFARS Parts 234, 242, and 252 to recognize industry-standard guidelines for earned value management systems as an alternative to DoD-unique cost/schedule control systems under DoD contracts. The final rule differs from the interim rule in that it makes minor clarifying amendments at 234.005–70, 242.1107–70, and 252.234–7000; amends 252.234–7001 to clarify the timing of the initial application of the earned value management system and the integrated baseline reviews; and amends 252.242–7005 for consistency with the industry standard, Guidelines for Earned Value Management Systems.

Item XXI—Research and Development Definitions (DFARS Case 97–D021)

This final rule revises DFARS 235.001 to update the definitions pertaining to research and development, for consistency with the terms defined in DoD 7000.14–R, Financial Management Regulation.

Item XXII—Report of 10-Year Term Contracts (DFARS Case 97–D303)

This final rule removes DFARS 235.002, which required departments and agencies to notify Congress of any research and development contract with a period of performance exceeding 10 years. Section 1062(c) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106) repealed the statute upon which this requirement was based (10 U.S.C. 2352).

Item XXIII—Construction in Foreign Countries (DFARS Case 97–D307)

This interim rule amends DFARS Part 236 and adds a new provision at 252.236–7012 to implement Section 112 of the Military Construction Appropriations Act for Fiscal Year 1998 (Public Law 105–45). Section 112 provides that no military construction appropriations may be used to award, to a foreign contractor, any contract estimated to exceed $1,000,000 for military construction in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, except for: (1) Contract awards for which the lowest responsive and responsible bid of a United States firm exceeds the lowest responsive and responsible bid of a foreign firm by more than 20 percent, and (2) contract awards for military construction on Kwajalein Atoll for which the lowest responsive and responsible bid is submitted by a Marshallese firm.

Item XXIV—Architect-Engineer Selection Process (DFARS Case 97–D015)

This final rule revises DFARS 236.602 to streamline the process for selection of firms for architect-engineer contracts. The rule eliminates requirements for formal constitution and minimum size of preselection boards; eliminates special approval requirements for selection of firms for contracts exceeding $500,000; and changes the criteria for inclusion of firms on a preselection list from ''the maximum practicable number of qualified firms'' to ''the qualified firms that have a reasonable chance of being considered as most highly qualified by the selection board.''

Item XXV—Overseas Architect-Engineer Services (DFARS Case 97–D034)

This final rule amends DFARS 236.609–70 to clarify the prescription for use of the provision at 252.236.–7011, Overseas Architect-Engineer Services—Restriction to United States Firms. The provision is used in solicitations for architect-engineer contracts that are funded with military construction appropriations; estimated to exceed $500,000; and to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf.

Item XXVI—Uncompensated Overtime (DFARS Case 97–D037)

This final rule removes DFARS 237.102, 237.170, and 252.237–7019. This guidance has been superseded by the guidance on performance-based contracting and uncompensated overtime at FAR 37.102, 37.115, and 52.237–10. A related editorial change is made at DFARS 215.608(a)(1).

Item XXVII—Telecommunications Services (DFARS Case 97–D305)

This final rule revises the guidance on multiyear contracting for telecommunications resources at DFARS 239.7405 to reflect the elimination of the Federal Information Resources Management Regulations (FIRMR), and revisions made to the Federal Property Management Regulations (FPMR), as a result of the Information Technology Management Reform Act of 1996 (Public Law 104–106).

Item XXVIII—Certification of Requests for Equitable Adjustment (DFARS Case 97–D302)

The interim rule issued by Departmental Letter 97–014 on July 11, 1997, is revised and finalized. The rule implements 10 U.S.C. 2410(a), as amended by Section 2301 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355). 10 U.S.C. 2410(a) requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete. The final rule differs from the interim rule in that it amends DFARS 243.204–70 to clarify that the certification required by 10 U.S.C. 2410(a) is different from the certification of a claim under the Contract Disputes Act; and amends 252.243–7002 to clarify requirements for contractor disclosure of facts to support a certification of a request for equitable adjustment.

Item XXIX—Designation of Hong Kong (DFARS Case 97–D023)

This final rule was issued by Departmental Letter 97–013, effective July 11, 1997 (62 FR 37147, July 11, 1997). The rule amends DFARS 252.225–7007 to add Hong Kong as a designated country under the Trade Agreements Act of 1979, as directed by the U.S. Trade Representative.

Item XXX—Specialty Metals—Agreements with Qualifying Countries (DFARS Case 97–D007)

This final rule amends the clause at DFARS 252.225–7014, Preference for Domestic Specialty Metals, to specify that the requirements of the clause do not apply to specialty metals melted, or incorporated in articles manufactured, in a qualifying country listed in DFARS 225.872–1.

Item XXXI—Reporting of Contract Performance Outside the United States (DFARS Case 97–D029)

This final rule amends the clause at DFARS 252.225–7026, Reporting of Contract Performance Outside the United States, to increase the reporting threshold from $25,000 to the simplified acquisition threshold, under contracts exceeding $500,000. The rule also increases the threshold for incorporation of the clause in first-tier subcontracts from $100,000 to $500,000.

Editorial Revisions

(1) DFARS 201.201–1 is amended to reflect the issuance of DoDI 5000.63, Defense Acquisition Regulations (DAR) System.

(2) DFARS 202.101 is amended to update the list of Army contracting activities and to show the correct title ''Under Secretary of Defense (Acquisition & Technology)'' in the definition of ''Head of the agency.''

(3) DFARS 204.7003(a)(1)(i) is amended to change the designation of the last paragraph from ''(L)'' to ''(M)'' (*this revision is made only in the loose-leaf edition of the DFARS*).

(4) DFARS 209.403 is amended to reflect the change in name of the ''Defense Mapping Agency'' to the ''National Imagery and Mapping Agency.''

(5) DFARS 214.202–5 is amended to show the correct number of the clause ''Brand Name or Equal.''

(6) DFARS Subparts 216.4 and 216.5 are amended to conform to the current numbering of the corresponding FAR subparts.

(7) DFARS 227.676 and 229.101 are amended to update the telephone and telefax numbers of the United States European Command.

(8) DFARS Part 241 is amended to conform to the current numbering of FAR Part 41 and to update other FAR references. Corresponding amendments are made at DFARS 252.241–7000 and 252.241–7001.

(9) DFARS 252.212–7001 is amended to remove references to DFARS 252.242–7002 and 252.249–7001, which were deleted in DAC 91–12.

(10) DFARS 252.229–7004 is amended to correct a typographical error in the clause title.

(11) DFARS Appendix G is amended to update activity and names and addresses.

Note: This DAC incorporates, into the loose-leaf edition of the DFARS, revisions previously issued by Departmental Letters 97–13 through 97–21. DFARS revisions contained in Departmental Letter 97–12 and departmental letters issued after 97–21 will be covered in a future DAC.

List of Subjects in 48 CFR Parts 201, 202, 204, 209, 212, 214, 215, 216, 217, 219, 223, 225, 226, 227, 229, 231, 232, 233, 234, 235, 236, 237, 239, 241, 242, 243, 250, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rules Adopted as Final With Changes

PARTS 225 AND 252—[AMENDED]

The interim rule that was published at 62 FR 30831 on June 5, 1997, is adopted as final with amendments at sections 225.7303–4 and 252.225–7027, as set forth below (see amendatory instructions 40 and 86).

PARTS 234, 242, AND 252—[AMENDED]

The interim rule that was published at 62 FR 9990 on March 5, 1997, is adopted as final with amendments at sections 234.005–70, 242.1107–70, 252.234–7000, 252.234–7001, and 252.242–7005, as set forth below (see amendatory instructions 53, 72, 90, 91, and 97).

PARTS 235, 243, AND 252—[AMENDED]

The interim rule that was published at 62 FR 37146 on July 11, 1997, is adopted as final with amendments at sections 243.204–70 and 252.243–7002, as set forth below (see amendatory instructions 73 and 98).

Amendments to 48 CFR Chapter 2 (Defense Federal Acquisition Regulation Supplement)

48 CFR Chapter 2 (the Defense Federal Acquisition Regulation Supplement) is amended as follows:

1. The authority citation for 48 CFR parts 201, 202, 204, 209, 212, 214, 215, 216, 217, 219, 223, 225, 226, 227, 229, 231, 232, 233, 234, 235, 236, 237, 239, 241, 242, 243, 250, 252, 253, and Appendices G and I to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 201.107 is added to read as follows:

201.107 Certifications.

In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), a new requirement for a certification by a contractor or offeror may not be included in the DFARS unless—

(1) The certification requirement is specifically imposed by statute; or

(2) Written justification for such certification is provided to the Secretary of Defense by the Under Secretary of Defense (Acquisition and Technology), and the Secretary of Defense approves in writing the inclusion of such certification requirement.

3. Section 201.201–1 is amended by revising paragraphs (c) and (d)(i)I. to read as follows:

201.201–1 The two councils.

(c) The composition and operation of the DAR Council is prescribed in DoDI 5000.63, Defense Acquisition Regulations (DAR) System.

(d)(i) * * *

I. PROBLEM: Succinctly state the problem created by current FAR and/or DFARS coverage and describe the factual and/or legal reasons necessitating the change to the regulation.

* * * * *

4. Section 201.304 is amended by revising the introductory text and paragraphs (1), (2), (3), and (5) to read as follows:

201.304 Agency control and compliance procedures.

Departments and agencies and their component organizations may issue acquisition regulations as necessary to implement or supplement the FAR or DFARS.

(1)(i) Approval of the Under Secretary of Defense (Acquisition and Technology) (USD(A&T)) is required before including in a department/agency or component supplement, or any other contracting regulation document such as a policy letter or clause book, any policy, procedure, clause, or form that—

(A) Has a significant effect beyond the internal operating procedures of the agency; or

(B) Has a significant cost or administrative impact on contractors or offerors.

(ii) Except as provided in paragraph (2) of this section, the USD(A&T) has delegated authority to the Director of Defense Procurement (USD(A&T)DP) to approve or disapprove the policies, procedures, clauses, and forms subject to paragraph (1)(i) of this section.

(2) In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), a new requirement for a certification by a contractor or offeror may not be included in a department/agency or component procurement regulation unless—

(i) The certification requirement is specifically imposed by statute; or

(ii) Written justification for such certification is provided to the Secretary of Defense by USD(A&T), and the Secretary of Defense approves in writing the inclusion of such certification requirement.

(3) Approval of USD(A&T)DP is required for any class deviation (as defined in FAR Subpart 1.4) from the FAR or DFARS, before its inclusion in a department/agency or component supplement or any other contracting regulation document such as a policy letter or clause book.

* * * * *

(5) Departments and agencies shall submit request for the Secretary of Defense, USD(A&T), and USD(A&T)DP approvals required by this section through the Director of the DAR Council.

* * * * *

PART 202—DEFINITIONS OF WORDS AND TERMS

5. Section 202.101 is amended in the definition of ''Contracting activity'' by revising the text under the heading ''ARMY''; and in the second sentence of the definition of ''Head of the agency'' by adding, in the parenthetical, after the word ''Acquisition'', the phrase ''& Technology''. The revised text reads as follows:

202.101 Definitions.

* * * * *

ARMY

Contract Support Agency
Office of the Deputy Chief of Staff for Research, Development and Acquisition, Headquarters, U.S. Army Materiel Command
Aviation and Missile Command
Industrial Operations Command
Communications-Electronics Command
Troop Support Agency
Tank-Automotive and Armaments Command
Training and Doctrine Command
Forces Command
Health Services Command
Military District of Washington
U.S. Army, Europe
National Guard Bureau
Corps of Engineers
Information Systems Command
Medical Research and Development Command
U.S. Army, Pacific
Military Traffic Management Command
Space and Strategic Defense Command
Eighth U.S. Army
Intelligence and Security Command
U.S. Army, South
Defense Supply Service-Washington
Directorate of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army
U.S. Army Special Operations Command

* * * * *

PART 204—ADMINISTRATIVE MATTERS

204.805 [Amended]

6. Section 204.805 is amended in the first sentence of paragraph (5), in the parenthetical, by removing ''15.804–2'' and inserting in its place ''15.403–4''.

PART 209—CONTRACTOR QUALIFICATIONS

209.403 [Amended]

7. Section 209.403 is amended in the definition of ''Debarring official'', in paragraph (1), by removing the entry ''Defense Mapping Agency—The General Counsel'' and inserting in its place the entry ''National Imagery and Mapping Agency—The General Counsel''.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

8. Section 212.301 is amended by redesigning paragraph (f)(i)(C) as paragraph (f)(i)(D) and by adding a new paragraph (f)(i)(C) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) * * *

(C) 252.225–7020, Trade Agreements Certificate.

* * * * *

PART 214—SEALED BIDDING

214.205–5 [Amended]

9. Section 214.202–5 is amended in paragraph (d) by revising the reference ''252.210–7000'' to read ''252.211–7003''.

PART 215—CONTRACTING BY NEGOTIATION

215.608 [Amended]

10. Section 215.608 is amended in the first sentence of paragraph (a)(1), in the parenthetical, by removing the reference ''237.170'' and inserting in its place the reference ''FAR 37.115''.

215.805–5 [Amended]

11. Section 215.805–5 is amended in paragraphs (a)(1)(A)(*1*) and (a)(1)(A)(*2*)

by removing the reference ''15.804–2(a)(1)'' and inserting in its place the reference ''15.403–4(a)(1)''.

PART 216—TYPES OF CONTRACTS

216.203–4 [Amended]

12. Section 216.203–4 is amended in paragraph (d)(xvi) by removing the reference ''15.804–1'' and inserting in its place the reference ''15.403–1''.

216.301 and 216.301–3 [Removed]

13. Sections 216.301 and 216.301–3 are removed.

216.403–70 [Removed]

14. Section 216.403–70 is removed.

15. Section 216.404 is revised to read as follows:

216.404 Fixed-price contracts with award fees.

Award-fee provisions may be used in fixed-price contracts as provided in 216.470

216.404–1 [Redesignated]

16. Section 216.404–1 is redesignated as section 216.405–1.

216.404–2 [Redesignated]

17. Section 216.404–2 is redesignated as section 216.405–2.

18. Section 216.405 is added to read as follows:

216.405 Cost-reimbursement incentive contracts.

216.501 [Amended]

19. Section 216.501 is amended in the introductory text of paragraph (a)(i) and in the first sentence of paragraph (a)(ii) by revising ''indefinite delivery'' to read ''indefinite-delivery''.

20. Sections 216.505 and 216.506 are revised to read as follows:

216.505 Ordering.

Orders placed under indefinite-delivery contracts may be issued on DD Form 1155, Order for Supplies or Services.

216.506 Solicitation provisions and contract clauses.

(d) If the contract is for the preparation of personal property for shipment or storage (see 247.271–4), substitute paragraph (f) at 252.247–7015, Requirements, for paragraph (f) of the clause at FAR 52.216–21, Requirements.

PART 217—SPECIAL CONTRACTING METHODS

21. Subpart 217.1 is revised to read as follows:

Subpart 217.1—Multiyear Contracting

Sec.
217.103 Definitions.
217.170 All multiyear contracts.
217.171 Multiyear contracts for services.
217.172 Multiyear contracts for supplies.
217.173 Multiyear contracts for weapon systems.
217.174 Mulityear contracts that employ economic order quantity procurement.

Subpart 217.1—Mulityear Contracting

217.103 Definitions.

Advance procurement, as used in this subpart, means an exception to the full funding policy that allows acquisition of long lead time items (advance long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a fiscal year in advance of that in which the related end item is to be acquired. Advance procurements may include materials, parts, components, and effort that must be funded in advance to maintain a planned production schedule.

217.170 All multiyear contracts.

(a) Before a multiyear contract is awarded, the cost of that contract shall be compared against the cost of an annual procurement approach, using a present value analysis. The multiyear contract shall not be awarded unless the analysis shows that it results in the lowest cost (Section 9021 of Pub. L. 101–165 and similar sections in subsequent Defense appropriations acts).

(b) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 10 days before termination of any multiyear contract (Section 9021 of Pub. L. 101–165 and similar sections in subsequent Defense appropriations acts).

(c) The Secretary of Defense may instruct the head of the agency proposing a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items to be procured over the life of the contract (10 U.S.C. 2306b(j)).

(d) Every multiyear contract must comply with FAR 17.104(c), unless an exception is approved through the budget process in coordination with the cognizant comptroller.

217.171 Multiyear contracts for services.

(a) *10 U.S.C. 2306(g).* (1) DoD may enter into multiyear acquisitions for the following services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated:

(i) Operation, maintenance, and support of facilities and installations.

(ii) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.

(iii) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training).

(iv) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(2) This authority may be used as long as the contract does not extend beyond 5 years.

(b) *10 U.S.C. 2829.* (1) The head of the agency may enter into multiyear contracts for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year from annual appropriations for that year.

(2) This authority may be used as long as the contract does not extend beyond 4 years.

(c) Award of a multiyear contract for services requires a written determination by the head of the agency (10 U.S.C. 2306(g)(1)) that—

(1) There will be a continuing need for the services and incidental supplies;

(2) Furnishing the services and incidental supplies will require—

(i) A substantial initial investment in plant or equipment; or

(ii) The incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(3) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations (e.g., economic lot purchases and more efficient production rates).

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems. For policies that apply only to multiyear contracts for weapon systems, see 217.173.

(b) A multiyear contract for supplies may be used if, in addition to the conditions listed in FAR 17.105–1(b), the use of such a contract will promote the national security of the United States.

(c) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 30 days before the contracting officer awards a multiyear contract

including an unfunded contingent liability in excess of $20 million (Section 9021 of Pub. L. 101–165 and similar sections in subsequent Defense appropriations acts).

(d) Agencies shall establish reporting procedures to meet the requirements of paragraph (c) of this section. Submit copies of the notifications to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology) (OUSD(A&T)DP), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD(C)(P/B)).

217.173 Multiyear contracts for weapon systems.

(a) As authorized by 10 U.S.C. 2306b(a) and subject to the conditions in paragraph (b) of this section, the head of the agency may enter into a multiyear contract for—

(1) A weapon system and associated items, services, and logistics support for a weapon system; and

(2) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates (see 217.174 regarding economic order quantity procurement).

(b) The following conditions must be satisfied before a multiyear contract may be awarded under the authority described in paragraph (a) of this section:

(1) The multiyear exhibits required by DoD 7000.14–R, Financial Management Regulation, are included in the agency's budget estimate submission and the President's budget request.

(2) The Secretary of Defense certifies to Congress that the current 5-year defense program fully funds the support costs associated with the multiyear program (10 U.S.C. 2306b(i)(1)(A)). Information supporting this certification shall be submitted to USD(C)(P/B) for transmission to Congress through the Secretary of Defense.

(3) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities (10 U.S.C. 2306b(i)(1)(B)). Information supporting the agency's determination that this requirement has been met shall be submitted to USD(C)(P/B) with the information supporting the certification required by paragraph (b)(2) of this section.

(4) If the value of the multiyear contract exceeds $500,000,000, the applicable Defense appropriations act specifically provides that a multiyear contract may be used to procure the particular system or system component (Section 9021 of Pub. L. 101–165 and similar sections in subsequent Defense appropriations acts).

(5) All other requirements of law are met and there are no other statutory restrictions on using a multiyear contract for the specific system or component (Section 9021 of Pub. L. 101–165 and similar sections in subsequent Defense appropriations acts). One such restriction may be the achievement of specified cost savings. If the agency finds, after negotiations with the contractor(s), that the specified savings cannot be achieved, the head of the agency shall assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law's specific savings requirement. The request shall—

(i) Quantify the savings that can be achieved;

(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details regarding the negotiated contract terms and conditions; and

(iv) Be submitted to OUSD(A&T)DP for transmission to Congress via the Secretary of Defense and the President (10 U.S.C. 2306b(i)(2)).

217.174 Multiyear contracts that employ economic order quantity procurement.

(a) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 30 days before awarding—

(1) A multiyear contract providing for economic order quantity purchases in excess of $20 million in any year; or

(2) A contract for advance procurement leading to a mulityear contract that employs economic order quantity procurement in excess of $20 million in any year (Section 9021 of Pub. L. 101–165 and similar sections in subsequent Defense appropriations acts).

(b) Before initiating an advance procurement, the contracting officer shall verify that it is consistent with DoD policy (e.g., Part 3 of DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, and the full funding policy in Volume 2A, Chapter 1, of DoD 7000.14–R, Financial Management Regulation).

22. Subpart 217.5 is revised to read as follows:

Subpart 217.5—Interagency Acquisitions Under the Economy Act

Sec.
217.503 Determinations and findings requirements.
217.504 Ordering procedures.

217.503 Determinations and findings requirements.

(c) If requested, the contracting officer who normally would contract for the requesting activity should advise in the determination process.

217.504 Ordering procedures.

(a) When the requesting agency is within DoD, a copy of the executed D&F shall be furnished to the servicing agency as an attachment to the order. When a DoD contracting office is acting as the servicing agency, a copy of the executed D&F shall be obtained from the requesting agency and placed in the contract file for the Economy Act order.

PART 219—SMALL BUSINESS PROGRAMS

23. Section 219.703 is amended in paragraph (a) by revising the introductory text to read as follows:

291.703 Eligibility requirements for participating in the program.

(a) Qualified nonprofit agencies for the blind and other severely disabled, that have been approved by the Committee for Purchase from People Who Are Blind or Severely Disabled under the Javits-Wagner-O'Day Act (41 U.S.C. 46–48), are eligible to participate in the program as a result of 10 U.S.C. 2410d and Section 9077 of Pub. L. 102–396 and similar sections in subsequent Defense appropriations acts. Under this authority, subcontracts awarded to such entities may be counted toward the prime contractor's small business subcontracting goal through fiscal year 1999.

* * * * *

219.7104 [Amended]

24. Section 719.7104 is amended in the last sentence of paragraph (b) and in paragraph (d) by revising the date ''October 1, 1999'' to read ''October 1, 2000''.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

25. Section 223.404 is amended by revising paragraph (b)(3) introductory text and paragraph (b)(4) to read as follows:

223.404 Procedures.

(b)(3) A contract for an EPA designated item that does not meet the EPA minimum recovered material standards shall not be awarded before approval of the written determination required by FAR 23.404(b)(3). The approving official shall be—

* * * * *

(4) Departments and agencies shall centrally collect information submitted in accordance with the clause at FAR 52.223–9 for reporting to the cognizant activity in the Office of the Secretary of Defense.

PART 225—FOREIGN ACQUISITION

26. Section 225.000–70 is amended by revising paragraphs (c), (j), and (m) to read as follows:

225.000–70 Definitions.

* * * * *

(c) *Domestic end product* has the meaning given in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the meaning in FAR 25.101.

* * * * *

(j) *Qualifying country component* and *qualifying country end product* are defined in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. ''Qualifying country end product'' is also defined in the clause at 252.225–7021, Trade Agreements.

* * * * *

(m) *U.S. made end product* is defined in the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program and; 252.225–7021, Trade Agreements.

27. Section 225.000–71 is amended by revising paragraphs (a)(1)(i) and (c)(2) to read as follows:

225.000–71 General guidelines.

* * * * *

(a) * * *

(1) * * *

(i) Defense authorization or appropriations acts (see Subpart 225.70); or

* * * * *

(c) * * *

(2) If the product is an eligible product under Subpart 225.4, evaluate the offer under FAR 25.402, 225.105, and 225.402.

* * * * *

28. Section 225.102 is amended by revising paragraph (a)(3)(A); by redesignating paragraphs (a)(3)(B) and (a)(3)(C) as paragraphs (a)(3)(C) and (a)(3)(D), respectively; and by adding a new paragraph (a)(3)(B) to read as follows:

225.102 Policy.

(a) * * *

(3)(A) Specific public interest exceptions for DoD for certain countries are in 225.872.

(B) The Under Secretary of Defense (Acquisition and Technology) has determined that, for procurements subject to the Trade Agreements Act, it is inconsistent with the public interest to apply the Buy American Act to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

* * * * *

29. Section 225.105 is amended by revising the introductory text and paragraphs (1), (2), and (3); and in Table 25–1 by revising Examples 2 and 3 to read as follows:

225.105 Evaluating offers.

Use the following procedures instead of those in FAR 25.105. These procedures do not apply to acquisitions of information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

(1) Treat offers of eligible end products under acquisitions subject to the Trade Agreements Act or NAFTA as if they were qualifying country offers. As used in this section, the term ''nonqualifying country offer'' may also apply to an offer that is not an eligible offer under a trade agreement (see Example 4 in Table 25–1, Evaluation).

(2) Except as provided in paragraph (3) of this section, evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (see Example 1 in Table 25–1, Evaluation).

(i) Nonqualifying country offers include duty in the offered price. When applying the factor, evaluate based on the inclusion of duty, whether or not duty is to be exempted. If award is made on the nonqualifying country offer and duty is to be exempted through inclusion of the clause at FAR 52.225–10, Duty-Free Entry, award at the offered price minus the amount of duty identified in the provision at 252.225–7003, Information for Duty-Free Entry Evaluation. See Example 1, Alternate II, in Table 25–1, Evaluation.

(ii) When a nonqualifying country offer includes more than one line item, apply the 50 percent factor—

(A) On an item-by-item basis; or

(B) On a group of items, if the solicitation specifically provides for award on a group basis.

(3) When application of the factor would not result in the award of a domestic end product, i.e., when no domestic offers are received (see Example 3 of Table 25–1, Evaluation) or when a qualifying country offer is lower than the domestic offer (see Example 2 of Table 25–1, Evaluation), evaluate nonqualifying country offers without the 50 percent factor.

(i) If duty is to be exempted through inclusion of the clause at FAR 52.225–10, Duty-Free Entry, evaluate the nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225–7003, Information for Duty-Free Entry Evaluation (see Examples 2 and 3, Alternate II, of Table 25–1, Evaluation). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(ii) If duty is not to be exempted, evaluate the nonqualifying country offer inclusive of duty. (See Examples 2 and 3, Alternate I, of Table 25–1, Evaluation.)

* * * * *

TABLE 25–1.—EVALUATION

* * * * * * *

Example 2

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:	
Nonqualifying Country Offer (including $100 duty)	$6,000
Domestic Offer	8,500
Qualifying Country Offer	7,800

TABLE 25–1.—EVALUATION—Continued

Award on Nonqualifying Country Offer. Since the qualifying country offer is lower than the domestic offer, the nonqualifying country offer is evaluated without the factor. Since duty is not being exempted for nonqualifying country offers, the offer is evaluated and award is made at the price inclusive of duty ($6,000).

Alternate II: Duty Exempted:

Nonqualifying Country Offer (including $1,000 duty)	$880,500
Domestic Offer	950,000
Qualifying Country Offer	880,000

Award on Nonqualifying Country Offer. Again, the qualifying country offer is lower than the domestic offer. The nonqualifying country offer is, therefore, evaluated without the factor. Since duty is being exempted for nonqualifying country offers, the duty identified by the offeror is subtracted from the offered price, which is evaluated and awarded at $879,500.

Example 3

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer (including $150 duty)	$9,600
Qualifying Country Offer	9,500

Award on Qualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is not being exempted and would be paid by the Government, the nonqualifying country offer is evaluated inclusive of duty.

Alternate II: Duty Exempted:

Nonqualifying Country Offer (including $1,000 duty)	$880,500
Qualifying Country Offer	880,000

Award on Nonqualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is being exempted, duty is subtracted from the nonqualifying country offer, which is evaluated and awarded at $879,500.

* * * * * * *

30. Section 225.109 is amended in paragraph (a) by revising the last sentence; in the introductory text of paragraph (d) by removing the word ''which'' and inserting in its place the word ''that''; and by revising paragraph (d)(i) to read as follows:

225.109 Solicitation provisions and contract clauses.

(a) * * * Use the provision in any solicitation that includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

* * * * *

(d) * * *

(i) Do not use the clause if an exception to the Buy American Act or Balance of Payments Program is known to apply or if using the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program; 252.225–7021, Trade Agreements; or 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

* * * * *

31. Section 225.109–70 is revised to read as follows:

225.109–70 Additional provisions and clauses.

(a) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(1) 252.225–7001, Buy American Act and Balance of Payments Program.

(2) 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program.

(3) 252.225–7021, Trade Agreements.

(4) 252.225–7036, Buy American Act—North American Trade Agreement Implementation Act—Balance of Payments Program.

(b) When only domestic end products are acceptable, the solicitation must make a statement to that effect.

32. Section 225.302 is amended by revising paragraphs (a)(iii) and (a)(iv); by adding a new paragraph (a)(v); in paragraph (b)(i) under the heading ''ARMY'' by removing the entry ''Deputy Chief of Staff for Procurement U.S. Army Material Command'' and inserting in its place the entry ''Deputy Chief of Staff for Research, Development and Acquisition, Headquarters, U.S. Army Material Command''; and in paragraph (b)(i) by removing the heading ''DEFENSE MAPPING AGENCY'' and inserting in its place the heading ''NATIONAL IMAGERY AND MAPPING AGENCY''. The revised and added text reads as follows:

225.302 Policy.

(a) * * *

(iii) Do not apply to qualifying country end products;

(iv) Do not apply to articles, materials, or supplies produced or manufactured in Panama when purchased by and for the use of U.S. forces in Panama; and

(v) For acquisitions subject to the Trade Agreements Act, do not apply to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

* * * * *

33. Section 225.402 is amended by revising paragraph (a)(1) to read as follows:

225.402 Policy.

(a) * * *

(1) See 225.105 for evaluation of eligible products and U.S. made end products, except when acquiring information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

* * * * *

34. Section 225.408 is revised to read as follows:

225.408 Solicitation provisions and contract clauses.

(a)(i) Use the provision at 252.225–7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–8, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program.

(ii) Except as provided in paragraph (a)(iv) of this section, use the clause at 252.225–7007, Buy American—Trade Agreements—Balance of Payment Program, instead of the clause at FAR 52.225–9, Buy American Act-Trade Agreements-Balance of Payment Program. The clause need not be used where purchase from foreign sources is

restricted (see 225.403(c)(1)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction. For procurements by the U.S. Army Corps of Engineers, use the clause with its Alternate I.

(iii) Use the provision at 252.225–7020, Trade Agreements Certificate, in all solicitations that include the clause at 252.225–7021, Trade Agreements.

(iv) Use the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–9, Buy American Act—Trade Agreements—Balance of Payments Program, when acquiring information technology products in Federal Supply Group 70 or 74. For procurements by the U.S. Army Corps of Engineers, use the clause with its Alternate I.

(v)(A) Use the provision at 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payment Program Certificate, instead of the provision at FAR 52.225–20, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(B)(*1*) Use the basic provision when the basic clause at 252.225–7036 is used.

(*2*) Use the provision with its Alternate I when the clause at 252.225–7036 is used with its Alternate I.

(vi)(A) Use the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the clause at FAR 52.225–21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(c)(1)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(B)(*1*) Use the clause in all solicitations and contracts for the items listed at 225.403–70, when the estimated value is $53,150 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(*2*) Use the clause with its Alternate I when the estimated value is between $25,000 and $53,150.

(C) Application of the procedures in 225.402(a) and the acquisition of noneligible and eligible products under the same solicitation may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items solicited. In such case, indicate in the schedule those items covered by the Act.

35. Section 225.602 is amended by revising the introductory text of paragraph (3) to read as follows:

225.602 Policy.

* * * * *

(3) Unless the supplies are entitled to duty-free treatment under a special category in the Harmonized Tariff Schedule of the United States (e.g., the Caribbean Basin Economic Recovery Act or NAFTA), or unless the supplies already have entered into the customs territory of the United States and duty already has been paid, DoD will issue duty-free entry certificates for—

* * * * *

36. Section 225.603 is amended by redesignating the text preceding paragraph (b) as paragraph (a); by revising newly designated paragraph (a); and in paragraph (b)(i)(D) introductory text, paragraph (b)(i)(E), and twice in paragraph (b)(ii) by removing ''DCMAO'' and inserting in its place ''DCMC''. The revised text reads as follows:

225.603 Procedures.

(a) *General.*

(i) *Preaward.*

(A) Unless duty was paid prior to submission of the offer, an offer of domestic end products with no nonqualifying country components, an offer of qualifying country end products, or an offer of eligible products under the Trade Agreements Act or NAFTA, should not include duty.

(B) Offers of U.S. made end products with nonqualifying country components, and offers that are neither qualifying country offers nor offers of eligible products under a trade agreement, should contain applicable duty.

(C) Exclude from the evaluation of domestic end products, or information technology end products in Federal Supply Group 70 or 74 in acquisitions subject to the Trade Agreements Act, any duty for nonqualifying country components listed in the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, for which duty-free entry will be granted.

(D) Except for acquisitions of information technology end products in Federal Supply Group 70 or 74 subject to the Trade Agreements Act, apply the evaluation procedures for the Buy American Act in accordance with 225.105.

(ii) *Award.* Exclude duty from the contract price for supplies (end products or components) that are to be accorded duty-free entry. If duty-free entry is granted to the successful offeror in accordance with the clause at FAR 52.225–10, Duty-Free Entry, and the clause at 252.225–7003, Information for Duty-Free Entry Evaluation, request that the offeror provide the list of foreign supplies that are subject to such duty-free entry, and list such supplies in the contract clause at 252.225–7008, Supplies to be Accorded Duty-Free Entry.

(iii) *Postaward.*

(A) Issue duty-free entry certificates for all qualifying country supplies in accordance with the policy at 225.602(3)(i) and the clause at 252.225–7009, Duty-Free Entry—Qualifying Country Supplies (End Products and Components); for all eligible products subject to trade agreements in accordance with the policy at 225.602(3)(ii) and the clause at 252.225–7037, Duty-Free Entry—Eligible End Products; and for other foreign supplies in accordance with the policy at 225.602(3)(iii) on contracts containing the clause at FAR 52.225–10, Duty-Free Entry; or (following to the extent practicable the procedures required by the clause at FAR 52.225–10, Duty-Free Entry, and the clause at 252.225–7010, Duty-Free Entry—Additional Provisions) on other contracts—

(*1*) That fall within one of the following categories:

(*i*) Direct purchases of foreign supplies under a DoD prime contract, whether title passes at point of origin or at destination in the United States, provided the contract states that the final price is exclusive of duty.

(*ii*) Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, follow the criteria stated in paragraph (a)(iii)(A)(1)(*iii*) of this section.

(*iii*) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-prime contract or fixed-price subcontract intervenes, provided the fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty.

(*2*) For which the supplies so purchased will be delivered to the

Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and for which duty will be paid if such supplies or any portion are used for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

(*3*) For which such acquisition abroad is authorized by the terms of the contract or subcontract or by the contracting officer.

(B) Under a fixed-price contract, negotiate an equitable reduction in the contract price if duty-free entry is granted for any nonqualifying country component not listed in the Schedule as duty-free, even if contract award was based on furnishing a domestic component or a qualifying country component.

* * * * *

37. Section 225.605–70 is revised to read as follows:

225.605–70 Additional solicitation provisions and contract clauses.

(a) Use the clause at 252.225–7009, Duty-Free Entry—Qualifying Country Supplies (End Products and Components), in solicitations and contracts for supplies and in solicitations and contracts for services involving the furnishing of supplies, except for solicitations and contracts for supplies for exclusive use outside the United States.

(b) Use the clause at 252.225–7037, Duty-Free Entry—Eligible End Products, in solicitations and contracts for supplies and services when the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program; 252.225–7021, Trade Agreements; or 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, is used.

(c) Use the clause at 252.225–7010, Duty-Free Entry—Additional Provisions, in solicitations and contracts that include the clause at FAR 52.225–10, Duty-Free Entry.

(d) Use the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, in solicitations that include the clause at FAR 52.225–10, Duty-Free Entry. Use the provision with its Alternate I when the clause at 252.225–7021, Trade Agreements, is used.

(e) Use the clause at 252.225–7008, Supplies to be Accorded Duty-Free Entry, in solicitations and contracts that provide for duty-free entry and that include the clause at FAR 52.225–10, Duty-Free Entry.

38. Section 225.872–4 is amended by revising the last sentence of the introductory text of paragraph (c), and paragraph (c)(2)4, to read as follows:

225.872–4 Evaluation of offers.

* * * * *

(c) * * * If the offer, as evaluated, is low or otherwise eligible for award, the contracting officer shall request an exemption of the Buy American Act/Balance of Payments Program as inconsistent with the public interest, unless another exception such as the Trade Agreements Act applies.

* * * * *

(2) * * *

4. To achieve the above objectives, the solicitation contained the (*title and number of the Buy American Act clause contained in the contract*). Offers were solicited from other sources and the offer received for (*qualifying country end item*) is found to be otherwise eligible for award.

* * * * *

225.7011–4 [Amended]

39. Section 225.7011–4 is amended in paragraph (b)(3) by removing the reference ''15.5'' and inserting in its place the reference ''15.6''.

40. Section 225.7303–4 is revised to read as follows:

225.7303–4 Contingent fees.

(a) Except as provided in paragraph (b) of this subsection, contingent fees are generally allowable under DoD contracts, provided the fees are determined by the contracting officer to be fair and reasonable and are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR Part 31 and FAR Subpart 3.4).

(b)(1) Under DoD 5105.38–M, Security Assistance Management Manual, Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) must provide that all U.S. Government contracts resulting from the Letters of Offer and Acceptance prohibit the reimbursement of contingent fees as an allowable cost under the contract, unless the payments have been identified and approved in writing by the foreign customer before contract award (see 225.7308(a)).

(2) For FMS to countries not listed in paragraph (b)(1) of this subsection, contingent fees exceeding $50,000 per FMS case shall be unallowable under DoD contracts, unless payment has been identified and approved in writing by the foreign customer before contract award.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

41. Section 226.103 is revised to read as follows:

226.103 Procedures.

(f) The contracting officer shall submit a request for funding of the Indian incentive to the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology, OUSD(A&T)SADBU, Room 2A340, 3061 Defense Pentagon, Washington, DC 20301–3061. Upon receipt of funding from OUSD(A&T)SADBU, the contracting officer shall issue a contract modification to add the Indian incentive funding for payment of the contractor's request for equitable adjustment as described at FAR 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

42. Section 226.104 is added to read as follows:

226.104 Contract clause.

(a) Also use the clause at FAR 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in contracts—

(i) With contractors that have comprehensive subcontracting plans approved under the test program described at 219.702(a); and

(ii) That contain the clause at 252.219–7004, Small, Small disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program).

PART 227—PATENTS, DATA, AND COPYRIGHTS

43. Section 227.676 is amended by revising paragraph (b) to read as follows:

227.676 Foreign patent interchange agreements.

* * * * *

(b) Assistance with patent rights and royalty payments in the United States European Command (USEUCOM) area of responsibility is available from HQ USEUCOM, ATTN: ECLA, Unit 30400, Box 1000, APO AE 09128; Telephone: DSN 430–8001/7263, Commercial 49–0711–680–8001/7263; Telefax: 49–0711–680–5732.

PART 229—TAXES

44. Section 229.101 is amended in paragraph (d)(i) by revising the last sentence to read as follows:

229.101 Resolving tax problems.

* * * * *

(d)(i) * * * For further information contact HQ USEUCOM, ATTN: ECLA, Unit 30400, Box 1000, APO AE 09128; Telephone: DSN 430–8001/7263, Commercial 49–0711–680–8001/7263; Telefax. 49–0711–680–5732.

* * * * *

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

231.205–71 [Removed]

45. Section 231.205–71 is removed.

PART 232—CONTRACT FINANCING

46. Sections 232.006, 232,006–5, 232.070, 232.071, 232.072, 232.072–1, 232.072–2 and 232.072–3 are added to read as follows:

232.006 Reduction or suspension of contract payments upon finding of fraud.

232.006–5 Reporting.

Departments and agencies in accordance with department/agency procedures, shall prepare and submit to the Under Secretary of Defense (Acquisition and Technology), through the Director of Defense Procurement, annual reports (Report Control Symbol DD–ACQ(A) 1891) containing the information required by FAR 32.006–5.

232.070 Responsibilities.

(a) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology) (OUSD(A&T)DP) is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures. Agency discretion under FAR Part 32 is at the DoD level and is not delegated to the departments and agencies. Proposals by the departments and agencies, to exercise agency discretion, shall be submitted to OUSD(A&T)DP through the DoD Contract Finance Committee (see 232.071).

(b) Departments and agencies are responsible for their day-to-day contract financing operations. Refer specific cases involving financing policy or important procedural issues to OUSD(A&T)DP for consideration through the department/agency Contract Finance Committee members (also see Subpart 204.1 for deviation request and approval procedures).

(c) The Under or Assistant Secretary, or other designated official, responsible for the comptroller function within the department or agency is the focal point for financing matters at the department/agency headquarters. Departments and agencies may establish contract financing offices at operational levels.

(1) Department/agency contract financing offices are—

(i) Army: Office of the Assistant Secretary of the Army (Financial Management);

(ii) Navy: Office of the Assistant Secretary of the Navy (Financial Management and Comptroller), Office of Financial Operations;

(iii) Air Force: Air Force Contract Financing Office (SAF/FMPB);

(iv) Defense agencies: Office of the agency comptroller.

(2) Contract financing offices should participate in—

(i) Developing regulations for contract financing;

(ii) Developing contract provisions for contract financing; and

(iii) Resolving specific cases that involve unusual contract financing requirements.

232.071 Contract Finance Committee.

(a) The Contract Finance Committee consists of—

(1) A representative of OUSD(A&T)DP, serving as the Chair;

(2) A representative of the Comptroller of the Department of Defense;

(3) A representative of the Defense Finance and Accounting Service;

(4) A representative of the Civilian Agency Acquisition Council (for matters pertaining to the FAR);

(5) A representative of the National Aeronautics and Space Administration (for matters pertaining to the FAR);

(6) An advisory consultant from the Defense Contract Audit Agency; and

(7) Two representatives of each military department and the Defense Logistics Agency (one representing contracting and one representing the contract finance office).

(b) The Committee—

(1) Advises and assists OUSD(A&T)DP in ensuring proper and uniform application of policies, procedures, and forms;

(2) Is responsible for formulating, revising, and promulgating uniform contract financing regulations;

(3) May recommend to the Secretary of Defense through OUSD(A&T)DP further policy directives on financing; and

(4) Meets at the request of the Chair or a member.

232.072 Financial responsibility of contractors.

Use the policies and procedures in this section in determining the financial capability of current or prospective contractors.

232.072–1 Required financial reviews.

The contracting officer shall perform a financial review when the contracting officer does not otherwise have sufficient information to make a positive determination of financial responsibility. In addition, the contracting officer shall consider performing a financial review—

(a) Prior to award of a contract, when—

(1) The contractor is on a list requiring preaward clearance or other special clearance before award;

(2) The contractor is listed on the Consolidated List of Contractors Indebted to the Government (Hold-Up List), or is otherwise known to be indebted to the Government;

(3) The contractor may receive Government assets such as contract financing payments or Government property;

(4) The contractor is experiencing performance difficulties on other work; or

(5) The contractor is a new company or a new supplier of the item.

(b) At periodic intervals after award of a contract, when—

(1) Any of the conditions in paragraphs (a)(2) through (a)(5) of this subsection are applicable; or

(2) There is any other reason to question the contractor's ability to finance performance and completion of the contract.

232.072–2 Appropriate information.

(a) The contracting officer shall obtain the type and depth of financial and other information that is required to establish a contractor's financial capability or disclose a contractor's financial condition. While the contracting officer should not request information that is not necessary for protection for the Government's interests, the contracting officer must insist upon obtaining the information that is necessary. The unwillingness or inability of a contractor to present reasonably requested information in a timely manner, especially information that a prudent business person would be expected to have and to use in the professional management of a business, may be a material fact in the determination of the contractor's responsibility and prospects for contract completion.

(b) The contracting officer shall obtain the following information to the extent required to protect the Government's interest. In addition, if the contracting officer concludes that information not listed in paragraphs (b)(1) through (b)(10) of this subsection is required to comply with 232.072–1, that

information should be requested. The information must be for the person(s) who are legally liable for contract performance. If the contractor is not a corporation, the contracting officer shall obtain the required information for each individual/joint venturer/partner:

(1) Balance sheet and income statement—

(i) For the current fiscal year (interim);

(ii) For the most recent fiscal year and, preferably, for the 2 preceding fiscal years. These should be certified by an independent public accountant or by an appropriate officer of the firm; and

(iii) Forecasted for each fiscal year for the remainder of the period of contract performance.

(2) Summary history of the contractor and its principal managers, disclosing any previous insolvencies—corporate or personal, and describing its products or services.

(3) Statement of all affiliations disclosing—

(i) Material financial interests of the contractor;

(ii) Material financial interests in the contractor;

(iii) Material affiliations of owners, officers, directors, major stockholders; and

(iv) The major stockholders if the contractor is not a widely-traded, publicly-held corporation.

(4) Statement of all forms of compensation to each officer, manager, partner, joint venturer, or proprietor, as appropriate—

(i) Planned for the current year;

(ii) Paid during the past 2 years; and

(iii) Deferred to future periods.

(5) Business base and forecast that—

(i) Shows, by significant markets, existing contracts and outstanding offers, including those under negotiation; and

(ii) Is reconcilable to indirect cost rate projections.

(6) Cash forecast for the duration of the contract (see 232.072–3).

(7) Financing arrangement information that discloses—

(i) Availability of cash to finance contract performance;

(ii) Contractor's exposure to financial crisis from creditor's demands;

(iii) Degree to which credit security provisions could conflict with Government title terms under contract financing;

(iv) Clearly stated confirmations of credit with no unacceptable qualifications;

(v) Unambiguous written agreement by a creditor if credit arrangements include deferred trade payments or creditor subordinations/repayment suspensions.

(8) Statement of all state, local, and Federal tax accounts, including special mandatory contributions, e.g., environmental superfund.

(9) Description and explanation of the financial effect of issues such as—

(i) Leases, deferred purchase arrangements, or patent or royalty arrangements;

(ii) Insurance, when relevant to the contract;

(iii) Contemplated capital expenditures, changes in equity, or contractor debt load;

(iv) Pending claims either by or against the contractor;

(v) Contingent liabilities such as guarantees, litigation, environmental, or product liabilities;

(vi) Validity of accounts receivable and actual value of inventory, as assets; and

(vii) Status and aging of accounts payable.

(10) Significant ratios such as—

(i) Inventory to annual sales;

(ii) Inventory to current assets;

(iii) Liquid assets to current assets;

(iv) Liquid assets to current liabilities;

(v) Current assets to current liabilities; and

(vi) Net worth to net debt.

232.072–3 Cash flow forecasts.

(a) A contractor must be able to sustain a sufficient cash flow to perform the contract. When there is doubt regarding the sufficiency of a contractor's cash flow, the contracting officer should require the contractor to submit a cash flow forecast covering the duration of the contract.

(b) A contractor's inability of refusal to prepare and provide cash flow forecasts or to reconcile actual cash flow with previous forecasts is a strong indicator of serious managerial deficiencies or potential contract cost or performance problems.

(c) Single or one-time cash flow forecasts are of limited forecasting power. As such, they should be limited to preaward survey situations. Reliability of cash flow forecasts can be established only by comparing a series of previous actual cash flows with the corresponding forecasts and examining the causes of any differences.

(d) Cash flow forecasts must—

(1) Show the origin and use of all material amounts of cash within the entire business unit responsible for contract performance, period by period, for the length of the contract (or until the risk of a cash crisis ends); and

(2) Provide an audit trail to the data and assumptions used to prepare it.

(e) Cash flow forecasts can be no more reliable than the assumptions on which they are based. Most important of these assumptions are—

(1) Estimated amounts and timing of purchases and payments for materials, parts, components, subassemblies, and services;

(2) Estimated amounts and timing of payments of purchase or production of capital assets, test facilities, and tooling;

(3) Amounts and timing of fixed cash charges such as debt installments, interest, rentals, taxes, and indirect costs;

(4) Estimated amounts and timing of payments for projected labor, both direct and indirect;

(5) Reasonableness of projected manufacturing and production schedules;

(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(7) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(8) Estimated amount and timing of cash receipt from other sources.

(f) The contracting officer should review the assumptions underlying the cash flow forecasts. In determining whether the assumptions are reasonable and realistic, the contracting officer should consult with—

(1) The contractor;

(2) Government personnel in the areas of finance, engineering, production, cost, and price analysis; or

(3) Prospective supply, subcontract, and loan or credit sources.

47. Subpart 232.1 is revised to read as follows:

Subpart 232.1—Non-Commercial Item Purchase Financing

Sec.
232.102 Description of contract financing methods.
232.102–70 Provisional delivery payments.
232.108 Financial consultation.

232.102 Description of contract financing methods.

(e)(2) Progress payments based on percentage or stage of completion are authorized only for contracts for construction (as defined in FAR 36.102), shipbuilding, and ship conversion, alteration, or repair. However, percentage or state of completion methods of measuring contractor performance may be used for performance-based payments in accordance with FAR Subpart 32.10.

232.102–70 Provisional delivery payments.

(a) The contracting officer may establish provisional delivery payments

to pay contractors for the costs of supplies and services delivered to and accepted by the Government under the following contract actions if undefinitized:

(1) Letter contracts contemplating a fixed-price contract.

(2) Orders under basic ordering agreements.

(3) Spares provisioning documents annexed to contracts.

(4) Unpriced equitable adjustments on fixed-price contracts.

(5) Orders under indefinite-delivery contracts.

(b) Provisional delivery payments shall be—

(1) Used sparingly;

(2) Priced conservatively; and

(3) Reduced by liquidating previous progress payments in accordance with the Progress Payments clause.

(c) Provisional delivery payments shall not—

(1) Include profit;

(2) Exceed funds obligated for the undefinitized contract action; or

(3) Influence the definitized contract price.

232.108 Financial consultation.

See 232.070 for offices to be consulted regarding financial matters with DoD.

48. Subpart 232.2 is added to read as follows:

Subpart 232.2—Commercial Item Purchase Financing

Sec.
232.202–4 Security for Government financing.
232.206 Solicitation provisions and contract clauses.
232.207 Administration and payment of commercial financing payments.

232.202–4 Security for Government financing.

(a)(2) When determining whether an offeror's financial condition is adequate security, see 232.072–2 and 232.072–3 for guidance. It should be noted that an offeror's financial condition may be sufficient to make the contractor responsible for award purposes, but may not be adequate security for commercial contract financing.

232.206 Solicitation provisions and contract clauses.

(d) *Instructions for multiple appropriations.* If the contract contains foreign military sales requirements, the contracting officer shall provide instructions for distribution of the contract financing payments to each country's account.

(f) *Prompt payment for commercial purchase payments.* The contracting officer shall incorporate the following standard prompt payment terms for commercial item contract financing:

(i) *Commercial advance payments:* The contractor entitlement date specified in the contract, or 30 days after receipt by the designated billing office of a proper request for payment, whichever is later.

(ii) *Commercial interim payments:* The contractor entitlement date specified in the contract, or 14 days after receipt by the designated billing office of a proper request for payment, whichever is later. The prompt payment standards for commercial delivery payments shall be the same as specified in FAR Subpart 32.9 for invoice payments for the item delivered.

(g) *Installment payment financing for commercial items.* Installment payment financing shall not be used for DoD contracts, unless market research has established that this form of contract financing is both appropriate and customary in the commercial marketplace. When installment payment financing is used, the contracting officer shall use the ceiling percentage of contract price that is customary in the particular marketplace (not to exceed the maximum rate established in FAR 52.232–30).

232.207 Administration and payment of commercial financing payments.

(b)(2) If the contract contains foreign military sales requirements, each approval shall specify the amount of contract financing to be charged to each country's account.

232.502–1–71 [Amended]

49. Section 232.502–1–71 is amended in paragraph (b)(3) by removing the reference ''15.801'' and inserting in its place the reference ''15.401''.

232.970 through 232.970–2 [Removed]

50. Sections 232.970 through 232.970–2 are removed.

51. Subpart 232.10 is added to read as follows:

Subpart 232.10—Performance-Based Payments

Sec.
232.1001 Policy.
232.1004 Procedure.
232.1007 Administration and payment of performance-based payments.

232.1001 Policy.

(d) The contracting officer shall use the following standard prompt payment terms for performance-based payments: The contractor entitlement date, if any, specified in the contract, or 14 days after receipt by the designated billing office of a proper request for payment, whichever is later.

232.100 Procedure.

(c) *Instructions for multiple appropriations.* If the contract contains foreign military sales requirements, the contracting officer shall provide instructions for distribution of the contract financing payments to each country's account.

232.1007 Administration and payment of performance-based payments.

(b)(2) If the contract contains foreign military sales requirements, each approval shall specify the amount of contract financing to be charged to each country's account.

PART 233—PROTESTS, DISPUTES, AND APPEALS

52. Section 233.204–70 is added to read as follows:

233.204–70 Limitations on payment.

See 10 U.S.C. 2410(b) for limitations on Congressionally directed payment of a claim under the Contract Disputes Act of 1978, a request for equitable adjustment to contract terms, or a request for relied under Pub. L. 85–804.

PART 234—MAJOR SYSTEM ACQUISITION

234.005–70 [Amended]

53. Section 234.005–70 is amended in the first sentence by inserting the phrase ''paragraph (b) of'' after the phrase ''in accordance with''.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

54. Section 235.001 is revised to read as follows:

235.001 Definitions.

As defined in DoD 7000.14–R, Financial Management Regulations, and as used in this part—

(a) *Basic research* (Category 6.1) means all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental, and life sciences related to long-term national security needs. It provides farsighted, high-payoff research, including critical enabling technologies that provide the basis for technological progress. It forms a part of the base for:

(1) Subsequent applied research (exploratory development); and advanced technology developments in Defense-related technologies; and

(2) New and improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation,

energy conversion, materials and structures, and personnel support.

(b) *Applied research* (Category 6.2) means effort that translates promising basic research into solutions for broadly defined military needs, short or major development projects. This type of effort may vary from fairly fundamental applied research to sophisticated bread-broad hardware, study, programming, and planning efforts that establish the initial feasibly and practicality of proposed solutions to technologies challenges. It includes studies, investigations, and nonsystem specific development efforts. The dominant characteristic of this category of effort is that it be pointed toward specific military needs with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

(c) *Advanced technology development* (Category 6.3A) means all efforts that have moved into the development and integration of hardware for field experiments and tests. The results of this type of effort are proof of technological feasibility and assessment of operability and producibility rather than the development of hardware for Service use. Projects in this category have a direct relevance to identified military needs. Advanced technology development is system specific (particularly for major platforms, i.e., aircraft, ships, missiles, and tanks, etc.) and includes advanced technology development that is used to demonstrate the general military utility or cost reduction potential of technology when applied to different types of military equipment or techniques. Advanced technology developments also includes evaluation and synthetic environment and proof-of-principle demonstrations in field exercises to evaluate system upgrades or provide new operational capabilities.

(d) *Demonstration and validation* (Category 6.3B) means all efforts necessary to evaluate integrated technologies in as realistic an operating environment as possible to assess the performance or cost reduction potential of advanced technology. The demonstration and validation phase is system specific and also includes advanced technology demonstrations that help expedite technology transition from the laboratory to operational use.

(e) *Engineering and manufacturing development* (Category 6.4) means those projects in engineering and manufacturing development for Service use but that have not received approval for full-rate production. This area is characterized by major line item projects, and program control will be exercised by review of individual projects. Engineering development includes engineering and manufacturing development projects consistent with the definitions within DoDD 5000.1.

(f) *Management support* (Category 6.5) means research and development effort directed toward support of installations or operations required for general research and development use. Included would be test ranges, military construction, maintenance support of laboratories, operation and maintenance of test aircraft and ships, and studies and analyses in support of the research and development program. Costs of laboratory personnel, either in-house or contractor-operated, would be assigned to appropriate projects or as a line item in the basic research, applied research, or advanced technology development program areas, as appropriate.

(g) *Operational system development* (Category 6.6) means those development projects, in support of development acquisition programs or upgrades, still in engineering and manufacturing development (DoDD 5000.1) but that have received approval for production through Defense Acquisition Board or other action, or for which production funds have been included in the DoD budget submission for the budget or subsequent fiscal year. All items in this area are major line item projects that appear as research, development, test, and evaluation costs of weapon system elements in other programs. Program control will be exercised by review of individual projects.

(h) *Research and development* ordinarily covers only the following categories:

(1) Basic research.

(2) Applied research.

(3) Technology development.

(4) Demonstration/validation.

(5) Engineering and manufacturing development.

(6) Operational system development.

235.002 [Removed]

55. Section 235.002 is removed.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

56. Section 236.102 is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by adding a new paragraph (3) to read as follows:

236.102 Definitions.

* * * * *

(3) *Marshallese firm* is defined in the provision at 252.236–7012, Military Construction on Kwajalein Atoll—Evaluation Preference.

* * * * *

57. Section 236.274 is amended by revising paragraph (a) to read as follows:

236.274 Construction in foreign countries.

(a) In accordance with Section 112 of Pub. L. 105–45, military construction contracts funded with military construction appropriations, that are estimated to exceed $1,000,000 and are to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, shall be awarded only to United States firms, unless—

(1) The lowest responsive and responsible offer of a United States firm exceeds the lowest responsive and responsible offer of a foreign firm by more than 20 percent; or

(2) The contract is for military construction on Kwajalein Atoll and the lowest responsive and responsible offer is submitted by a Marshallese firm.

* * * * *

58. Section 236.570 is amended by revising paragraph (c) to read as follows:

236.570 Additional provisions and clauses.

* * * * *

(c) Use the following provisions in solicitations for military construction contracts that are funded with military construction appropriations and are estimated to exceed $1,000,000:

(1) 252.236–7010, Overseas Military Construction—Preference for United States Firms, when contract performance will be in a United States territory or possession in the Pacific or in a country bordering the Arabian Gulf.

(2) 252.236–7012, Military Construction on Kwajalein Atoll—Evaluation Preference, when contract performance will be on Kwajalein Atoll.

* * * * *

59. Sections 236.602–2 and 236.602–4 are revised to read as follows:

236.602–2 Evaluation boards.

(a) Preselection boards may be used to identify to the section board the qualified firms that have a reasonable chance of being considered as most highly qualified by the selection board.

236.602–4 Selection authority.

(a) The selection authority shall be at a level appropriate for the dollar value and nature of the proposed contract.

(c) A finding that some of the firms on the selection report are unqualified does not preclude approval of the report, provided that a minimum of three most highly qualified firms remains. The

reasons for finding a firm or firms unqualified must be recorded.

60. Section 236.609–70 is amended by revising paragraph (b) to read as follows:

236.609–70 Additional provision and clause.

* * * * *

(b) Use the provision at 252.236–7011, Overseas Architect-Engineer Services—Restriction to United States Firms, in solicitations for A–E contracts that are—

(1) Funded with military construction appropriations;

(2) Estimated to exceed $500,000; and

(3) To be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf.

PART 237—SERVICE CONTRACTING

237.102 [Removed]

61. Section 237.102 is removed.

62. Section 237.104 is amended by revising paragraph (f)(i) to read as follows:

237.104 Personal services contracts.

* * * * *

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS–15 (see 5 CFR 304.105(a)).

* * * * *

237.170 through 237.170–3 [Removed]

63. Sections 237.170 through 237.170–3 are removed.

64. Section 237.201 is added to read as follows:

237.201 Definitions.

Advisory and assistance services.

(c) *Engineering and technical services.*

Engineering and technical services consist of—

(i) Contract field services, which are engineering and technical services provided on site at Defense locations by the trained and qualified engineers and technicians of commercial or industrial companies;

(ii) Contract plant services, which are engineering and technical services provided by the trained and qualified engineers and technicians of a manufacturer of military equipment or components in the manufacturer's own plants and facilities; and

(iii) Field service representatives, who are employees of a manufacturer of military equipment or components that provide a liaison or advisory service between their company and the military users of their company's equipment or components.

65. Section 237.203 is revised to read as follows:

237.203 Policy.

(1) Every contract for engineering and technical services, alone or as part of an end item, shall—

(i) Show those services as a separately priced line item;

(ii) Contain definitive specifications for the services; and

(iii) Show the work-months involved.

(2) Agency heads may authorize personal service contracts for contract field services to meet an unusual essential mission need. The authorization will be for an interim period only.

237.203–70 [Redesignated and Amended]

66. Section 237.203–70 is redesignated as section 237.270 and amended in paragraph (b) by revising ''one year'' to read ''1-year'' and by revising ''two'' to read ''2''.

237.205 and 237.206 [Redesignated]

67. Sections 237.205 and 237.206 are redesignated as sections 237.271 and 237.272 respectively.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

68. Section 239.7405 is revised to read as follows:

239.7405 Multiyear contracting authority for telecommunications resources.

(a) The General Services Administration (GSA) has exclusive multiyear contracting authority for telecommunications resources. However, GSA may delegate this authority in certain instances (see Federal Property Management Regulations (FPMR) 101–35.6).

(b) In accordance with FPMR 101–35.6, executive agencies may enter into multiyear contracts for telecommunications resources if—

(1) The agency notifies GSA prior to using GSA's multiyear contracting authority;

(2) The contract life, including options, does not exceed 10 years; and

(3) The agency complies with OMB budget and accounting procedures relating to appropriated funds.

239.7406 [Amended]

69. Section 239.7406 is amended in the introductory text of paragraph (c) by removing reference ''15.804–2'' and adding in its place the reference ''15.403–4''; and by removing the reference ''15.804–5'' and adding in its place the reference ''15.403–3''.

70. Part 241 is revised to read as follows:

PART 241—ACQUISITION OF UTILITY SERVICES

Subpart 241.1—General

Sec.
241.101 Definitions.
241.102 Applicability.

Subpart 241.2—Acquiring Utility Services

241.201 Policy.
241.202 Procedures.
241.203 GSA assistance.
241.205 Separate contracts.
241.270 Preaward contract review.

Subpart 241.5—Solicitation Provisions and Contract Clauses

241.501–70 Additional clauses.

Authority: 48 U.S.C. 421 and 48 CFR Chapter 1.

Subpart 241.1—General

241.101 Definitions.

As used in this part—

Definite term contract means a contract for utility services for a definite period of not less than one nor more than ten years.

Dual service area means a geographical area in which two or more utility suppliers are authorized under State law to provide services.

Indefinite term contract means a month-to-month contract for utility services which may be terminated by the Government upon proper notice.

Independent regulatory body means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority. The body has the power to fix, establish, or control the rates and services of utility suppliers.

Nonindependent regulatory body means a body that regulates a utility supplier which is owned or operated by the same entity that created the regulatory body, e.g., a municipal utility.

Regulated utility supplier means a utility supplier regulated by an independent regulatory body.

Service power procurement officer means for the—

Army, the Chief of Engineers;

Navy, the Commander, Naval Facilities Engineering Command;

Air Force, the head of a contracting activity; and

Defense Logistics Agency, the Executive Director of Contracting.

241.102 Applicability.

(a) This part applies to purchase of utility services from nonregulated and regulated utility suppliers. It includes the acquisition of liquefied petroleum gas as a utility service when purchased from regulated utility suppliers.

(b)(7) This part does not apply to third party financed projects. However, it may be used for any purchased utility services directly resulting from such projects, including those authorized by—

(A) 10 U.S.C. 2394 for energy, fuels, and energy production facilities for periods not to exceed 30 years;

(B) 10 U.S.C. 2394a for renewable energy for periods not to exceed 25 years;

(C) 10 U.S.C. 2689 for geothermal resources that result in energy production facilities;

(D) 10 U.S.C. 2809 for potable and waste water treatment plants for periods not to exceed 32 years; and

(E) 10 U.S.C. 2812 for lease/purchase of energy production facilities for periods not to exceed 32 years.

Subpart 241.2—Acquiring Utility Services

241.201 Policy.

(1) Except as provided in FAR 41.201, DoD, as a matter of comity, will comply with the current regulations, practices and decisions of independent regulatory bodies which are subject to judicial appeal. This policy does not extend to regulatory bodies whose decisions are not subject to appeal nor does it extend to nonindependent regulatory bodies.

(2) Purchases of utility services outside the United States may use—

(i) Formats and technical provisions consistent with local practice; and

(ii) Dual language forms and contracts.

(3) Rates established by an independent regulatory body are considered ''prices set by law or regulation'' and do not require submission of cost or pricing data (see FAR Subpart 15.4).

241.202 Procedures.

(a)(i) *Competitive proposals.*

When a new major utility service load develops or a new military installation is established, the contracting officer shall—

(A) Determine whether more than one supplier can provide the required utility services.

(*1*) Competition may be possible where dual franchises exist or where no franchise exists.

(*2*) Competition should also be considered when an installation is served by one supplier and other potential suppliers exist even though one supplier has entered into a General Services Administration area-wide contract.

(B) Where competition exists, solicit competitive proposals from all potential suppliers.

(ii) *Periodic reviews for competition.*

Conduct periodic review of ongoing contracts to determine the availability of competition. If available, evaluate the need to rewrite the contract considering—

(A) The possible loss of rights vested in the Government under the existing contract;

(B) The age and quality of the contract; and

(C) The number of contract modifications and the ease of administration with the existing contract documents.

(iii) *Connection and service charges.*

The Government may pay a connection charge when required to cover the cost of the necessary connecting facilities. A connection charge based on the estimated labor cost of installing and removing the facility shall not include salvage cost. A lump-sum connection charge shall be no more than the agreed cost of the connecting facilities less net salvage. The order of precedence for contractual treatment of connection and service charges is—

(A) No connection charge.

(B) Termination liability. Use when an obligation is necessary to secure the required services. The obligation must be not more than the agreed connection charge, less any net salvage material costs. Use of a termination liability instead of a connection charge requires the approval of the service power procurement officer or designee.

(C) Connection charge, refundable. Use a refundable connection charge when the supplier refuses to provide the facilities based on lack of capital or published rules which prohibit providing up-front funding. The contract should provide for refund of the connection charge within five years unless a longer period or omission of the refund requirement is authorized by the service power procurement officer or designee.

(D) Connection and service charges, nonrefundable. The Government may pay certain nonrefundable, nonrecurring charges including service initiation charges, a contribution in aid of construction, membership fees, and charges required by the supplier's rules and regulations to be paid by the customer. If possible, consider sharing with other than Government users the use of (and costs for) facilities when large nonrefundable charges are required.

(iv) *Construction and labor requirements.* (A) Do not use the connection charge provisions for the installation of Government-owned distribution lines and facilities. The acquisition of such facilities must be authorized by legislation and accomplished in accordance with FAR Part 36. Also, do not use the connection charge provisions for the installation of new facilities related to the supplier's production and general ''backbone'' system unless authorized by legislation.

(B) Construction labor standards ordinarily do not apply to construction accomplished under the connection charge provisions of this part. However, if installation includes construction of a public building or public work as defined in FAR 36.102, construction labor standards may apply.

241.203 GSA assistance.

The General Services Administration (GSA) has delegated to DoD the authority to enter into utility service contracts (see FAR 41.103); therefore, contracting officers need not seek assistance or approval from GSA.

241.205 Separate contracts.

(a)(i) Requests for proposals shall state the anticipated service period in terms of months or years. Where the period extends beyond the current fiscal year, evaluate offers of incentives for a definite term contract.

(ii) The solicitation may permit offerors the choice of proposing on the basis of—

(A) A definite term not to exceed the anticipated service period; or

(B) An indefinite term contract.

(iii) Where the expected service period is less than the current fiscal year, the solicitation shall be on the basis of an indefinite term contract.

(iv) Contracts for utility services for leased premises shall identify the lease document on the face of the contract.

(d) Use an indefinite term utility service contract when it is considered to be in the Government's best interest to—

(i) Have the right to terminate on a 30-day (or longer) notice. A notice of up to one year may be granted by an installation if needed to obtain a more favorable rate, more advantageous conditions, or for other valid reasons; or

(ii) Grant the supplier the right to terminate the contract when of benefit to the Government in the form of lower rates, larger discounts or more favorable terms and conditions.

241.270 Preaward contract review.

Departments/agencies shall conduct their owned preaward contract reviews.

Subpart 241.5—Solicitation Provision and Contract Clauses

241.501–70 Additional clauses.

(a) If the Government must execute a superseding contract and capital credits, connection charge credits, or

termination liability exist, use the clause at 252.241–7000, Superseding Contract.

(b) Use the clause at 252.241–70001, Government Access, when the clause at FAR 52.241–5, Contractor's Facilities, is used.

PART 242—CONTRACT ADMINISTRATION

71. Section 242.302 is amended by revising paragraphs (a)(4)(A) and (a)(19) to read as follows:

242.302 Contract administration functions.

(a)(4) * * *

(A) Contractor estimating systems (see FAR 15.407–5); and

* * * * *

(19) Also negotiate and issue contract modifications reducing contract prices in connection with the provisions of paragraph (b) of the clause at FAR 52.225–10, Duty-Free Entry.

* * * * *

72. Section 242.1107–70 is revised to read as follows:

242.1107–70 Solicitation provision and contract clause.

(a) Use the clause at 252.242–7005, Cost/Schedule Status Report, in solicitations and contracts for other than major systems that require cost/schedule status reports (i.e., when the Contract Data Requirements List includes DI–MGMT–81467 in accordance with DoD 5000.2–R).

(b) Use the provision at 252.242–7006, Cost/Schedule Status Report Plans, in solicitation for other than major systems that require cost/schedule status reports.

PART 243—CONTRACT MODIFICATIONS

73. Section 243.204–70 is amended in paragraph (b) by revising the reference ''15.804–2(a)(1)(iii)'' to read ''15.403–4(a)(1)(iii)'' and by adding paragraph (c) to read as follows:

243.204–70 Certification of requests for equitable adjustment.

* * * * *

(c) The certification required by 10 U.S.C. 2410(a), as implemented in the clause at 252.243–7002, is different from the certification required by the Contract Disputes Act of 1978 (41 U.S.C. 605(c)). If the contractor has certified a request for equitable adjustment in accordance with 10 U.S.C. 2410(a), and desires to convert the request to a claim under the Contract Disputes Act, the contractor shall certify the claim in accordance with FAR Subpart 33.2.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

74. Section 250.102–70 is added to read as follows:

250.102–70 Limitations on payment.

See 10 U.S.C. 2410b for limitations on Congressionally directed payment of a request for equitable adjustment to contract terms or a request for relief under Pub. L. 85–804.

250.201 [Amended]

75. Section 250.201 is amended in paragraph (b) by revising the reference ''FAR subpart 50.2'' to read FAR Subpart 50.4''.

PART 252—SOLICITATION PROVISIONS AND CONTRAST CLAUSES

76. Section 252.212–7001 is amended by revising the clause date; and in paragraph (b) by revising the entries at 252.225–7001, 252.225–7007, and 252.225–7036; by adding, in numerical order, an entry at 252.225–7021; and by removing the entries at 252.242–7002 and 252.249–7001. The revised and added text reads as follows:

252.212–7001 Contract terms and conditions required to implement statutes or Executive Orders applicable to Defense Acquisitions of commercial items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes of Executive Orders Applicable to Defense Acquisitions of Commercial Items (Mar 1998)

* * * * *

(b) * * *

_____ 252.225–7001 Buy American Act and Balance of Payments Program (41 U.S.C. 10a–10d, E.O. 10582).

_____ 252.225–7007 Buy American Act—Trade Agreements—Balance of Payments Program (____Alternate I) (41 U.S.C. 10a–10d, 19 U.S.C. 2501–2518, and 19 U.S.C. 3301 note).

* * * * *

_____ 252.225–7021 Trade Agreements (____Alternate I) (19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note).

* * * * *

_____ 252.225–7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payment Program (____ Alternate I) (41 U.S.C. 10a–10d and 19 U.S.C. 3301 note).

* * * * *

77. Section 252.225–7001 is revised to read as follows:

252.225–7001 Buy American Act and Balance of Payments Program.

As prescribed in 225.109(d), use the following clause:

Buy American Act and Balance of Payments Program (Mar 1998)

(a) *Definitions.*

As used in this clause—

(1) *Components* means those articles, materials, and supplies directly incorporated into end products.

(2) *Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind—

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) That the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) *End product* means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(4) *Nonqualifying country end product* means an end product that is neither a domestic end product nor a qualifying country end product.

(5) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(6) *Qualifying country component* means an item mined, produced, or manufactured in a qualifying country.

(7) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a–d) in a manner that will encourage a favorable international balance of payments by providing a preference to domestic end products over other end products, except for end products which are qualifying country end products.

(c) The Contractor agrees that it will deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act—Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product will be supplied requires the Contractor to deliver a qualifying country end product or a domestic end product.

(d) The offered price of qualifying country end products should not include custom fees or duty. The offered price of nonqualifying country end products, and products manufactured in the United States that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, when the Buy American Act is applicable, each nonqualifying country offer is adjusted for the purpose of evaluation by adding 50 percent of the offer, inclusive of duty.

(End of clause)

78. Section 252.225–7003 is revised to read as follows:

252.225–7003 Information for duty-free entry evaluation.

As prescribed in 225.605–70(d), use the following provision:

Information for Duty-Free Entry Evaluation (Mar 1998)

(a) Does the offeror propose to furnish—

(1) A domestic end product with nonqualifying country components for which the offeror requests duty-free entry; or

(2) A foreign end product consisting of end items, components, or material of foreign origin other than those for which duty-free entry is to be accorded pursuant to the Duty-Free Entry—Qualifying Country Supplies (End Products and Components) clause or, if applicable, the Duty-Free Entry—Eligible End Products clause of this solicitation?

Yes ( ) No ( )

(b) If the answer in paragraph (a) is yes, answer the following questions:

(1) Are such foreign supplies now in the United States?

Yes ( ) No ( )

(2) Has the duty on such foreign supplies been paid?

Yes ( ) No ( )

(3) If the answer to paragraph (b)(2) is no, what amount is included in the offer to cover such duty?$_____

(c) If the duty has not been paid, the Government may elect to make award on a duty-free basis. If so, the offered price will be reduced in the contract award by the amount specified in paragraph (b)(3). The Offeror agrees to identify, at the request of the Contracting Officer, the foreign supplies which are subject to duty-free entry.

(End of provision)

Alternate I (Mar 1998). As prescribed in 225.605–70(d), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) Does the offeror propose to furnish a U.S. made end product with nonqualifying country components for which the offeror requests duty-free entry?

Yes ( ) No ( )

79. Section 252.225–7006 is amended by revising the introductory text, the clause date, paragraphs (a) and (c)(1)(i), the introductory text of paragraph (c)(2), and paragraph (c)(2)(vi) to read as follows:

252.225–7006 Buy American Act—Trade Agreements—Balance of Payments Program Certificate.

As prescribed in 225.408(a)(i), use the following provision:

Buy American Act—Trade Agreements—Balance of Payments Program Certificate (Mar 1998)

(a) *Definitions. Caribbean Basin country end* product, *designated country end product, domestic end product NAFTA country end product, nondesignated country end product, qualifying country end product,* and *U.S. made end product* have the meanings given in the Buy American Act—Trade Agreements—Balance of Payments Program clause of this solicitation.

* * * * *

(c) * * *

(1) * * *

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

* * * * *

(2) The Offeror must identify all end products that are not domestic end products.

* * * * *

(vi) The following supplies are other nondesignated country end products.

Insert line item number	Insert country of origin

(End of provision)

80. Sections 252.225–7007 and 252.225–7008 are revised to read as follows:

252.225–7007 Buy American Act—trade agreements—Balance of Payments Program.

As prescribed in 225.408(a)(ii), use the following clause:

Buy American Act—Trade Agreements—Balance of Payments Program (Mar 1998)

(a) *Definitions. As used in this clause—*

(1) *Caribbean Basin country* means—

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
British Virgin Islands
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
St. Kitts-Nevis
St. Lucia
St. Vincent and the Grenadines
Trinidad and Tobago

(2) *Caribbean Basin country end product—*

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C 2703(b)). These exclusions presently consist of—

(A) Textiles and apparel articles that are subject to textile agreements;

(B) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(C) Tuna, prepared or preserved in any manner in airtight containers; and

(D) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which Harmonized Tariff Schedule column 2 rates of duty apply.

(3) *Components* means those articles, materials, and supplies directly incorporated into end products.

(4) *Designated country* means—

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central; African Republic
Chad
Comoros
Denmark
Djibouti

Equatorial Guinea
Finland
France
Gambia
Germany
Greece
Guinea
Guinea-Bissau
Haiti
Hong Kong
Ireland
Israel
Italy
Japan
Kiribati
Lesotho
Liechtenstein
Luxembourg
Malawi
Maldives
Mali
Mozambique
Nepal
Netherlands
Niger
Norway
Portugal
Republic of Korea
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen

(5) *Designated country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the designated country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(6) *Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certification may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind—

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) That the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(7) *End product* means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(8) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(9) *Nondesignated country end product* means any end product that is not a U.S. made end product or a designated country end product.

(10) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(11) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(12) *Qualifying country component* means an item mined, produced, or manufactured in a qualifying country.

(13) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced or manufactured in the United States exceeds 50 percent of the cost of all its components.

(14) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(15) *U.S. made end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the United States; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) Unless otherwise specified, the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative apply to all items in the Schedule.

(c)(1) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of U.S. made, qualifying country, designated country, Caribbean Basin country, NAFTA country, or other nondesignated country end products in the Buy American Act—Trade Agreements—Balance of Payments Program Certificate provision of the solicitation.

(2) The Contractor may not supply a nondesignated country end product unless—

(i) It is a qualifying country end product, a Caribbean Basin country end product, or a NAFTA country end product;

(ii) The Contracting Officer has determined that offers of U.S. made end products or qualifying, designated, NAFTA, or Caribbean Basin country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(iii) A national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979.

(d) The offered price of qualifying country end products and the offered price of designated country end products, NAFTA country end products, and Caribbean Basin country end products, for line items subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of end products listed in paragraph (c)(2)(vi) of the Buy American Act—Trade Agreements—Balance of Payments Program Certificate provision of the solicitation, or the offered price of U.S. made end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each offer of a U.S. made end product that does not meet the definition of ''domestic end product'' is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

(End of clause)

Alternate I (Mar 1998). As prescribed in 225.408(a)(ii), delete Singapore from the list of designated countries in paragraph (a)(4) of the basic clause.

252.225–7008 Supplies to be accorded duty-free entry.

As prescribed in 225.605–70(e), use the following clause:

Supplies To Be Accorded Duty-Free Entry (Mar 1998)

In accordance with paragraph (b) of the Duty-Free Entry clause of this contract, in addition to duty-free entry for all qualifying country supplies (end products and components) and all eligible end products subject to applicable trade agreements (if this contract contains the Buy American Act—Trade Agreements—Balance of Payments Program clause or the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause), the following foreign end products that are neither qualifying country end products nor eligible end products under a trade agreement, and the following nonqualifying country components, are accorded duty-free entry.

_____

_____

_____

(End of clause)

81. Section 252.225–7009 is amended by revising the section heading, the introductory text, the clause title and date, and paragraphs (a), (b), (c), (f)(2)(iv), (f)(2)(vii), and (g) to read as follows:

252.225–7009 Duty-free entry—qualifying country supplies (end products and components).

As prescribed in 225.605–70(a), use the following clause:

Duty-Free Entry—Qualifying Country Supplies (End Products and Components) (Mar 1998)

(a) *Definitions. Qualifying country* and *qualifying country end products* have the meaning given in the Buy American Act and Balance of Payments Program clause, Buy American Act—Trade Agreements—Balance of Payments Program clause, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause, or Trade Agreements clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether placed—

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, or unless supplies were imported into the United States before the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor, before the date of the subcontract, no amount is or will be included in the contract price for duty for—

(1) End items that are qualifying country end products; or

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in the end items to be delivered under this contract, provided that the end items are manufactured in the United States or in a qualifying country.

* * * * *

(f) * * *

(2) * * *

(iv)(A) For direct shipments to a U.S. military installation, the notation:

UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, Defense Contract Management Command (DCMC) New York, ATTN: Customs Team, DCMDN–GNIC, 207 New York Avenue, Staten Island, New York, 10305–5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates.

(B) In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, Defense Contract Management Command (DCMC) New York, for execution of the duty-free certificate.

* * * * *

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCMC Dayton, S3605A.

(g) *Preparation of customs forms.* (1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCMC NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

* * * * *

82. Section 252.225–7010 is amended by revising the introductory text, the clause date, the introductory text of paragraph (c), the first sentence of the introductory text of paragraph (e), paragraph (e)(3), and in the second sentence of paragraph (f) by removing ''DCMAO'' and inserting in its place ''DCMC''. The revised text reads as follows:

252.225–7010 Duty-free entry—additional provisions.

As prescribed in 225.605–70(c), use the following clause:

Duty-Free Entry—Additional Provisions (Mar 1998)

* * * * *

(c) In addition to any data required by paragraph (b)(1) of the Duty-Free Entry clause, the Contractor shall furnish the following for all foreign supplies to be imported pursuant to paragraph (a) or (b) of the Duty-Free Entry clause. The Contractor shall furnish this information to the Contracting Officer administering the prime contract immediately upon award of any contract or subcontract involving supplies to be accorded duty-free entry.

* * * * *

(e) To properly complete the shipping document instructions as required by paragraph (f) of the Duty-Free Entry clause, the Contractor shall insert Defense Contract Management Command (DCMC) New York, ATTN: Customs Team, DCMDN–GNIC, 207 New York Avenue, Staten Island, New York 10305–5013, as the cognizant contract administration office (for paragraph (f) only) in those cases when the shipment is consigned directly to a military installation.

* * *

(3) Activity address number of the contract administration office actually administering the prime contract, e.g., for DCMC Dayton, S3605A.

* * * * *

83. Section 252.225–7014 is amended by revising the clause date and paragraphs (a) and (c)(2), the Alternate I date, and paragraph (c)(2) of Alternate I to read as follows:

252.225–7014 Preference for domestic specialty metals.

* * * * *

Preference for Domestic Specialty Metals (Mar 1998)

(a) *Definitions.*

As used in this clause—

(1) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(2) *Specialty metals* means—

(i) Steel—

(A) Where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) That contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium base alloys.

* * * * *

(c) * * *

(2) The specialty metal is melted in a qualifying country or is incorporated in an article manufactured in a qualifying country;

* * * * *

Alternate I (Mar 1998)

* * * * *

(c) * * *

(2) The specialty metal is melted in a qualifying country or is incorporated in an article manufactured in a qualifying country; or

* * * * *

84. Sections 252.225–7020 and 252.225–7021 are added to read as follows:

252.225–7020 Trade Agreements Certificate.

As prescribed in 225.408(a)(iii), use the following provision:

Trade Agreements Certificate (Mar 1998)

(a) *Definitions. Caribbean Basin country end product, designated country end product, NAFTA country end product, nondesignated country end product, qualifying country end product,* and *U.S. made end product* have the meanings given in the Trade Agreements clause of this solicitation.

(b) *Evaluation.* Offers will be evaluated in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement. Offers of foreign end products that are not U.S. made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products will not be considered for award, unless the Contracting Officer determines that there are not offers of such end products; or the offers of such end products are insufficient to fulfill the requirements; or a national interest exception to the Trade Agreements Act is granted.

(c) *Certifications.* (1) The offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2) of this provision, is a U.S. made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end product.

(2) The following supplies are other nondesignated country end products:

insert line item number	insert country of origin

(End of provision)

252.225–7021 Trade Agreements.

As prescribed in 225.408(a)(iv), use the following clause:

Trade Agreements (Mar 1998)

(a) *Definitions.* As used in this clause—

(1) *Caribbean Basin country* means—

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
British Virgin Islands
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
St. Kitts-Nevis
St. Lucia
St. Vincent and the Grenadines
Trinidad and Tobago

(2) *Caribbean Basin country end product*—

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles and apparel articles that are subject to textile agreements;

(B) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(C) Tuna, prepared or preserved in any manner in airtight containers; and

(D) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which Harmonized Tariff Schedule column 2 rates of duty apply.

(3) *Components* means those articles, materials, and supplies directly incorporated into end products.

(4) *Designated country* means—

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Dijbouti
Equatorial Guinea
Finland
France
Gambia
Germany
Greece
Guinea
Guinea-Bissau
Haiti
Hong Kong
Ireland
Israel
Italy
Japan
Kiribati
Lesotho
Liechtenstein
Luxembourg
Malawi
Maldives
Mali
Mozambique
Nepal
Netherlands
Niger
Norway
Portugal
Republic of Korea
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen

(5) *Designated country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the designated country; into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(6) *End product* means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for pubic use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(7) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been

substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(8) *Nondesignated country end product* means any end product that is not a U.S. made end product or a designated country end product.

(9) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(10) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(11) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(12) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(13) *U.S. made end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the United States; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) Unless otherwise specified, the Trade Agreements Act of 1979 (19 U.S.C. 2501, *et seq.*), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative apply to all items in the Schedule.

(c)(1) The Contractor agrees to deliver under this contract only U.S. made, qualifying country, designated country, Caribbean Basin country or NAFTA country end product unless, in its offer, it specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation.

(2) The Contractor may not supply a nondesignated country end product other than a qualifying country end product, a Caribbean Basin country end product, or a NAFTA country end product, unless—

(i) The Contracting Officer has determined that offers of U.S. made end products or qualifying, designated, Caribbean Basin, or NAFTA country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979.

(d) The offered price of end products listed in paragraph (c)(2) of the Trade Agreements Certificate provision of the solicitation must include all applicable duty, whether or not a duty-free entry certificate will be granted. The offered price of qualifying country, designated country, Caribbean Basin country, or NAFTA country end products, for line items subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of U.S. made end products should not include duty for qualifying country components.

(End of clause)

Alternate I (Mar 1998). As prescribed in 225.408(a)(iv), delete Singapore from the list of designated countries in paragraph (a)(4) of the basic clause.

85. Section 252.225–7026 is amended by revising the clause date, the introductory text of paragraph (a)(3), and paragraph (c); and by redesignating paragraphs (d)(i), (d)(ii), and (d)(iii), as paragraphs (d)(1), (d)(2), and (d)(3), respectively. The revised text reads as follows:

252.225–7026 Reporting of contract performance outside the United States.

* * * * *

Reporting of Contract Performance Outside the United States (Mar 1998)

(a) * * *

(3) Contracts exceeding $500,000, when any part that exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation will be performed outside the United States, unless a foreign place of performance is—

* * * * *

(c) *Flowdown requirements.* (1) The Contractor shall include a clause substantially the same as this one in all first-tier subcontracts exceeding $500,000, except subcontracts for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence.

(2) The Contractor shall provide the prime contract number to subcontractors for reporting purposes.

* * * * *

86. Section 252.225–7027 is revised to read as follows:

252.225–7027 Restriction on contingent fees for foreign military sales.

As prescribed in 225.7308(a), use the following clause. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303–4(b).

Restriction on Contingent Fees for Foreign Military Sales (Mar 1998)

(a) Except as provided in paragraph (b) of this clause, contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are generally an allowable cost, provided the fees are paid to a bona fide employee of the Contractor or to a bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.

(b) For foreign military sales, unless the contingent fees have been identified and payment approved in writing by the foreign customer before contract award, the following contingent fees are unallowable under this contract:

(1) For sales to the Government(s) of _____, contingent fees in any amount.

(2) For sales to Governments not listed in paragraph (b)(1) of this clause, contingent fees exceeding $50,000 per foreign military sale case.

(End of clause)

87. Sections 252.225–7035, 252.225–7036, and 252.225–7037 are revised to read as follows:

252.225–7035 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

As prescribed in 225.408(a)(v), use the following provision:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate (MAR 1998)

(a) *Definitions.* ''Domestic end product,'' ''foreign end product,'' ''NAFTA country end product,'' and ''qualifying country end product'' have the meanings given in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* Offers will be evaluated in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement. For line items subject to the North American Free Trade Agreement Implementation Act, offers of qualifying country end products or NAFTA country end products will be evaluated without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications.* (1) The offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror must identify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies are qualifying country (except Canada) end products:

insert line item number	insert country of origin

(ii) The Offeror certifies that the following supplies qualify as NAFTA country end products:

insert line item number	insert country of origin

(iii) The following supplies are other foreign end products:

insert line item number	insert country of origin

(End of provision)

Alternate I (Mar 1998)

As prescribed in 225.408(a)(v)(B)(*2*), substitute the phrase ''Canadian end product'' for the phrase ''NAFTA country end product'' in paragraph (a); and substitute the phrase ''Canadian end products'' for the phrase ''NAFTA country end products'' in paragraphs (b) and (c)(2)(ii) of the basic clause.

252.225–7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program

As prescribed in 225.408(a)(vi),use the following clause:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (Mar 1998)

(a) *Definitions.* As used in this clause—

(1) *Components* means those articles, materials, and supplies directly incorporated into end products.

(2) *Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind—

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) That the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) *End product* means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(4) *Foreign end product* means an end product other than a domestic end product.

(5) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(6) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(7) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(8) *Qualifying country component* means an item mined, produced, or manufactured in a qualifying country.

(9) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) Unless otherwise specified, the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note) applies to all items in the Schedule.

(c) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product or a NAFTA country end product will be supplied requires the Contractor to supply a qualifying country end product or a NAFTA country end product, whichever is certified, or, at the Contractor's option, a domestic end product.

(d) The offered price of qualifying country end products, or NAFTA country end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of foreign end products listed in paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation, or the offered price of domestic end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each foreign end product listed in paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

(End of clause)

Alternate I (Mar 1998)

As prescribed in 225.408(a)(vi)(B)(*2*), substitute the following paragraphs (a)(4), (c), and (d) for paragraphs (a)(4), (c), and (d) of the basic clause:

(a)(4) *Canadian end product,* means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it so was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself.

(c) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product or a Canadian end product will be supplied requires the Contractor to supply a qualifying country end product or a Canadian end product, whichever is certified, or, at the Contractor's option, a domestic end product.

(d) The offered price of qualifying country end products, or Canadian end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of foreign end products listed in paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation, or the offered price of domestic end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each foreign end product listed in

paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

252.225–7037 Duty-Free Entry—Eligible End Products.

As prescribed in 225.605–70(b), use the following clause:

Duty-Free Entry—Eligible End Products (Mar 1998)

(a) *Definition. Eligible end product,* as used in this clause, means—

(1) *Designated country end product, Caribbean Basin country end product,* or *NAFTA country end product,* as defined in the Trade Agreements clause of this contract;

(2) *NAFTA country end product,* as defined in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract; or

(3) *Canadian end product,* as defined in Alternate I of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve delivery of eligible end products to be accorded duty-free entry whether placed—

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for duty for eligible end products.

(d) The Contractor warrants that—

(1) All eligible end products, for which duty-free entry is to be claimed under this clause, are intended to be delivered to the Government; and

(2) The Contractor will pay any applicable duty to the extent that such eligible end products, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free certificates and to afford such assistance as appropriate to obtain the duty-free entry of eligible end products for which the shipping documents bear the notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering eligible end products for which duty-free entry certificates are to be issued under this clause, shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information—

(i) Prime contract number, and delivery order if applicable;

(ii) Number of the subcontract/purchase order for foreign supplies if applicable;

(iii) Identification of carrier;

(iv)(A) For direct shipments to a U.S. military installation, the notation:

UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142, and notify Commander, Defense Contract Management Command (DCMC) New York, ATTN: Customs Team, DCMDN–GNIC, 207 New York Avenue, Staten Island, New York 10305–5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates.

(B) In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, DCMC, NY, for execution of the duty-free certificate. (Note: In those instances where the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required, the contractor or its agent shall claim duty-free entry under NAFTA or other trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, CDMC, NY, is required.

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) Estimated value in U.S. dollars; and

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCMC Dayton, S3605A.

(g) Preparation of customs forms. (1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of eligible end products in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCMC NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(h) The Contractor agrees—

(1) To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies, of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) To consign the shipment as specified in paragraph (f) of this clause; and

(3) To mark the exterior of all packages as follows:

(i) ''UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;'' and

(ii) The activity address number of the contract administration office actually administering the prime contract.

(i) The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of eligible end products to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the supplier of the eligible end products. The notice shall contain—

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number, and delivery order number if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract/purchase order for eligible end products;

(7) Total dollar value of the subcontract for eligible end products;

(8) Expiration date of the subcontract for eligible end products;

(9) List of items purchased;

(10) An agreement by the Contractor that any applicable duty shall be paid by the Contractor to the extent that such eligible end products are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer; and

(11) The scheduled delivery date(s).

(End of clause)

252.229–7004 [Amended]

88. Section 252.229–7004 is amended in the clause title by revising the word ''CONTRACT'' to read ''CONTRACTOR''.

252.232–7006 [Removed and Reserved]

89. Section 252.232–7006 is removed and reserved.

252.234–7000 [Amended]

90. Section 252.234–7000 is amended in the introductory text by revising the reference ''234.005–71'' to read ''234.005–71(a)''; by revising the clause date to read ''(MAR 1998)''; and at the end of paragraph (a) by removing the word ''Government'' and inserting in its place the phrase ''Department of Defense''.

91. Section 252.234–7001 is revised to read as follows:

252.234–7001 Earned value management system.

As prescribed in 234.005–71(b), use the following clause:

Earned Value Management System (Mar 1998)

(a) In the performance of this contract, the Contractor shall use an earned value management system (EVMS) that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the criteria provided in DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs.

(b) If, at the time of award, the Contractor's EVMS has not been recognized by the cognizant ACO as complying with EVMS criteria (or the Contractor does not have an existing cost/schedule control system that has been accepted by the Department of Defense), the Contractor shall apply the system to the contract and shall be prepared to demonstrate to the ACO that the EVMS complies with the EVMS criteria referenced in paragraph (a) of this clause.

(c) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the ACO, Contractor-proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) of this clause.

(f) The Contractor shall require the following subcontractors to comply with the requirements of this clause:

(Contracting Officer to insert names of subcontractors selected for application of EVMS criteria in accordance with 252.234–7000(c).)

_____

_____

_____

_____

(End of clause)

252.236–7010 [Amended]

92. Section 252.236–7010 is amended in the introductory text by revising the reference ''236.570(c)'' to read ''236.570(c)(1)''.

93. Section 252.236–7012 is added to read as follows:

252.236–7012 Military construction on Kwajalein Atoll—evaluation preference.

As prescribed in 236.570(c)(2), use the following provision:

Military Construction on Kwajalein Atoll—Evaluation Preference (Mar 1998)

(a) *Definitions.* As used in this provision—

(1) *Marshallese firm* means a local firm incorporated in the Marshall Islands, or otherwise legally organized under the laws of the Marshall Islands, that—

(i) Is more than 50 percent owned by citizens of the Marshall Islands; or

(ii) Complies with the following:

(A) The firm has done business in the Marshall Islands on a continuing basis for not less than 3 years prior to the date of issuance of this solicitation;

(B) Substantially all of the firm's directors of local operations, senior staff, and operating personnel are resident in the Marshall Islands or are U.S. citizens; and

(C) Most of the operating equipment and physical plant are in the Marshall Islands.

(2) *United States firm* means a firm incorporated in the United States that complies with the following:

(i) The corporate headquarters are in the United States;

(ii) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(iii) The firm employs United States citizens in key management positions.

(b) *Evaluation.* Offers from firms that do not qualify as United States firms or Marshallese firms will be evaluated by adding 20 percent to the offer, unless application of the factor would not result in award to a United States firm.

(c) *Status.* The offeror is _____ a United States firm; _____ a Marshallese firm; _____ Other.

(End of provision)

252.237–7019 [Removed and Reserved]

94. Section 252.237–7019 is removed and reserved.

252.241–7000 [Amended]

95. Section 252.241–7000 is amended in the introductory text by revising the reference ''241.007–70(a)'' to read ''241.501–70(a)''.

252.241–7001 [Amended]

96. Section 252.241–7001 is amended in the introductory text by revising the reference ''241.007–70(b)'' to read ''241.501–70(b)''.

97. Section 252.242–7005 is amended by revising the clause date and paragraphs (b)(4) and (d) to read as follows:

252.242–7005 Cost/Schedule Status Report.

* * * * *

Cost/Schedule Status Report (Mar 1998)

* * * * *

(b) * * *

(4) Establishing constraints to preclude subjective adjustment of data to ensure that performance measurement remains realistic. The total allocated budget may exceed the contract budget base only after consultation with the Contracting Officer. For cost-reimbursement contracts, the contract budget base shall exclude changes for cost growth increase, other than for authorized changes to the contract scope; and

* * * * *

(d) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

* * * * *

98. Section 252.243–7002 is revised to read as follows:

252.243–7002 Requests for equitable adjustment.

As prescribed in 243.205–72, use the following clause:

Requests for Equitable Adjustment (Mar 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

_____

(Official's Name)

_____

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including——

(1) Cost or pricing data if required in accordance with subsection 15.403–4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403–3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to——

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

(End of clause)

PART 253—FORMS

99. Section 253.204–70 is amended by revising paragraphs (c)(4)(xi)(A) and (c)(4)(xi)(C) to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(c) * * *

(4) * * *

(xi) * * *

(A) *Code Y—Yes—Obtained.* Enter code Y when cost or pricing data were obtained (see FAR 15.403–4) and certified in accordance with FAR 15.406–2.

* * * * *

(C) *Code W—Not Obtained—Waived.* Enter code W when cost or pricing data were not obtained because the requirement was waived (see FAR 15.403–1(c)(4)).

* * * * *

Appendix G to Chapter 2 [Amended]

100. Appendix G to Chapter 2 is amended in Part 1, Section G–101, paragraph (c), under the heading ''AIR FORCE'', by revising the symbol ''SAF/AQCO'' to read ''SAF/AQCP''.

101. Appendix G to Chapter 2 is amended in Part 2 by removing entry DAAB24; by revising entry DACA81; and by adding, in alpha-numerical order, entries DAJN01, DAJN02, and DASW02 to read as follows:

PART 2—ARMY ACTIVITY ADDRESS NUMBERS

* * * * *

DACA81, CA81, CN USA Engineer District, Far East, APO AP 96205–0610

* * * * *

DAJN01, JN01, 1B U.S. Southern Command, Contracting Office, HQCMDT, 7955 NW 12th Street, Suite 450, Miami, FL 33126–1823

DAJN02, JN02, 8V Fort Buchanan Contracting Office, Attn: AFZK–DOC, Fort Buchanan, PR 00934–5049

* * * * *

DASW02, SW02, 1W Joint Visual Information Activity, Attn: SAM–OPV–JC, 601 North Fairfax Street, Room 334, Alexandria, VA 22314–2007

* * * * *

102. Appendix G to Chapter 2 is amended in Part 5 by removing entry F04704 R9; and by revising entry FA2550 to read as follows:

PART 5—AIR FORCE ACTIVITY ADDRESS NUMBERS

* * * * *

FA2550 50 CONS, 66 Falcon Parkway, Ste 49, Falcom AFB, CO 80912–6649

* * * * *

103. Appendix G to Chapter 2 is amended by revising Part 6 to read as follows:

PART 6—DEFENSE LOGISTICS AGENCY ACTIVITY ADDRESS NUMBERS

SP0100 Defense Personnel Support Center, TW Directorate of Clothing & Textiles, 2800 South 20th Street, Philadelphia, PA 19101–8419

SP0103 W7 Defense Personnel Support Center, Installation Support, 2800 South 20th Street, Philadelphia, PA 19101–8419

SP0200 TX Defense Personnel Support Center, Directorate of Medical Materiel, 2800 South 20th Street, Philadelphia, PA 19101–8419

SP0300 UE Defense Personnel Support Center, Directorate of Subsistence, 2800 South 20th Street, Philadelphia, PA 19101–8419

SP0302 W6 Defense Subsistence Region Pacific, Attn: DSR-Pacific, 2155 Mariner Square Loop, Alameda, CA 94501–1022

SP0303 U6 Defense Subsistence Region Europe, DSR Europe, APO AE 09052

SP0400 TY Defense Supply Center Richmond, Business Operations, 800 Jefferson Davis Highway, Richmond, VA 23297–5770

SP0410 XH Defense Supply Center Richmond, Base Spt Div, Dir of Spec Proc, 8000 Jefferson Davis Highway, Richmond, VA 23297–5312

SP0411 TY Defense Supply Center Richmond, Proc Br (ESOC), Customer Asst Ctr, 8000 Jefferson Davis Highway, Richmond, VA 23297–5871

SP0413 TY Defense Supply Center Richmond, Spec Purchase Br, Prod Ctr Spt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5864

SP0414 TY Defense Supply Center Richmond, SASPS Phase I Br, Prod Ctr Spt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5863

SP0420 XK Defense Supply Center Richmond, DODDS Div, Dir Of Spec Proc, 8000 Jefferson Davis Highway, Richmond, VA 23297–5313

SP0430 TY Defense Supply Center Richmond, Proc Br, Product Center 5, 8000 Jefferson Davis Highway, Richmond, VA 23297–5813

SP0440 TY Defense Supply Center Richmond, Proc Br, Product Center 7, 8000 Jefferson Davis Highway, Richmond, VA 23297–5834

SP0441 TY Defense Supply Center Richmond, Proc Br, Product Center 6, 8000 Jefferson Davis Highway, Richmond, VA 23297–5822

SP0450 TY Defense Supply Center Richmond, Proc Br, Product Center 4, 8000 Jefferson Davis Highway, Richmond, VA 23297–5800

SP0451 TY Defense Supply Center Richmond, Proc Br, Product Center 2, 8000 Jefferson Davis Highway, Richmond, VA 23297–5772

SP0454 TY Defense Supply Center Richmond, Proc Br, Product Center 4, Enhanced Vendor Delivery Program, 8000 Jefferson Davis Highway, Richmond, VA 23297–5800

SP0460 TY3 Defense Supply Center Richmond, Proc Br, Product Center 1, 8000 Jefferson Davis Highway, Richmond, VA 23297–5772

SP0461 TY Defense Supply Center Richmond, Special Purchase Branch (SPUR), 8000 Jefferson Davis Highway, Richmond, VA 23297–5864

SP0480 TY Defense Supply Center Richmond, Aircraft Engines, 8000 Jefferson Davis Highway, Richmond, VA 23297–5876

SP0490 TY Defense Supply Center Richmond, Proc Br, Product Center 1, 8000 Jefferson Davis Highway, Richmond, VA 23297–5846

SP0499 Defense Supply Center Richmond-FCIM, 8000 Jefferson Davis Highway, Richmond, VA 23297–5770

SP0500 TZ, WU Defense Industrial Supply Center, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SP0510 W2 Defense Industrial Supply Center, Base Operating Support System, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SP0520 Defense Industrial Supply Center, Product Verification Testing Acquisition, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SP0599 Defense Industrial Supply Center-FCIM, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SP0600 UA Defense Fuel Supply Center, 8725 John, J. Kingman Road, Suite 2533, Fort Belvoir, VA 22304–6160

SP0700 UB, UZ Defense Supply Center Columbus, PO Box 32990, Columbus, OH 43216–3990

SP0701 Defense Supply Center Columbus, Attn: DSCC–OT, Bldg 20, Fourth Floor, Columbus, OH 43216–5000

SP0710 YL Defense Supply Center Columbus, Base Contracting, PO Box 16704, Columbus, OH 43216–5010

SP0720 YM Defense Supply Center Columbus, Lumber Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010

SP0730 WZ Defense Supply Center Columbus, Military Interdepartmental PR MIPR Division, PO Box 3990, Columbus, OH 43216–5000

SP0740 XJ Defense Supply Center Columbus, Aerospace Solicitations/Awards, PO Box 3990, Columbus, OH 43216–5000

SP0750 UB Defense Supply Center Columbus, Land Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010

SP0760 UB Defense Supply Center Columbus, Maritime Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010

SP0770 UB Defense Supply Center Columbus, Commodities Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010

SP0780 Defense Supply Center Columbus, Government Furnished Property Account, ATTN: DSCC–PAPB GFP, Building 20 A2N, 3990 E Broad Street, Columbus, OH 43216–5000
SP0799 Defense Supply Center Columbus-FCIM, PO Box 3990, Columbus, OH 43216–5000
SP0833VS Defense National Stockpile Center, 8725 John J. Kingman Road, Suite 3339, Fort Belvoir, VA 22060–6223
SP0900UD Defense Supply Center Columbus, Equipment, PO Box 16704, Dayton, OH 43216–5010
SP0905 Defense Supply Center Columbus, PO Box 16704, Dayton, OH 43216–5010
SP0910U7 Defense Supply Center Columbus, Base Contracting Section, PO Box 16704, Dayton, OH 43216–5010
SP0920W4 Defense Supply Center Columbus, Electro Mechanical, PO Box 16704, Dayton, OH 43216–5010
SP0930 Defense Supply Center Columbus, Switches, PO Box 16704, Dayton, OH 43216–5000
SP0935 Defense Supply Center Columbus, Connectors, PO Box 16704, Dayton, OH 43216–5000
SP0960 Defense Supply Center Columbus, Active Devices, PO Box 16704, Dayton, OH 43216–5000
SP0970 Defense Supply Center Columbus, PO Box 16704, Dayton, OH 43216–5000
SP0980 Defense Supply Center Columbus, Tailored Logistics Acquisitions, PO Box 16704, Dayton, OH 43216–5000
SP0999 Defense Supply Center Columbus-FCIM, PO Box 16704, Dayton, OH 43216–5000
SP3100WX Defense Distribution Region East, Office of Contracting, New Cumberland, PA 17070–5001
SP3200TV Defense Distribution Region West, Office of Contracting, Building S–4, Lathrop, CA 95330–5000
SP3500UN Defense Distribution Region East, Office of Contracting, New Cumberland, PA 17070–5001
SP4400X1 Defense Reutilization Marketing Service, 74 Washington Avenue North, Battle Creek, MI 49017–3092
SP4410X1 Defense Reutilization Marketing Service, Special Contracts Division, Attn: DRMS–PO, 74 Washington Avenue North, Battle Creek, MI 49017–3092
SP4420XI Defense Reutilization Marketing Service, Attn: DRMS–PMG, APO AE 09096
SP4700YK DLA Administrative Support Center, Office of Contracting, 8725 John J. Kingman Road, Suite 0119, Fort Belvoir, VA 22060–6220
SP4800 Defense Logistics Agency, Office of Small and Disadvantaged, Business Utilization, 8725 John J. Kingman Road, Suite 1127, Fort Belvoir, VA 22060–6221
SAS01A UY DCMC Pacific—Australia, Unit 11009, APO AP 96551
SBL00A MJ DCMC Northern Europe—Belgium, PSC 82, Box 002, APO AE 09724
SCN01A WV DCMC Americas, 275 Bank Street, Suite 200, Ottawa, Canada K2P 2L6
SGR18A DCMC Southern Europe, CMR 410, Box 764, APO AP 09096
SJP10A Y9 DCMC Pacific—Japan, PSC 477, Box 39, FPO AP 96306–2739
SKR08A R1 DCMC Pacific, Unit 2000, APO AE 96214–5000
SML04A XC DCMC Pacific—Kuala Lumpur, American Embassy, APO AP 96535–5000
SPR01A QF DCMC Americas—Puerto Rico, Box DLA NSGA, FPO AA 34053–0007
SSA20A DCMC Southern Europe—Spain, PSC 61, Box 3000, APO AE 09642–5000
SSN05A DCMC Pacific—Singapore, PSC 470, Box 2700, FPO AP 96534–2100
SSR01A YE DCMC Southern Europe—Israel, American Embassy Unit 7228, APO AE 09830–7228
SSU01A U4 DCMC Saudi Arabia—Air DCMCI Unit 61305, APO AE 09803–1305
SSU03A US DCMC Saudi Arabia—Land, DCMCI Unit 61301, APO AE 09803–1301
STA21A DCMC Southern Europe—Italy (Brindisi), PSC 817, Box 61, FPO AE 09622–0061
STA23A DCMC Southern Europe—Italy, Unit 31401, Box 71, APO AE 09630–0071
STR02A TQ DCMC Southern Europe—Turkey, Unit 9050, APO AE 09822–9050
SUK12A VN DCMC Northern Europe, PSC 821, Box 55, APO AE 09421–0055
SUK14A DCMC Northern Europe—UK Bristol, Unit 4825, APO AE 09456–4825
SUK15A DCMC Northern Europe—UK Rochester, PSC 30, Box 100, APO AE 09447–0100
SZA01A DCMC Pacific—New Zealand, PSC 467, Box 298, FPO AP 96531–2000
S0101A DCMC Birmingham, 1910 Third Avenue North, Room 201, Birmingham, AL 35203–2376
S0102A WA DCMC Pemco Aeroplex Birmingham, PO Box 12447, Birmingham, AL 35202–2447
S0302A WY DCMC Phoenix, 215 North 7th Street, Phoenix, AZ 85034–1012
S0305A SR DCMC Hughes Tucson, PO Box 11337, Bldg 801, M/5 D–4, Tucson, AZ 85734–1337
S0506A WL DCMD West, 222 North Sepulveda Boulevard, El Segundo, CA 90245–4320
S0507A XR DCMC San Francisco, 1265 Borregas Avenue, Sunnyvale, CA 94089
S0512AYC DCMC Van Nuys, 6230 Van Nuys Boulevard, Van Nuys, CA 91401–2713
S0513AUG DCMC Santa Ana, 34 Civic Center Plaza, PO Box C–12700, Santa Ana, CA 92712–2700
S0514AVH DCMC San Diego, 7675 Dagget Street, Suite 200, San Diego, CA 92111–2241
S0520AVR DCMC San Francisco—ULDP San Jose, M/SX65, PO Box 367, San Jose, CA 95103–0367
S0530AX9 DCMC McDonnell Douglas, 5301 Bolsa Avenue, Huntington Beach, CA 92647–2099
S0539AQT DCMC Hughes, Los Angeles, PO Box 92463, Los Angeles, CA 90009–2463
S0542ARY DCMC Rockwell, Canoga Park, PO Box 7922, Canoga Park, CA 91303–7922
S0543AQX DCMC Lockheed Martin Missiles & Space, PO Box 3504, Sunnyvale, CA 94088–3504
S0544ATC DCMC McDonnell Douglas, 1570 Hughes Way, Mail Code 54–79, Long Beach, CA 90846–0001
S0546AQR DCMC Northrop, Gumman Hawthorne, One Northrop Avenue, Hawthorne, CA 90250–3277
S0602AVK DCMC Denver, Orchard Place 2, Suite 200, 5975 Greenwood Plaza Boulevard, Englewood, CO 80111–4715
S0605ARE DCMC Lockheed Martin Astronautics, PO Box 179, Denver, CO 80201–0179
S0701AWB DCMC Hartford, 130 Darlin Street, East Hartford, CT 06108–3234
S0702AUP DCMC Stratford, 550 Main Street, Stratford, CT 06497–7593
S0703AXT DCMC Hamilton Standard, 1 Hamilton Road, Windsor Locks, CT 06096–0463
S0707ALF DCMC Sikorsky, 6900 Main Street, Stratford, CT 06497–9131
S0708AT5 DCMC Pratt & Whitney, East Hartford, 400 Main Street, Mail Stop 104–08, East Hartford, CT 06108–0969
S1002AWW DCMC Orlando, 3555 Maguire Boulevard, Orlando, FL 32803–3726
S1005AXL DCMC Lockheed Martin, Orlando, 5600 Sand Lake Road, MP49, Orlando, FL 32819–8907
S1009AV1 DCMC Orlando-Harris, 1425 Troutman Boulevard, NE, Palm Bay, FL 32905–4102
S1011AT2 DCMC Pratt & Whitney, West Palm Beach, PO Box 109600, West Palm Beach, FL 33410–9600
S1103AY1 DCMC Atlanta, 805 Walker Street, Marietta, GA 30060–2789
S1104A DCMC Atlanta-Rockwell, PO Box 1356, Duluth, GA 30136–1357
S1109AZ4 DCMC Clearwater, Gadsen Building, Suite 200, 9549 Koger Blvd., St. Petersburg, FL 33702–2455
S1110A Z5 DCMC Grumman, St. Augustine, 5000 US Highway 1, North, PO Drawer 3447, St. Augustine, FL 32085–3447
S1111A RK DCMC Lockheed Martin Marietta, 86 South Cobb Drive, Bldg B–2, Marietta, GA 30063–0260
S1211A U8 DCMC Aircraft Program Management Officer, 805 Walker Street, Marietta, GA 30060–2789
S1221A X5 DCMC Grumman Melbourne, PO Box 9650, Melbourne, FL 32902–9650
S1403A YP DCMC Chicago, PO Box 66911, Chicago, IL 60666–0911
S1501A WG DCMC Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249–5701
S1505A X2 DCMC Indianapolis-Hughes, Defense Communications, 1616 Directors Row, Fort Wayne, IN 46808–1286
S1510A Z9 DCMC Pacific-Honolulu, Box 64110, Camp HM Smith, Honolulu, HI 96861–4110
S1701A YD DCMC Wichita, U.S. Courthouse, Suite B–34, 401 North Market, Wichita, KS 67202–2095
S1903A DCMC Michoud-Stennis, 138000 Old Gentilly Hwy, Building 350, PO Box 29503, New Orleans, LA 70189–0503
S2103A S2 DCMC Westinghouse Baltimore, PO Box 1693, M/S 1285, Baltimore, MD 21203–1693
S2202A UT DCMC East, 495 Summer Street, Boston, MA 02210–2184
S2203A XX DCMC Boston-GTE, Government Systems Corp, 200 First Avenue, Needham, MA 02194–9123
S2205A XF DCMC Raytheon, 2 Wayside Avenue, Burlington, MA 01803–0901
S2206A Y3 DCMC Boston, 495 Summer Street, Boston, MA 02210–2138

S2207A7Q DCM GE Lynn, 1000 Western Avenue, Lynn, MA 01910–0445
S2208A NJ DCMC Lockheed Martin Defense Systems, 100 Plastics Avenue, Pittsfield, MA 01201–3677
S2209A SQ DCMC Boston-Textron Systems Division, 201 Lowell Street, Wilmington, MA 01887–2941
S2303A VW DCMC Grand Rapids, Riverview Center Building, 678 Front Street, Grand Rapids, MI 49504–5352
S2305A Y7 DCMC Detroit, U.S. Army Tank-Automotive Command, ATTN: DCMDE–GJD, Warren, MI 48397–5000
S2401A WQ DCMC Twin Cities, 3001 Metro Drive, Bloomington, MN 55425–1573
S2404A UR DCMC Baltimore, 200 Towsontown Boulevard, West, Towson, MD 21204–5299
S2605A XS DCMC St Louis, 1222 Spruce Street, St. Louis, MO 63103–2812
S2606A JZ DCMC McDonnell Douglas, St. Louis, P.O. Box 516, St. Louis, MO 63166–0516
S3001A YS DCMC Lockheed Martin Sanders, P.O. Box 0868, NHQ–539, Nashua, NH 03061–0868
S3101A WT DCMC Springfield, Building 1, ARDEC, Picatinny, NJ 07806–5000
S3102A UU DCMC Allied Signal, Route 46, Mail Stop 1–37, Teterboro, NJ 07608–1173
S3109A WC DCMC Springfield-GEC/Kearfott, 164 Totowa Road, MS 11A30, Wayne, NJ 07474–0975
S3110A X7 DCMC Lockheed Martin Delaware Valley, Mail Stop AE 2–W, 1 Federal Street, Camden, NJ 08102–1013
S3306A XU DCMC Syracuse, 615 Erie Boulevard West, Syracuse, NY 13402–2408
S3309A VX DCMC Long Island, 605 Stewart Avenue, Garden City, NY 11530–4761
S3310A DCMC New York, 207 New York City Avenue, Staten Island, NY 10305–5013
S3315A YR DCMC Lockheed Martin, Federal Systems, Owego, 1801 State Route 17C, Owego, NY 13827–3998
S3316A KK DCMC Grumman Bethpage, Bethpage, NY 11714–3593
S3317A NH DCMC Lockheed Martin Tactical, Defense Systems, East, 365 Lakeville Road, Great Neck, NY 11020–1696
S3619A SB DCMC GE Aircraft Engines, Evendale, Mail Drop N–1, Cincinnati,OH 45215–6303
S3603A VB DCMC Cleveland, Admiral Kidd Building, 555 East 88th Street, Bratenahl, OH 44108–1068
S3605A VL DCMC Dayton, Gentile Station, 1001 Hamilton Street, Dayton, OH 45444–5300
S3613A YB DCMC Cleveland-Westinghouse, 18901 Euclid Avenue, Plant 2, Cleveland, OH 44117–1388
S3616A X6 DCMC Cleveland-Lockheed Martin, Tactical Defense Systems, Akron, 1210 Massillon Road, Akron, OH 44315–0001
S3618A YF DCMC General Dynamics Lima, 1155 Buckeye Road, Lima, OH 45804–1898
S3620A VA DCMC International, 8725 John J. Kingman Road, Fort Belvoir VA 22060–6221
S3911A X3 DCMC Pittsburgh, Federal Building, Room 1612, 1000 Liberty Avenue, Pittsburgh, PA 15222–4190
S3912A XM DCMC Reading, 1125 Berkshire Blvd, Suite 160, Wyomissing, PA 19610–1249
S3915A XD DCMC Philadelphia, South 20th Street, Philadelphia, PA 19101–7699
S3916A TU DCMC Boeing Helicopters, PO Box 16859, Philadelphia, PA 19142–0859
S4201A XY DCMC United Defense Limited Partnership, PO Box 15512, York, PA 17405–1512
S4402A Z7 DCMC Dallas, 1200 Main Street, Dallas, TX 75202–4399
S4404A XN DCMC San Antonio, 615 East Houston, PO Box 1040, San Antonio, TX 78294–1040
S4407A WN DCMC E-Systems Greenville, PO Box 6379, Greenville, TX 75403–6379
S4408A XZ DCMC Texas Instruments, PO Box 660246, MS 256, Dallas, TX 75266–0246
S4418A WI DCMC Bell Helicopter Textron, PO Box 1605, Fort Worth, TX 76101–1605
S4419A SL DCMC Lockheed, Fort Worth, PO Box 371, Fort Worth, TX 76101–0371
S4420A WP DCMC Lockheed Martin Vought Systems, PO Box 655907, M/S 4915, Dallas, TX 75265–5907
S4503A R6 DCMC Thiokol, PO Box 524, Mail Stop Z–10, Brigham City, UT 84302–0524
S4801A XW DCMC Seattle, Corporate Campus East III, 3009 112th Ave, NE, Suite 200, Bellevue, WA 98004–8019
S4804A SP DCMC Boeing, Seattle, PO Box 3707, Seattle, WA 98124–2207
S4807A WM DCMC Stewart and Stevenson, Inc., PO Box 457, Sealy, TX 77474–0457

Appendix I to Chapter 2 [Amended]

104. Appendix I to Chapter 2 is amended in section I–102, paragraphs (a) and (b), and in section I–103, paragraph (a), by revising the date ''September 30, 1998'' to read ''September 30, 1999''.

105. Appendix I to Chapter 2 is amended in section I–103, in the introductory text of paragraph (b) and in paragraph (c), by revising the date ''September 30, 1999'' to read ''September 30, 2000''.

106. Appendix I to Chapter 2 is amended in section I–109, in paragraph (e)(3), by revising the date ''October 1, 1999, to read ''October 1, 2000''.

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federal register

Monday
March 9, 1998

Part IV

Department of Education

Notice of Final Funding Priorities for Fiscal Years 1998–1999 for Rehabilitation Engineering Research Centers; Notice Inviting Applications for New Rehabilitation Engineering Research Centers for Fiscal Year 1998

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Final Funding Priorities for Fiscal Years 1998–1999 for Rehabilitation Engineering Research Centers

SUMMARY: The Secretary announces final funding priorities for four Rehabilitation Engineering Research Centers (RERCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years l998–1999. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority takes effect on April 8, 1998.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains final priorities under the Disability and Rehabilitation Research Projects and Centers program for RERCs related to information technology access, communication enhancement, ergonomic solutions for employment, and hearing enhancement.

The authority for RERCs is contained in section 204(b)(3) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(b)(3)). Under this program the Secretary makes awards to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. An RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

These final priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a(g) and 762).

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under this competition is published in this issue of the **Federal Register**.

Analysis of Comments and Changes

On October 30, 1997, the Secretary published a notice of proposed priorities in the **Federal Register** (62 FR 58862–58867). The Department of Education received 12 letters commenting on the notice of proposed priorities by the deadline date. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under statutory authority—are not addressed.

General

Comment: Each RERC should be required to collaborate on a utilization plan with the RERC on Technology Transfer. This will not only improve their utilization activities, but also parallel the dissemination requirement that each RERC must consult with the National Center for the Dissemination of Disability Research (NCDDR) in the development and implementation of a dissemination plan.

Discussion: This comment and the comment that follows (on providing applicants with more discretion) have prompted reconsideration of all the general requirements. In order to provide applicants with more discretion in their dissemination and utilization activities and achieve a proper balance between the dissemination and utilization requirements, both requirements have been revised. The revisions provide applicants with the discretion to propose to consult with the RERC on Technology Transfer or the NCDDR, but do not require it. NIDRR strongly encourages these consultations. The peer review process will determine the merits of the dissemination and utilization activities that an applicant proposes.

In regard to the other general requirements, the proposed requirements related to graduate training and sharing information have been eliminated as technical changes. The graduate training requirement repeats the statutory training requirements for RERCs, and the sharing information provision is not a requirement per se.

Changes: The requirements applicable to each RERC regarding dissemination and utilization have been revised to be internally consistent and less prescriptive. The graduate training and sharing information requirements have been eliminated.

Comment: The priorities are too prescriptive and do not provide applicants with sufficient discretion to propose research and engineering activities within each field of study. The priorities should not set forth the specific research problems to be addressed by each RERC, but instead provide a general framework of issues within the authority of the RERCs.

Discussion: NIDRR attempts to provide applicants with as much discretion as possible. Finding the proper balance between providing applicants with this discretion, while at the same time ensuring that an approved application will accomplish the purposes of the RERC, is an admittedly subjective task. This delicate balance is evidenced in the fact that most of the comments that NIDRR receives on this issue request that NIDRR be more prescriptive and include one or more specific requirements. Unless there is compelling evidence of the merits of additional specific requirements, NIDRR routinely declines those requests in order to provide applicants with as much discretion as possible.

There are two sets of requirements applicable to each priority: the general requirements prefacing the priorities and the priorities themselves. In response to this comment, NIDRR has reviewed all of the requirements in the proposed general requirements and the proposed priorities to determine if any could be revised to be less prescriptive without compromising their purposes. As a result, the proposed general requirements have been revised to provide applicants with increased discretion. As indicated in the following sections, NIDRR has made a number of changes to the priorities in response to specific comments suggesting greater flexibility.

Changes: The general requirements regarding dissemination and utilization have been revised to be less prescriptive.

Comment: Paragraphs b and c of the description of the RERC Program are very similar and place too much emphasis on service delivery.

Discussion: Paragraphs b and c of the description of the RERC Program are consistent with the statute.

Changes: None.

Priority 1: Information Technology Access

Comment: The RERC might benefit from collaborating with the European Commission's Telematics Programme.

Discussion: NIDRR encourages all of its RERCs to collaborate with entities undertaking related research and development. The commenter's recommendation is one of many appropriate collaborations that could be undertaken by the RERC. Applicants have the discretion to propose to collaborate with other organizations and agencies, and an applicant could propose to collaborate with the European Commission's Telematics Programme. The peer review process will evaluate the merits of any proposed collaborations.

Changes: None.

Comment: The RERC should be required to coordinate with the RERC on Adaptive Computers and Information Systems and the National Science Foundation's (NSF's) Universal Access Initiative that will, in part, examine access to the World Wide Web.

Discussion: The project period for the RERC on Adaptive Computers and Information Systems ends before the project period for the Information Technology Access RERC begins. The NSF's Universal Access Initiative is expected to address many topics of interest to this RERC, and that coordination will be necessary in order to avoid duplication of effort.

Changes: The priority has been revised to require the RERC to coordinate on research projects of mutual interest with the NSF's Universal Access Initiative.

Priority 3: Ergonomic Solutions for Employment

Comment: Three commenters expressed concern that the priority overemphasized prevention of cumulative trauma disorders (CTDs) and did not place sufficient emphasis on developing ergonomic solutions to the problems persons with disabilities face in obtaining and maintaining employment. The commenters were also concerned that this over-emphasis would neglect the needs of persons with developmental and other significant disabilities.

Discussion: The fact that only one of the five activities required by the priority relates to obtaining and maintaining employment, supports the commenters' contention that the priority overemphasizes prevention. NIDRR agrees that the proposed priority does not place sufficient emphasis on the promotion of employment.

In regard to the issue of addressing the needs of individuals with development and other significant disabilities, NIDRR's authorizing statute requires NIDRR to place a special emphasis on ''individuals with the most severe disabilities. Unless noted otherwise in the priority, all of NIDRR's Centers and Projects are required to address the needs of all persons with disabilities, including those with developmental and other significant disabilities. In addition, it should be noted that the ''Description of the RERC Program'' includes two references to addressing the ''needs of individuals with severe disabilities.'' This RERC is required to address the needs of persons with developmental and other significant disabilities.

Changes: The number of activities to be carried out by the RERC that relate to assisting persons with disabilities to obtain and maintain employment has been increased. The second activity has been expanded beyond prevention-related activities to include evaluation of the worksite accommodation needs of workers with disabilities. The third and fourth activities have been revised and combined to eliminate a prevention focus and, instead, to design, develop, and evaluate ergonomically-based technologies, modifications, techniques, and tools to provide worksite accommodations to workers with disabilities, including elderly workers with disabilities.

Comment: The RERC should include at least two certified professional ergonomists in leadership positions.

Discussion: Persons who fill the leadership positions of this RERC could come from a wide range of professional fields. Applicants have the discretion to propose key personnel, and an applicant could propose to have two certified professional ergonomists in leadership positions on the grant. The peer review process will evaluate the merits of the proposed personnel.

Changes: None.

Comment: The location of the RERC should be limited to an academic institution that includes accredited engineering and medical schools.

Discussion: Eligibility to be an applicant for an RERC is established by statute. RERCs are required to be operated by or in collaboration with an institution of higher education or a nonprofit organization. No further restrictions are permissible by law.

Changes: None.

Comment: The extent of the problem, as stated in the background section of the proposed priority, is incorrectly stated and could be misinterpreted. According to the Bureau of Labor Statistics report on Workplace Injuries and Illnesses in 1995, repeated trauma accounted for 62% of occupational *illnesses* (emphasis added), not injuries as stated in the proposed priority.

Discussion: The commenter is correct. The reference cited refers to illnesses rather than injuries.

Changes: The Bureau of Labor Statistics report citation has been revised to refer to illnesses and not injuries.

Comment: The priority should be expanded beyond biomedical factors to include the psychosocial, cognitive and sensory aspects of ergonomics.

Discussion: Having met the requirements of the priority, applicants have the discretion to propose to expand a field of investigation. An applicant could propose to investigate the psychosocial, cognitive and sensory aspects of ergonomics in addition to proposing to investigate the biomechanical factors that lead to CTDs. The peer review process will evaluate the merits of such a proposal. There is no compelling evidence to justify requiring all applicants to investigate the psychosocial, cognitive and sensory aspects of ergonomics.

Changes: None.

Comment: The fourth and fifth activities should be revised to include evaluation activities.

Discussion: The commenter is correct that adding evaluation components to the fourth and fifth activities of the proposed priority will substantially improve them. In response to other comments the fourth and fifth activities have been revised.

Changes: The revised activities have been expanded to include evaluation components.

Comment: As a matter of clarification, does NIDRR want the RERC to focus its efforts on paid employment or ''include solutions which might include non-paid and home maintenance types of work?''

Discussion: When the purpose of a center or project is to promote obtaining and maintaining employment for persons with disabilities, NIDRR expects the center or project to focus, but necessarily limit, its efforts on paid employment.

Changes: None.

Comment: As a matter of clarification, does NIDRR expect the RERC to link outcome measures related to quality of life to their research and development activities?

Discussion: The outcome measures for each of the priorities should at a minimum include the purposes of the RERCs as stated in the priority. Applicants have the discretion to

propose other outcome measures, including quality of life measures.

Changes: None.

Comment: The priority should be broadened to include addressing injury and pain experienced as a result of secondary conditions by persons with disabilities.

Discussion: The priority requires the RERC to address the needs persons with disabilities. Therefore, the priority requires the RERC to address secondary disabilities that in the case of CTDs necessarily involve pain and injury.

Changes: None.

Comment: The priority should be modified to include the commonly accepted scope of ergonomic research thereby allowing the RERC to exploit the full range of possibilities for research.

Discussion: The priority does not limit applicants to a limited scope of research related to ergonomics. Applicants have the discretion to explore any and all aspects of ergonomic research that will contribute to accomplishing the RERC's purposes. It is unnecessary to revise the priority in order for an applicant to address a wide range of ergonomic research.

Changes: None.

Comment: Two commenters recommended requiring the RERC to develop and make available a design database of ergonomically-based performance data, including anthropomorphic data, to better understand the work-related capabilities of individuals with a wide range of disabilities.

Discussion: The commenters are correct. There is a significant need for development of a database in this area.

Changes: The priority has been revised to require the RERC to develop and disseminate a database of ergonomically-based performance data on the work-related capabilities of persons with disabilities.

Comment: The RERC should design technologies, modifications, techniques and tools that will aid others in providing ergonomically-based worksite accommodations.

Discussion: The commenter has suggested language that more effectively captures the NIDRR's intent for the fifth activity of the proposed priority. As a result of revisions in response to other comments, the fifth activity in the proposed priority has been incorporated into the third activity of the final priority.

Changes: The third activity of the RERC has been revised to design, develop, and evaluate ergonomically-based technologies, modifications, techniques, and tools to provide worksite accommodations to workers with disabilities, including elderly workers with disabilities.

Priority 4: Hearing Enhancement

Comment: Two commenters suggested studying telecoil functioning in hearing aids, including better shielding to prevent electronic interference and weak telecoil sensitivity levels.

Discussion: NIDRR agrees with the commenters that current telecoil functioning in hearing aids can present significant problems to users.

Changes: The priority has been revised to require the RERC to develop and evaluate new, emerging technology for integration into more advanced versions of next generation hearing aids, assistive listening devices (ALDs), and telecoils; Comment: The RERC should study whether an individual can hear as well or better on the telephone using a completely-in-the-canal-aid rather than with another type of aid which has the telecoil option.

Discussion: An applicant could propose to study whether an individual can hear as well or better on the telephone using a completely-in-the-canal-aid rather than with another type of aid which has the telecoil option. The peer review process will evaluate the merits of the proposal. However, there is insufficient evidence to warrant requiring all applicants to conduct this study.

Changes: None.

Comment: The RERC should coordinate with the U.S. Architectural and Transportation Barriers Compliance Board's (Access Board's) efforts at developing standards for ALDs including research.

Discussion: NIDRR agrees with the commenter that the Access Board's research activities in the area of ALDs complement the research of the RERC. While applicants have the discretion to propose specific coordination activities, e.g., research related to developing standards for ALDs, NIDRR believes that a general requirement for the RERC to coordinate with the Access Board will assist the RERC to fulfill its purposes.

Changes: The priority has been revised to require the RERC to coordinate with the Access Board on research projects of mutual interest.

Comment: The RERC should investigate the overall functioning of microphones used with ALDs.

Discussion: An applicant could propose to study the overall functioning of microphones used with ALDs. The peer review process will evaluate the merits of the proposal. However, there is insufficient evidence to warrant requiring all applicants to conduct this study.

Changes: None.

Comment: The RERC should compare the benefits and costs of high tech hearing aids with other available aids in order to provide consumers with impartial information.

Discussion: An applicant could propose to compare the benefits and costs of high tech hearing aids with other available aids. The peer review process will evaluate the merits of the proposal. However, there is insufficient evidence to warrant requiring all applicants to conduct this cost benefit analysis.

Changes: None.

Comment: While maskers have proved to be effective for some persons with significant tinnitus, they are by no means the only, or even the most used, treatment for the relief from the symptoms of tinnitus. The priority places too much emphasis on improving tinnitus maskers.

Discussion: NIDRR agrees with the commenter that maskers are one of a number of strategies to address the symptoms of tinnitus, and that the priority should provide the RERC with greater discretion to explore not only maskers, but other approaches to alleviate these symptoms.

Changes: The fifth activity expands the discretion of the RERC to develop and evaluate technology, including, but not limited to maskers, to alleviate the problems of tinnitus.

Comment: Technology is already available to detect hearing loss in infants. What is needed is better utilization of this technology.

Discussion: NIDRR agrees that there has significant progress in the technology to detect hearing loss in infants. The priority does not require the RERC to develop new technology. The priority directs the RERC to address increased utilization through automation and simplification of hearing loss evaluations.

Changes: None.

Description of the Rehabilitation Engineering Research Center Program

RERCs carry out research or demonstration activities by:

(a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers, and (2) study new or emerging technologies, products, or environments;

(b) Demonstrating and disseminating (1) innovative models for the delivery of

cost-effective rehabilitation technology services to rural and urban areas, and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services, and (2) other scientific research to assist in meeting the employment and independent needs of individuals with severe disabilities.

Each RERC must provide training opportunities to individuals, including individuals with disabilities, to become researchers of rehabilitation technology and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organizations.

General

The following requirements apply to these RERCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these requirements will be assessed using applicable selection criteria in the peer review process:

The RERC must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings. The RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.

The RERC must disseminate research results and other knowledge gained from the Center's research and development activities to persons with disabilities, their representatives, disability organizations, businesses, manufacturers, professional journals, service providers, and other interested parties.

The RERC must develop and carry out utilization activities to successfully transfer all new and improved technologies developed by the RERC to the marketplace.

The RERC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, development, training, and dissemination activities, and in evaluating the Center.

The RERC must conduct a state-of-the-science conference in the third year of the grant and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under this competition only applications that meet one of these absolute priorities.

Priority 1: Information Technology Access

Background

High speed computers, high speed modems, sophisticated telecommunication networks, cable networks, intranets, the Internet, the World Wide Web, and satellites constitute an unparalled global information network. However, the proliferation of information technology has also created problems of accessibility for persons with disabilities (Paciello, M., *People with Disabilities Can't Access the Web*, Yuri Rubinsky Insight Foundation, 1997). Persons with disabilities will be significantly disadvantaged if this new generation of information technology is inaccessible. Promoting accessibility to this dynamic field is a highly technical and complicated task that will place unique demands on an RERC to serve as a resource to a wide range of industry and government officials, as well as persons with disabilities.

The Internet is expanding at a phenomenal rate. There were 1,000 Internet host computers worldwide in 1980. That number increased to 200,000 in 1996 and is expected to reach 12 million by the year 2000. The number of Internet users has virtually doubled every year over the past three years from an estimated 16 million in 1995 to 68 million in 1997 (*Computer Industry Forecasts*, Third Quarter, 1997). Emerging nomadic technologies will enable individuals to access information systems from virtually anywhere, at anytime, and in entirely visual, audio, or mixed modes.

The Internet and World Wide Web are also undergoing dramatic structural changes. Internet 2 is a consortium of academic institutions planning to interconnect its members with a new high-bandwidth Internet that will support advanced applications that are not possible or practical on the current Internet (Kennedy, K., Testimony Before the Senate Commerce, Science, and Transportation Committee; Subcommittee on Communications, June 3, 1997). Once developed, the Next Generation Internet will interconnect 100 Federal research institutions and their research partners with a network capable of operating at speeds 100 to 1000 times faster than today's Internet (Lane, N., Testimony Before the Senate Commerce, Science, and Transportation Committee; Subcommittee on Communications, June 3, 1997). In the spring of 1997, the International World Wide Web Consortium held special workshops at their Sixth International World Wide Web Conference that focused on developing strategies for designing accessibility into the Web core environment.

New generations of computer and information technologies become available long before anyone has fully grasped the implications of the previous generation (Kelly, H., Testimony Before the Senate Commerce, Science, and Transportation Committee; Subcommittee on Communications, June 3, 1997). Product cycles and lifetimes are measured in months, not years. There are many small high technology firms that remain virtually unknown until they announce their product. These firms may have little, or no experience with design accessibility. In addition, the industry is highly competitive, and companies may not be willing to incorporate accessible design features into their products if they believe it involves additional development time and expense.

Designing accessible features into new information technologies early in the design process provides persons with disabilities with immediate access and is more cost effective than retrofitting. Increasingly, functions are integrated onto single chips and motherboards, obviating the need for third party accessories such as sound cards or voice input devices, and making changes or modifications to these built-in features difficult or impossible. The earlier accessibility occurs in the design process for new products, the easier it is to incorporate accessibility features.

Universal design is a process whereby environments and products are designed with built-in flexibility so they are usable by all people, regardless of age and ability, at no additional cost to the user. While advances in computers and information technologies create new opportunities for some individuals, they create barriers for others. Information presented in graphical modes (i.e., images, photographs, icons) poses problems for people who are blind unless there are built-in ''hooks'' that can be identified by the user's screen reader. Conversely, audio cues (beeps) do not convey information to individuals who are deaf or hard of hearing.

The proliferation of public access terminals creates unique accessibility challenges. Access to these terminals requires the use of keyboards, touch screens, telephone handsets, and smart cards and will require the development of flexible, multi-modal interface techniques that can work across all disabilities.

The ability to access computer-based information technologies is quickly becoming a prerequisite for successful employment. Companies are increasingly using internal networks, commonly referred to as intranets, to share information within the company. This presents unique problems for individuals with disabilities if the company uses proprietary software and databases that are specifically designed for their company and do not follow standard protocols. In those cases, the information may be inaccessible to individuals who use assistive devices (e.g., screen readers) to access their computers.

There are emerging information and communication policy issues that will have an enormous impact on technology development. Section 508 of the Rehabilitation Act of 1973, as amended, and the Telecommunications Act of 1996 require the development of accessibility standards and guidelines that direct government agencies, Federal customers and contractors, manufacturers, and developers to address accessibility for new and existing products.

Although computer and information technologies are expanding at phenomenal rates, it is also important to recognize that there are many individuals with disabilities who have problems accessing the current generation of technologies (e.g., integrating assistive devices with existing computer workstations). Continued support and guidance for these individuals are necessary to promote access to the computers and information systems they currently use.

Priority 1

The Secretary will establish an RERC on information technology access for the purposes of developing technological solutions and promoting access for individuals with disabilities to current and emerging information technologies and technology interfaces, including hardware, software, networks, nomadic technologies, the Internet and the World Wide Web. The RERC must:

(1) Develop and evaluate technological solutions in collaboration with industry to promote accessibility and universal design at the outset of the development of information technologies including software, hardware, intranets, and nomadic technologies;

(2) Develop through research and in collaboration with industry flexible, multi-modal interface techniques for computer and information technologies that provide universal access for all individuals with disabilities;

(3) Develop and disseminate strategies for integrating current accessibility features into newer generations of computer and information systems;

(4) Develop through research and in collaboration with Federal agencies, universities and industry the technologies necessary to promote access to current and emerging generations of the Internet and the World Wide Web for persons with disabilities;

(5) Develop and evaluate technologies and strategies to promote universal access to intranet systems;

(6) Provide technical assistance to public and private organizations responsible for developing policies, guidelines and standards that affect the accessibility of information technology products and systems that are developed, manufactured, and implemented; and

(7) Provide technical assistance and guidance to individuals with disabilities and employers on accessibility problems affecting current computer and information systems.

In carrying out the purposes of the priority, the RERC shall coordinate on research projects of mutual interest with the RERC on Telecommunications and the National Science Foundation's Universal Access Initiative.

Priority 2: Communication Enhancement

Background

Speech and language disorders affect the way people talk and understand language, range from mild to significant, and may be developmental or acquired. According to the American Speech-Language and Hearing Association (ASHA), approximately 14 million individuals may be described as having a speech or language disorder (Bello, J., *Communication Facts*, ASHA Research Division, 1994). Two million of those individuals experience significant communication disorders and need access to augmentative and alternative communication (AAC) (Beukelman, D., *Augmentative and Alternative Communication*, Volume 11, June, 1995). For the purpose of this priority, augmentative and alternative communication refers to all forms of communication that enhance or supplement comprehension, speech, and writing, including electronic devices and communication boards.

Historically, AAC has been associated with specific technologies that provide individuals who have significant communication disorders with some type of alternative output. Research documenting successful AAC use has been confined primarily to adolescents and adults with reasonably intact cognitive capabilities and moderate to significant motor impairment (Shane, H., Presentation at ASHA Annual Convention, Seattle, 1995). This limited approach does not address the needs of all persons with significant communication disorders such as persons with mental retardation, aphasia, traumatic brain injury, and autism. A more holistic approach to communication enhancement strategies for persons with significant communication disorders must take into account the complexities of human language and incorporate those factors as unique physical, cognitive, and sensory manifestations and individualized learning styles.

There is a need for new and improved AAC technologies that take the more holistic approach to AAC intervention by addressing input technologies, language processing, and output strategies for a wide range of disabilities. These new or improved technologies could address an array of issues, including, but not limited to: speed enhancement and rate of communication that enable the user to operate in or close to real-time; cosmesis and aesthetics of devices; ergonomic and human factors relationships to interventions and technologies for significant communication disorders; quality, diversity, and naturalness of speech output as it relates to a user's actual voice; human and machine interface and multiple control options; using technology to reduce the burden on users with physical disabilities; reliability, portability, and cost; and developing and disseminating measurable outcomes of research.

Studies of the brain and language acquisition emphasize the importance of addressing the language needs of toddlers and school aged children who use or could use AAC (Blackstone, S., *Augmentative Communication News*, Volume 10, No. 1, 1997). Often children and others with significant communication disorders encounter difficulty in processing and comprehending spoken language. In order to address the needs of these children and adults with significant communication disorders, systems to

enhance communication must support comprehension as well as expression.

Reading and writing are interrelated skills that emerge as part of an interactive language and communication process that begins early in life and continues for approximately 6 years. This process is referred to as emergent literacy. Users of AAC in contrast to those who do not use AAC are often found to be in a phase of emergent literacy for many more years (Koppenhaver, D., et al., *Technology and Disability*, Vol 2., No. 3, 1993). Emergent literacy and AAC use are interrelated processes. This relationship has an impact on the way that the next generation of technology for communication enhancement should be studied and developed. Research issues related to emergent literacy of AAC users include, but are not limited to: the effects of AAC use on reading and writing development; differences in written language development between AAC users and non-users; the effects of early AAC use on emergent literacy; and the impact of different types of technologies on better understanding and use of written language in AAC users.

Aging presents a unique challenge to AAC researchers because technologies must address linguistic, speech, and sensory deterioration as well as tolerance for technology. As persons age, the need for communication enhancement technology increases, yet, according to data reported by the National Health Interview Survey in 1990 only six-tenths of one percent of individuals aged 65 or older were using AAC technology. Elderly persons with acquired communication disorders encounter a lack of awareness on the part of service providers and an absence of communication services in general.

To date there has been only minimal attention to the job options available for persons with disabilities who use AAC. Anecdotal reports suggest that individuals with severe communication disorders are frequently considered unemployable. The high rate of unemployment results from a number of factors including, but not limited to: lack of skills, inadequate job preparation; attitudinal barriers; transportation barriers; architectural and accommodation barriers; and limitations in the AAC technology (Light, J., et al., *AAC*, Volume 12, 1996). Issues related to unemployment for users of AAC devices include, but are not limited to, compatibility with other technology on the worksite and the ability of the AAC user to transition easily from one task to another.

There are over 40 companies in the United States developing, manufacturing and distributing AAC devices. The next generation of development must challenge conventional AAC approaches and improve the way in that new technologies incorporate and blend principles of communication theories and engineering. Communicative competence ensures that individuals are able to attain communication goals that include expressing needs and wants, developing social skills and routines, and exchanging information (Light, J., *AAC*, Volume 13, 1997). Communication competence is built over time through improved science, engineering, and the modification of environments, parameters, opportunities and instruction as well as improving communication tools.

Priority 2

The Secretary will establish an RERC on communication enhancement to improve AAC technologies that can further the development of communication, language, natural speech, discourse skills, and literacy of persons with significant communication disorders. The RERC must:

(1) Develop and evaluate in collaboration with industry improved AAC technologies for individuals with significant communication disorders;

(2) Develop and evaluate strategies that promote literacy proficiency for AAC users;

(3) Develop and evaluate communication enhancement strategies and AAC technologies that factor in the speech, linguistic and multiple sensory needs of the elderly;

(4) Investigate and disseminate strategies to build the capacity of service providers and increase their involvement with elderly persons with significant communication disorders who use or could use AAC; and

(5) Identify barriers that negatively affect the employment status of individuals with significant communication disorders who use, or could use, AAC and develop and evaluate approaches to overcome those barriers in order to improve their employment status.

In carrying out the purposes of the priority, the RERC shall:

- Coordinate on research projects of mutual interest with the RERC on Hearing Enhancement;
- Address the needs of individuals of all ages with significant communication disorders including, but not limited to, toddlers and the elderly; and
- Address the needs of persons with developmental disabilities and acquired disabilities including but not limited to mental retardation, aphasia, traumatic brain injury, and autism.

Priority 3: Ergonomic Solutions for Employment

Background

The familiar components of the work environment (i.e., tools, machines, and equipment) often are designed without adequate consideration for the people who must use them. Similarly, work tasks may require capabilities that individuals do not have or cannot sustain over long periods of time without injury. Improperly designed workplaces can lead to fatigue, discomfort, and injury that result in reduced productivity and increased costs for employers. These same work environment components may present additional physical barriers to persons with disabilities and negatively impact their employment status.

The Bureau of Labor Statistics estimates that repeated trauma, commonly referred to as cumulative trauma disorders (CTDs), accounted for 62 percent of all occupational illnesses in 1995—up from 15 percent in the early 1980s. The National Institute for Occupational Safety and Health (NIOSH) estimates that annual U.S. medical costs from repetitive stress injuries total $13 billion (NIOSH, ''Musculoskeletal Disorders and Workplace Factors,'' July, 1997), and the Labor Department's Occupational Safety and Health Administration (OSHA) has estimated overall costs at nearly $100 billion a year when one considers lost work time, lost productivity, and retraining costs.

Ergonomics is an interdisciplinary field concerned with the performance and safety of individuals at work and how they cope with the work environment, interact with machines, and, in general, negotiate their work surroundings (Scheer, S. and Mital, A., ''Ergonomics,'' *Archives of Physical Medicine & Rehabilitation*, Volume 78, pg. 36, March, 1997). Ergonomic principles are based on a combination of science, engineering, and biomechanics (the study of the body as a system operating under two sets of laws: Newtonian mechanics and the biological laws of life) and are used to promote the proper design of products, workplaces, and equipment (Kroemer, K.H.E., et al., *Ergonomics: How to Design for Ease & Efficiency*, Prentice Hall, N.J., pgs. 6–7, 1994). When these principles are applied correctly, the incidence and severity of musculoskeletal disorders decrease (Stobbe, T. J., ''Occupational

Ergonomics and Injury Prevention,'' *Occupational Medicine*, pgs. 531–543, July, 1996) thereby reducing the likelihood of work related injuries and employer costs.

Cumulative trauma disorders (CTDs) are a class of musculoskeletal disorders involving nerves, tendons, muscles and supporting bony structures (i.e., back, neck, shoulders, and hands). They represent a wide range of disorders that can differ in severity from mild periodic conditions to those that are severe, chronic and debilitating. Since the early 1980s, there has been a dramatic increase in CTDs. OSHA attributes much of this increase to changes in production processes and technologies, resulting in more specialized tasks with increased repetitions and higher assembly line speeds. Two of the most frequently occurring, occupationally induced CTDs are carpal tunnel syndrome and low back pain.

Carpal tunnel syndrome is a condition caused by pressure on the median nerve as it passes through the carpal tunnel of the wrist; it results in the gradual onset of numbness and tingling in one's thumb and the first two and a half fingers of the hand. If allowed to continue, carpal tunnel syndrome may cause pain, muscle atrophy at the base of the thumb, and clumsiness (Phalen, G.S., ''The Carpal-Tunnel Syndrome: Seventeen Year's Experience in Diagnosis and Treatment of Six-Hundred Fifty-Four Hands,'' *The Journal of Bone and Joint Surgery*, pgs. 211–228, 1996). Carpal tunnel syndrome is recognized as a disabling condition of the hand caused by excessive or repetitive movements, undesirable hand positions, or exertions that impose prolonged loads on the affected tissues (Huenting, H., et al., ''Constrained Postures in Accounting Machine Operations,'' *Applied Ergonomic*, Volume 11, pgs. 145–149, 1980).

Improper working posture is a major factor in the development of lower back pain. The strain on one's body may be caused by external loads (e.g., when one lifts, lowers, pulls, pushes, carries, holds onto heavy objects or any combination of these factors) or by simply moving one's own body or by maintaining postural support using muscle tension alone. In addition to the loss in function and pain, the direct and indirect costs associated with lower back injuries are significant. There is a need for reliable and validated measurement tools to measure mechanical strains within the body and to incorporate the various findings into models of strains and capabilities (Kroemer, K.H.E., op. cit., pgs. 473–475).

The ability to perform physical work depends greatly upon a number of variables including an individual's age, size, strength, overall health and fitness, training, motivation, and physical dexterity. A common approach to matching an individual's work capacity with specific job tasks is to assess the individual's overall energy capacity by measuring heart rate and oxygen consumption while on a treadmill or bicycle ergometer and then comparing that information with the amount of energy it takes for a ''normal'' person to do the specific job tasks (Kroemer, K.H.E, op. cit., pgs. 118–131). Improper matches can lead to early fatigue, and impact a person's ability to do the job tasks safely and efficiently.

Individuals with disabilities present unique ergonomic challenges particularly if they use assistive devices to overcome deficits and function independently. The use of ergonomic knowledge in rehabilitation engineering is widespread, ranging from wrist splints to environmental control systems. Technology for people with significant disabilities depends increasingly on the development and implementation of sophisticated devices including voice input systems, screen readers, and eye tracking systems. However, development alone of those types of devices does not ensure success. It is sometimes necessary to quantitatively measure one's residual capabilities and energy capacity and compare these results with specific job tasks. After selecting the appropriate ergonomic solutions, it is necessary to have the individual demonstrate the usability of those solutions within the worksite environment and make the necessary changes or adaptations to ensure proper use and fit. There are testing devices and procedures that have been developed to quantitatively measure the residual capabilities of impaired persons, such as the Basic Elements of Performance Test and the Available Motions Inventory Test (Smith, R. V. and Leslie, J. H., *Rehabilitation Engineering*, CRC Press, pgs. 127–143, 1990). These tests measure an individual's ability for specific tasks (i.e., reach, grasp, manipulation), but do not measure one's ability to incorporate complex assistive devices into the workplace of people with significant disabilities.

Elderly individuals are working longer than ever before and the proportion of people with work disability (defined as a limitation in work due to chronic illness or impairment) increases with age (Disability Statistics Program, ''People with Work Disability in the U.S.,'' *Disability Statistics Abstract*, U.S. Department of Education, Volume 4, May, 1992). Older workers face unique ergonomic challenges due to other changes that occur naturally as part of the aging process (i.e., changes in biomechanical features, respiratory capabilities, visual functions, hearing, reaction times, etc). Without proper ergonomic design and strategies, older workers could well find themselves at an unnecessary disadvantage due to compromised productivity and health.

Priority 3

The Secretary will establish an RERC on ergonomic solutions for employment to develop ergonomic strategies and devices to reduce and prevent the onset of cumulative trauma disorders and to assist persons with disabilities in obtaining and maintaining appropriate employment. The RERC must:

(1) Investigate the biomechanical factors that lead to cumulative trauma disorders including, but not necessarily limited to, carpal tunnel syndrome and low back injuries;

(2) Develop and evaluate worksite ergonomic analysis tools to: (a) determine the causes of ergonomic stress associated with repetitive motions, awkward postures, and excessive energy expenditure, and (b) evaluate the worksite accommodation needs of workers with disabilities;

(3) Design, develop, and evaluate ergonomically-based technologies, modifications, techniques, and tools to provide worksite accommodations to workers with disabilities, including elderly workers with disabilities; and

(4) Develop and disseminate a database of ergonomically-based performance data on the work related capabilities of persons with disabilities.

In carrying out the purposes of the priority, the RERC shall coordinate on research projects of mutual interest with the RRTC on Workplace Supports to Improve Employment Outcomes.

Priority 4: Hearing Enhancement

Background

Individuals whose hearing is impaired, but who can understand conversational speech with, or without, amplification are hard-of-hearing (HoH). Individuals classified as HoH range in age from infants to the elderly. The National Center for Health Statistics (NCHS), using the ''Gallaudet Hearing Scale'' that is self-reporting and quantifies the amount of interference with hearing in ordinary day-to-day situations, estimates that the number of persons who are HoH and who might benefit from using a hearing aid ranges

from 20 million to 22 million (''National Health Survey,'' Series 10, No. 188, 1994).

Developments over the past five years have resulted in significant growth in digital hearing aid technology, improved evaluation of hearing loss, especially in very young children, improved computer assisted fitting of hearing aids, and more cosmetically acceptable hearing aids that do not sacrifice important functions for the sake of appearance. Modern science and technology continue to offer even greater opportunity for improvements in the simplification and automation of hearing loss evaluation and in the proper fitting of appropriate hearing aids to individual users. Concurrently there have been important developments in related areas, such as assistive listening devices (ALDs) and in automatic speech recognition (ASR), a technology that enables a person to dictate words into a microphone and have those words converted into computer-language text. The 1996 National Strategic Plan of the National Institute on Deafness and Other Communication Disorders (NIDCD) reflects a growing realization that new technology offers potential relief from the symptoms of tinnitus. New developments in ultra-thin circuit boards and chips, flash ROM, better power management, and other forms of emerging technology offer increasing opportunities to expand features available in the next generation of hearing enhancing devices.

While improving, consistent and early identification of hearing loss in small children remains problematic. The diagnostic technology needs to be simplified and made available to pediatric and child care personnel with minimal training in audiology.

The proper fitting of hearing aids ensures that tonal quality, amplification levels, and environmental noise are controlled to the maximum extent possible. New developments in sophisticated digital hearing technology must be accompanied by new training and fitting procedures to ensure that new multi-channel aids deliver maximum performance.

Tinnitus affects about 17 percent of the general population and about 33 percent of the elderly (Jastreboff, P. and Hazell, J., ''Neurophysiological Approaches to Tinnitus'' *British Journal of Audiology*, 1993). Tinnitus is described as an incessant ringing in the ears or other head noise that is heard when there is no external cause for that noise. Currently, there is no cure for tinnitus (Goldstein, B. & Shulman, A., ''Tinnitus Masking—A Longitudinal Study of Efficacy/Diagnosis 1977–1994.'' Proceedings of the Fifth International Tinnitus Seminar, 1995). Often, tinnitus accompanies hearing loss. However, there are cases of severe hearing loss without tinnitus. Tinnitus also occurs without evidence of other auditory system diseases or disorders. This variation drives the need for better dual channel hearing aid/tinnitus maskers and single channel tinnitus maskers. Although there are currently some devices on the market that combine amplification and masking, those efforts have not been widely accepted, possibly because recent technical developments in miniaturizing have not been fully exploited (Gold, S., et al., ''Selection and Fitting of Noise Generators and Hearing Aids for Tinnitus Patients.'' Proceedings of the Fifth International Tinnitus Seminar, 1995).

In recent years there have been significant advances in assistive devices that enhance the ability of individuals to integrate more successfully in personal and business arenas. In a survey by one of the largest organizations for the HoH, Self-Help for the Hard of Hearing (SHHH), it was found that nearly half of its membership used ALDs, both personal devices and large room systems (Sorkin, D., ''Understanding Our Needs: The SHHH Member Survey Looks at Hearing Aids.'' *SHHH Journal*, Volume 16, No. 4, 1995). Perhaps the most promising new technology for broadening the application of assistive devices is ASR. The potential for using speech-to-print mechanisms based on ASR offers promising benefits including real-time transcription in meetings and automated telephone relay services to HoH persons. However, the mechanisms to realize the full potential of those benefits for this population remain to be developed.

There is a need for improvements in the shielding of hearing aid components from the emission of extraneous electronic signals. The Federal government is working to establish standards to reduce those signals from a multitude of devices regulated by the Federal Communications Commission (FCC). However, the probability of blanket suppression of all sources is low.

Priority 4

The Secretary will establish an RERC on hearing enhancement to develop new and improve existing technologies for persons who are HoH. The RERC must:

(1) Evaluate current technology available for hearing aids, ALDs, tinnitus maskers, and ASR systems and develop improvements for these technologies including, but not limited to, improved shielding for extraneous electronic signals and new training and fitting procedures for new multi-channel aids;

(2) Develop and evaluate new, emerging technology for integration into more advanced versions of next generation hearing aids, ALDs, and telecoils;

(3) Automate and simplify methods for conducting hearing loss evaluation in infants, children, and adults;

(4) Develop training and technical assistance materials and provide training and technical assistance to hearing aid developers, technicians, and appropriate organizations representing persons who are HoH to enable them to effectively address the hearing enhancement needs of individuals who are HoH;

(5) Develop and evaluate technology, including, but not limited to maskers, to alleviate the problems of tinnitus.

(6) Develop and evaluate protocols for efficient integration of ASR with interfacing needs of persons with hearing loss including, but not limited to, ''real-time captioning,'' automated relay telephone systems, and personal hand-held communicators; and

(7) Develop training and technical assistance materials and provide training and technical assistance to hearing aid fitters, pediatric and audiology personnel, appropriate counseling organizations, and organizations representing people who are HoH to enable them to address effectively the hearing aid needs and adjustment to hearing loss problems experienced by persons who are HoH and also to provide appropriate counseling and guidance to individuals who experience tinnitus;

In carrying out the purposes of the priority, the RERC shall coordinate on research projects of mutual interest with the RERCs on Universal Telecommunications Access and Communication Enhancement, the RRTC on HoH/Late Deafened, and the Access Board.

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Note: The official version of this document is the document published in the **Federal Register**.

Applicable Program Regulations: 34 CFR Parts 350 and 353.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133E, Rehabilitation Engineering Research Centers)

Dated: March 3, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–5894 Filed 3–6–98; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.133E]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Rehabilitation Engineering Research Centers for Fiscal Year 1998

Note To Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

This program supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and Disability and Rehabilitation Research Projects and Centers—34 CFR Part 350, particularly *Rehabilitation Engineering Research Centers* in Subpart D.

APPLICATION NOTICE FOR FISCAL YEAR 1998, REHABILITATION ENGINEERING RESEARCH CENTERS, CFDA NO. 84.133E

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Information Technology Access	May 11, 1998	1	$1,350,000	60
Communication Enhancement	May 11, 1998	1	900,000	60
Ergonomic Solutions for Employment	May 11, 1998	1	800,000	60
Hearing Enhancement	May 11, 1998	1	900,000	60

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Program Title: Rehabilitation Engineering Research Centers.

CFDA Number: 84.133E.

Purpose of Program: Rehabilitation Engineering Research Centers (RERCs) conduct research, demonstration, and training activities regarding rehabilitation technology—including rehabilitation engineering, assistive technology devices, and assistive technology services, in order to enhance the opportunities to better meet the needs of, and address the barriers confronted by, individuals with disabilities in all aspects of their lives.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications under the RERC program. (See § 350.54)

(a) *Importance of the problem* (8 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of rehabilitation service providers (2 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of an application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (20 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (3 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of

the current literature, demonstrating knowledge of the state-of-the-art (3 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (3 points);

(C) Each sample population is appropriate and of sufficient size (3 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (3 points); and

(E) The data analysis methods are appropriate (3 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (2 points).

(d) *Design of development activities* (20 points total).

(1) The Secretary considers the extent to which the design of development activities is likely to be effective in accomplishing the objectives of the project.

(2)(i) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(ii) The extent to which the plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products or techniques, including consideration of the extent to which—

(A) The proposed project will use the most effective and appropriate technology available in developing the new device or technique (3 points);

(B) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology (4 points);

(C) The new device or technique will be developed and tested in an appropriate environment (3 points);

(D) The new device or technique is likely to be cost-effective and useful (3 points);

(E) The new device or technique has the potential for commercial or private manufacture, marketing, and distribution of the product (4 points); and

(F) The proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products (3 points).

(e) *Design of training activities* (4 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factor: The extent to which the type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in advanced-level research, are likely to develop highly qualified researchers (4 points).

(f) *Design of dissemination activities* (7 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (2 points); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (2 points).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(g) *Design of utilization activities* (2 points total).

(1) The Secretary considers the extent to which the design of utilization activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factor: The extent to which the potential new users of the information or technology have a practical use for the information and are likely to adopt the practices or use the information or technology, including new devices (2 points).

(h) *Design of technical assistance activities* (2 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factor: The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (2 points).

(i) *Plan of operation* (4 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(j) *Collaboration* (4 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (2 points).

(ii) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities (2 points).

(k) *Adequacy and reasonableness of the budget* (3 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(l) *Plan of evaluation* (9 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors: The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(i) Are clearly related to the intended outcomes of the project and expected impacts on the target population (5 points); and

(ii) Are objective, and quantifiable or qualitative, as appropriate (4 points).

(m) *Project staff* (9 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (2 points).

(n) *Adequacy and accessibility of resources* (4 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (1 point).

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Instructions For Application Narrative

The Secretary strongly recommends the following:

(a) A one-page abstract;

(b) An Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than 125 pages double-spaced (no more than 3 lines per vertical inch) 8½ × 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(c) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions For Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

(**Note:** ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team, Department of Education, 600 Independence Avenue S.W., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD

number at (202) 205–2742. Internet: Donna__Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: March 3, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for The Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application To a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. An applicant for an RERC is limited to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply For Grants?

No. Only organizations are eligible to apply for grants under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise me Whether my Project is of Interest to NIDRR or Likely to be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I Assure that my Application will be Referred to the most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting my Application Can I Find Out if it Will be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date.

Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR to Find Out if my Application is being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If my Application is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will all Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, 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 regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000–01–C

Public reporting burden for these collections of information is estimated to average 30 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 regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, D.C. 20503.

Rehabilitation Engineering Research Center (CFDA No. 84.133E) 34 CFR part 350.

Rehabilitation Engineering Research Center (CFDA No. 84.133E) 34 CFR part 350.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provisions is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability to certain potential beneficiaries to fully participate in the project and to achieve high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provisions.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4561.

BILLING 4000–01–P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant,' " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. a. **Name and Address of Lobbying ~~Entity~~ Registrant** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
~~11. **Amount of Payment** *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~	~~13. **Type of Payment** *(Check all that apply):*~~ ~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~○ e. deferred~~ ~~☐ f. other; specify: _____~~	
~~12. **Form of Payment** *(check all that apply):*~~ ~~☐ a. cash~~ ~~☐ b. in-kind; specify: nature _____ value _____~~		
~~14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**~~ ~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~		
~~15. **Continuation Sheet(s) SF-LLL attached:** ☐ Yes ☐ No~~		
16. **Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.**	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:**	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate~~. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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[1] 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.

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