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WHO: The Office of the Federal Register.

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NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 300 and 330

RIN 3206-AE50

Employment (General); Time-in-Grade Restrictions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations governing the time-in-grade restriction on advancement to positions in the General Schedule. These changes would provide additional flexibility and simplify or clarify provisions.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Leota Shelkey (202) 606-0960; FTS 266-0960.

SUPPLEMENTARY INFORMATION: Since the early 1950's, Federal employees in General Schedule positions at GS-5 and above have been required to serve at least 1 year in grade before being promoted. On October 19, 1990, OPM published proposed revisions to the time-in-grade regulations in the **Federal Register** (55 FR 42389). We received written comments from 13 Federal agencies, one employee organization, and one individual. Most commenters supported the changes. The key comments and changes are summarized below.

Section 300.602 Definitions

One commenter pointed out that our definition of "Advancement" as a position change, which includes demotion, is inconsistent with the generally accepted meaning of advancement. We agree and have revised the definition to mean a promotion (including temporary promotion) or appointment resulting in a higher grade or salary.

In addition, we revised the definition of "Inequity to an employee." The purpose is to include all situations where an employee's duties remain unchanged but the position is upgraded. For example, an air traffic control specialist position might be upgraded when the facility is upgraded as a result of increased air traffic.

Section 300.603 Coverage

Section 300.603(b) lists exceptions to the time-in-grade restriction. We have revised the introductory clause to show that these exceptions do not constitute a waiver of any other applicable requirement, such as qualification standards.

One commenter suggested we clarify that the noncompetitive appointments under exception (2) do not include transfer and reinstatement. We have done so.

Another commenter suggested we expand exception (3) on repromotion to a grade formerly held to include a grade held in the excepted service. We have made this change and also clarified that any repromotion must be consistent with the merit promotion program requirements in 5 CFR part 335.

Another commenter suggested we revise exception (4) to exempt an employee in a non-GS position from the time-in-grade restriction, even if the individual had held a GS position within the previous 52 weeks. We have not adopted this suggestion. Any individual who held a GS position within the last 52 weeks is subject to the restriction. This is the case regardless of whether the person left Federal employment or served in a non-GS Federal position.

An agency suggested that to avoid additional paperwork, in exception (7), we retain the previous language on agency redelegation of authority to approve waivers based on hardship or inequity. Our purpose in changing the language was to make clear agency heads could redelegate this authority. Inasmuch as we do not want to create additional roadblocks to redelegation, we have adopted the agency's suggestion.

Another commenter felt exception (8), allowing OPM to approve waivers, was not needed and that agencies should be given full delegation to approve waivers based on hardship or inequity. We have revised exception (8) to clarify that OPM could approve waivers in situations not strictly covered by our definitions of hardship or inequity but which are consistent with the intent of those definitions.

Section 300.604 Restrictions

This section contains the time-in-grade waiting period, which we proposed to change from 1 year to 52 weeks. This would make the time-in-grade waiting period consistent with the waiting period for within-grade increases to steps 2, 3, and 4 of General Schedule grades.

Commenters strongly supported this change. However, several pointed out there would be confusion unless we made a corresponding change in the qualification standards requiring 1 year of specialized experience. This had been our plan although we did not say so in the proposal. We will change the Qualification Standards Handbook (X-118) to define 1 year for qualification purposes as 52 weeks.

The change to 52 weeks would allow within-grade increases and promotions to occur on the same effective date. This would eliminate the need for agencies to process separate notifications of personnel action for promotion and within-grade increases. OPM will change its processing procedures to allow agencies to combine the two personnel actions.

Proposed § 300.604(b)(3) would have allowed agency heads to determine whether time in grade is satisfied by service one grade or two grades lower when positions with 1-grade interval work have mixed interval promotion patterns (e.g., GS-5, 6, 8).

One agency stated that our proposal would be more difficult for them to apply because it would require the agency head's approval. Because the intent of our proposal was to recognize unique promotion patterns and organizational arrangements of agencies rather than make it more difficult to work with these unusual situations, we have revised paragraph (b)(3) to drop agency head approval. Instead, agencies themselves would decide the appropriate approval level.

Section 300.605 Creditable Service

This section defines creditable service for meeting time in grade. In § 300.605(a), we have clarified the

longstanding rule that service on detail is credited at the grade of the position of record rather than the position to which detailed. This means an employee detailed to a higher grade position receives time-in-grade credit at the lower grade rather than the higher grade. An employee detailed to a lower grade position receives credit at the higher grade.

One commenter objected to allowing credit for service with a nonappropriated fund (NAF) instrumentality. This commenter pointed out that NAF Service has not been creditable for purposes such as retirement, leave, and reduction in force. We allowed time-in-grade credit on the basis that NAF workers are employees of the United States. Furthermore, recent legislation has reversed earlier laws limiting credit of NAF service for many purposes.

Public Law 101–508, November 5, 1990, allows personnel interchange agreements between NAF instrumentalities and Federal agencies. In addition, an NAF employee of the Defense Department or Coast Guard who moves without a break in service to a civil service position in the same agency receives service credit for NAF time for leave and reduction-in-force purposes. The law permits use of NAF time in determining other benefits as well.

Section 300.605(b) requires agencies to use representative rates to credit Federal service in non-General Schedule (GS) positions. Two agencies pointed out it is difficult to obtain or determine representative rates for non-GS pay systems (which do not use the concept of representative rate), especially for less recent service. To eliminate these problems, we have changed the method for crediting non-GS service. Under the new method, agencies must compare an individual's rate of basic pay in a non-GS position with the representative rate of a GS position.

Section 300.605(c) addresses credit for higher grade temporary service that occurs prior to an employee's first competitive appointment. Under 5 CFR 330.502, such service is credited for time-in-grade purposes at the grade of the subsequent competitive appointment. We proposed to continue the same requirement under § 300.605(c) but apply it only until an employee had served in pay status for 52 weeks under nontemporary competitive appointment. One commenter believed our change would contribute to favoritism and merit system abuses.

The limit on crediting temporary service was adopted initially because agencies were appointing individuals from civil service registers for lower grade jobs and soon after promoting them to higher grades for which they were ineligible on appropriate registers. Thus, the purpose was to prevent use of inappropriate civil service registers in filling positions. We do not believe that our change will lead to merit system abuses since agencies have long had the authority to match an individual's salary under a prior temporary appointment. Furthermore, any subsequent promotion action must be consistent with the merit promotion program, including qualification standards.

Section 300.606 Agency Authority

We clarified that an agency has authority to expand on these restrictions consistent with the intent of this subpart.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

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

List of Subjects

5 CFR Part 300

Government employees, Administrative practice and procedure.

5 CFR Part 330

Government employees, Intergovernmental relations.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR parts 300 and 330 as follows:

PART 300—EMPLOYMENT (GENERAL)

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

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. secs. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Sec. 300.301 also issued under 5 U.S.C. 3324.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. secs. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

2. Subpart F is revised to read as follows:

Subpart F—Time-in-Grade Restrictions

Sec.

Subpart F—Time-in-Grade Restrictions

§ 300.601 Purpose.

The restrictions in this subpart are intended to prevent excessively rapid promotions in competitive service General Schedule positions and to protect competitive principles. They provide a budgetary control on promotion rates and help assure that appointments are made from appropriate registers. These restrictions are in addition to the eligibility requirements for promotion in part 335 of this chapter.

§ 300.602 Definitions.

In this subpart—

Advancement means a promotion (including a temporary promotion) or any type of appointment resulting in a higher grade or higher rate of basic pay.

Competitive appointment means an appointment based on selection from a competitive examination register of eligibles or under a direct hire authority.

Hardship to an agency involves serious difficulty in filling a position, including when:

(a) The situation to be redressed results from circumstances beyond the organization's control and otherwise would require extensive corrective action; or

(b) A position at the next lower grade in the normal line of promotion does not exist and the resulting action is not a career ladder promotion; or

(c) There is a shortage of candidates for the position to be filled.

Inequity to an employee involves situations where a position is upgraded without change in the employee's duties or responsibilities, or where discrimination or administrative error prevented an employee from reaching a higher grade.

Nontemporary appointment means any appointment other than a temporary appointment pending establishment of a register (TAPER) or a temporary or excepted appointment not to exceed 1 year or less.

§ 300.603 Coverage.

(a) *Coverage.* This subpart applies to advancement to a General Schedule position in the competitive service by any individual who within the previous 52 weeks held a General Schedule position under nontemporary

appointment in the competitive or excepted service in the executive branch, unless excluded by paragraph (b) of this section.

(b) *Exclusions.* The following actions may be taken without regard to this subpart but must be consistent with all other applicable requirements, such as qualification standards:

(1) Appointment based on selection from a competitive examination register of eligibles or under a direct hire authority.

(2) Noncompetitive appointment based on a special authority in law or Executive order (but not including transfer and reinstatement) made in accordance with all requirements applicable to new appointments under that authority.

(3) Advancement in accordance with part 335 of this chapter up to any General Schedule grade the employee previously held under nontemporary appointment in the competitive or excepted service.

(4) Advancement of an employee from a non-General Schedule position to a General Schedule position unless the employee held a General Schedule position under nontemporary appointment in the executive branch within the previous 52 weeks.

(5) Advancement of an individual whose General Schedule service during the previous 52 weeks has been totally under temporary appointment.

(6) Advancement of an employee under a training agreement established in accordance with chapter 338 of the Federal Personnel Manual. However, an employee may not receive more than two promotions in any 52-week period solely on the basis of one or more training agreements. Also, only OPM may approve a training agreement that provides for consecutive promotions at rates that exceed those permitted by § 300.604 of this part.

(7) Advancement to avoid hardship to an agency or inequity to an employee in an individual meritorious case but only with the prior approval of the agency head or his or her designee. However, an employee may not be promoted more than three grades during any 52-week period on the basis of this paragraph.

(8) Advancement when OPM authorizes it to avoid hardship to an agency or inequity to an employee in individual meritorious situations not defined, but consistent with the definitions, in § 300.602 of this part.

§ 300.604 Restrictions.

The following time-in-grade restrictions must be met unless advancement is permitted by § 300.603(b) of this part:

(a) *Advancement to positions at GS–12 and above.* Candidates for advancement to a position at GS–12 and above must have completed a minimum of 52 weeks in positions no more than one grade lower (or equivalent) than the position to be filled.

(b) *Advancement to positions at GS–6 through GS–11.* Candidates for advancement to a position at GS–6 through GS–11 must have completed a minimum of 52 weeks in positions:

(1) No more than two grades lower (or equivalent) when the position to be filled is in a line of work properly classified at 2-grade intervals; or

(2) No more than one grade lower (or equivalent) when the position to be filled is in a line of work properly classified at 1-grade intervals; or

(3) No more than one or two grades lower (or equivalent), as determined by the agency, when the position to be filled is in a line of work properly classified at 1-grade intervals but has a mixed interval promotion pattern.

(c) *Advancement to positions up to GS–5.* Candidates may be advanced without time restriction to positions up to GS–5 if the position to be filled is no more than two grades above the lowest grade the employee held within the preceding 52 weeks under his or her latest nontemporary competitive appointment.

§ 300.605 Creditable service.

(a) All service at the required or higher grade (or equivalent) in positions to which appointed in the Federal civilian service is creditable towards the time periods required by § 300.604 of this part, except as provided in paragraph (c) of this section. Creditable service includes competitive and excepted service in positions under the General Schedule and other pay systems, including employment with a nonappropriated fund instrumentality. Service while on detail is credited at the grade of the employee's position of record, not the grade of the position to which detailed. Also creditable is service with the District of Columbia Government prior to January 1, 1980 (or prior to September 26, 1980, for those District employees who were converted to the District personnel system on January 1, 1980).

(b) Service in positions not subject to the General Schedule (GS) is credited at the equivalent GS grade by comparing the candidate's rate of basic pay with the representative rate (as defined in § 351.203 of this chapter) of the GS position in effect when the non-GS service was performed. The equivalent GS grade is the GS grade with a representative rate that equals the candidate's rate of basic pay. When the candidate's rate of basic pay falls between the representative rates of two GS grades, the non-GS service is credited at the higher grade.

(c) In applying the restrictions in § 300.604 of this part, prior service under temporary appointment at a level above that of a subsequent nontemporary competitive appointment is credited as if the service had been performed at the level of the nontemporary appointment. This provision applies until the employee has served in pay status for 52 weeks under nontemporary competitive appointment; thereafter, the service is credited at its actual grade level (or equivalent).

§ 300.606 Agency authority.

An agency may expand on these restrictions consistent with the intent of this subpart or may adopt similar policies to control promotion rates of employees not covered by this subpart.

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

3. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–58 Comp., p. 218.

Sec. 330.102 also issued under 5 U.S.C. 3327.

Subpart B also issued under 5 U.S.C. 3315 and 8151.

Sec. 330.401 also issued under 5 U.S.C. 3310.

Subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

§ 330.502 [Removed]

4. In part 330, § 330.502 is removed and reserved.

[FR Doc. 91–11804 Filed 5–17–91; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amendment No. 332]

Food Stamp Program; Resource Exemption for Public Assistance/ Supplemental Security Income Households from the Mickey Leland Memorial Domestic Hunger Relief Act.

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: This rule amends the Food Stamp regulations to implement subsection 1719(2) of the Mickey Leland

Memorial Domestic Hunger Relief Act (Pub. L. 101–624, title XVII, 104 Stat. 3785). The provision allows the exemption of resources for food stamp purposes for certain individuals receiving public assistance (PA) or supplemental security income (SSI).

DATES: The provisions of this action are effective and must be implemented on October 1, 1991. Comments must be received on or before July 19, 1991 to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. All written comments will be open for public inspections at the office of the Food and Nutrition Service during regular business hours (8:30 to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding this interim rulemaking should be addressed to Ms. Seymour at the above address or by telephone at (703) 756–3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291/Secretary's Memorandum 1521–1

This interim rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521–1. The Department has classified this rule as nonmajor. The rule will not have an annual affect on the economy of $100 million a year or more. The rule will have little or no effect on costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Further the rule will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the interim rule and related notice(s) to 7 CFR part 3015, subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Betty Jo Nelsen, Administrator of the Food and Nutrition Service (FNS), has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This interim rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Public Participation and Effective Date

This interim rule is being published without prior notice of proposed rulemaking or an opportunity for public comment prior to implementation. As a result of a court suit, which is discussed later in the preamble, the Department has become aware that implementation of this rule as soon as possible may avoid undue hardship for a large group of food stamp recipients. For this reason, Betty Jo Nelsen, Administrator of FNS, has determined, pursuant to 7 U.S.C. 553(b)(B), that public comment on this interim rule prior to implementation is impracticable. However, because the Department believes that the administration of these provisions may be improved by public comments, the Department is soliciting comments on this rule for 60 days. All comments received will be analyzed and appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

Background

Section 5(g)(1) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2014(g)), prescribes the types and allowable amounts of financial resources that an eligible food stamp household may own. Accordingly, current regulations at 7 CFR 273.8(b) prescribe a $3,000 resource limit for households with a member age 60 or over, and a $2,000 resource limit for all other households. Households whose resources exceed their respective resource limit are ineligible for food stamp benefits. An exception to this rule is that households which are categorically eligible for food stamps do not have to meet resource limits as described in 7 CFR 273.8. As prescribed in section 5(a) of the Food Stamp Act (7 U.S.C. 2014(a)) categorically eligible households are defined in 7 CFR 273.2(j)(2)(i) as those households where all household members receive or are authorized to receive public assistance (PA) and/or Supplemental Security Income (SSI) (commonly known as "pure" PA or SSI households).

However, not all households with a household member receiving or authorized to receive PA and/or SSI benefits are "pure" PA or SSI households. In some households all members who are eligible for food stamps are counted as one household in accordance with 7 CFR 273.1(a) but only one (or more) household member may be receiving PA or SSI benefits. These households are commonly known as "mixed" households. Under 7 CFR 273.2(j)(2)(i) such households are not considered categorically eligible for food stamp benefits and must meet standard program eligibility criteria, including the prescribed resource limits.

In an effort to reduce the administrative burden and to promote conformity among the Food Stamp, PA, and SSI Programs section 1719(2) of Public Law 101–624, amended section 5(j) (7 U.S.C. 2014(j)) of the Food Stamp Act to exclude resources of a household member who receives PA or SSI benefits provided the resources are exempt for PA or SSI purposes, and the household member's income does not exceed the applicable income standard of eligibility described in section 5(c)(2) of the Food Stamp Act (7 U.S.C. 2014(c)(2)).

This interim rule will affect any situation in which current food stamp rules treats as a resource anything that is not counted as a resource by SSI or PA rules. While there are several resources in this category, the following example is particularly timely, given a recent Supreme Court decision, and will help in understanding the effect the interim rule will have on "mixed" food stamp households. A family has three children, one of whom is disabled. The family applied for SSI benefits for the disabled child in November 1989 but was denied benefits in December 1989. The family also applied for food stamps at the same time and was found eligible for food stamp benefits.

Subsequently, the Supreme Court, in the case of *Sullivan* v. *Zebley* (110 S.Ct. 885 (1990)) ruled that SSA had been applying an overly rigid standard when evaluating disability in children. The Court ruled that, as part of SSA's disability determination, each child whose impairment(s) does not medically meet or equal an impairment listed by the Social Security Administration (SSA) must have an individualized assessment of his or her ability to

perform the normal activities of a child the claimant's age.

Based on this ruling the disabled child in the example will be evaluated under the new procedures sometime in June 1991 and, if found eligible for SSI benefits, will be awarded retroactive SSI benefits back to the date of the original SSI application. If the child is found eligible for SSI benefits, a lump sum payment for the months from November 1989 through June 1991 will be issued along with the regular SSI monthly benefit in July 1991. Assuming the child is found eligible for SSI benefits, the family would then be considered a "mixed" food stamp household.

Under the current regulation at 7 CFR 273.9(c)(8), the SSI lump sum payment of retroactive benefits to the disabled child is considered a non-recurring lump sum payment and therefore is not counted as income to the household for food stamp purposes. The payment is counted, however, as a resource in the month received, in accordance with 7 CFR 273.8(c)(1). If the lump sum payment exceeds $2,000, the entire household loses its eligibility for food stamps. With the implementation of this interim rule the outcome is different. The lump sum payment continues to be exempt as income for the household. However, the payment would no longer be included in the total amount of resources available to the household for the sixth month period in which it is not a resource for SSI purposes, because it meets the criteria described in section 1719 of the Leland Act, i.e., it is not counted as a resource for SSI purposes and the disabled child's income does not exceed the applicable income of eligibility for food stamps.

Accordingly, the Department is amending 7 CFR 273.8(e) by adding a new paragraph (17) to exclude, for food stamp purposes, resources of a household member who receives SSI benefits under title XVI of the Social Security Act or who receives aid to the aged, blind, or disabled under title I, X, XIV, or XVI of the Social Security Act or who receives benefits under part A of title IV of the Social Security Act provided the resource is exempt by SSI or PA rules, and such household member's income does not exceed the applicable income standard of eligibility as described in 7 CFR 273.9(a).

Implementation

Section 1781 of the Leland Act requires that the provisions of this rulemaking be effective and implemented the first day of the month beginning 120 days after publication of implementing regulations and requires that regulations be published by specified dates. The law provides that implementing regulations for changes in the food stamp resource exclusion of SSI/PA households of section 1719, subsection 2 must be published not later than October 1, 1991. This provision is effective and must be implemented on October 1, 1991. Variances resulting from implementation of the provisions of this rule shall be excluded from error analysis for 90 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly apply on or after the required implementation date. The current caseload must be converted to the new provision at recertification, at household request, or when the case, is next reviewed, whichever occurs first. If for any reason a State agency fails to implement on the required implementation date, restored benefits must be provided back to the required implementation date or the date of the food stamp application, whichever is later.

List of Subjects

7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, parts 272 and 273 are amended as follows:

1. The authority citation for parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(117) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation. * * *

(117) *Amendment No. 332.* The provisions of *Amendment No. 332* are effective and must be implemented October 1, 1991. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 90 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first. If, for any reason, a State agency fails to implement by the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application, whichever is later.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.8, a new paragraph (e)(17) is added to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(17) The resources of any household member who receives supplemental security income (SSI) benefits under title XVI of the Social Security Act or who receives aid to the aged, blind or disabled under title I, X, XIV, or XVI of the Social Security Act or who receives benefits under part A of title IV of the Social Security Act (PA benefits) shall be considered exempt for food stamp purposes provided his/her resources are also considered exempt under the applicable titles or parts of the Social Security Act (i.e., if PA or SSI rules exempt the resource for the program in which he/she participates) and the household member's income does not exceed the applicable income standard of eligibility as described in § 273.9(a).

* * * * *

Dated: May 13, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91–11889 Filed 5–17–91; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV–91–271IR]

Avocados Grown in South Florida; Maturity Requirement Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This rule changes maturity requirements in effect on a continuous basis for avocados grown in Florida. The rule relaxes the maturity

requirements for the Booth 8 variety of avocados, based on recent maturity test results for this variety. In addition, the rule makes calendar date adjustments in the shipping schedules for several varieties of avocados to synchronize them with the 1991 and 1992 calendar years. This action is designed to ensure that only mature fruit is shipped to the fresh market, thereby improving grower returns and promoting orderly marketing conditions.

DATES: These changes become effective May 13, 1991. Comments which are received by June 19, 1991, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the Marketing Agreement and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are about 40 handlers of Florida avocados subject to regulation under Marketing Order No. 915, and about 300 avocado producers in the production area (South Florida). Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the avocado handlers and producers may be classified as small entities.

The Avocado Administrative Committee (committee), which administers the order locally, met on March 13, 1991, and unanimously recommended these maturity changes. The committee meets prior to and during each season to review the handling requirements for avocados, effective on a continuous basis. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

This rule relaxes the maturity requirements specified in Table 1 of paragraph (a)(2) of § 915.322 (7 CFR part 915) for the Booth 8 variety of Florida grown avocados, based on recent maturity test results. This action adds a new shipping period to the existing three shipping periods in the maturity shipping schedule for the Booth 8 variety. The new shipping period adds a minimum weight and diameter classification of 12 ounces and 3 3/16 inches in diameter for the period beginning the fourth Monday in September through the first Sunday in October. In addition, this rule adjusts the calendar dates in the shipping schedules for several avocado varieties specified in section 915.332 to synchronize these dates with the 1991 and 1992 years. The starting date for the earliest variety on that schedule is May 13, 1991.

The maturity requirements for Florida avocados are in effect on a continuous basis. Such requirements specify minimum weights and diameters for specific shipping periods for some 60 varieties of avocados and color specifications for those varieties which turn red or purple when mature. The maturity requirements for the various varieties of avocados are different, because each variety has different characteristics.

These maturity requirements are designed to prevent shipments of immature avocados to the fresh market, especially during the early part of the harvest season for each variety. Providing fresh markets with mature fruit is an important aspect of creating consumer satisfaction and is in the interest of both producers and consumers.

The Florida avocado shipping season usually begins about mid-May with light shipments of early varieties and it continues into the following March or April, with heaviest shipments occurring from July through December.

A minimum grade requirement of U.S. No. 2 currently in effect on a continuous basis for Florida avocados under § 915.306 (7 CFR part 915) remains in effect unchanged by this action.

Avocado import grade requirements are currently in effect on a continuous basis under § 944.28 (7 CFR part 944). Such requirements specify that all avocados imported into the United States must grade at least U.S. No. 2, as specified in § 915.306. Since this action does not change the grade requirements concerning Florida avocados, § 944.28 is not affected.

Maturity requirements are also currently in effect on a continuous basis for fresh avocados imported to the United States under § 944.31 (7 CFR part 944), effective under section 8e of the Act (7 U.S.C § 608e–1). These requirements specify that minimum weights and diameters for avocados imported into the United States from northern hemisphere countries be the same as the requirements for Florida grown avocados. These avocado maturity import requirements will be temporarily suspended by a separate rule on the same date that this rule for Florida avocados is made effective. The suspension is necessary to provide the U.S. Trade Representative adequate time to review contemplated changes in the import requirements.

According to the Florida Agricultural Statistics Service, Florida avocado shipments for the 1991–92 season are expected to total 975,000 bushels, an increase of 30 percent from the 1990–91 season but 7 percent below the previous 5-year average. Florida avocado production over the last five years (1985–89) averaged 1.1 million bushels per season. Also, competitive supplies from California are likely to exceed those in the 1990–91 season. Competitive

supplies from California during the 1990–91 season declined due to crop damage attributed to freezing temperatures in late December. Avocado imports from the Caribbean may reach record proportions.

Handlers may ship, exempt from the minimum grade, size, and maturity requirements effective under the marketing order, up to 55 pounds of avocados during any one under a minimum quantity provision, and up to 20 pounds of avocados as gifts in individually addressed containers. Also, avocados utilized in commercial processing are not subject to the grade, size, and maturity requirements under the order.

This action reflects the committee's and the Department's appraisal of the need to make the specified changes. The Department's view is that this action will have a beneficial impact on producers and handlers since it will help ensure that only mature avocados are shipped to fresh markets. The committee considers that maturity requirements for Florida grown avocados are necessary to improve grower returns and promote orderly marketing conditions. Although compliance with these maturity requirements will affect costs to handlers, these costs will be offset by the benefits of providing the trade and consumers with mature avocados.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes current maturity requirements; (2) Florida avocado handlers are aware of this action which was unanimously recommended by the committee at a public meeting; (3) these changes apply to varieties of avocados which handlers normally begin shipping in mid-May, and there is not enough time to provide a period for comments prior to implementation of the changes set forth below; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

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

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 915.332 is amended by revising table I in paragraph (a)(2) to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) * * *

(2) * * *

TABLE I

Avocado variety	Effective period		Minimum size	
	From	Through	Weight	Diameter
			ounces	inches
Arue	2nd Mon May	4th Sun May	16	
	4th Mon May	5th Sun June	14	3 3/16
Donnie	3rd Mon May	1st Sun June	16	3 5/16
	1st Mon June	5th Sun June	14	3 4/16
Dr. Dupuis #2	4th Mon May	2nd Sun June	16	3 7/16
	2nd Mon June	5th Sun June	14	3 5/16
	1st Mon July	3rd Sun July	12	3 3/16
Fuchs	1st Mon June	3rd Sun June	14	3 3/16
	3rd Mon June	5th Sun June	12	3
K-5	2nd Mon June	4th Sun June	18	3 5/16
	4th Mon June	1st Sun July	14	3 3/16
Simmonds	3rd Mon June	5th Sun June	16	3 9/16
	1st Mon July	2nd Sun July	14	3 7/16
	3rd Mon July	5th Sun July	12	3 1/16
Pollock	3rd Mon June	5th Sun June	18	3 11/16
	1st Mon July	2nd Sun July	16	3 7/16
	3rd Mon July	5th Sun July	14	3 5/16
West Indian	3rd Mon June	2nd Sun July	18	
Seedling*	3rd Mon July	3rd Sun Aug	16	
	3rd Mon Aug	3rd Sun Sept	14	
Hardee	4th Mon June	5th Sun June	16	3 3/16
	1st Mon July	1st Sun July	14	2 13/16
	2nd Mon July	4th Sun July	12	
Nadir	4th Mon June	5th Sun June	14	3 3/16
	1st Mon July	1st Sun July	12	3 1/16
	2nd Mon July	2nd Sun July	10	2 13/16
Gorham	1st Mon July	2nd Sun July	29	4 5/16
	3rd Mon July	2nd Sun Aug	27	4 3/16
Reuhle	1st Mon July	1st Sun July	18	3 11/16
	2nd Mon July	2nd Sun July	16	3 9/16
	3rd Mon July	4th Sun July	14	3 7/16
	5th Mon July	1st Sun Aug	12	3 5/16
	1st Mon Aug	2nd Sun Aug	10	3 3/16
Biondo	2nd Mon July	2nd Sun Aug	13	
Peterson	2nd Mon July	2nd Sun July	14	3 9/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight	Diameter
			ounces	inches
	3rd Mon July	3rd Sun July	12	3 5/16
	4th Mon July	1st Sun Aug	10	3 2/16
Bernecker	3rd Mon July	4th Sun July	18	3 6/16
	5th Mon July	2nd Sun Aug	16	3 5/16
	2nd Mon Aug	4th Sun Aug	14	3 4/16
Miguel (P)	3rd Mon July	4th Sun July	22	3 13/16
	5th Mon July	2nd Sun Aug	20	3 12/16
	2nd Mon Aug	4th Sun Aug	18	3 10/16
Nesbitt	3rd Mon July	4th Sun July	22	3 12/16
	5th Mon July	1st Sun Aug	16	3 5/16
	1st Mon Aug	3rd Sun Aug	14	3 3/16
232	3rd Mon July	4th Sun July	14	
	5th Mon July	2nd Sun Aug	12	
Pinelli	3rd Mon July	4th Sun July	18	3 12/16
	5th Mon July	2nd Sun Aug	16	3 10/16
Trapp	3rd Mon July	4th Sun July	14	3 10/16
	5th Mon July	2nd Sun Aug	12	3 7/16
Tonnage	5th Mon July	2nd Sun Aug	16	3 6/16
	2nd Mon Aug	3rd Sun Aug	14	3 4/16
	3rd Mon Aug	4th Sun Aug	12	3
Waldin	5th Mon July	2nd Sun Aug	16	3 6/16
	2nd Mon Aug	4th Sun Aug	14	3 7/16
	4th Mon Aug	2nd Sun Sept	12	3 4/16
Tower 2	5th Mon July	2nd Sun Aug	14	3 6/16
	2nd Mon Aug	1st Sun Sept	12	3 4/16
K-9	5th Mon July	3rd Sun Aug	16	
Christina	5th Mon July	3rd Sun Aug	11	2 14/16
Beta	1st Mon Aug	2nd Sun Aug	18	3 8/16
	2nd Mon Aug	1st Sun Sept	16	3 5/16
Lisa (P)	1st Mon Aug	2nd Sun Aug	12	3 2/16
	2nd Mon Aug	3rd Sun Aug	11	3
Black Prince	2nd Mon Aug	4th Sun Aug	28	4 1/16
	4th Mon Aug	2nd Sun Sept	23	3 14/16
	2nd Mon Sept	5th Sun Sept	16	3 9/16
Catalina	2nd Mon Aug	4th Sun Aug	24	
	4th Mon Aug	3rd Sun Sept	22	
Loretta	4th Mon Aug	2nd Sun Sept	30	4 3/16
	2nd Mon Sept	5th Sun Sept	26	3 15/16
Booth 8	4th Mon Aug	2nd Sun Sept	16	3 9/16
	2nd Mon Sept	4th Sun Sept	14	3 8/16
	4th Mon Sept	1st Sun Oct	12	3 3/16
	1st Mon Oct	3rd Sun Oct	10	3 1/16
Booth 7	4th Mon Aug	2nd Sun Sept	18	3 13/16
	2nd Mon Sept	4th Sun Sept	16	3 10/16
	4th Mon Sept	1st Sun Oct	14	3 8/16
Blair	4th Mon Aug	2nd Sun Sept	16	3 8/16
	2nd Mon Sept	5th Sun Sept	14	3 8/16
Booth 5	1st Mon Sept	3rd Sun Sept	14	3 9/16
	3rd Mon Sept	5th Sun Sept	12	3 6/16
Guatemalan Seedling**	1st Mon Sept	5th Sun Sept	15	
	5th Mon Oct	1st Sun Dec	13	
Marcus	1st Mon Sept	3rd Sun Sept	32	4 12/16
	3rd Mon Sept	4th Sun Oct	24	3 5/16
Brooks 1978	1st Mon Sept	2nd Sun Sept	12	3 4/16
	2nd Mon Sept	3rd Sun Sept	10	3 1/16
	3rd Mon Sept	1st Sun Oct	8	2 14/16
Rue	2nd Mon Sept	3rd Sun Sept	30	4 3/16
	3rd Mon Sept	5th Sun Sept	24	3 15/16
	5th Mon Sept	2nd Sun Oct	18	3 9/16
Collinson	2nd Mon Sept	1st Sun Oct	16	3 10/16
Hickson	2nd Mon Sept	4th Sun Sept	12	3 1/16
	4th Mon Sept	1st Sun Oct	10	3
Simpson	3rd Mon Sept	1st Sun Oct	16	3 9/16
Chica	3rd Mon Sept	5th Sun Sept	12	3 7/16
	5th Mon Sept	2nd Sun Oct	10	3 4/16
Choquette	4th Mon Sept	2nd Sun Oct	28	4 4/16
	3rd Mon Oct	4th Sun Oct	24	4 1/16
	4th Mon Oct	2nd Sun Nov	20	3 14/16
Hall	4th Mon Sept	1st Sun Oct	26	3 14/16
	1st Mon Oct	3rd Sun Oct	20	3 9/16
	3rd Mon Oct	1st Sun Nov	18	3 8/16
Leona	4th Mon Sept	1st Sun Oct	18	3 10/16
Lula	5th Mon Sept	2nd Sun Oct	18	3 11/16
	3rd Mon Oct	4th Sun Oct	14	3 6/16
	4th Mon Sept	2nd Sun Nov	12	3 3/16
Herman	5th Mon Sept	2nd Sun Oct	16	3 9/16
	2nd Mon Oct	4th Sun Oct	14	3 6/16
Pinkerton (CP)	5th Mon Sept	2nd Sun Oct	13	3 3/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight	Diameter
			ounces	inches
	2nd Mon Oct	4th Sun Oct	11	3
	4th Mon Oct	2nd Sun Nov	9	
Taylor	1st Mon Oct	3rd Sun Oct	14	3 5/16
	3rd Mon Oct	1st Sun Nov	12	3 3/16
Ajax (B-7)	1st Mon Oct	4th Sun Oct	18	3 1 1/16
Booth 3	1st Mon Oct	2nd Sun Oct	16	3 1/16
	3rd Mon Oct	4th Sun Oct	14	3 1/16
Monroe	2nd Mon Nov	4th Sun Nov	26	4 3/16
	4th Mon Nov	2nd Sun Dec	24	4 1/16
	2nd Mon Dec	4th Sun Dec	20	3 1 1/16
	4th Mon Dec	1st Sun Jan	16	3 9/16
Booth 1	2nd Mon Nov	4th Sun Nov	16	3 1 3/16
	4th Mon Nov	2nd Sun Dec	12	3 5/16
Zio (P)	2nd Mon Nov	4th Sun Nov	12	3 1/16
	4th Mon Nov	2nd Sun Dec	10	2 1 1/16
Gossman	4th Mon Nov	4th Sun Dec	11	3 1/16
Brookslate	2nd Mon Dec	3rd Sun Dec	18	3 1 3/16
	3rd Mon Dec	4th Sun Dec	16	3 1 1/16
	4th Mon Dec	1st Sun Jan	14	3 3/16
	1st Mon Jan	3rd Sun Jan	12	3 5/16
	3rd Mon Jan	1st Sun Feb	10	
Meya (P)	2nd Mon Dec	4th Sun Dec	13	3 3/16
	4th Mon Dec	1st Sun Jan	11	3
Reed (CP)	2nd Mon Dec	4th Sun Dec	12	3 3/16
	4th Mon Dec	1st Sun Jan	10	3 3/16
	1st Mon Jan	3rd Sun Jan	9	3

* Avocados of the West Indian type varieties and seedlings not listed elsewhere in table I.
** Avocados of the Guatemalan type varieites and seedlings, hybrid varieties and seedlings, and unidentified seedlings not listed elsewhere in Table I.

* * * * *

Dated: May 15, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-11894 Filed 5-17-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 944

[Docket No. FV-91-273FR]

Fruits; Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule temporarily suspends certain maturity requirements for avocados imported into the United States. The suspension is necessary to provide the U.S. Trade Representative (USTR) adequate time to review changes in the avacado import requirements. Avacados import requirements are effective under section 8e of the Agricultural Marketing Agreement Act of 1937 (Act).

EFFECTIVE DATE: May 13, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under section 8e (7 U.S.C. Section 608e-1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, this action should also have small entity orientation, and impact on both small and large business entities in a manner comparable to rules issued under such marketing orders. There are about 20 importers of avacados. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. A majority of these importers may be classified as small entities.

Section 8e of the Act provides that whenever specified commodities, including avacados, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

Section 944.31 (7 CFR 944.31) currently specifies that avacados imported into the United States, except for avocados grown in countries in the southern hemisphere, must meet the same minimum maturity requirements as those in § 915.332 (7 CFR 915.332) for avacados grown in Florida. Such requirements specify minimum weights and diameters for specific shipping periods and color specifications for those varieties which change color when mature. The Avocado Administrative Committee (committee) has recommended that changes be made in the maturity requirements in § 915.332

for fresh avocados grown in Florida for the 1991–92 season. Florida avocado 1991–92 shipments are expected to begin about mid-May. Maturity requirements are designed to assure that fresh market shipments are mature. The Department has reviewed the committee's recommendation and has determined that the changes should be made effective. This action is contained in a separate document.

In past years, such modified maturity requirements would automatically be applied to imports from the northern hemisphere. However, a provision in the Food, Agriculture, Conservation, and Trade Act of 1990 amended section 8e to require the Secretary of Agriculture to notify the USTR prior to implementing or modifying import regulations to ensure that they are consistent with trade agreements in affect. The USTR is required to provide advice to the Secretary within 60 days. Suspension of the current avocado import maturity requirements in § 944.31 is necessary to provide the USTR adequate time to review contemplated changes in those requirements. Since the maturity requirement changes for Florida advocados are to become effective May 13, 1991, the maturity requirements in § 944.31 should be temporarily suspended beginning on May 13, 1991.

A minimum grade requirement of U.S. No. 2 currently in effect for imported avocados in § 944.28 remains in effect unchanged by this action.

This final rule reflects the Department's appraisal of the need to suspend the avocados import maturity regulation, as hereinafter set forth, and is in accordance with the Act.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action temporarily relieves certain maturity requirements currently in effect for imported avocados; (2) the suspension needs to be made effective by May 13, 1991; and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 944.31 [Temporarily suspended]

2. The provisions of § 944.31 (7 CFR 944.31) are hereby temporarily suspended beginning May 13, 1991.

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

Dated: May 15, 1991.

Robert O. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–11895 Filed 5–17–91; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 211 and 265

[Docket No. R-0703]

Regulation K - International Banking Operations; Rules Regarding Delegation of Authority; Corrections

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule; Correction.

SUMMARY: This notice corrects a previous Federal Register notice (FR Doc. R-0703) that implements a final rule revising Regulation K (12 CFR part 211), which governs international banking operations, and the Board's Rules Regarding Delegation of Authority (12 CFR part 265). This notice corrects the effective date of the final rule, as well as two typographical errors in the notice.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Lynch, Attorney (202/452-3584), or Deborah K. Burand, Attorney (202/452-3427), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: This notice corrects a previous Federal Register notice (FR Doc. R-0703) published at page 19549, column 3, of the issue for Monday, April 29, 1991.

1. On page 19549, column 3, the effective date is corrected to read as follows:

EFFECTIVE DATE: Effective May 26, 1991, except in the case of § 211.5(b)(1)(iii), (c)(1) and (f)(4)(i), which were effective April 19, 1991.

2. On page 19576, column 3, the addition of paragraph (c)(38) to § 265.2 is corrected to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(c) * * *

(38) Under § 211.5(d)(14) of this chapter (Regulation K):

(i) To approve requests for authority to engage in the activities of underwriting, distributing, and dealing in shares outside the United States, provided that the Staff Director has determined that the internal procedures and operations of the organization and the effect of the proposed activities on capital adequacy are consistent with approval; and

(ii) To approve hedging methods authorized under § 211.5(d)(14)(iii)(A) of this chapter.

Board of Governors of the Federal Reserve System, May 14, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11839 Filed 5-17-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 324

RIN 3064–AA98 and 3064–AA87

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control; and Agricultural Loan Loss Amortization

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: On February 28, 1991, the FDIC's Board of Directors adopted final amendments to the FDIC's capital maintenance regulations (12 CFR part 325). Those final amendments deleted the definitions of, and references to, certain terms such as "primary capital" and "secondary capital" from the capital maintenance regulations. The final

amendments also changed the capital level at which an insured institution is deemed to be in an "unsafe and unsound condition." The deleted terms and previous "unsafe and unsound condition" test are still referenced in both parts 303 and 324 of the FDIC's regulations. Accordingly, the FDIC is amending those regulations so that they do not continue to refer to terms and standards that no longer appear in our capital maintenance regulations.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Robert F. Miailovich, Assistant Director, Division of Supervision (202–898–6918), Stephen G. Pfeifer, Examination Specialist, Accounting Section, Division of Supervision (202–898–8904), or Claude A. Rollin, Counsel, Legal Division (202–898–3985).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This final rule does not create any new reporting or recordkeeping requirements, nor does it modify any existing reporting or recordkeeping requirements.

Discussion

On February 28, 1991, the FDIC's Board of Directors adopted final amendments to the FDIC's capital maintenance regulations (12 CFR part 325). Those final amendments were published in the **Federal Register** on March 11, 1991 (56 FR 10154) and became effective on April 10, 1991.

The final amendments deleted, *inter alia*, the definitions of, and all references to, the terms "primary capital" and "secondary capital" from the capital maintenance regulations. In place of the deleted terms, the terms "Tier 1 capital" and "Tier 2 capital" are now defined in, and utilized throughout, the capital maintenance regulations.

Since the terms that were deleted from part 325 still appear in parts 303 and 324 of the FDIC's regulations, we are amending those regulations to bring them into conformance with the revised capital regulations. This is necessary so that parts 303 and 324 do not continue to refer to terms that are no longer defined in our capital maintenance regulations.

In addition, the final amendments to the capital regulations changed the level (from 3% to 2%) at which an insured depository institution is deemed to be in an unsafe or unsound condition, pursuant to section 8(a) of the Federal Deposit Insurance Act, and the "unsafe or unsound condition" test is now based solely on Tier 1 capital. The amendments to parts 303 and 324 reflect those changes.

Moreover, under the amended regulations, insured institutions may no longer include allowances for loan and lease losses in their leverage capital calculations. Accordingly, the references to allowances for loan and lease losses in part 303 are being deleted.

At their February 28 meeting, the FDIC's Board of Directors directed the staff to prepare, and submit to the **Federal Register**, any amendments to other FDIC regulations that are necessary to conform such other regulations to the amendments made by the Board to our capital regulations. These amendments are being made pursuant to that authority.

Regulatory Flexibility Act Statement

The Board of Directors of the FDIC hereby certifies that these amendments to parts 303 and 324 will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In light of this certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 324

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth above, the Federal Deposit Insurance Corporation hereby amends parts 303 and 324 of title 12 of the Code of Federal Regulations as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, and 1819 ("Seventh" and "Tenth"), 1828, 1831(e), and 15 U.S.C. 1607.

§ 303.0 [Amended]

2. Section 303.0(b) is amended:

a. In paragraph (b)(21), by removing the first parenthesis and inserting ", which is" in lieu thereof; by removing the second parenthesis; and by removing "plus allowance for loan and lease losses".

b. In paragraph (b)(22), by removing "primary" and inserting "Tier 1" in lieu thereof each place it appears.

c. In paragraph (b)(23), by removing "plus allowance for loan and lease losses"; and by removing "those terms are".

§ 303.9 [Amended]

3. Section 303.9(a) is amended:

a. In paragraph (a)(1), by removing "3%" and inserting "2%" in lieu thereof; and by removing "secondary" and inserting "Tier 2" in lieu thereof.

b. In paragraph (a)(2), by removing "primary" and inserting "Tier 1" in lieu thereof; and by removing "3%" and inserting "2%" in lieu thereof.

§ 303.10 [Amended]

4. Section 303.10(c)(1)(i) is amended by removing "primary" and inserting "Tier 1" in lieu thereof; and by removing "3%" and inserting "2%" in lieu thereof each place it appears.

PART 324—AGRICULTURAL LOAN LOSS AMORTIZATION

5. The authority citation for part 324 is revised to read as follows:

Authority: 12 U.S.C. 1823(j), 1819, and 12 U.S.C. 1811–1831.

§ 324.4 [Amended]

6. Section 324.4 is amended by removing "primary" and inserting "Tier 2" in lieu thereof.

By order of the Board of Directors.

Dated at Washington, DC, this 28th day of February, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–11824 Filed 5–17–91; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–291–AD; Amendment 39–7003]

Airworthiness Directives; Fokker Model F–28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F–28 series airplanes, which requires removal

of certain rivets from the cold-bonded lap joints; visual and high frequency eddy current inspections to detect cracks and damage to the area adjacent to the rivet holes, and repair, if necessary; and installation of protruding-head rivets. This amendment is prompted by reports of disbonds of the fuselage lap joints. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

EFFECTIVE DATE: June 24, 1991.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Fokker Model F-28 series airplanes, which requires removal of certain rivets from the cold-bonded lap joints; visual and high frequency eddy current inspections to detect cracks and damage to the area adjacent to the rivet holes, and repair, if necessary; and installation of protruding-head rivets; was published in the **Federal Register** on February 20, 1991 (56 FR 6817).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator, nor significantly increase the scope of the AD.

There are currently no airplanes of U.S. registry that would be affected by this AD. However, should one be imported and placed on the U.S. Register, it would take approximately 435 manhours per airplane to accomplish the required actions, and the average labor cost would be $55 per manhour. The estimated cost for required parts is $200. Based on these figures, the total cost impact of this AD would be $24,125 per airplane.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-11-07. Fokker: Amendment 39-7003. Docket No. 90-NM-291-AD.

Applicability: Model F-28 series airplanes, Serial Numbers 11003 through 11013, 11991, and 11992; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Within one year after the effective date of this AD, remove the cold-bonded lap joint rivets, and perform detailed visual and high frequency eddy current inspections to detect cracks and damage to the areas adjacent to the rivet holes, in accordance with the Accomplishment Instructions of Fokker Service Bulletin F28/53-109, dated October 24, 1990.

1. If no cracks or damage are found, prior to further flight, install 3/16-inch protruding-head rivets in accordance with the Accomplishment Instructions of the service bulletin.

2. If cracks or damage are found, prior to further flight, repair and install 3/16-inch protruding-head rivets in accordance with the Accomplishment Instructions of the service bulletin.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective June 24, 1991.

Issued in Renton, Washington, on May 9, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11829 Filed 5-17-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ANM-09]

Amendment of Spokane International Airport Control Zone, Spokane, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Spokane International Airport Control Zone, Spokane, Washington, by slightly altering its boundary to coincide with the boundary of the amended Spokane Fairchild AFB Control Zone. The effect of this action is to make the boundary of the controlled airspace more discernible.

EFFECTIVE DATE: 0901 UTC, July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 91–ANM–09, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

The northern boundary of the Spokane International Airport Control Zone is defined by a 5-mile radius from the Airport; similarly, the northern boundary of the Spokane Fairchild Air Force Base (AFB) Control Zone is defined by a 5-mile radius from the AFB. The control zones are separated by a line extending from lat. 47°30'19" N., long. 117°34'45" W., to lat 47°40'57" N., long. 117°36'00" W. The Spokane International Control Zone lies east of the extended line; the Fairchild AFB Control Zone lies west of the extended line. The northern boundary of the Spokane International Control Zone intersects the extended line north of where the northern boundary of the Fairchild AFB Control Zone intersects it. Accordingly, the shape of the controlled airspace in that vicinity is irregular.

The FAA recently amended the Spokane Fairchild AFB Control Zone to alter the coordinates that define the extended line between the control zones.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the coordinates of the line extending from lat. 47°30'19" N., long. 117°34'45" W., which separates the Spokane International Airport Control Zone from the Spokane Fairchild AFB Control Zone. The amendment extends the line to lat. 47°40'47" N., long. 117°36'25" W. This alteration coincides with the amendment to the Fairchild AFB Control Zone, described above. The effect of this amendment, and the other amendment, is that the northern boundaries of the control zones intersect the extended line at the same point, eliminating the irregularity in the shape of the controlled airspace.

The alteration described above (and the alteration by virtue of the other amendment) result in a negligible change in the volume of controlled airspace. The effect of eliminating the irregularity in the shape of the airspace is to make it easier for pilots to discern between controlled and uncontrolled airspace. Accordingly, I find that prior public notice and comment are unnecessary, and that it is in the public interest, and good cause exists, to forego notice and public procedure under 5 U.S.C. 553(b).

Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows: Spokane International Airport Control Zone, Spokane, Washington (Amended).

Within a 5 mile radius of the Spokane International Airport (lat 47°37'35" N, long 117°32'05" W), within 2 miles each side of the Runway 21 centerline extended, extending from the 5 mile radius zone to 6 miles southwest of the lift-off end of Runway 21, and within 2 miles northwest and 4.5 miles southeast of the Spokane VORTAC 060 degree radial, extending from the VORTAC to 11 miles northeast of the VORTAC, excluding the portion west of a line extending from lat 47°30'19" N, long 117°34'45" W; to lat 47°40'47" N, long 117°36'25" W.

Issued in Seattle, Washington, on May 8, 1991.

Daniel A. Boyle,

Actg. Manager, Air Traffic Division.

[FR Doc. 91–11832 Filed 5–17–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 90–ANM–16]

Amendment Coeur d'Alene Control Zone, Coeur d'Alene, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Coeur d'Alene Control Zone, Coeur d'Alene, Idaho, by changing the hours of effectiveness. Currently, the control zone is effective part-time. An Automated Weather Observation System (AWOS) was recently commissioned which provides 24-hour official weather reporting capability for the airport which makes it possible to designate a full-time control zone. This amendment extends the time in which aircraft operating under instrument flight rules can be separated by air traffic control.

EFFECTIVE DATE: 0901 UTC, July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM–535, Federal Aviation Administration, Docket No. 90–ANM–16, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On February 28, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by changing the effective hours of the control zone from part-time to full-time (56 FR 8306). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Accordingly, the final rule is adopted as proposed. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the effective time of the Coeur d'Alene Control Zone, Coeur d'Alene, Idaho from part-time to full-time. Recent commissioning of an Automated Weather Observation System (AWOS) at the Coeur d'Alene Airport provides 24-hour official weather reporting capability on frequency 135.075 and via telephone. Currently, airport operations and Empire Airways personnel are taking hourly weather observation during the control zone effective hours Monday through Friday 1400–0300 UTC. This action extends the time in which aircraft operating under instrument flight conditions can be separated by air traffic control.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows: Coeur d'Alene, Idaho (amended). Within a 5 mile radius of Coeur d'Alene Air Terminal, Coeur d'Alene, Idaho, (lat. 47°46'28" N., long. 116°49'07" W.); within 4 miles each side of the Coeur d'Alene VOR/DME 251° radial extending from the 5 mile radius zone to 7 miles southwest of the airport.

Issued in Seattle, Washington, on April 22, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91–11831 Filed 5–17–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ASO–7]

Revision of Transition Area, Fort Payne, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Fort Payne, AL Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve the Isbell Field Airport based on the Fort Payne non-directional radio beacon (NDB). This action will increase the size of the existing 700-ft. transition in order to provide controlled airspace for instrument flight rules (IFR) aircraft executing the SIAP. Additionally, due to rising terrain, especially east and north of the airport, the transition area has been increased in size to provide controlled airspace for protection of IFR departing aircraft. Also, a minor correction has been made in the latitude/longitude coordinates of the NDB.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On March 12, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Fort Payne, AL Transition Area (56 FR 10384). This action proposed to increase the size of the transition area to provide additional controlled airspace necessary for IFR aircraft executing a newly developed SIAP based on the Fort Payne NDB. Additionally, due to rising terrain, especially to the east and north, the transition area would be increased to provide controlled airspace for departing IFR aircraft. Also, a minor correction would be made in the latitude/longitude coordinate position of the Fort Payne NDB. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Fort Payne, AL Transition Area. The size of the transition area is increased to accommodate a new SIAP to the Isbell Field Airport predicated on the Fort Payne NDB. Additionally, the basic radius of the transition area is increased due to rising terrain in order to provide the necessary controlled airspace for departing IFR aircraft. Also, a minor correction is made to the latitude/longitude position of the Fort Payne NDB. The proposed revised description of the transition area would have defined the arrival area extension as extending from an 8.5-mile radius of Isbell Field Airport to 18.5 miles northeast of the NDB. Due to charting difficulties, the arrival area extension has been redefined as extending from the NDB to 18.5 miles northeast of the NDB. This change has a negligible impact on the dimensions of the transition area and is made for charting purposes.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Fort Payne, AL [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Isbell Field Airport (lat. 34°28'20" N., long. 85°43'25" W.); within 9.5 miles northwest and 5 miles southeast of the Fort Payne NDB (lat. 34°31'16" N., long 85°40'24" W.) 040° bearing extending from the NDB to a point 18.5 miles northeast of the NDB.

Issued in East Point, Georgia, on May 7, 1991.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91–11830 Filed 5–17–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 95

[Docket No. 26540; Amdt. No. 363]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airwarys, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: May 30, 1991.

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

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on April 25, 1991.

Daniel C. Beaudette,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 g.m.t.:

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910–13–M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 363 EFFECTIVE DATE, MAY 30, 1991

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.		
IS ADDED TO READ		
CRAIG, FL VORTAC	LEE COUNTY, FL VORTAC	24000 MAA-45000
IS AMENDED TO DELETE		
CRAIG, FL VORTAC	FORT MYERS, FL VORTAC	24000 MAA-45000
§95.6001 VOR FEDERAL AIRWAY 1		
IS AMENDED TO READ IN PART		
PLANN, SC FIX	GRAND STRAND, SC VORTAC	2000
§95.6007 VOR FEDERAL AIRWAY 7		
IS AMENDED TO READ IN PART		
SWAGS, FL FIX	LEE COUNTY, FL VORTAC	2200
LEE COUNTY, FL VORTAC	ROGAN, FL FIX	2500
ROGAN, FL FIX	LAKELAND, FL VORTAC	2000
§95.6023 VOR FEDERAL AIRWAY 23		
IS AMENDED TO READ IN PART		
PAINE, WA VOR/DME	EGRET, WA FIX	6000
EGRET, WA FIX	BELLINGHAM, WA VORTAC	3500
§95.6035 VOR FEDERAL AIRWAY 35		
IS AMENDED TO READ IN PART		
DEEDS, FL FIX	LEE COUNTY, FL VORTAC	2200
LEE COUNTY, FL VORTAC	ST PETERSBURG, FL VORTAC	2000
§95.6120 VOR FEDERAL AIRWAY 120		
IS AMENDED TO READ IN PART		
MULLAN PASS, ID VOR/DME *9200 - MOCA	CHARL, MT FIX	*13000
§95.6224 VOR FEDERAL AIRWAY 224		
IS AMENDED TO READ IN PART		
MARQUETTE, MI VOR/DME	SCHOOLCRAFT COUNTY, MI VOR/DME	3300
§95.6225 VOR FEDERAL AIRWAY 225		
IS AMENDED TO READ IN PART		
RIGOR, FL FIX *1200 - MOCA	MARCI, FL FIX	*4000
MARCI, FL FIX	LEE COUNTY, FL VORTAC	2000
LEE COUNTY, FL VORTAC *1400 - MOCA	LA BELLE, FL VORTAC	*2000
§95.6231 VOR FEDERAL AIRWAY 231		
IS AMENDED TO READ IN PART		
ARLEE, MT FIX	JESSY, MT FIX S BND	*11000
	N BND	*13000
*9200 - MOCA		
JESSY, MT FIX	SKOTT, MT FIX	*13000
*8700 - MOCA		
SKOTT, MT FIX	KALISPELL, MT VOR/DME N BND	*8500
	S BND	*13000
*6900 - MOCA		
§95.6521 VOR FEDERAL AIRWAY 521		
IS AMENDED TO READ IN PART		
GILBI, FL FIX	RUTHY, FL FIX	3000
RUTHY, FL FIX	LEE COUNTY, FL VORTAC	2000
LEE COUNTY, FL VORTAC *2000 - MOCA	QUNCY, FL FIX	*2500
QUNCY, FL FIX	LAKELAND, FL VORTAC	2000
§95.6539 VOR FEDERAL AIRWAY 539		
IS AMENDED TO READ IN PART		
CORGI, FL FIX *1200 - MOCA	GOODY, FL FIX	*4000
GOODY, FL FIX	LEE COUNTY, FL VORTAC	2000
§95.6579 VOR FEDERAL AIRWAY 579		
IS AMENDED TO READ IN PART		
LEE COUNTY, FL VORTAC	VIOLA, FL FIX	2000

FROM	TO	MEA	MAA
§95.7008 JET ROUTE NO. 8			
	IS AMENDED TO READ IN PART		
NEEDLES, CA VORTAC	FLAGSTAFF, AZ VOR/DME	18000	45000
FLAGSTAFF, AZ VOR/DME	GALLUP, NM VORTAC	18000	45000
§95.7041 JET ROUTE NO. 41			
	IS AMENDED TO READ IN PART		
KEY WEST, FL VORTAC	LEE COUNTY, FL VORTAC	18000	45000
LEE COUNTY, FL VORTAC	ST PETERSBURG, FL VORTAC	18000	45000
§95.7058 JET ROUTE NO. 58			
	IS AMENDED TO READ IN PART		
SARASOTA, FL VORTAC	LEE COUNTY, FL VORTAC	18000	45000
LEE COUNTY, FL VORTAC	BISCAYNE BAY, FL VORTAC	18000	45000
§95.7075 JET ROUTE NO. 75			
	IS AMENDED TO READ IN PART		
BISCAYNE BAY, FL VORTAC	LEE COUNTY, FL VORTAC	18000	45000
LEE COUNTY, FL VORTAC	TAYLOR, FL VORTAC	18000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-23		
	IS AMENDED BY ADDING		
PAINE, WA VOR/DME	BELLINGHAM, WA VORTAC	24	PAINE
	V-35		
	IS AMENDED TO DELETE		
FORT MYERS, FL VORTAC	ST PETERSBURG, FL VORTAC	40	FORT MYERS
	V-97		
	IS AMENDED TO DELETE		
LA BELLE, FL VORTAC	ST PETERSBURG, FL VORTAC	40	LA BELLE
	V-492		
	IS AMENDED TO DELETE		
ST PETERSBURG, FL VORTAC	LA BELLE, FL VORTAC	55	ST PETERSBURG

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
J-8			
IS AMENDED TO DELETE			
NEEDLES, CA VORTAC	WINSLOW, AZ VORTAC	81	NEEDLES

[FR Doc. 91-11833 Filed 5-17-91; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 1397]

Bureau of Politico-Military Affairs; Amendment to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State has determined, in consultation with the Departments of Defense and Commerce, that certain Inertial Navigation Systems (and components designed for such systems) should be transferred to the jurisdiction of the Department of Commerce for export control purposes. Accordingly, the United States Munitions List has been amended to reflect this change.

DATES: This rule is effective as of June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Chief, Arms Licensing Division, Office of Defense Trade Controls, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: This final rule amends the United States Munitions List, which is part of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The ITAR in turn implements section 38 of the Arms Export Control Act (22 U.S.C. 2778).

Section 17(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2416(c)) divided export control jurisdiction over inertial navigation systems and components between the Departments of State and Commerce. Pursuant to this statute and implementing regulations, the Commerce Department assumed jurisdiction over most inertial navigation systems and components that are standard equipment in civil aircraft, including spare parts, spare units and related repair technical data to be used exclusively for the maintenance of such equipment, and that are certified by the Federal Aviation Administration (FAA) as being an integral part of such aircraft. The Department of State retained jurisdiction over such systems, components, spares, and technical data only if they were destined for certain countries. In addition, the State Department retained jurisdiction over all inertial navigation systems and related equipment that did not meet the criteria set forth above, as well as all technical data related to the design, development, production or manufacture of any such equipment.

Recently, the Department of State, in consultation with the Departments of Defense and Commerce, conducted a commodity jurisdiction review of the inertial navigation systems it controlled only for export to certain countries. This review established that such systems, components and related spares are no longer appropriately considered to be inherently military in character.

Accordingly, this rule amends the U.S. Munitions List to reflect the transfer of these items to Commerce Department jurisdiction. It should be noted, however, that all other inertial navigation systems, components, spares and related repair technical data remain subject to Department of State jurisdiction, and as such may only be exported as provided in the ITAR. In addition, all technical data related to design, development, production or manufacture of any inertial navigation system remain subject to State Department jurisdiction. The Commerce Department is concurrently amending the Commodity Control List to reflect the addition of these items.

The following amendment deals with a foreign affairs function of the United States and is thus excluded from the major rule procedures of Executive Order 12291 [46 FR 13193] and the procedures of 5 U.S.C. 553 and 554. Although the Department of State believes that the public should generally have an opportunity to comment on proposed ITAR amendments before they are promulgated as a final rule, this amendment simply reflects an administrative determination made in consultation with the Departments of Commerce and Defense. Therefore, it is being promulgated as a final rule. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that Title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulation, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 121.1, paragraph (g) of Category VIII is revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category VIII—Aircraft, Spacecraft, and Associated Equipment

* * * * *

*(g) Inertial navigation systems and all specifically designed components, parts and accessories, except those systems or components that are standard equipment in civil aircraft, including spare parts and spare units to be used exclusively for the maintenance of inertial navigation equipment incorporated in civil aircraft, and that are certified by the Federal Aviation Administration (FAA) as being an integral part of such aircraft. All exports of technical data related to the design, development, production or manufacture of inertial navigation equipment (regardless of accuracies) or its related parts, components or subsystems are subject to the requirements of the regulations contained in this subchapter. The export of technical data related to the repair of parts, components, or subsystems of inertial navigation systems (including accelerometers and gyroscopes) that are not certified by the FAA as being an integral part of civil aircraft are subject to the requirements of this subchapter. The provisions of XI(e) and XII(c) are not applicable to such exports of technical data.

* * * * *

Dated: March 28, 1991.

Reginald Bartholomew,

Under Secretary of State for International Security Affairs.

[FR Doc. 91–11674 Filed 5–17–91; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 58a

Human Immunodeficiency Virus (HIV–1)

AGENCY: Office of the Secretary, DoD.

ACTION: Withdrawal.

SUMMARY: DoD is withdrawing a document published on Tuesday, May 7, 1991 (56 FR 21077) in the "Rules and Regulations" section of the **Federal Register**. This document should have been prepared to be published in the **"PROPOSED RULES"** section of the **Federal Register.**

EFFECTIVE DATE: May 20, 1991.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Directives Division,

Washington Headquarters Services, Pentagon, Washington, DC 20301, telephone (703) 697–4111.

Dated: May 14, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–11852 Filed 5–17–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS ALEXANDRIA (SSN 757) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS ALEXANDRIA (SSN 757) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: rule 21(c), pertaining to the arc of visibility of the sternlight; annex I, section 2(a)(i), pertaining to the height of the masthead light; annex 1, section 2(k), pertaining to the height and relative positions of the anchor lights; and annex 1, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS ALEXANDRIA (SSN 757) is a member of the SSN–688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS ALEXANDRIA (SSN 757).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
USS ALEXANDRIA	SSN 757	3.5

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side light, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(k), Annex I	Anchor lights, relationship of aft light of forward light in meters; § 2(k), Annex I
USS ALEXANDRIA	SSN–757			205°	4.2	6.2	3.5	1.7 below.

W.L. Schachte, Jr.,

Deputy Judge Advocate General.

Approved: April 19, 1991.

Dated: April 19, 1991.

[FR Doc. 91–11482 Filed 5–17–91; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 489

[BPD–484–CN]

Medicare Program; OBRA '87 Conforming Amendments; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; correction.

SUMMARY: **Federal Register** document No. 91–4415, beginning on page 8832 of the issue of Friday March 1, 1991, conformed numerous sections of the HCFA regulations with self-executing provisions of the Omnibus Budget Reconciliation Act of 1987. A one-page revision, dealing with the application of the Medicare blood deductible, was unintentionally omitted from column 2 of page 8852, where only the heading "P. Part 489" appears.

Also omitted was a conforming change needed in § 482.12(c)(1)(iv) to reflect the amendment made by section 9336(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509). Section 9336(a) removed the provision that limited Medicare coverage of optometrist services to services related to the condition of aphakia. This means that any optometrist services permitted by State medical practice laws are now covered.

This notice corrects the omissions by publishing the amendment to part 489, which was discussed in section "D" of the preamble in the first column of page 8834, and including the revision of § 482.12(e)(1)(iv). The notice also makes numerous other minor corrections.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 245–0383.

SUPPLEMENTARY INFORMATION: Correction 11 simply makes it easier to understand the requirement by breaking down a very complex sentence and reducing the number of internal cross-references.

Corrections

1. On page 8839, column 2, in the first amendatory instruction, "below." is changed to "above.".

2. On page 8840, column 2, in § 409.19(b), "will deny" is changed to "denies".

3. On page 8840, column 3, in § 410.2, in the definition of "*Partial hospitalization services*", the designation "(a)" is removed, the first word "A" is lower-cased, and the text is run together.

4. On page 8841, column 1, in § 410.2(a)(3)(iv), "biological" is changed to "biologicals".

5. On page 8843, column 2, in § 416.1(a)(2), line 4, "and" is changed to "an".

6. On page 8843, column 2, in § 416.2, in the definition of "*Ambulatory surgical center*," the phrase "has an agreement with HCFA under Medicare to participate as an ASC" is changed to "has an agreement with HCFA to participate in Medicare as an ASC".

7. On page 8844, column 3, in § 416.120(a) "will be" is changed to "is".

8. On page 8847, column 1, in the Subpart B table of contents heading, "Requirement" is changed to "Requirements".

9. On page 8847, column 1, in § 431.50(b), "must be met:" is changed to "are met:".

10. On page 8851, column 3, in § 441.10(f), "(§§ 441.35 and 441.25)" is added at the end, before the period.

11. On page 8852, column 1, in § 482.12, the following changes are made:

a. The following revision of § 482.12(c)(1)(iv) is inserted:

(iv) A doctor of optometry who is legally authorized to practice optometry by the State in which he or she practices.

b. Paragraph (c)(4) is revised to read as follows:

(4) A doctor of medicine or osteopathy is responsible for the care of each Medicare patient with respect to any medical or psychiatric problem that—

(i) Is present on admission or develops during hospitalization; and

(ii) Is not specifically within the scope of practice of a doctor of dental surgery, dental medicine, podiatric medicine or optometry, or a chiropractor, as that scope is—

(A) Defined by the medical staff;

(B) Permitted by State law; and

(C) Limited, under paragraph (c)(1)(v) of this section, with respect to chiropractors.

12. On page 8852, column 2, under the heading "P. Part 489", the following omitted amendment is inserted:

P. PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa(m), 1395cc, and 1395hh).

2. Section 489.31 is revised to read as follows:

§ 489.31 Allowable charges: Blood.

(a) *Limitations on charges.*

(1) A provider may charge the beneficiary (or other person on his or her behalf) only for the first three pints of blood or units of packed red cells furnished under Medicare Part A during a benefit period, or furnished under Medicare Part B during a calendar year.

(2) The charges may not exceed the provider's customary charges.

(3) The provider may not charge for any whole blood or packed red cells in any of the circumstances specified in § 409.87(c)(2) of this chapter.

(b) *Offset for excessive charges.* If the charge exceeds the cost to the provider, that excess will be deducted from any Medicare payments due the provider.

13. On page 8852, column 3, in amendatory instruction 7(a), "§ 410.63" is changed to "§ 410.61".

14. On page 8852, column 3, in amendatory instruction 8, "§ 410.63" is changed to "410.61".

15. On page 8854, column 1, in the bracketed statement that follows "§ 424.25", and in amendatory instruction 20, "§ 410.63" is changed to "§ 410.61".

16. On page 8854, column 1, in amendatory instruction 24, "*disease*" is changed to "*diseases*".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance; Program No. 13.773, Medicare—Hospital Insurance; Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: May 8, 1991.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 91–11808 Filed 5–17–91; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6858

[MT–930–4214–10; MTM 066181, MTM 41231, MTM 41504]

Partial Revocation of Public Land Order No. 3606 and Opening of Land Subject to Section 24 of the Federal Power Act; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 20 acres of land withdrawn for the Bureau of Land Management's Madison River Recreation Sites. It also opens, subject to the provisions of section 24 of the Federal Power Act of 1920, 29.15 acres of land withdrawn for Powersite Reserve No. 184 and Powersite Classification No. 334. This land has been and will remain open to mineral leasing. Approximately 9.15 acres has been open to the operation of the United States mining laws and 20 acres will be opened to mining under the provisions of the Mining Claims Rights Restoration Act of 1955. The revocation and opening are needed to permit disposal of the land through exchange.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and section 24 of the Act of June 10, 1920, as amended, 41 Stat.

1075; 49 Stat. 275; 16 U.S.C. 818, and pursuant to the determinations by the Federal Energy Regulatory Commission in DVMT–236 and DVMT–238, it is ordered as follows:

1. Public Land Order No. 3606 which withdrew land for the Bureau of Land Management's Madison River Recreation Sites is hereby revoked insofar as it affects the following described land:

Principal Meridian

(MTM 066181)
T. 10 S., R. 1 E.,
Sec. 6, N½SE¼NW¼.

The area described contains 20 acres in Madison County.

2. The following described land withdrawn by the Executive Order dated April 19, 1912, creating Powersite Reserve No. 184 will be opened to disposal by land exchange subject to provisions of section 24 of the Federal Power Act:

Principal Meridian

(MTM 41231)
T. 10 S., R. 1 E.,
Sec. 6, N½SE¼NW¼.

The area described contains 20 acres in Madison County.

3. The following described land withdrawn by the Executive Order dated February 18, 1943, creating Powersite Classification No. 334 will be opened to disposal by land exchange subject to provisions of section 24 of the Federal Power Act:

Principal Meridian

(MTM 41504)
T. 7 S., R. 7 E.,
Sec. 20, lot 11, formerly described as part of E½SW¼.

The area described contains 9.15 acres in Park County.

4. At 9 a.m. on June 19, 1991, all the land described in paragraphs 1, 2, and 3 will be opened to disposal by land exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), subject to valid existing rights, the provisions of existing withdrawals, the provisions of section 24 of the Federal Power Act, as amended (16 U.S.C. 818), and the requirements of applicable law.

5. At 9 a.m. on June 19, 1991, the land described in paragraph 1 will be opened to location and entry under the United States mining laws, subject to the provisions of the Act of August 11, 1955 (30 U.S.C. 621 *et seq.*), and to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91–11816 Filed 5–17–91; 8:45 am]

BILLING CODE 4310–DN–M

[AK–932–4214–10; AA–62900, AA–62914]

43 CFR Public Land Order 6860

Revocation of Powersite Classification No. 203, as Modified, and Powersite Classification No. 415, for Selection of Land by the State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes, in their entirety, two Powersite Classifications which withdrew approximately 955 acres of public land for power purposes in the Sheep Creek area, near Juneau. The land is no longer needed for the purpose for which it was withdrawn. This action also opens the land for selection by the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State will be subject to the terms and conditions of withdrawals of record.

EFFECTIVE DATE: May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Powersite Classification No. 203, as Modified, and Powersite Classification No. 415, which withdrew public land for power purposes in the Sheep Creek area, near Juneau, are hereby revoked in their entirety:

Copper River Meridian

Tps. 41 and 42 S., R. 68 E., (unsurveyed).
Powersite Classification No. 203 (AA–62900).

All land within 1,000 feet of Sheep Creek, Alaska, from its mouth to a point about 2.3 miles upstream, said point being 1,800 feet S. 70° E. of U.S.L.M. 3A, excepting land within U.S. Survey No. 2572 and the strip of adjacent land approximately 300 feet wide comprising the area between the southeast boundary of Survey 2572 and the southeast boundary of this reservation; Sheep Creek being a stream from the mainland emptying into Gastineau Channel about 4 miles southeast of Juneau.

The area described contains approximately 495 acres.

Powersite Classification No. 415 (AA–62914).

All land within 1,500 feet of Sheep Creek, Alaska, from its mouth to a point about 3.2 miles upstream, said point being approximately 6,000 feet S. 60° E. of U.S.L.M. 3A, excepting land included in Modification No. 420 of Powersite Classification No. 203, approved June 26, 1947, and the strip of land lying between Boundary Line 2–3 of U.S. Survey No. 2572 extended, and the Gastineau Channel, and extending southeasterly from Boundary Line 3–4 of U.S. Survey No. 2572 to the southeast boundary of the reserve; Sheep Creek being a stream from the mainland emptying into Gastineau Channel about four miles southeast of Juneau, Alaska.

The area described contains approximately 460 acres. The areas described aggregate a total of approximately 955 acres.

2. Subject to valid existing rights, and other withdrawals of record, the land described above is hereby opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 48 U.S.C. prec. 21 (1988), or section 906(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(b) (1988).

3. The State of Alaska selection made under section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State will be subject to the terms and conditions of withdrawals of record.

Dated: May 14, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91–11890 Filed 5–17–91; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73, and 74

[MM Docket 88-140; DA 91-527]

Broadcast Service; FM Translator Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; suspension.

SUMMARY: The Commission suspends the amendments to the FM translator rules adopted in the Report and Order (Report) in MM Docket 88-140 (55 FR 50690, December 10, 1990, FR Doc. 90-28769) and stays the lifting of the freeze on the acceptability of FM translator applications. The action is taken to allow time for Office of Management and Budget (OMB) approval of the new requirements. Thus, the amended rules are suspended from March 1, 1991, to June 1, 1991, and the lifting of the freeze is suspended from May 1, 1991, to June 1, 1991, pending OMB approval of the amendments. Applications that have been deferred pending the outcome of this proceeding must be amended to conform to the new rules within 60 days after the freeze is lifted, or by August 1, 1991.

DATES: Effective upon publication, the amendments published December 10, 1990 are suspended until June 1, 1991, and the date for lifting the freeze on accepting FM translator applications is also suspended until June 1, 1991. The date for amending deferred applications is August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Alan Schneider, Mass Media Bureau, (202) 634-6307.

SUPPLEMENTARY INFORMATION:

Order

Adopted: April 23, 1991;

Released: May 3, 1991.

By the Chief, Mass Media Bureau:

1. This action suspends the rules adopted in the Report and Order (Report) in MM Docket No. 88-140 (5 FCC Rcd 7212, 1990) and for lifting the freeze on the acceptability of FM translator applications. The Report restructured the Commission's FM translator rules. The Report established a March 1 effective date for the rule amendments, and added that the freeze on acceptance of applications for FM translator stations on the commercial band would continue for 60 days after the effective date of the new rules or May 1. This information was verified in a Public Notice issued February 26, 1991. However, the full text of the Report at paragraph 150 indicated that "Implementation of any new or modified requirements will be subject to approval by the Office of Mangement and Budget * * *." Such approval is still pending. The rules are suspended until June 1, 1991, and the date for lifting the freeze is extended to June 1, 1991, to allow for approval of the amended requirements by the Office of Management and Budget (OMB). Applications that have been deferred pending the outcome of this proceeding must be amended to conform to the new rules by August 1, 1991. Whether these rules will have to be suspended again is dependent on approval by the OMB.

2. Accordingly, *it is Ordered* That the amendments to the FM Translator Station rules are suspended to June 1, 1991.

3. *It is Further Ordered* That the date for lifting the FM translator application freeze is suspended to June 1, 1991.

4. *It is Further Ordered* That applications deferred pending the outcome of this proceeding must be amended to conform to the new rules by August 1, 1991.

5. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and §§ 0.24(b) and 0.283 of the Commission's Rules (47 CFR §§ 0.24(b) and 0.283).

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 91-11802 Filed 5-17-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[DA 91-543]

Editorial Amendment of Part 97 of the Commission's Rules Regarding the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action conforms the amateur service rules with the Table of Frequency Allocations in part 2 of the Commission's rules. The rule change is necessary in order to show that the Government radiolocation service is currently secondary to other radio services in the 1.25 meter band. The effect of the rule change is to remove an obsolete restriction in the amateur service rules.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

Order

Adopted: April 25, 1991.
Released: May 3, 1991.

By the Chief, Private Radio Bureau:

1. Section 97.303(b) of the Commission's Rules, 47 CFR 97.303(b), currently provides that no amateur station transmitting in the 1.25 meter (m) band, among other amateur bands, shall cause harmful interference to, nor is protected from interference due to the operation of, stations in the Government radiolocation service. Pursuant to Footnote US243 to the Table of Frequency Allocations (Table) in § 2.106 of the Commission's rules, 47 CFR 2.106, the Government radiolocation service was primary in that band until January 1, 1990. That date having passed, the Government radiolocation service is now secondary to other radio services in the 1.25 m band. Section 97.303(b), therefore, should be amended by removing the reference to the 1.25 m band.

2. By this action, we are deleting the reference to the 1.25 m band in § 97.303(b), thereby conforming that section to the Table in § 2.106. Because the rule amendments adopted herein are nonsubstantive in nature, the notice and comment provisions of section 553 of the Administrative Procedure Act, 5 U.S.C. 553, need not be complied with. Authority for this action is contained in § 0.331(a)(1) of the Commission's Rules, 47 CFR 0.331(a)(1).

3. Accordingly, part 97 is amended, effective June 28, 1991, as set forth below.

List of Subjects in 47 CFR Part 97

Frequencies, Radio.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Title 47 of the Code of Federal Regulations, part 97, is amended as follows:

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

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. §§ 151-155, 301-609, unless otherwise noted.

2. Section 97.303(b) is revised to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(b) No amateur station transmitting in the 1900–2000 kHz segment, the 70 cm band, the 33 cm band, the 13 cm band, the 9 cm band, the 5 cm band, the 3 cm band, the 24.05–24.25 GHz segment, the 76–81 GH segment, the 144–149 GHz segment and the 241–248 GHz segment shall cause harmful interference to, nor is protected from interference due to the operation of, the Government radiolocation service.

* * * * *

[FR Doc. 91–11803 Filed 5–17–91; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 901199–1021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Director), is prohibiting directed fishing for pollock with trawls other than pelagic trawls, and for Pacific cod with any trawl gear in the entire Bering Sea and Aleutian Islands (BSAI) area due to attainment of both the primary Pacific halibut allowance, and the second quarter seasonal apportionment of the secondary Pacific halibut allowance. This action is necessary to prevent both the annual primary allowance and second quarter apportionment of the secondary allowance for Pacific halibut to the "DAP other fishery" from being exceeded. The intent of this action is to ensure optimum use of groundfish while conserving Pacific halibut stocks.

EFFECTIVE DATES: The closure of Zones 1 and 2H is effective 12 noon, Alaska local time (A.l.t.), May 14, 1991, through the remainder of the fishing year. The closure of the BSAI outside of Zones 1 and 2H is effective 12 noon, A.l.t., May 14, 1991, through 24 midnight, A.l.t., June 30, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone within the Bering Sea and Aleutian Islands Management Area (BSAI) under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and parts 620 and 675.

Amendment 16 to the FMP (56 FR 2700, January 24, 1991) established prohibited species catch (PSC) limits of red king crab and *C. bairdi* Tanner crab in specific zones of the Bering Sea subarea, and for Pacific halibut throughout the BSAI area. Under § 675.21(a), the primary PSC limit of Pacific halibut while conducting any trawl fishery for groundfish in the BSAI during any fishing year is 4,400 metric tons (mt) and the secondary limit as 5,333 mt. Furthermore, § 675.21(b) provides that the PSC limit of Pacific halibut be apportioned into bycatch allowances for several target fisheries, one of which is assigned to the "DAP other fishery." Within the "DAP other fishery," the Pacific halibut bycatch allowance is further allocated on a seasonal basis. The final notice of initial specifications of groundfish for the BSAI for 1991 (56 FR 6290; February 15, 1991) established the annual 1991 primary Pacific halibut allowance for the "DAP other fishery" in Zones 1 and 2H at 2,667 mt. Attainment of this PSC limit closes the "DAP other fishery" for the remainder of the year. The second quarter seasonal apportionment of the secondary Pacific halibut allowance for the entire BSAI was established at 1,293 mt. The cumulative amount of the secondary Pacific halibut allowance available for the "DAP other fishery" through the second quarter is 2,748 mt.

Previous closures under § 675.21(c)(2)(iii), effective on May 3, 1991, closed Zones 1 and 2H, and the remainder of the BSAI outside of Zones 1 and 2H to directed fishing for pollock and Pacific cod, in the aggregate, due to attainment of the primary Pacific halibut allowance, and the second quarter seasonal apportionment of the secondary Pacific halibut allowance respectively (56 FR 21450; May 9, 1991).

This notice modifies the closures related to the "DAP other fishery" which were made effective on May 3, 1991. A revision to FMP Amendment 16 for the BSAI changes provisions for closures of the "DAP other fishery" under § 675.21 (56 FR 21619; May 10, 1991).

Section 675.21(c)(2)(iii) now provides that if, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the primary PSC bycatch allowance of Pacific halibut in the BSAI Management Area while participating in the "DAP other fishery", the Secretary will publish a notice in the **Federal Register** closing Zones 1 and 2H to directed fishing for: (A) Pollock by trawl vessels using other than pelagic trawl gear for the remainder of the year, and (B) Pacific cod by vessels using trawl gear for the remainder of the fishing season. The annual primary allowance for Pacific halibut in the "DAP other fishery" has been reached. Therefore, under revised § 675.21, the Secretary is prohibiting directed fishing for pollock by DAP vessels using trawl gear other than pelagic trawl gear in Zones 1 and 2H of the Bering Sea subarea from 12 noon, A.l.t., May 13, 1991, through the remainder of the fishing year. The Secretary is prohibiting directed fishing for Pacific cod by vessels using trawl gear in Zones 1 and 2H of the Bering Sea subarea from 12 noon, A.l.t., May 14, 1991, through the remainder of the fishing year.

Section 675.21(c)(2)(iv) now provides that if the Director determines that U.S. fishing vessels using trawl gear will catch the secondary PSC allowance or seasonal apportionment of the PSC allowance of Pacific halibut in the BSAI while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** closing the Bering Sea and Aleutian Islands Area to directed fishing for: (A) Pollock by trawl vessels using other than pelagic trawl gear for the remainder of the fishing season, and (B) Pacific cod by vessels using trawl gear for the remainder of the season. The cumulative amount of primary plus secondary apportionments of the secondary PSC allowance for Pacific halibut in the "DAP other fishery" has been reached. Therefore, under revised § 675.21, the Secretary is prohibiting directed fishing for: (A) Pollock by trawl vessels using other than pelagic trawl gear, and (B) Pacific cod by vessels using any trawl gear in the entire BSAI as of 12 noon, A.l.t., May 14, 1991. Zones 1 and 2H will remain closed for the rest of the fishing year, and the BSAI outside of Zones 1 and 2H will remain closed through 24 midnight, A.l.t., June 30, 1991, at which time the third quarter seasonal apportionment of the secondary Pacific halibut allowance becomes available.

In accordance with § 675.20(h), after these closures, the amount of Pacific cod retained by vessels using any trawl gear at any particular time during a trip in the BSAI must comprise less than 20 percent of the amount of other fish species retained at the same time on the vessel during the same trip. Additionally, the amount of pollock retained by vessels using trawls other than pelagic trawls at

any particular time during a trip in the BSAI must comprise less than 20 percent of the amount of other fish species retained at the same time on the vessel during the same trip.

Classification

This action is taken under § 675.21 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: May 14, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11811 Filed 5-14-91; 4:24 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 97
Monday, May 20, 1991

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 274

[Amdt. No. 333]

Food Stamp Program; Benefit Delivery Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes changes to Food Stamp Program regulations based upon amendments to the Food Stamp Act of 1977 contained in the Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. 101–624, title XVII, 104 Stat. 3783), regarding the issuance of benefits. These provisions relate to the staggered issuance of benefits on Indian reservations, aggregate (combined) allotments of benefits to households applying after the 15th of the month, and mail issuance in rural areas where households experience transportation difficulties in obtaining program benefits. Congress intended these changes to improve benefit delivery to recipients. In addition to the regulatory changes regarding benefit issuance required by Public Law 101–624, this rule proposes minor, and technical changes in current regulatory issuance provisions deemed appropriate by the Department to improve benefit issuance.

DATES: Comments must be received by June 19, 1991, to be assured of consideration.

ADDRESSES: Marilyn P. Carpenter, Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 904, Alexandria, Virginia 22302. All written comments received will be available for public inspection during regular business hours (8:30 am–5 pm) Monday through Friday.

FOR FURTHER INFORMATION, CONTACT: Marilyn P. Carpenter at the above address, or by telephone at (703) 756–3383.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291/Secretary's Memorandum 1512–1

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1. Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has classified this rule as nonmajor. The rule's effect on the economy will be less than $100 million, and it will have no substantial effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant impact on a substantial number of small entities. The requirements will affect State and local agencies which administer the Food Stamp Program as well as food stamp applicants and recipients.

Paperwork Reduction Act

The provisions of this proposed rule do not contain recordkeeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

The Mickey Leland Memorial Domestic Hunger Relief Act (Title XVII of Pub. L. 101–624) amended three provisions of the Food Stamp Act (the Act) relating to the timing and method of benefit delivery (issuance). These provisions relate to staggered issuance of benefits on Indian reservations, aggregate (combined) allotments to households applying after the 15th of the month, and mail issuance in rural areas where households experience transportation difficulties in obtaining benefits. In addition, unrelated to the regulatory changes required by Public Law 101–624, this proposed rule modifies three regulatory provisions requiring minor changes in order to clarify the meaning of the provisions. These changes have already been implemented on a limited basis through the approval of State agency requests for waivers from the provisions as currently stated.

The 1990 Amendments (Public Law 101–624)

1. Section 1728 of Public Law 101–624 amended section 7(h) of the Act, 7 U.S.C. 2016(h) to mandate the use of staggered issuance throughout the entire month on Indian reservations.

Currently, the only Program requirement concerning staggered issuance is 7 CFR 274.2(c)(1) which directs that project areas which issue benefits by direct mail must stagger the mailings over at least 10 days. Prior to the enactment of section 1728, section 7(h) of the Act provided for staggered issuance as a State agency option. Section 1728 reflects the findings of a General Accounting Office (GAO) audit (Recipient and Expert Views on Food Assistance at Four Indian Reservations, GAO/RCED 90–152, dated June 28, 1990) in which auditors were told by recipients that every month certain retail food stores on or near reservations which were authorized to accept food stamps were increasing the prices of eligible food during the week containing the issuance day, each month. GAO recommended that issuance to households on reservations be staggered through the entire month. The Department proposes to amend 7 CFR 274.2(c)(1) to reflect the amendment of section 7(h) of the Act made by section 1728 of Public Law 101–624.

2. Section 1732 of Public Law 101–624 amended section 8(c)(3) of the Act, 7 U.S.C. 2017(c)(3), to change the Act's requirements concerning aggregate benefits (combined benefits for the month of application and the first full month of benefit receipt) to eligible households applying after the 15th of the month. Before the amendment, section 8(c) required that an initial allotment reflecting the aggregate of the application month's benefits and the next following month's benefits was required if the application was made after the 15th day of the month. Section 1732 makes the combined allotment a State agency option for eligible households applying under normal processing standards. Combined allotments, however, remain mandatory for eligible households that meet the requirements for expedited service. This rule proposes a change to 7 CFR 274.2(b)(2) to reflect those changes in the Act.

3. Section 1738 of Public Law 101–624 amended section 11(e) of the Act, 7 U.S.C. 2020(e), to require State agencies to use mail issuance in any rural areas where the State agency determines that recipients face substantial difficulties in obtaining transportation. Amended section 11(e) provides an exception to mandatory mail issuance for households which experience excessive mail issuance losses. In addition, mail issuance is not required in those localities where the mail loss rates exceed standards set by the Secretary. A State agency assessment of the State's need for mail issuance in rural areas is to be made a part of the State plan of operation.

This amendment was prompted by concern that some eligible households in rural areas have trouble getting to issuance sites because they lack cars or sufficient funds to hire someone to drive them. (House Report 101–569, part 1, pages 433–434.)

Any State which is not currently using mail issuance throughout the State must engage in an assessment of transportation barriers rural benefit recipients experience in getting to issuance offices and report both the assessment process and the results of that process as an attachment to its State plan of operation. Section 272.2 of the regulations would be revised to add this requirement to the requirements for the State plan of operation. Section 274.2, Providing benefits to participants, would be revised to add a new subsection describing the required content of this new attachment to the State plan of operation.

In enacting section 1738 of Public Law 101–624, Congress was clearly concerned with transportation problems that make it difficult for food stamp recipients to obtain their benefits at issuance offices. (House Report No. 569, 101st Cong., 2nd Sess., pages 433–34.) These problems, rather than transportation problems in general, should be the focus of the State agency's assessment of the need for mail issuance. For example, mail issuance would not be required where electronic benefits transfer (EBT) removed the need for transportation to an issuance office. As an alternative to mail issuance, States finding substantial transportation difficulties could reduce these difficulties by a variety of methods. For example, a State agency could help people with transportation problems obtain authorized representatives as provided for in 7 CFR 274.5.

To implement the exception to mail issuance for individual households that experience excessive mail losses, FNS proposes to use the current standard at 7 CFR 274.6(c)(3)(ii), which provides that households experiencing two losses or thefts of benefits from the mail in a six month period shall be placed on an alternative delivery system.

To implement the exception to mail issuance in amended section 11(e)(25) of the Act for localities with excessive mail losses, the Department proposes to utilize the standards set by the mail loss tolerance levels provided at 7 CFR 276.2(b)(4). State agencies would not have to use mail issuance where mail losses exceed, or could reasonably be expected to exceed, the mail loss tolerance levels for the reporting unit within which the particular rural area would fall. Section 276.2(b)(4) provides three separate mail issuance tolerance levels. The applicable mail loss tolerance level depends on the size of the reporting unit: a county or project area, an intermediate level reporting unit, or a State-wide reporting unit. In determining whether mail losses in a given rural area would be excessive, State agencies without mail issuance in that area may use the tolerance level associated with a hypothetical reporting unit. Any hypothetical reporting unit would have to be consistent with existing rules and any existing State agency reporting units. For example, a State agency currently reporting issuance losses by project areas could not exempt a rural area without mail issuance from the mail issuance requirements of amended section 11(e)(25) on the basis of its losses exceeding a State-wide tolerance. Similarly, a State agency that does not employ mail issuance, could not exempt some areas because they would exceed the State-wide tolerance level and other areas because they would exceed the project area tolerance level. States which choose not to introduce mail issuance based upon findings that losses would exceed tolerance levels would be required to provide evidence to support such findings.

Changes to Current Regulations

4. On February 15, 1989, at 54 FR 6990, the Department issued a final rule constituting the first comprehensive review and modification of food stamp issuance regulations since their adoption pursuant to the Food Stamp Act of 1977, Public Law 95–113. A primary goal of the 1989 final rule was to "make specific provisions easier to locate, Agency policies and statutory provisions more clearly stated, issuance liabilities more fully outlined, and the regulatory language, in general, easier to understand. By and Large, the Department deems its 1989 efforts to have been successful. This proposed rule makes changes to three regulations published on February 15, 1989 (54 FR 6990), in an effort to clarify interpretive problems brought to the Department's attention in the past two years.

In 7 CFR 274.2(c)(1) the Department proposes that a clarification of the terms "staggered issuance" and "40-day limit" be made so that the terms apply to all issuance systems and procedures, and not simply to mail issuance. Prior to the 1989 revision of part 274, the terms were almost exclusively associated with mail issuance, since, for reasons of security, that system had a required minimum staggering period of 10 days. However, State agencies have been permitted to stagger in any system, even though that was not specifically stated.

Whenever staggered issuance is utilized, the State agency must ensure that the interval between any two issuances after the first full month of participation is not longer than 40 days as required by section 7(h) of the Act, 7 U.S.C. 2016(h)(2). This would apply to instances in which a State agency is changing issuance systems, is starting a staggered system, is quitting a staggered system, or is fluctuating the issuance schedule within a staggered system. The only exception to the 40-day limit occurs for some households who apply after the 15th of the month and receive their first and second month's benefit as a combined allotment. Since they may receive their benefits for the first and second months of participation in the first month, more than 40 days may elapse before they are issued benefits for the third month on a normal issuance schedule.

5. The regulations at 7 CFR 274.3(e) currently provide validity periods for issuances made in authorization document, direct access, and direct delivery issuance systems. A validity period is the time-frame during which a household may obtain benefits by transacting an authorization document or receiving the benefits at an issuance point. The validity period begins the day a household is issued an authorization document, or is authorized to obtain its issuance at an issuance point. If such a day is after the 20th day of the issuance month, the State agency must extend the validity period at least 20 days into the next month and may extend the validity period until the end of the next month. FNS intends to change the issuance date that triggers an extended validity period for normal issuances so that it will correspond with the date triggering combined issuance. Validity periods would be extended for authorizations made after the 15th of the month (instead of for those after the 20th of the month.) Currently, the validity period for issuances made between the 15th and the 20th of any month vary; the validity period for normal issuances expires at the end of the month, while the validity period for combined issuances must extend until the end of the next month, since that is the period of intended use for combined issuances. This change, which applies to authorization document, direct access, and direct delivery issuance systems, would provide the same validity periods for all issuances made after the 15th of the month.

6. In 7 CFR 274.11(a) a change is proposed to clarify those issuance documents, including signature cards used by direct delivery agents, required to be retained for three years to provide an audit trail for accountability. The current regulation lists specific forms required to be retained. As issuance systems have changed, however, and newer ones have been implemented, the list has not been revised. FNS proposes to replace the listing of specific forms with a general retention requirement covering all issuance system documents which provide an audit record for accountability. An additional change makes the wording on the period of retention conform to 7 CFR 272.1(f).

Effective and Implementation Dates

Sec. 1781 of Public Law 101–624 establishes the effective and implementation date of sections 1728, 1732, and 1738 of Public Law 101–624 as the first day of the month beginning 120 days after publication of the final rule. Section 1781 also stipulates that final rules must be published no later than October 1, 1991. The Department has elected to use the same dates for the discretionary amendments discussed in the second half of the preamble. In the case of the rural mail issuance provision, an approvable amendment to the State Plan of Operation must be submitted to the Food and Nutrition Service (FNS) by the implementation date. The timetable for the actual implementation of any new mail issuance system would be set by the State agency, with FNS approval, to assure an orderly transition. In determining what factors constitute an orderly transition, FNS will consider such things as the need for contractual assistance and the State agency's need for special equipment.

List of Subjects

7 CFR Part 272

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and record-keeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs-social programs, Reporting and record-keeping requirements.

For the reasons set out in the Preamble, parts 272 and 274 of chapter II of title 7, Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for parts 272 and 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.2, a new sentence is added to the end of paragraph (a)(2), and a new paragraph (d)(1)(xi) is added, to read as follows:

§ 272.2 Plan of operation.

(a) *General purpose and content.* * * *

(2) *Content.* * * * The Plan's attachments shall describe the State agency's review of direct mail issuance requirements in rural areas.

* * * * *

(d) *Planning Documents.* * * *

(1) * * *

(xi) The State agency's review of mail issuance requirements in rural areas. State agencies using mail issuance throughout the State with exceptions only for individual households, shall simply state this fact. States which use methods other than direct mail issuance in any part of the State shall submit an attachment to their State plan of operation which includes the State agency's procedure for reviewing mail issuance requirements in rural areas, and the results of applying that procedure for designating parts of, or entire, project areas that are subject to mail issuance because they are rural, and are areas in which low-income households face substantial difficulties in obtaining transportation. The requirements for this attachment to the State plan of operation are described in § 274.2(f) of this chapter.

* * * * *

PART 274—ISSUANCE AND USE OF COUPONS

3. In § 274.2, a sentence is added at the end of paragraph (a), paragraphs (b)(2), (c)(1), and (c)(2) are revised, and a new paragraph (f) is added, to read as follows:

§ 274.2 Providing benefits to participants.

(a) *General* * * * Requirements to assure timely and accurate issuance of benefits to eligible households in rural areas are described in § 274.2(f).

(b) * * *

(2) *Households certified under the normal processing timeframes.* Households which apply for their initial month's benefits (as described in § 273.10(a) of this chapter) after the 15th of the month and which complete the application with all required verification within 30 days of the date of the application, and which are determined eligible to receive benefits for the month of application and the succeeding month, may receive a combined allotment, at the State agency's option. The combined allotment shall consist of the prorated allotment for the month of application and a full allotment for the succeeding month. The State agency may provide both months' benefits as a single issuance or as two separate issuances provided at the same time, with the same validity period, and within the time-frame specified in § 273.2(g) of this chapter.

* * * * *

(c) *Ongoing households* * * *

(1) State agencies shall stagger the issuance of benefits to all eligible households on Indian reservations throughout an entire month, regardless of the issuance system being used. In areas other than Indian reservations, State agencies that use direct mail issuance shall stagger issuance over at least 10 days of the issuance month, and may stagger issuance over the entire issuance month. In areas other than an Indian reservation, the State agency using a method other than mail issuance

may stagger issuance throughout the month, or for a shorter period. When staggering benefit delivery, however, State agencies shall not allow more than 40 days to elapse between the issuance of any two allotments provided to a household participating longer than two consecutive, complete months. Regardless of the issuance schedule used, the State agency shall adhere to the reporting requirements specified in § 274.4.

(2) When a participating household is transferred from one issuance system or procedure to another issuance system or procedure, the State agency shall not permit more than 40 days to elapse between the last issuance under the previous system or procedure, and the first issuance under the new system or procedure. Examples of transfer include, but are not limited to, a household being moved in or out of a staggered issuance procedure, a household being on a fluctuating schedule within a staggered system, or a household being moved from a direct mail issuance system to an authorization document system. If the State agency determines that more than 40 days may elapse between issuances, the State agency shall divide the new issuance into two parts, with one part being issued within the 40-day period, and the second part, or supplemental issuance, being issued on the household's established issuance date in the new system or procedure. The supplemental issuance cannot provide the household more benefits than the household is entitled to receive.

* * * * *

(f) *Issuance in rural areas.* State agencies shall use mail issuance in any rural areas where the State agency determines that recipients face substantial difficulties in obtaining transportation in order to obtain their food stamp benefits by methods other than direct mail issuance. Exceptions shall be made for households which have exceeded the allowable number (2) of reported losses in a six-month period and replacements set forth in § 274.6 (b) and (g), and mail issuance is not required in those localities where the direct mail loss rates exceed, or are likely to exceed, standards set by the Secretary at § 276.2(b) of this chapter. The State agency shall:

(1) Submit an attachment to the State Plan of Operation (§ 272.2(d) of this chapter) which describes the State's exemption from this requirement, because the State agency uses mail issuance throughout the State, or

(2) Submit an attachment to their State Plans of Operation (§ 272.2(d) of this chapter) which describes:

(i) The areas designated by the State agency as rural;

(ii) The rural areas where direct mail issuance will not be used because:

(A) Recipients do not face substantial difficulties in obtaining transportation to obtain their benefits, and/or;

(B) Direct mail issuance losses exceed the loss tolerance levels, or there is evidence which indicates that direct mail, if used, would produce losses which would exceed the loss tolerance levels established under § 276.2(b)(4) of this chapter.

(iii) The State agency's criteria for designating an area as rural. Such criteria may include, but are not limited to: The use of the Bureau of the Census definition; the distances that recipients may need to travel to reach an issuance office; or, other criteria described by the State agency.

(iv) The State agency's criteria for determining that recipients in an area designated as rural do not face substantial difficulties in obtaining transportation to obtain their benefits.

(v) The State agency's schedule for introducing mail issuance into any rural areas requiring mail issuance because of substantial transportation problems.

§ 274.3 [Amended]

4. In § 274.3, paragraph (e)(1) is amended by removing the number "20th" in the fourth and fifth sentences, and by adding the number "15th" in its place.

5. In § 274.11, the section heading, the introductory text of paragraph (a), and paragraph (a)(1) are revised to read as follows:

§ 274.11 Issuance and inventory record retention, and forms security.

(a) *Availability of records.* The State agency shall maintain issuance and inventory reconciliation and other accountability records for a period of three years as specified in § 272.1(f) of this chapter. This period may be extended at the written request of FNS.

(1) Issuance and inventory reconciliation and accountability records shall include all Agency, State, and local forms involved in the State agency's receipt, storage, handling, issuance, and destruction of benefits completed by contract agents or any other individuals or entities involved in issuance or inventory, as well as those completed by the State agency.

* * * * *

Dated: May 13, 1991.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 91-11789 Filed 5-17-91; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV-91-282]

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, Except Malheur County; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 947 for the 1991–92 fiscal period. Authorization of this budget would permit the Oregon-California Potato Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by June 21, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC, 20090–6456, telephone 202–447–2020.

SUPPLEMENTARY INFORMATION:

This rule is proposed under Marketing Agreement No. 113 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

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

There are approximately 45 handlers of Oregon—California potatoes under this marketing order, and approximately 470 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

The Oregon-California Potato Committee (committee) authorized its Executive Subcommittee to forward the 1991–92 budget recommendation on its behalf. In 1989, at the full committee's annual meeting, the Executive Subcommittee was unanimously given the authority to act on behalf of the committee to submit the proposed budget and assessment rate to the USDA. Final action on this proposal will be taken only after a recommendation by the full committee.

The committee, the agency responsible for local administration of the order, consists of producers and handlers of Oregon-California potatoes, as does the Executive Subcommittee. These producers and handlers are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget.

The recommended assessment was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon before the season starts, and expenses are incurred on a continuous basis.

The recommended budget for the 1991–92 fiscal year of $43,250 is $3,300 more than the previous year due to increases for equipment, manager's travel, office supplies, and postage.

The 1991–92 recommended assessment rate of $0.004 per hundredweight of potatoes is the same as last year. This rate, when applied to anticipated fresh market shipments of 8,491,750 hundredweight, would yield $33,967 in assessment revenue. This, along with $9,283 from interest income and the committee's authorized reserve, would be adequate for budgeted expenses. The projected reserve for the end of the 1991–92 fiscal period is $20,000, which would be carried over into the next fiscal year. This amount is within the maximum permitted by the order of one fiscal year's expenses.

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

Interested persons may file comments with respect to this proposal until June 21, 1991. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 947 be amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 947.242 is added to read as follows:

§ 947.242 Expenses and assessment rate.

Expenses of $43,250 by the State of Oregon—California Potato Committee are authorized, and an assessment rate of $0.004 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1992. Unexpended funds may be carried over as a reserve.

Dated: May 15, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–11898 Filed 5–17–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 948, 953, and 958

[Docket No. FV–91–281]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Orders 948, 953, and 958 for the 1991–92 fiscal period. Authorization of these budgets would permit the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3), the Southeastern Potato Committee, and the Idaho-Eastern Oregon Onion Committee (committees) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

DATES: Comments must be received by May 30, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456,room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS. USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 447–2020.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Order No. 948 [7 CFR part 948], both as amended, regulating the handling of Irish potatoes grown in Colorado, Marketing Agreement No. 104 and Order No. 953 [7 CFR part 953], both as amended. regulating the handling of Irish potatoes grown in Southeastern States (Virginia and North Carolina), and Marketing Agreement No. 130 and Order No. 958 [7 CFR part 958], both as

amended, regulating the handling of onions grown in designated counties of Idaho and Malheur County, Oregon. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 18 handlers of Colorado Area III potatoes under Marketing Order No. 948, and approximately 95 potato producers. There are approximately 60 handlers of Southeastern potatoes under Marketing Order No. 953, and approximately 150 potato producers. Also, there are approximately 35 handlers of Idaho-Eastern Oregon onions under Marketing Order No. 958, and approximately 450 onion producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and handlers may be classified as small entities.

The budgets of expenses for the 1991–92 fiscal period were prepared by the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3), the Southeastern Potato Committee, and the Idaho-Eastern Oregon Onion Committee, the agencies responsible for local administration of the orders, and submitted to the Department of Agriculture for approval. The members of these committees are handlers and producers of Colorado potatoes, Southeastern potatoes, and Idaho-Oregon onions. They are familiar with the committees' needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the committees were derived by dividing anticipated expenses by expected shipments of potatoes and onions. Because these rates will be applied to actual shipments, they must be established at rates that will provide sufficient income to pay the committees' expenses.

The Colorado Potato Administrative committee, Northern Colorado Office (Area 3) met on April 11, 1991, and unanimously recommended a 1991–92 budget of $4,335, about the same as last year's budget. In Colorado, both a State and Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. Administrative expenses that are shared are divided so that 85 percent is paid under the State and 15 percent under the Federal order. All promotion and advertising expenses are financed under the State order.

The 1991–92 recommended assessment of $0.0025 per hundredweight of potatoes is a decrease from last year's $0.005 rate. This rate, when applied to anticipated fresh market shipments of 826,500 hundredweight, would yield $2,066 in assessment revenue. Additional money to be received from the Federal-State Inspection Service for rent ($360) and income from interest ($450), plus $1,459 from the reserves, would result in total revenues of $4,335 which would be adequate to cover budgeted expenses. Funds at the beginning of the 1991–92 fiscal period, estimated at $7,276, would be within the maximum permitted by the order of two fiscal periods' expenses.

The Southeastern Potato Committee met on April 18, 1991, and unanimously recommended a 1991–92 budget of $11,000, the same as last year. Major expense items include committee staff salaries and travel expenses. The committee also unanimously recommended an assessment rate of $0.0025 per hundredweight, a decrease from last season's rate of $0.0075. Production for the 1991–92 season could not be estimated at this time. However, the $21,000 reserve would be adequate to cover the expenses incurred. Given the assessment rate decrease, funds remaining at the end of the 1991–92 fiscal period should be within the maximum permitted by the order of one fiscal period's expenses.

The Idaho-Eastern Onion Committee met on April 9, 1991, and unanimously recommended a 1991–92 budget of $891,565, $58,351 more than the previous year. Increases in office salaries, promotion and advertising, car rental, and capital improvements would be partially offset by decreases in contingency and research expenses. The committee also unanimously recommended an assessment rate of $0.12 per hundredweight, an increase from last season's rate of $0.11. This rate, when applied to anticipated fresh market shipments of 7,200,000 hundredweight, would yield $864,000. This, along with $25,000 in interest income and $2,565 from the committee's authorized reserve, would be adequate to cover budgeted expenses. Funds at the beginning of the 1991–92 fiscal period, estimated at $331,188, would be within the maximum permitted by the order of one fiscal period's expenses.

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

This action should be expedited because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1991–92 fiscal period for the Southeastern Potato Committee begins on June 1, and the 1991–92 fiscal periods for the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3) and the Idaho-Eastern Oregon Onion Committee begin on July 1, and each marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes or onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committees at public meetings. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approvals for these programs need to be expedited.

List of Subjects in 7 CFR Parts 948, 953 and 958

Marketing agreements, Onions, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR parts 948, 953, and 958 be amended as follows:

1. The authority citation for 7 CFR parts 948, 953, and 958 continues to read as follows:

Authority: Secs. 1.19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 948—IRISH POTATOES GROWN IN COLORADO

2. A new § 948.206 is added to read as follows:

§ 948.206 Expenses and assessment rate.

Expenses of $4,335 by the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3) are authorized, and an assessment rate of $0.0025 per hundredweight of potatoes is established for the fiscal period ending June 30, 1992. Unexpended funds may be carried over as a reserve.

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

3. A new § 953.248 is added to read as follows:

§ 953.248 Expenses and assessment rate.

Expenses of $11,000 by the Southeastern Potato Committee are authorized, and an assessment rate of $0.0025 per hundredweight of potatoes is established for the fiscal period ending May 31, 1992. Unexpended funds may be carried over as a reserve.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO; AND MALHEUR COUNTY, OREGON

4. A new § 958.235 is added to read as follows:

§ 958.235 Expenses and assessment rate.

Expenses of $891,565 are authorized, and an assessment rate of $0.12 per hundredweight of onions is established for the fiscal period ending June 30, 1992. Unexpended funds may be carried over as a reserve.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–11896 Filed 5–17–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 989

[FV–91–267PR]

Raisins Produced From Grapes Grown in California; Revising the Desirable Carryout Formula

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a change to the administrative rules and regulations of the California raisin marketing order. This action would change the desirable carryout figure from three months of shipments to two and one-half months of shipments. The Raisin Administrative Committee (Committee) has determined that the use of the current desirable carryout formula results in excessive supplies of marketable tonnage early in the crop year. The proposed action is intended to stabilize marketing conditions for California raisins. This change was recommended by the Committee, which is responsible for local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California.

DATES: Comments must be received by June 19, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3920.

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

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

This proposed rule invites comments on a change to the administrative rules and regulations of the raisin marketing order. This action was recommended by the Committee at its March 5, 1991, meeting.

The change would revise the desirable carryout level which appears in § 989.154 relating to the desirable carryout formula. The desirable carryout level is the amount of tonnage from the prior crop year that is considered necessary for the industry to have available during the first part of the succeeding crop year to meet market needs, before the crop is harvested. Currently, § 989.154 provides that the desirable carryout level shall be equal to the shipments of free tonnage to all outlets for each varietal type during the period from August through October of the prior crop year. The desirable carryout figure is used in marketing policy calculations to determine trade demand. The trade demand is 90 percent of prior year's shipments, adjusted by the carryin and desirable carryout. The trade demand is then used to help determine the volume regulation

percentages for each crop year, if necessary.

The desirable carryout formula was established on June 9, 1989, (54 FR 24669). At that time, the Committee determined that the desirable carryout levels for certain varietal types of raisins specified in the order were too low and that higher levels were more appropriate because they would allow handlers to have adequate inventory to meet shipment needs during the early months of the crop year. The formula was used for the first time in marketing policy calculations for the 1989–90 crop year. The effect of changing this formula increased the desirable carryout from 60,000 tons to 103,090 tons for Natural (sun-dried) Seedless raisins (the major varietal type of raisin).

After using the three month desirable carryout figure for two crop seasons, the Committee has determined that the use of the formula results in excessive supplies of marketable tonnage. The majority of the Committee members believe that this causes unstable market conditions during the early part of the crop year. For the past two seasons, the desirable carryout was significantly increased causing excessive supplies and decreases in prices.

In order to correct this problem, the Committee has recommended that the formula be revised from three months of shipments to two and one-half months of shipments from the prior crop year. For example, for each varietal type the Committee would use the total shipments from the prior year for the months of August and September, and one-half of the total shipments in October, for computing free and reserve percentages for the applicable crop year. The change in the desirable carryout figure would reduce the trade demand and the free tonnage percentage, thus making less free tonnage available to handlers for immediate use. However, handlers would still be provided an opportunity to increase their inventory, if necessary, by purchasing raisins from the reserve pool under the 10 plus 10 offers in November and other releases of reserve pool raisins available under the marketing order.

In addition, the Department has received several letters from interested persons opposing the Committee's recommendation. Mainly, these persons opposed the recommendation because they believe that: (1) Demand for California raisins will not be increased by a reduction in the industry's free tonnage; (2) a tightening of supply and increased prices will reduce supply of California raisins at a time when the industry is investing funds (Market Promotion Program funds and promotion program to Japan) to increase shipments; and (3) purchases from this year's 10 plus 10 offer, a sale of reserve pool raisins to handler for free use, indicate that handlers were not overburdened with free tonnage (over 20,000 tons). Also, producers may be economically impacted by the decrease in free tonnage by the reduction in the desirable carryout figure. In view of these concerns, the Department is interested in receiving comments specifically addressing these issues. All comments would be considered before issuing a final rule, if warranted.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 989

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

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

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.154 is revised to read as follows:

§ 989.154 Desirable carryout levels.

The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the total shipments of free tonnage of the prior crop year during the months of August and September, and one-half of the total shipments for the month of October, for each varietal type, converted to a natural condition basis: *Provided*, That should the prior year's shipments be limited because of crop conditions, the Committee may select the total shipments during the months of August and September, and one-half of the total shipments for the month of October, during one of the three years preceding the prior crop year.

Dated: May 15, 1991.

Robert O. Keaney,

Deputy Director Fruit and Vegetable Division.

[FR Doc. 91–11899 Filed 5–17–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–82–AD]

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes Equipped With Air Cruisers Slides

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require repetitive inspections of the forward door escape slides' velcro girt retaining straps that were installed in accordance with an existing AD. This proposal is prompted by reports of incorrectly routed and unserviceable straps. This condition, if not corrected, could result in unusable slides or jammed doors during an emergency evacuation.

DATES: Comments must be received no later than July 9, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–82–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Terrell W. Rees, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2785. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: 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 duplicate to the address specified above. All communications received on or before the closing date for comments specified

above will be considered by the Administrator 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 post card on which the following statement is made: "Comments to Docket Number 91–NM–82–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 21, 1988, the FAA issued Airworthiness Directive (AD) 88–07–07, Amendment 39–5884 (53 FR 9864, March 28, 1988), to require modification of Air Cruisers forward door escape slide installations on Boeing Model 737 series airplanes, in accordance with Boeing Alert Service Bulletin 737–25A1221, dated December 17, 1987. This modification consisted of, in part, the addition of velcro girt retaining straps to the slide girt material, with corresponding mating velcro strips on the slide compartment, and the installation of an instructional placard on the slide compartment describing routing of the straps. The intent of this modification was to take up excess girt material to prevent it from becoming trapped under the armed girt bar. Trapped girt material had been the cause of unusably deployed slides and jammed doors, which had prompted the issuance of the AD.

Subsequent experience has shown, however, that this modification has not been successfully implemented in service. Operators have not consistently observed the placarded explicit instructions for routing of the straps as mandated by AD 88–07–07. Straps have been found in service to be misrouted and incorrectly utilized by flight attendants as auxiliary retention devices for the girt bars in the stowed position. This misuse requires the flight attendant to peel and unpeel the velcro straps twice for each flight, thus decreasing the life of the velcro more rapidly than expected. Consequently, many velcro straps have been found in service simply hanging loosely, both unmaintained and useless for the intended function. Boeing Service Letter 737–SL–25–44, released March 22, 1989, and Telex M–7272–90–3242, issued May 21, 1990, described the function and routing of the straps.

This condition, if not corrected, results in the same unsafe condition that generated the original AD. If excess girt material is trapped under the girt bar while in the armed mode, or if the straps are misrouted, the slide may not deploy in a usable manner or the door may jam partly open during an attempted emergency evacuation.

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is proposed which would require repetitive inspections of these velcro straps, prior to each flight, to assure that the straps are in an airworthy condition and are routed in accordance with the existing placarded instructions. The proposal contains a provision for optional terminating action for the repetitive inspections as the development and installation of a terminating modification that has been approved by the FAA.

There are approximately 816 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 439 airplanes of U.S. registry would be affected by this AD, that it would take approximately 0.5 manhour per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,073 per inspection cycle.

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 "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Docket No. 91–NM–82–AD.

Applicability: Model 737–300, 737–400, and 737–500 series airplanes, equipped with Air Cruisers forward door escape slides, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent a jammed door or an escape slide deployed in an unusable position during an emergency evacuation, either of which may be caused by inadequately maintained or misrouted girt retaining straps, accomplish the following:

(a) Within 30 days after the effective date of this AD, establish operating procedures, approved by the FAA Principal Maintenance Inspector (PMI), for the forward doors to include the requirements specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD and thereafter comply with those procedures. The procedures required by this paragraph must be accomplished by qualified and trained mechanics or flight crew, and the training program must be approved by the FAA PMI. Methods for documentation of compliance with the following procedures must be approved by the FAA PMI.

(1) Prior to each flight, inspect the condition and the routing of the girt retaining straps at the forward doors.

(2) Replace, prior to further flight, worn or aged velcro whose grip strength will no longer hold the girt retaining straps in position.

(3) Reroute, prior to further flight, girt retaining straps that are found not to be routed in accordance with the placarded instructions on the inboard face of the slide compartment.

(b) The actions required by paragraph (a) of this AD may be terminated upon installation of a modification that has been approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on May 8, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11834 Filed 5-17-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 90-AWP-13]

Proposed Amendment to Time of Designation of Restricted Area R-2301E, Ajo East, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the time of designation of Restricted Area R-2301E Ajo East, AZ, from "Intermittent" to "0630-2230 local time, Monday to Friday; other times by NOTAM." This would more accurately reflect the actual usage times for this restricted area. This action also proposes to correct Part 71 by removing R-2301 from the Continental Control Area and adding R-2301E and R-2301W.

DATES: Comments must be received on or before June 28, 1991.

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, Air Traffic Division, AWP-500, Docket No. 90-AWP-13, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Linda Ullom, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7683.

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 proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AWP-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. 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 procedure.

The Proposals

The FAA is considering amendments to parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) to amend the time of designation of Restricted Area R-2301E Ajo East, AZ. The existing time is "Intermittent." FAA Order 7400.2C, Procedures for Handling Airspace Matters, states that "Intermittent" is not applicable to restricted areas without a "by NOTAM" provision. In viewing the actual utilization data, it was determined that the more appropriate time of designation should be "0630-2230 local time, Monday to Friday; other times by NOTAM." This is verified by annual utilization reports dating back to 1986. This designation would allow for more efficient real-time coordination of the airspace between Albuquerque Air Route Traffic Control Center and the scheduling agency at Luke Air Force Base. It would also display more accurate usage information to the flying public, thus creating a more operationally advantageous environment for nonparticipants wishing to transit the restricted area. The current time of designation for Restricted Area R-2301W is not affected by this action. Additionally, when R-2301 was subdivided into R-2301E and R-2301W, part 71 was not updated. This action would correct part 71 by removing R-2301 from the Continental Control Area and adding R-2301E and R-2301W. Sections 71.151 and 73.23 of parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Restricted areas, Continental control area.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R–2301 Ajo, AZ [Removed]

R–2301E Ajo East, AZ [New]

R–2301W Ajo West, AZ [New]

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.23 [Amended]

4. Section 73.23 is amended as follows:

R–2301E Ajo East, AZ [Amended]

By removing the existing time of designation and substituting the following:

Time of designation: 0630–2230 local time, Monday to Friday; other times by NOTAM.

Issued in Washington, DC, on May 7, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91–11835 Filed 5–17–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

Records and Reports of Listed Chemicals and Certain Machines

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposes to amend the regulations implementing the Chemical Diversion and Trafficking Act of 1988 (CDTA) by including the requirements to maintain records and file reports on the importation or exportation of any tableting machine or encapsulating machine. This requirement is specified in the CDTA and was inadvertently omitted from the Notice of Proposed Rulemaking to implement the CDTA. The inadvertent omission necessitates that this requirement be separately proposed in the **Federal Register.**

DATES: Written comments and objections must be received on or before July 19, 1991.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The Chemical Diversion and Trafficking Act of 1988 (Pub. L. 100–690) requires that any person who distributes, imports or exports certain machines document these transactions (to include a description of the tableting machine or encapsulating machine and a description of the method of transfer), maintain retrievable records for a specified period of time, report suspicious or unusual orders and identify each party to the transaction. The import and export requirements for any tableting machine or encapsulating machine were inadvertently omitted from the Notice of Proposed Rulemaking to implement the CDTA, published on February 8, 1989. The inadvertent omission necessitates that these requirements be separately proposed in the **Federal Register.** This proposed rule would incorporate this requirement into the regulations that implement the CDTA.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This proposed rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981.

Pursuant to sections 3(c)(3) and 3(e)(2)(c) of Executive Order 12291, this proposed rule has been submitted to the Office of Management and Budget for review, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C., et seq.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug Enforcement Administration, Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, it is proposed that 21 CFR part 1310 be amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

§ 1310.05 [Amended]

2. Section 1310.05(a)(4) is proposed to be amended by removing the word "domestic" from the paragraph.

3. Section 1310.06 is proposed to be amended by revising paragraph (c) and adding new paragraphs (e) and (f) as follows:

§ 1310.06 Contents of records and reports.

* * * * *

(c) Each report required by § 1310.05 shall include the information as specified by § 1310.06(a) and, where obtainable, the telephone number of the other party. A report submitted pursuant to § 1310.05 (a)(1) or (a)(3) must also include a description of the circumstances leading the regulated person to make the report, such as the reason that the method of payment was uncommon or the loss unusual. If the report is for a loss or disappearance under § 1310.05(a)(3), the circumstances of such loss must be provided (in-transit, theft from premises, etc.). A report on import/export transactions submitted pursuant to § 1310.05(a)(4) shall include the information specified by paragraphs (e) and (f) of this section.

* * * * *

(e) Each regulated person who imports a tableting machine, as defined in § 1310.01(i), or an encapsulating machine, as defined in § 1310.01(j) of this chapter, shall notify the Administration on or before the date of importation. In order to facilitate the import of any tableting machine or encapsulating machine and implement the purpose of the Act, regulated persons may wish to provide notification to the Administration as far in advance as possible.

(1) The notification (not a DEA–486) must be received at the following address on or before the date of importation: Drug Enforcement Administration, P.O. Box 28346, Washington, DC 20038.

A copy of the notification may be transmitted directly to the Drug Enforcement Administration through electronic facsimile media.

(2) Any tableting machine or encapsulating machine as defined in § 1310.01 of this chapter may be imported if that machine is needed for medical, commercial, scientific, or other legitimate uses.

(3) The import notification must include the following information:

(i) The name, address, telephone number, telex number, and, where available, the facsimile number of the regulated person; the name, address, telephone number, telex number, and, where available, the facsimile number of the import broker or forwarding agent, if any;

(ii) The description of each machine (including make, model and serial number) and the number of machines being received;

(iii) The proposed import date, and the first U.S. Customs Port of Entry; and

(iv) The name, address, telephone number, telex number, and, where available, the facsimile number of the consignor in the foreign country of exportation.

(f) No regulated person shall export or cause to be exported from the United States a tableting machine, as defined in § 1310.01(i), or an encapsulating machine, as defined in § 1310.01(j) of this chapter, until such time as the Administration has been notified. Notification shall be made on or before the date of exportation. In order to facilitate the export of any tableting machine or encapsulating machine and implement the purpose of the Act, regulated persons may wish to provide notification to the Administration as far in advance as possible.

(1) The notification (not a DEA–486) must be received at the following address on or before the date of exportation: Drug Enforcement Administration, P.O. Box 28346, Washington, DC 20038.

A copy of the notification may be transmitted directly to the Drug Enforcement Administration through electronic facsimile media.

(2) Any tableting machine or encapsulating machine as defined in § 1310.01 of this chapter may be exported if that machine is needed for medical, commercial, scientific, or other legitimate uses.

(3) The export notification must include the following information:

(i) The name, address, telephone number, telex number, and, where available, the facsimile number of the regulated person; the name, address, telephone number, telex number, and, where available, the facsimile number of the export broker, if any;

(ii) The description of each machine (including make, model and serial number) and the number of machines being shipped;

(iii) The proposed export date, the U.S. Customs port of exportation, and the foreign port of entry; and

(iv) The name, address, telephone, telex, and where available, the facsimile number of the consignee in the country where the shipment is destined; the name(s) and address(es) of any intermediate consignee(s).

(4) Declared exports of machines which are refused, rejected, or otherwise deemed undeliverable may be returned to the regulated person. A brief written notification outlining the circumstances must be sent to the Drug Enforcement Administration, P.O. Box 28346, Washington, DC 20038, following the return within a reasonable time. This provision does not apply to shipments that have cleared foreign customs, been delivered, and accepted by the foreign consignee. Returns to third parties in the United States will be regarded as imports.

Dated: April 17, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–11865 Filed 5–17–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–42–91]

RIN 1545–AP72

Taxation of Fringe Benefits and Exclusions From Gross Income of Certain Fringe Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments of two provisions of the fringe benefit regulations. These proposed amendments provide: (1) A new valuation rule for certain transportation provided by an employer to or from an employee's workplace due to unsafe conditions surrounding the employee's workplace or residence and (2) increase the dollar amount of the de minimis exclusion for public transit passes provided to employees for travel on public transit systems. The proposed regulations affect employees receiving these fringe benefits and provide guidance to employers and employees to help determine their federal tax liability for the benefits received.

DATES: Requests to appear at a public hearing scheduled for Monday, July 1, 1991, at 10 a.m. and outlines of oral comments must be received by June 17, 1991. Written comments must be received by June 24, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE 42–91), room 5228, Washington, DC 20044. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Marianna Dyson at 202–377–9372 (not a toll-free number). Concerning the hearing, Carol Savage, Regulations Unit, at 202–377–9236 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 61 and 132 of the Internal Revenue Code of 1986 (Code)

Explanation of Provisions

1. Employer-Provided Transportation Due to Unsafe Conditions

Section 132(a)(3) of the Code provides that working condition fringes are excludable from gross income. Section 132(d) of the Code and § 1.132–5(a)(1) of the regulations provide that a "working condition fringe" is any property or service provided to an employee of an employer to the extent that, if the employee paid for the property or service, the amount paid would be allowable as a deduction under section 162 or 167.

The value of employer-provided transportation that is used for commuting purposes is generally not excludable from gross income as a working condition fringe benefit because commuting is a nondeductible

personal expense under section 262 of the Code. The proposed amendment of the regulations under section 61 provides a new special valuation rule for employer-provided transportation furnished, solely because of unsafe conditions, to an employee who would otherwise walk or use public transportation. Unsafe conditions exist if a reasonable person would, under the facts and circumstances, consider it unsafe to walk to or from home, or to walk to or use public transportation at the time of day the employee must commute. The employer must establish a written policy (e.g., in the employer's personnel manual) under which the transportation is not provided to the employee for personal purposes other than commuting due to unsafe conditions. The employer's practice must correspond with the written policy.

If the requirements of the proposed regulation are satisfied, the amount includable in the employee's income is $1.50 per one-way commute (i.e., from home to work or from work to home). The special valuation rule applies on a trip-by-trip basis. Thus, if the requirements of the regulation are not met with respect to any particular trip (e.g., because the trip is for a personal purpose of the employee), the amount includable in the employee's income is determined by reference to the fair market value of the transportation for that trip.

This rule applies only to employees who do not receive compensation from the employer in excess of the amount permitted by section 414(q)(1)(C) of the Code. In addition, the employee must be paid on an hourly basis and not be claimed under section 213(a)(1) of the Fair Labor Standards Act of 1938 (as amended), 29 U.S.C. 201–219 (FLSA), to be exempt from the minimum wage and maximum hour provisions of the FLSA. Furthermore, the employee must be within a classification with respect to which the employer actually pays, or has specified in writing that it will pay, compensation at one and one-half times the regular rate as provided by section 207 of the FLSA. If questions arise concerning an employee's classification under the FLSA, the pronouncements and rulings of the Administrator of the Wage and Hour Division, Department of Labor will be determinative. The Service requests suggestions from taxpayers concerning other appropriate methods for determining which employees should be permitted to use the special valuation rule.

The special valuation rule set forth in a new § 1.61–21(k) is effective July 1, 1991. The special valuation rule may be used for reporting and withholding and for payment of employment taxes for transportation that satisfies the requirements of proposed § 1.61–21(k) and that is provided on or after that date.

2. Public Transit Passes

Section 132(a)(4) of the Code provides that de minimis fringe benefits are excluded from gross income. Section 132(e) and § 1.132–6(d)(1) of the regulations provide that a "de minimis fringe" means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable. Section 1.132–6(d)(1) provides a special rule for public transit passes and tokens or fare cards (including vouchers or similar instruments exchangeable for tokens or fare cards) that are provided to an employee to enable the employee to travel on the public transit system. If the value of the public transit pass, token, fare card, or other instrument enabling the employee to use the public transit system does not exceed $15 in any month, the benefit may be excluded from the employee's gross income as a de minimis fringe. The basis for the $15 exclusion arises out of the legislative history accompanying the Tax Reform Act of 1984, Public Law No. 98–369, section 531, 98 Stat. 494, which added section 132 to the Code. To reflect increases in the cost of living, the proposed regulations increase the dollar amount of the exclusion from $15 to $21, effective July 1, 1991. This increase in the exclusion amount may be used for reporting and withholding and for payment of employment taxes for qualifying benefits provided to employees on or after July 1, 1991.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests to Appear at a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. Because the Treasury Department expects to issue final regulations on this matter as soon as possible, a public hearing will be held beginning at 10 a.m. on July 1, 1991, in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to appear at the public hearing and outlines of oral comments must be received by June 17, 1991. Written comments must be received by June 24, 1991. See notice of hearing published elswhere in this issue of the **Federal Register.**

Drafting Information

The principal author of these regulations is Marianna Dyson, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Parts 1.61–1 Through 1.133–1T

Income taxes, reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Sec. 1.61–21(k) also issued under 26 U.S.C. 61.

Par. 2. Section 1.61–21(k) is added to read as follows:

§ 1.61–21 Taxation of fringe benefits.

* * * * *

(k) *Commuting valuation rule for certain employees*—(1) *In general.* Under the rule of this paragraph (k), the value of the commuting use of employer-provided transportation may be determined under paragraph (k)(3) of this section if the following criteria are

met by the employer and employee with respect to the transportation:

(i) The transportation is provided, solely because of unsafe conditions, to an employee who would otherwise walk or use public transportation for commuting to or from work;

(ii) The employer has established a written policy (e.g., in the employer's personnel manual) under which the transportation is not provided for the employee's personal purposes other than for commuting due to unsafe conditions and the employer's practice in fact corresponds with the policy;

(iii) The transportation is not used for any personal purpose other than commuting due to unsafe conditions; and

(iv) The employee receiving the employer-provided transportation is a qualified employee of the employer (as defined in paragraph (k)(6) of this section).

(2) *Trip-by-trip basis.* The special valuation rule of this paragraph (k) applies on a trip-by-trip basis. If an employer and employee fail to meet the criteria of paragraph (k)(1) of this section with respect to any trip, the value of the transportation for that trip is not determined under paragraph (k)(3) of this section and the amount includible in the employee's income is determined by reference to the fair market value of the transportation.

(3) *Commuting value*—(i) *$1.50 per one-way commute.* If the requirements of this paragraph (k) are satisfied, the value of the commuting use of employer-provided transportation is $1.50 per one-way commute (i.e., from home to work or from work to home).

(ii) *Value per employee.* If transportation is provided to more than one qualified employee at the same time, the amount includible in the income of each employee is $1.50 per one-way commute.

(4) *Definition of employer-provided transportation.* For purposes of this paragraph (k), "employer-provided transportation" means transportation by vehicle (as defined in paragraph (f)(4) of this section) that is purchased by the employer from an unrelated third party for the purpose of transporting a qualified employee to or from work.

(5) *Unsafe conditions.* Unsafe conditions exist if a reasonable person would, under the facts and circumstances, consider it unsafe for the employee to walk to or from home, or to walk to or use public transportation at the time of day the employee must commute. One of the factors indicating whether it is unsafe is the history of crime in the geographic area surrounding the employee's workplace or residence at the time of day the employee must commute.

(6) *Qualified employee defined*—(i) *In general.* For purposes of this paragraph (k), a qualified employee is one who meets the following requirements with respect to the employer:

(A) The employee performs services during the current year, is paid on an hourly basis, is not claimed under section 213(a)(1) of the Fair Labor Standards Act of 1938 (as amended), 29 U.S.C. 201–219 (FLSA), to be exempt from the minimum wage and maximum hour provisions of the FLSA, and is within a classification with respect to which the employer actually pays, or has specified in writing that it will pay, compensation at one and one-half times the regular rate as provided by section 207 of the FLSA; and

(B) the employee does not receive compensation from the employer in excess of the amount permitted by section 414(q)(1)(C) of the Code.

(ii) *Compensation defined.* Compensation for purposes of this paragraph (k) means wages within the meaning of section 3401(a) of the Code and all other payments of compensation to the employee by the employer that are required to be reported under section 6041 of the Code.

(iii) *FLSA compliance required.* An employee will not be considered a qualified employee for purposes of this paragraph (k), unless the employer is in compliance with the recordkeeping requirements concerning that employee's wages, hours, and other conditions and practices of employment as provided in section 211(c) of the FLSA and 29 CFR part 516.

(iv) *Issues arising under the FLSA.* If questions arise concerning an employee's classification under the FLSA, the pronouncements and rulings of the Administrator of the Wage and Hour Division, Department of Labor are determinative.

(v) *Non-qualified employees.* If an employee is not a qualified employee within the meaning of this paragraph (k)(6), no portion of the value of the commuting use of employer-provided transportation is excluded under this paragraph (k).

(7) *Examples.* This paragraph (k) is illustrated by the following examples:

Example 1. A and B are word-processing clerks employed by Y, an accounting firm in a large metropolitan area and both are qualified employees under paragraph (k)(6) of this section. The normal working hours for A and B are from 11 p.m. until 7 a.m. and public transportation, the only means of transportation available to A or B, would be considered unsafe by a reasonable person at the time they are required to commute from home to work. In response, Y hires a car service to pick up A and B at their homes each evening for purposes of transporting them to work. The amount includible in the income of both A and B is $1.50 for the one-way commute from home to work.

Example 2. Assume the same facts as in Example 1, except that Y also hires a car service to return A and B to their homes each morning at the conclusion of their shifts and public transportation would not be considered unsafe by a reasonable person at the time of day A and B commute to their homes. The value of the commute from work to home is includible in the income of both A and B by reference to fair market value since unsafe conditions do not exist for that trip.

Example 3. C is an associate for Z, a law firm in a metropolitan area. The normal working hours for C's law firm are from 9 a.m. until 6 p.m., but C's ordinary office hours are from 10 a.m. until 8 p.m. Public transportation, the only means of transportation available to C at the time C commutes from work to home during the evening, would be considered unsafe by a reasonable person. In response, Z hires a car service to take C home each evening. C does not receive annual compensation from Z in excess of the amount permitted by section 414(q)(1)(C) of the Code. However, C is not paid on an hourly basis. Therefore, C is not a qualified employee within the meaning of paragraph (k)(6) of this section. The value of the commute from work to home is includible in C's income by reference to fair market value.

(8) *Effective date.* This paragraph (k) applies to employer-provided transportation provided to a qualified employee on or after July 1, 1991.

Par 3. Section 1.32–6 is amended as follows:

1. Paragraph (d)(1) is amended by inserting "$21" in place of "$15" in the first, second, and third sentences and by adding a fifth sentence.

2. The second sentence of paragraph (d)(3) is revised.

3. The last sentence of paragraph (d)(4) is revised.

4. The addition and revisions read as follows:

§ 1.32–6 De minimis fringes.

* * * * *

(d) * * *

(1) * * * For months ending before July 1, 1991, the amount is $15 per month.

* * * * *

(3) * * * For example, the fact that $252 (i.e., $21 per month for 12 months) worth of public transit passes can be excluded from gross income as a de minimis fringe in 1992 does not mean that any fringe benefit with a value equal to or less than $252 may be excluded as a de minimis fringe. * * *

(4) * * * For example, if, in 1992, an employer provides a $50 monthly public

transit pass, the entire $50 must be included in income, not just the excess value over $21.

* * * * *

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 91-11891 Filed 5-17-91; 8:45 am]
BILLING CODE 4830-01-M

26 CFR Part 1

[EE-42-91]

RIN 1545-AP72

Taxation of Fringe Benefits and Exclusions From Gross Income of Certain Fringe Benefits; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulation.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to taxation of fringe benefits and exclusions from gross income of certain fringe benefits.

DATES: The public hearing will be held on Monday, July 1, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, June 17, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (EE-42-91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 61 and 132 of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, June 17, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,
Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-11892 Filed 5-17-91; 8:45 am]
BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 719]

RIN 1512-AA07

Realignment of the Northern Boundary of the Alexander Valley Viticultural Area (89F751P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), has received a petition for the revision of the northern boundary of the Alexander Valley viticultural area to include vineyard land that is similar to land in the currently approved Alexander Valley viticultural area. This land was not included in the original Alexander Valley viticultural area which was established on November 23, 1984, by the issuance of Treasury Decision ATF-187 [49 FR 42719].

The proposed boundary revision would add approximately 80 acres of territory to the current Alexander Valley viticultural area. Of these, eight acres are currently planted to grapes.

DATES: Written comments must be received by July 5, 1991.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 719). Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1979, ATF published Treasury Decision ATF-60 [44 FR 56692] which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF has received a petition from Mr. James W. Reed of Oak Ridge Ranch and Vineyards for the amendment of the northern boundary of the Alexander Valley viticultural area to include vineyard land that was omitted when the viticultural area was established by

Treasury Decision ATF–187 on November 23, 1984.

Mr. Reed states that his northernmost vineyard block known as CS73 lies just outside the northern boundary of the Alexander Valley viticultural area. Vineyard block CS73 comprises approximately eight acres which was originally planted to Cabernet Sauvignon in 1973. Mr. Reed further states that this vineyard is isolated and, in fact, cannot be reached or the fruit removed without entering the present Alexander Valley viticultural area. Mr. Reed owns other vineyards within the Alexander Valley viticultural area and only recently became aware that vineyard block CS73 was not included within the established boundaries of the Alexander Valley viticultural area. However, the current boundaries do not split any of Mr. Reed's existing vineyards.

Northern Sonoma

In the preamble to Notice No. 472 (48 FR 29539, 1983) proposing the Northern Sonoma viticultural area, ATF stated its intention to have the proposed boundary coincide generally with the "outer" portions of the boundaries of the proposed Alexander Valley, Dry Creek Valley, Russian River Valley, and Knights Valley viticultural areas. In the preamble to Treasury Decision ATF–204 (50 FR 20560, 1985), which established the Northern Sonoma viticultural area, ATF stated that these four areas all fit perfectly together dividing northern Sonoma County into four large areas. The current Northern Sonoma viticultural area uses all of the outer boundaries of these four areas with the exception of a small area southwest of the Dry Creek Valley area and west of the Russian River Valley. This small area has nearly 300 acres of grapevines and possesses the same geographical features as the rest of the Northern Sonoma viticultural area.

Currently, the northern boundary of the Alexander Valley and Northern Sonoma viticultural areas follows the Sonoma County-Mendocino County line. Mr. Reed's petition proposes adding an area to Alexander Valley north of the common boundary of these two viticultural areas and located entirely in Mendocino County. Since the proposed area is located entirely in Mendocino County, ATF is not proposing changing the northern boundary of the Northern Sonoma viticultural area to coincide with the proposed revision of the northern boundary for the Alexander Valley viticultural area. ATF does not believe it is appropriate for the Northern Sonoma viticultural area to extend outside of Sonoma County since there is no evidence that the name "Northern Sonoma" ever referred to land in Mendocino County. However, the petitioner has submitted evidence that the area within the proposed extension, although located in Mendocino County, is known as part of Alexander Valley. Therefore, this notice proposes the extension of the Alexander Valley viticultural area into a small area of Mendocino County.

Evidence Of Name

The petitioner submitted several letters from owners of neighboring wineries and vineyards supporting the Petitioner's contention that the proposed extension area is locally known as being a part of the Alexander Valley viticultural area.

Geographical Evidence

Topography

The petitioner provided aerial color photographs to illustrate the topographic similarity between the currently approved Alexander Valley viticultural area and the petitioned area. These photographs show that vineyard block CS73 is the northernmost block on the petitioner's property. In addition, the petitioner cited the U.S.G.S. Topographical map (Asti Quadrangle California 7.5 Minute Series), as evidence that the terrain to the northeast, north, and northwest differs from the terrain in the petitioned area and the current Alexander Valley viticultural area.

The terrain to the northeast of the proposed boundary amendment appears from the elevation and closeness of the contour lines on the map to be very steep, mountainous and, according to the petitioner, not conducive to cultivation. This impression is reinforced by the aerial photographs. The terrain to the north and northwest drops very steeply with slopes of 40 to 50 degrees down to Ash Creek. The petitioner states that this area is north sloping and very rocky, unlike the petitioned area and the directly adjacent Alexander Valley viticultural area, which are predominantly south sloping without the degree of steepness or rocky outcropping.

The photographs also show an olive orchard within the petitioned area east of vineyard block CS73. This orchard is cited by the petitioner as evidence that the petitioned area is generally suitable for cultivation unlike the steep brushy terrain to the northeast, north, and northwest.

Climate

The present Alexander Valley viticultural area border is 100 feet south of vineyard block CS73. The close proximity of the proposed and current areas is cited by the petitioner as evidence that the present and petitioned areas share similar climatic conditions regarding precipitation, temperature and frost free periods. However, the petitioner was unable to submit any direct evidence concerning the climate of the area within the proposed extension.

Soils

Mr. Roy Bowman, a certified professional soil scientist for the Mendocino County Resource Conservation District was retained by the petitioner to compare soils in the petitioned area with the soils in the Alexander Valley viticultural area. Mr. Bowman's report details the similarity between soil samples taken in the petitioner's Sonoma County vineyards (report profile #1) inside the current Alexander Valley viticultural area, and vineyard block CS73 (report profile #2) in the petitioned area located in Mendocino County. These profiles were constructed from soil samples taken about 1,500 feet apart, close to the same elevation, with the same southern exposure. Profile #1 and profile #2 both keyed out to a fine, mixed, thermic mollic Haploxeralf. Mr. Bowman states, "these soil profiles are so similar that I could not separate them in field mapping."

According to Mr. Bowman, it is impossible to obtain a soil map with matched soil types for the petitioned area and the present Alexander Valley viticultural area because Sonoma and Mendocino Counties used different soil classification systems.

Public Participation—Written Comments

ATF requests comments from all interested persons. ATF is particularly interested in receiving comments concerning the fact that the northern boundary of the Northern Sonoma viticultural area will no longer coincide with the northern boundary of the Alexander Valley viticultural area. ATF is also interested in receiving comments concerning whether it is appropriate to extend the boundaries of the Alexander Valley viticultural area into Mendocino County. Specifically, ATF wishes to solicit comments on whether the name "Alexander Valley" is locally or nationally known as referring to the proposed area of extension.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Flexibility Act

It is hereby certified that this document will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority And Issuance

27 CFR part 9, American Viticultural Areas, is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 9.53 is amended by redesignating existing paragraphs (c) (2) through (44) as (c) (5) through (47); revising paragraph (c)(1), and adding new paragraphs (c) (2) through (4), to read as follows:

§ 9.53 Alexander Valley

* * * * *

(c) Boundaries. The Alexander Valley viticultural area is located in northeastern Sonoma County and southeastern Mendocino County, California. From the beginning point at the S.E. corner of section 29, T. 12N., R. 10W., on the Asti Quadrangle map, the boundary runs—

(1) North along the eastern boundary of section 29, T. 12N., R. 10W., approximately 2,000 feet to the point where it meets Ash Creek;

(2) Then following Ash Creek in a general westerly direction approximately 2,600 feet until it meets a point where the 2,000 foot elevation topographic line crosses Ash Creek;

(3) Then along the 2,000 foot contour line in a general southerly direction for approximately 3,000 feet to a point where it meets the north line of section 32, T. 12N., R. 10W.;

(4) Then west along the north line of sections 32 and 31, T. 12N., R. 10W., and sections 36, 35, and 34, T. 12N., R. 11W., to the northwest corner of section 34, on the Cloverdale Quadrangle map.

* * * * *

Signed: May 9, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91–11753 Filed 5–17–91; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 58a

[DoD Directive 6485.AA]

RIN 0790–AC49

Human Immunodeficiency Virus (HIV–1)

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Defense published a proposed rule on December 5, 1989 (54 FR 50243) concerning Human Immunodeficiency Virus (HIV–1). A new 32 CFR part 58 was added concerning HIV–1 making this rulemaking unnecessary, therefore this proposed rule, 32 CFR part 58a, is withdrawn.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Directives Division, Washington Headquarters Services, Pentagon, Washington, DC 20301, telephone (703) 697–4111.

Dated: May 14, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–11853 Filed 5–17–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

32 CFR Part 806b

[Air Force Reg. 12–35]

Air Force Privacy Act Program

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed exemption rule.

SUMMARY: The Department of the Air Force proposes to amend two specific exemption rules for two existing systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The systems of records are identified as F035 AF MP A, Effectiveness/Performance Reporting Systems and F035 AF MP P, General Officer Personnel Data System.

DATES: Comments must be received on or before June 19, 1991, to be considered by the agency.

ADDRESSES: Send comments to Mrs. Anne Turner, Air Force Access Programs Officer, SAF/AAIA, The Pentagon, Washington, DC 20330–1000. Telephone (703) 697–3491 or Autovon 227–3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force proposes to

amend 32 CFR part 806b by revising the subsections from which records contained in two systems of records can be exempt.

List of Subjects in 32 CFR Part 806b

Privacy.

Accordingly, the Department of the Air Force proposes to amend existing exemption rules in 32 CFR part 806b as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: 5 U.S.C. 552a, Pub. L. 93–579.

2. Section 806b.13 is proposed to be amended by revising paragraphs (b)(7) and (b)(10) as follows:

§ 806b.13 General and specific exemptions

* * * * *

(b) *Specific exemptions.*

* * * * *

(7) *System identification and name*—F035 AF MP A, Effectiveness/Performance Reporting System.

(i) *Exemptions*—Portions of this system of records may be exempt from subsections of 5 U.S.C. 552a (c)(3); (d); (e)(4)(H); and (f).

(ii) *Authority*—5 U.S.C. 552a(k)(7).

(iii) *Reasons*—Subsection (c)(3) because making the disclosure accounting available to the individual may compromise express promises of confidentiality by revealing details about the report and identify other record sources, which may result in circumvention of the access exemption.

Subsection (d) because individual disclosure compromises express promises of confidentiality conferred to protect the integrity of the promotion rating system.

Subsection (e)(4)(H) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

Subsection (f) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

* * * * *

(10) *System identification and name*—F035 AF MP P, General Officer Personnel Data System.

(i) *Exemption*—Portions of this system of records may be exempt from subsections of 5 U.S.C. 552a (c)(3); (d); (e)(4)(H); and (f).

(ii) *Authority*—5 U.S.C. 552a(k)(7).

(iii) *Reason*—Subsection (c)(3) because making the disclosure accounting available to the individual may compromise express promises of confidentiality by revealing details about the report and identify other record sources, which may result in circumvention of the access exemption.

Subsection (d) because individual disclosure compromises express promises of confidentiality conferred to protect the integrity of the promotion rating system.

Subsection (e)(4)(H) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

Subsection (f) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

* * * * *

Dated: May 10, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–11506 Filed 5–17–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 910512–1112]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce issues a preliminary notice of change in the commercial quota for red snapper in the Gulf of Mexico reef fish fishery in accordance with the framework procedure of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as amended. This notice proposes an annual red snapper commercial quota of 2.04 million pounds. The intended effect is to protect the overfished red snapper resource while still allowing catches by important recreational and commercial fisheries that are dependent on red snapper.

DATES: Written comments must be received on or before May 30, 1991.

ADDRESSES: Comments on the proposed rule should be sent to Robert A. Sadler, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702. Copies of documents supporting this action may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813–893–3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared and amended by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act.

In accordance with procedures approved in Amendment 1 to the FMP, the Council convened a scientific assessment panel (Panel) that reviewed the latest stock assessment and fishery evaluation report for red snapper. Based on the Panel's report and public hearings on that report, the Council recommended a total allowable catch (TAC) of red snapper for 1991 of 4.0 million pounds. The TAC of 4.0 million pounds for 1991 is one of a series of annual TACs that, within 3 years, will come within the range of acceptable biological catch established for red snapper. Within the TAC, the Council recommended reducing the commercial quota for red snapper from 3.1 million pounds to 2.04 million pounds. No change is recommended in the current 7-fish recreational daily bag limit. The 7-fish bag limit equates to a recreational catch of approximately 1.96 million pounds. The proposed 2.04-million-pound commercial quota and the expected 1.96-million-pound recreational catch represent a division of the TAC of 51 percent to the commercial fishery and 49 percent to the recreational fishery. This division of the red snapper TAC maximizes the net benefits of the fishery to the nation and is consistent with the historical percentages harvested by commercial and recreational fishermen during the base period 1979–87, as specified in the FMP's framework procedure for setting and dividing TACs.

The Council proposed this action because it reduces fishing mortality on red snapper and maintains the existing structure of the directed red snapper fishery and associated secondary industries and coastal communities. The estimated commercial catch of red snapper in 1990 was 2.4 million pounds. Thus, the proposed quota of 2.04 million pounds for 1991 represents a moderate reduction in actual harvest levels. The effects of this reduction on a fisherman would depend on the fisherman's: (1) Dependence on harvest of red snapper, and (2) ability to compensate for reduced red snapper harvests by increasing harvests of other species.

The Council intends to monitor the red snapper population by evaluating annual stock assessments and, as

provided in the FMP's framework procedure, to adjust management measures as necessary to ensure that the red snapper resource continues to rebuild at an acceptable rate toward the Council's goal of a spawning potential ratio (SPR) of 20 percent. In Amendment 1, the Council's goal was expressed in terms of a spawning stock biomass per recruit ratio (SSBR) of 20 percent. Both SPR and SSBR refer to the same index of population status. SPR is technically a more correct reference to spawning stock index and was used in the most recent stock assessment.

In addition to this action for 1991, the Council intends to achieve, commencing in 1994, a reduction of 6.2 million juvenile red snapper in the shrimp trawl bycatch of red snapper. That amount represents 50 percent of the 1984–1988 average bycatch level of juvenile red snapper. This reduction of bycatch is expected to be accomplished by: (1) Reductions that may have occurred already through reduced effort and changes in gear and fishing practices but have not yet been documented; and (2) if necessary, trawl modifications that exclude finfish, and/or further reductions in fishing effort. The Council and NMFS will work with the fishing industry, states, and universities to develop suitable means to effect the required bycatch reductions.

The Council's goal is to rebuild the red snapper resource to 20 percent SPR by 2007 at a deliberate and acceptable rate while attempting to maintain the viability of the fishery and associated industries/economies dependent on the fishery. (Amendment 3 to the FMP proposes a change in the target date for attaining the 20-percent-SPR goal from the year 2000 to 2007. The proposed rule to implement Amendment 3 was published in the **Federal Register** on March 27, 1991 (56 FR 12698). Final action on the revised commercial quota in this proposed rule will follow final action on Amendment 3.)

Other Matters

This action is authorized by the FMP and complies with E.O. 12291.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 14, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

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

2. Section 641.25, paragraph (a) is revised to read as follows:

§ 641.25 Commercial quotas.

* * * * *

(a) Red snapper—2.04 million pounds.

* * * * *

[FR Doc. 91–11846 Filed 5–15–91; 12:32 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 56, No. 97
Monday, May 20, 1991

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-063]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plants Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
91-094-01 renewal of Permit 90-032-01, issued on 05-08-90.	Monsanto Agricultural Company	04-04-91	Potato plants genetically engineered to express the potato virus X (PVX) and the potato virus Y (PVY).	Washington
91-100-02	Ciba-Geiy Biotechnology Research	04-10-91	Corn plants genetically engineered to express a hygromycin resistance gene and the beta-glucuronidase (GUS) gene.	Hawaii.
91-102-01, renewal of Permit 90-065-06, issued on 05-15-90.	University of Kentucky	04-12-91	Tobacco plants genetically engineered to express tobacco vein mottling virus (TVMV) and tobacco etch virus resistance.	Kentucky.
91-105-01	Pioneer Hi-Bred International, Incorporated.	04-15-91	Corn plants genetically engineered to express the visual marker genes phos-phinothricin acetyltransferase (BAR), beta-glucuronidase (GUS), and the C1 and R transcriptional activator genes, and/or a bialaphos herbicide tolerance gene.	Iowa.
91-106-01	DNA Plant Technology	04-16-16	Chrysanthemum plants genetically engineered to suppress a chrysanthemum chalcone synthase (CHS) gene and to express a neomycin phosphotransferase (NPTII) gene.	California, Florida, and South Carolina.

Done in Washington, DC, this 14th day of May 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-11871 Filed 5-17-91; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

[Docket No. 91-015N]

National Advisory Committee on Meat and Poultry Inspection; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Meat and Poultry Inspection will be held on Tuesday and Wednesday, June 18-19, 1991, in Arlington, Virginia, from 9 a.m. to 4:30 p.m., at the George Mason University at Quincy Street Station, 4001 N. Fairfax Drive, Arlington, Virginia.

The Committee provides advice and recommendations to the Secretary of Agriculture regarding certain issues pertaining to the meat and poultry inspection program, pursuant to sections 7(c), 24, 205, 301(a)(3), and 301(c) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, 661(a)(3) and 661(c)) and sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e).

the meeting will include a discussion of the following topics:

1. State Designations;

2. HACCP;
3. Labeling;
4. Relationships by Objectives;
5. Appeals Procedure;
6. SIS Cattle;
7. Slaughter of Transgenic Animals;
8. Regulatory Development;
9. Retail Exemption;
10. Small Plant Handbook; and
11. User Fees.

The meeting is open to the public on a space available basis. Comments of interested persons may be filed prior to or following the meeting, and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, room 3175 South Building, 14th and Independence Avenue, SW., Washington, DC 20250. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447–9150.

Done at Washington, DC, on May 14, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91–11869 Filed 5–17–91; 8:45 am]

BILLING CODE 3410–DM–M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System—OK

The Statewide central filing system of Oklahoma has been previously certified, pursuant to section 1324 of the Food Security Act of 1905, on the basis of information submitted by Hannah D. Atkins, Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by John Kennedy, Secretary of State, for an additional farm product produced in that State as follows:

Radishes

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.18(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: May 15, 1991.

Virgil M. Rosendale,

Administrator, Packers and Stockyards Administration.

[FR Doc. 91–11870 Filed 5–17–91; 8:45 am]

BILLING CODE 3410–KD–M

Rural Electrification Administration

Pre-Emption of State Commission Jurisdiction Over the Rates of Wabash Valley Power Association, Inc.

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of pre-emption.

SUMMARY: This notice is published pursuant to the provisions of 7 CFR 1717.305 and gives notice of the pre-emption of the jurisdiction of the Indiana Utility Regulatory Commission (IURC) and the Michigan Public Service Commission (MPSC) over the rates charged by Wabash Valley Power Association, Inc. (WVPA) for electricity sold to its member cooperatives.

FOR FURTHER INFORMATION CONTACT: Thomas L. Eddy, Assistant Program Advisory, Rural Electrification Administration, room 4050 South Building, U.S. Department of Agriculture, Washington, DC 20250, Telephone number (202) 382–1265.

SUPPLEMENTARY INFORMATION: The Rural Electrification Administration (REA), an agency of the United States Government, makes loans and loan guarantees pursuant to the Rural Electrification Act (RE Act) of 1936, as amended, (7 U.S.C. 901 *et seq.*), for the purpose of furnishing electric service to rural areas. Wabash Valley Power Association, Inc. (WVPA), of Indianapolis, Indiana, secured REA guarantees of three loans in the aggregate principal amount of $1,166,684,000 to finance construction of facilities to provide electric power and energy in portions of Indiana and Michigan. WVPA provided REA with first lien security interests on virtually all of WVPA's assets.

After receiving approximately $671 million of these loan funds, WVPA failed to make the required repayments and filed for bankruptcy on May 23, 1985. As long as WVPA continues defaulting on these obligations, the size of the debt will continue to increase.

As a result of its bankruptcy filing, the jurisdiction of the IURC and of the MPSC over WVPA's rates were pre-empted on October 19, 1990, pursuant to 7 CFR 1717.350 *et seq.*

WVPA's present rates average 45.88 mills per kilowatt hour sold. The IURC failed to approve Wabash's filing for a rate increase. The Indiana Supreme Court affirmed this action. The Administrator of REA has determined that WVPA's present rates, as approved by the IURC and the MPSC, are, after taking into account WVPA's costs and expenses, inadequate to produce revenues sufficient to permit WVPA to make required payments on its secured loans. The Administrator further determines that WVPA has failed to make required payments on its secured loans.

Therefore, the REA has determined, pursuant to the RE Act and 7 CFR part 1717, that in addition to the pre-emption that occurred as a result of WVPA's bankruptcy filing, the conditions stated in 7 CFR part 1717.300 *et seq.*, for pre-emption of state regulatory body authority over rates exist with respect to WVPA.

Dated: May 13, 1991.

Gary C. Byrne,

Administrator.

[FR Doc. 91–11873 Filed 5–17–91; 8:45 am]

BILLING CODE 3410–15–M

ARMS CONTROL AND DISARMAMENT AGENCY

The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Dates: June 27–28, 1991.

Time: 8:30 a.m.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed.

Contact: Robert M. Meissner, Executive Director, General Advisory Committee on Arms Control and Disarmament, room 5927, Washington, DC, 20451. (202) 647–5178.

Purpose of Advisory Committee: To advise the President, the Secretary of State, and Director of the Arms Control and Disarmament Agency respecting matters affecting arms control, disarmament, and world peace.

Agenda: The Committee will review specific national security policy and arms control issues. Members will be briefed on the status of the current START, CFE and CW negotiations, Theatre Missile Defenses, GPALS, and the ABM Treaty. An Executive Session will be held.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated December 5, 1990, made pursuant to the

provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 91–11857 Filed 5–17–91; 8:45 am]

BILLING CODE 6820–32–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 7:30 p.m. and adjourn at 9:30 p.m. on June 18, 1991, at the Radisson Hotel, 808 20th Street South, Birmingham, Alabama 35205. The purpose of the meeting is to plan for future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division, (816) 426–5253 (TTY 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–11875 Filed 5–17–91; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 7 p.m. and recess at 9 p.m. on July 24, 1991, at the Riverfront Hilton Inn, 2 Riverfront Place, North Little Rock, Arkansas 72114 and reconvene at 9 a.m. and adjourn at 5 p.m. on July 25, 1991, at the Statehouse Conference Center, P.O. Box 3232, Little Rock, Arkansas 72202. The purpose of the meeting is to plan for future SAC activities and hear presentations concerning the status of civil rights.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426–5253, (TTY 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–11818 Filed 5–17–91; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 5 p.m. on July 10, 1991, at the Holiday Inn Holidome, 200 McDonald Drive, Lawrence, Kansas 66044. The purpose of the meeting is to plan a project on the administration of justice in selective sites in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426–5253, (TTY 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–11879 Filed 5–17–91; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 12 p.m. on June 14, 1991, at the Holiday Inn Downtown, 200 East Amite, Jackson, Mississippi 39201. The purpose of the meeting is to discuss proposed activities on the administration of justice and desegregation in higher education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426–5253, (TTY 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit

[FR Doc. 91–11876 Filed 5–17–91; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 3 p.m. on July 12, 1991, at Rothschild & Sale, 165 North Meramec, Suite 400, Clayton, Missouri 63105. The purpose of the meeting is to plan for future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426–5253, (TTY 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1991.

Carol-Lee Hurley,

Chief Regional Programs Coordination Unit.

[FR Doc. 91–11880 Filed 5–17–91; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting of the Nebraska Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will

convene at 10 a.m. and adjourn at 2 p.m. on July 27, 1991, at the Scottsbluff Inn, 1901 21st Avenue, Scottsbluff, Nebraska 69361. The purpose of the meeting is to plan for future SAC activities and orientation of new members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division, (816) 426–5253 (TTY 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–11877 Filed 5–17–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Semiconductor Technical Advisory Committee; Partially Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held June 11, 1991, 9 a.m., Herbert C. Hoover Building, room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors and related equipment or technology.

Agenda: General Session

1. Opening Remarks by the Chairman and Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials or comments at least one week before the meeting to the address listed below: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue, NW., room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of the meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: May 14, 1991.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 91–11893 Filed 5–17–91; 8:45 am]

BILLING CODE 3510–DT–M

Patent and Trademark Office

Trademark Affairs Public Advisory Committee

AGENCY: Patent and Trademark Office; Commerce.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The Public Advisory Committee for Trademark Affairs will meet from 10 a.m. until 4 p.m. on June 11, 1991. Place: U.S. Patent and Trademark Office, 2900 Crystal Drive, Arlington, Virginia, in the Conference Room on the Lobby level. Status: The meeting will be open to public observation; seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

Matters To Be Considered: The agenda for the meeting is as follows:

(1) Finance.

(2) Automation.

(3) Strategic Planning.

(4) Current Trademark Office Practice Issues.

(5) International Trademark Law.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact Lynne Beresford, Office of the Assistant Commissioner for Trademarks, room CPK2–910, Patent and Trademark Office, Washington, DC 20231. Telephone (703) 557–7464.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91–11806 Filed 5–17–91; 8:45 am]

BILLING CODE 3510–16–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for Thursday, 20 June 1991 at 10 a.m. in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 441 F Street NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202–504–2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC May 13, 1991.

Charles H. Atherton,

Secretary.

[FR Doc. 91–11814 Filed 5–17–91; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Proposed Collection of Information

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposal to collect information.

SUMMARY: The Committee for Purchase from the Blind and Other Severely Handicapped proposes to survey workers with disabilities who are employed in nonprofit agencies participating in the Javits-Wagner-O'Day (JWOD) Program. The purpose of the proposed survey research is to define the demographic characteristics of the JWOD population. Information collected from the survey will be used to increase the effectiveness of the Program in meeting the needs of the target population.

EFFECTIVE DATE: Not applicable.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: The Committee for Purchase from the Blind and Other Severely Handicapped (hereinafter referred to as the "Committee") is an independent Federal agency responsible for administering the Javits-Wagner-O'Day (JWOD) Program which provides employment and training opportunities for persons who are blind or have other severe disabilities. Under the Program, the Committee oversees the Government's procurement of selected commodities and services from qualified nonprofit agencies which employ persons with severe disabilities. The Committee's organization and responsibilities are provided in the Code of Federal Regulations, title 41, chapter 51.

The JWOD Program, formerly the Wagner-O'Day Program, has been in existence since 1938, yet there has been little research undertaken relating to the nature of the population that the Program serves. The population that the Program serves has in fact changed substantially over the years, with amendments to the Program's legislation (such as the 1971 amendments to include workers with disabilities other than blindness), significant advances in medical science, fundamental changes in the national economy and general population, and altered attitudes toward individuals with disabilities. Although some background data has been collected on the blind persons who work on JWOD projects, very little is known about the persons with other disabilities, who currently comprise approximately 75 percent of the JWOD population.

The Committee proposes to conduct a survey of the JWOD population. Two survey instruments—a mail questionnaire and an on-site interview questionnaire—will be used to obtain basic demographic data (e.g., age, gender, ethnic origin, marital status, disability, etc.) and general information pertaining to employment experiences and histories, living arrangements, and financial assistance. Copies of the two survey instruments and other relevant supporting documents can be obtained by directly telephoning the Committee at (703) 557–1145, or by writing the Committee at the above address.

During Fiscal Year 1990, approximately 19,000 persons who are blind or have other severe disabilities were employed on JWOD contracts in almost 400 participating nonprofit agencies. Using random sampling procedures, 10 percent of the JWOD workers (i.e., some 1,900) will be surveyed with the mail questionnaire. Staff at the JWOD participating agencies will complete the mail questionnaire for each worker surveyed, since a substantial portion of the JWOD population is mentally retarded. An estimated 255 JWOD workers will be randomly selected from approximately 17 JWOD agencies for the interview questionnaire. A private firm retained by the Committee to conduct the survey research will administer the interview questionnaires.

The total estimated number of survey respondents is 1,806, based on a 85 percent response rate for the mail questionnaire and a 75 percent rate for the interview questionnaire. Based on pilot tests of the survey, each mail questionnaire should take an average of 35 minutes to complete, and each interview questionnaire an average of 20 minutes. The total estimated respondent burden for the two survey instruments is therefore 1,006 hours (i.e., 942 hours for the mail questionnaire and 64 hours for the interview questionnaire).

A number of actions have been taken or are planned (such as pilot testing the surveys to eliminate or simplify complex questions, using closed-ended questions, clarifying instructions, and providing self-return mailers) to minimize respondent burden. At this time, the Committee plans to conduct the survey only once, during the summer of 1991, however, a follow-up survey to track future changes in the JWOD population may be undertaken in five to six years.

Under the Paperwork Reduction Act, the Committee has submitted this proposed collection of information to the Office of Management and Budget (OMB) for review and approval. Comments regarding the Committee's proposed collection of information should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Committee for Purchase from the blind and Other Severely Handicapped.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–11903 Filed 5–17–91; 8:45 am]

BILLING CODE 6820–33–M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 91–3–SCRA]

1991 Satellite Carrier Royalty Rate Adjustment

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Tribunal gives notice that the period for negotiations to adjust the satellite carrier royalty rate is scheduled to begin July 1, 1991. The Tribunal requests that those parties who expect to be a part of those negotiations file notices of intent to participate with the Tribunal.

DATES: Notices of intent to participate are due June 17, 1991.

ADDRESSES: An original and five copies of the notice should be addressed to: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202–673–5400).

SUPPLEMENTARY INFORMATION: In 1988, Congress created a satellite carrier compulsory copyright license. The initial royalty rate for the first few years of the license was set by Congress. Any adjustment to that rate was to be determined first by voluntary negotiations, and then by arbitration. The voluntary negotiations are scheduled to begin on July 1, 1991

The Copyright Royalty Tribunal has received a motion from some of the copyright owners interested in the satellite carrier royalty fund—Program Suppliers, Joint Sports Claimants, Broadcaster Claimants, Public Television Claimants, ASCAP, BMI and SESAC, and the Devotional Claimants.

The copyright owners ask the Tribunal to set a date by which those parties who expect to be part of the negotiations shall file notice of their intentions with the Tribunal. The purpose of such filing is to facilitate the negotiations.

The Tribunal agrees with the copyright owners that such a procedure would be useful, and requests that all those parties who expect to be a part of the negotiations to file a notice of intent to participate with the Tribunal. The notice should include a brief statement of the party's interest in the voluntary negotiations, including whether the party is a copyright owner, satellite carrier, or distributor, and should identify any agent which that party has appointed for purposes of the negotiations.

The notice is due June 17, 1991. This procedure is intended to facilitate negotiations only. Failure to file will not act to bar any party from the negotiations who otherwise has standing to participate.

Dated: May 14, 1991.

Mario F. Aguero,

Chairman.

[FR Doc. 91–11856 Filed 5–17–91; 8:45 am]

BILLING CODE 1410–09–M

[CRT Docket No. 91–1–89SCD]

Ascertainment of Whether Controversy Exists Concerning Distribution of 1989 Satellite Carrier Royalty Fund

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Copyright Royalty Tribunal directs all claimants to the royalty fees paid by satellite carriers for secondary transmissions to home dish owners during 1989 to submit any comments concerning whether a controversy exists with regard to the distribution of the 1989 satellite carrier royalty fees. All claimants intending to participate in the 1989 distribution proceeding shall include with their comments a Notice of Intent to Participate.

DATES: Comments are due June 24, 1991.

ADDRESSES: An original and five copies of the comments should be addressed to: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202–673–5400).

Dated: May 14, 1991.

Mario F. Aguero,

Chairman.

[FR Doc. 91–11855 Filed 5–17–91; 8:45 am]

BILLING CODE 1410–09–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Health Insurance Claim Form, HCFA–1500.

Type of Request: Expedited submission—approval date requested: June 15, 1991.

Average Burden Hours/Minutes per response: 30 minutes.

Responses per Respondent: One.

Number of Respondents: 6,500,000.

Annual Burden Hours: 3,250,000.

Annual Responses: 6,500,000.

Needs and Uses: The information collection requirement is used by CHAMPUS to determine reimbursement for health care services or supplies rendered by individual professional providers to CHAMPUS of CHAMPVA beneficiaries. The requested information is used to determine beneficiary eligibility, appropriateness and costs of care, other health insurance liability and whether services received are benefits. Use of this form continues CHAMPUS commitments to use the national standard claim form for reimbursement of services/supplies provided by individual professional providers.

Affected Public: Individuals or households, State or local governments, businesses or other for profit, Federal agencies or employees, Non-profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Joseph F. Lackey

Written comments and recommendations on the proposed information collection should be sent to Mr. Lackey at the Office of Management and Budget, Desk Officer, room 3002, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22203–4302.

Dated: May 14, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 3810–01–M

DRAFT

PLEASE DO NOT STAPLE IN THIS AREA

PICA

HEALTH INSURANCE CLAIM FORM

PICA

1. MEDICARE ☐ (Medicare #) MEDICAID ☐ (Medicaid #) CHAMPUS ☐ (Sponsor's SSN) CHAMPVA ☐ (VA File No.) GROUP HEALTH PLAN ☐ (SSN or ID) FECA BLK LUNG ☐ (SSN) OTHER ☐ (ID)

1a. INSURED'S ID NUMBER (FOR PROGRAM IN ITEM 1)

2. PATIENT'S NAME (Last Name, First Name, Middle Initial)

3. PATIENT'S BIRTH DATE MM DD YY SEX M ☐ F ☐

4. INSURED'S NAME (Last Name, First Name, Middle Initial)

5. PATIENT'S ADDRESS (No., Street)

6. PATIENT RELATIONSHIP TO INSURED Self ☐ Spouse ☐ Child ☐ Other ☐

7. INSURED'S ADDRESS (No., Street)

CITY STATE

8. PATIENT STATUS Single ☐ Married ☐ Other ☐ Employed ☐ Full-Time Student ☐ Part-Time Student ☐

CITY STATE

ZIP CODE TELEPHONE (Include Area Code) ( )

ZIP CODE TELEPHONE (Include Area code) ( )

9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)

10. IS PATIENT'S CONDITION RELATED TO:

11. INSURED'S POLICY, GROUP OR FECA NUMBER

a. OTHER INSURED'S POLICY OR GROUP NUMBER

a. EMPLOYMENT? (CURRENT OR PREVIOUS) ☐ YES ☐ NO

a. INSURED'S DATE OF BIRTH MM DD YY SEX M ☐ F ☐

b. OTHER INSURED'S DATE OF BIRTH MM DD YY SEX M ☐ F ☐

b. AUTO ACCIDENT? ☐ YES ☐ NO PLACE (State)

b. EMPLOYER'S NAME OR SCHOOL NAME

c. EMPLOYER'S NAME OR SCHOOL NAME

c. OTHER ACCIDENT? ☐ YES ☐ NO

c. INSURANCE PLAN NAME OR PROGRAM NAME

d. INSURANCE PLAN NAME OR PROGRAM NAME

10d. RESERVED FOR LOCAL USE

d. IS THERE ANOTHER HEALTH BENEFIT PLAN? ☐ YES ☐ NO *If yes, return to and complete item 9 a-d*

READ BACK OF FORM BEFORE COMPLETING & SIGNING THIS FORM.

12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below.

SIGNED _____ DATE _____

13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to undersigned physician or supplier for services described below.

SIGNED _____

14. DATE OF CURRENT: MM DD YY ILLNESS (First symptom) OR INJURY (Accident) OR PREGNANCY (LMP)

15. IF PATIENT HAS HAD SAME OR SIMILAR ILLNESS, GIVE FIRST DATE MM DD YY

16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION MM DD YY FROM TO MM DD YY

17. NAME OF REFERRING PHYSICIAN OR OTHER SOURCE

17a. I.D. NUMBER OF REFERRING PHYSICIAN

18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES MM DD YY FROM TO MM DD YY

19. RESERVED FOR LOCAL USE

20. OUTSIDE LAB? ☐ YES ☐ NO $ CHARGES

21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (RELATE ITEMS 1, 2, 3 OR 4 TO ITEM 24E BY LINE)

1. ____ 3. ____

2. ____ 4. ____

22. MEDICAID RESUBMISSION CODE ORIGINAL REF. NO.

23. PRIOR AUTHORIZATION NUMBER

24. A DATE(S) OF SERVICE From MM DD YY To MM DD YY	B Place of Service	C Type of Service	D PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS	MODIFIER	E DIAGNOSIS CODE	F $ CHARGES	G DAYS OR UNITS	H EPSDT Family Plan	I EMG	J COB	K RESERVED FOR LOCAL USE
1											
2											
3											
4											
5											
6											

25. FEDERAL TAX I.D. NUMBER SSN ☐ EIN ☐

26. PATIENT'S ACCOUNT NO.

27. ACCEPT ASSIGNMENT? *(For govt. claims, see back)* ☐ YES ☐ NO

28. TOTAL CHARGE $

29. AMOUNT PAID $

30. BALANCE DUE $

31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS

SIGNED DATE

32. NAME AND ADDRESS OF FACILITY WHERE SERVICES RENDERED (if other than home or office)

33. PHYSICIAN'S, SUPPLIER'S BILLING NAME, ADDRESS, ZIP CODE & PHONE #

PIN # GRP #

(I certify that the statements on the reverse apply to this bill and are made a part thereof.)

PLEASE PRINT OR TYPE

APPROVED BY AMA COUNCIL ON MEDICAL SERVICE 8/88
APPROVED OMB SF0983-0008

FORM **HCFA-1500 (12-90)** FORM **OWCP-1500** FORM **RRB-1500**

CARRIER

PATIENT AND INSURED INFORMATION

PHYSICIAN OR SUPPLIER INFORMATION

[FR Doc. 91-11859 Filed 5-17-91; 8:45 am]

BILLING CODE 3810-01-C

Office of the Secretary

Defense Environmental Response Task Force; Establishment

ACTION: Establishment of the Defense Environmental Response Task Force.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Defense Environmental Response Task Force has been established, pursuant to Public Law 101–510, the "National Defense Authorization Act for Fiscal Year 1991."

The Task Force will study and provide a report to the Secretary of Defense for transmittal to the Congress on the findings and recommendations concerning environmental restoration at military installations closed or realigned under title II of Public Law 100–526. The primary objectives of the Task Force will be, within existing laws and regulations, to improve interagency coordination of environmental responses at affected installations, and to consolidate and streamline the practices, policies, and administrative procedures of relevant Federal and state agencies with respect to such environmental responses.

The membership of the Task Force will be composed of designated individuals from both the public and private sectors, as set down in Public Law 101–510. The prescribed membership will be a diverse and well-balanced group in terms of the functions to be performed and the interest groups represented.

For additional information regarding the Task Force, please contact Hayden Bryan, telephone: (703) 325–2211.

Dated: May 14, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–11854 Filed 5–17–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Determination of Active Military Service: "Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945"

On April 8, 1991 the Secretary of the Air Force determined that the World War II service of a group known as "Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945" would be considered "active duty" under the provisions of Public Law 95–202 and be eligible for benefits according to all laws administered by the Department of Veterans Affairs.

To receive recognition, each applicant must meet the following eligibility criteria:

1. Must have been a civilian employee of the United States Coast and Geodetic Survey and served as a crewman aboard one or more of the following USCGS vessels: DERICKSON; EXPLORER; GILBERT; HILGARD, E. LESTER JONES; LYDONIA; PATTON; SURVEYOR; WAINWRIGHT; or WESTDAHL; during the period:

2. December 7, 1941 thru V–E Day, May 8, 1945, in all those Atlantic areas outside U.S. inland waters, to include Atlantic and Gulf of Mexico coastal waters; or

3. December 7, 1941 thru V–J Day, August 14, 1945 in all those Pacific areas outside of U.S. inland waters, to include Pacific coastal and Alaskan coastal waters.

Before an individual can receive any Veterans Administration benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to: Bureau of Naval Personnel (PERS–312), Washington, DC 20370–5312.

Individual applicants should include as much supporting documentation as possible when making application and should identify the specific vessels they served aboard. However, individuals should not attempt to obtain their government employment records for submission with their DD Form 2168 as the U.S. Navy will perform this task. Individuals should be aware that the application process will take several months due to the time required to obtain government employment records and then review these records to confirm membership in the recognized group. In addition, staff reduction due to general force reductions may also extend processing time.

DD Forms 2168 are available from any Department of Veterans Affairs Office, Veterans Organization, or the office listed above.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–11815 Filed 5–17–91; 8:45 am]

BILLING CODE 3910–01–M

Privacy Act of 1974; Amend Systems of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Amend existing systems of records.

SUMMARY: The Department of the Air Force proposes to amend two existing systems of records in its inventory of records systems notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: This action will be effective June 19, 1991, unless comments are received which result in a contrary determination.

ADDRESSES: Send any comments to Mrs. Anne Turner, SAF/AAIA, The Pentagon, Washington, DC 20330–1000. Telephone (703) 697–3491 or Autovon 227–3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C 552a), have been pulished in the **Federal Register** as follows:

50 FR 22332 May 29, 1985 (DoD Compilation, changes follow)
50 FR 24672 Jun. 12, 1985
50 FR 25737 Jun. 21, 1985
50 FR 46477 Nov. 8, 1985
50 FR 50337 Dec. 10, 1985
51 FR 4531 Feb. 5, 1986
51 FR 7317 Mar. 5, 1986
51 FR 16735 May 6, 1986
51 FR 18927 May 23, 1986
51 FR 41382 Nov. 14, 1986
51 FR 44332 Dec. 9, 1986
52 FR 11845 Apr. 13, 1987
53 FR 24354 Jun. 28, 1988
53 FR 45800 Nov. 14, 1988
53 FR 50072 Dec. 13, 1988
53 FR 51301 Dec. 21, 1988
54 FR 10034 Mar. 9, 1989
54 FR 43450 Oct. 25, 1989
54 FR 47550 Nov. 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (Air Force Address Directory)
55 FR 27868 Jul. 6, 1990
55 FR 28427 Jul. 11, 1990
55 FR 34310 Aug 22, 1990
55 FR 38126 Sep. 17, 1990
55 FR 42625 Oct 22, 1990
55 FR 42629 Oct. 22, 1990
55 FR 52072 Dec. 19, 1990
56 FR 1990 Jan. 18, 1991
56 FR 5804 Feb. 13, 1991
56 FR 12713 Mar. 27 , 1991

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a(r)), which requires the submission of altered systems reports. The specific changes to the system of records being amended are set forth below, followed by the record systems notices, as amended, in their entirety.

Dated: May 10, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F035 AF MP A

System name:

F035 AF MP A—Effectiveness/ Performance Reporting System, (53 FR 45802, November 14, 1988).

Changes:

* * * * *

System location:

Delete entry and replace with "Headquarters, United States Air Force, Washington DC 20330–5060; Headquarters, Air Force Military Personnel Center, Randolph Air Force Base, TX 78150–6001; National Military Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–2001; Air Reserve Personnel Center, Denver, CO 80280–5000; and the Human Resources Laboratory, Brooks Air Force Base, TX 78235–5000.

Headquarters of major commands and separate operating agencies; consolidated base personnel offices; each State Adjutant General Office, and Air Force Reserve and Air National Guard units. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices."

* * * * *

Categories of records in the system:

Delete entry and replace with "Officer Effectiveness Reports; Education/ Training Reports; Colonels and Lieutenant Colonels Promotion Recommendation Reports; Enlisted Performance Reports Airman Basic (E–1) through Chief Master Sergeant (E–9); Description of data contained therein: Name; Social Security Number; active and permanent grades; specialty data; organization location and Personnel Accounting Symbol; period of report; number of days of supervision; performance evaluation scales; assessment of potential, and comments regarding ratings."

Authority for maintenance of the system:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force: Power and duties; delegation by: as implemented by Air Force Regulation 36–9, General Officer Promotions and Evaluations; Air Force Regulation 36–10, Officer Evaluation System; Air Force Regulation 39–62, Enlisted Evaluation System, and Executive Order 9397."

* * * * *

System manager(s) and address:

Delete entry and replace with "Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington DC 20330–5060; Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330–1000; and Director, Air National Guard, Washington, DC 20310–2500."

* * * * *

Record source categories:

Delete entry and replace with "The basis of the ratings is observed on-the-job performance or by the education/ training progression of the individual. Further, evaluation reports may have as an additional source of information Letters of Evaluation."

Exemptions claimed for the system.

Delete entry and replace with "Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager."

F035 AF MP A

SYSTEM NAME:

F035 AF MP A—Effectiveness/ Performance Reporting System.

SYSTEM LOCATION:

Headquarters, United States Air Force, Washington DC 20330–5060; Headquarters, Air Force Military Personnel Center, Randolph Air Force Base, TX 78150–6001; National Military Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–2001; Air Reserve Personnel Center, Denver, CO 80280–5000; and the Human Resources Laboratory, Brooks Air Force Base, TX 78235–5000.

Headquarters of major commands and separate operating agencies; consolidated base personnel offices; each State Adjutant General Office, and Air Force Reserve and Air National Guard units. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel only.

Officer applies to Active Duty/Air National Guard/Air Force Reserve personnel serving in grades Warrant Officer (W–1) through Colonel (0–6).

Enlisted applies to active duty personnel in grades Airman Basic (E–1) through Chief Master Sergeant (E–9), and to Air Force Reserve personnel in grades Staff Sergeant (E–5) through Chief Master Sergeant (E–9).

CATEGORIES OF RECORDS IN THE SYSTEM:

Officer Effectiveness Reports; Education/Training Reports; Colonel Promotion Recommendation Reports; Enlisted Performance Reports for Airman Basic (E–1) through Chief Master Sergeant (E–9).

Description of data contained therein: Name; Social Security Number; active and permanent grades; specialty data; organization location and Personnel Accounting Symbol; period of report; number of days of supervision; performance evaluation scales; assessment of potential, and comments regarding ratings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Regulation 36–9, General Officer Promotions and Evaluations; Air Force Regulation 36–10, Officer Evaluation System; Air Force Regulation 39–62, Enlisted Evaluation System, and Executive Order 9397.

PURPOSE(S):

Used to document effectiveness/duty performance history; promotion selection; school selection; assignment selection; reduction-in-force; control roster; reenlistment; separation; research and statistical analyses, and other appropriate personnel actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of the Department of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/ cabinets.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) who are properly screened and cleared for

need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Copies of effectiveness reports are retained until separation or retirement. At separation or retirement, data subject is presented with field and command record copies of his or her reports. The Headquarters Air Force (HAF) copy is a permanent record that is forwarded to the National Personnel Records Center, St. Louis, MO 63132–2001. In the event the member has a Reserve commitment, the HAF copy is sent to the Air Reserve Personnel Center, Denver, CO 80280–5000.

The following exceptions apply: Officers Field Record: Remove and give to individual when promoted to Colonel, when separated or retired, or destroy when voided by action of the Officer Personnel Records Review Board. When voided by action of the Air Force Board for Correction of Military Records, forward all copies of report to Headquarters United States Air Force (HQ USAF) when directed.

Command Record: The command custodian will destroy the reports when voided by action of Officer Personnel Records Review Board. When voided by action of the Air Force Board for Correction of Military Records, forward all copies of report to HQ USAF when directed.

HAF Record: Remove reports voided by action of the Officer Personnel Records Review Board from the selection folder and file in the board recorder's office until destruction. Remove reports voided by action of the Air Force Board for Correction of Military Records from selection folder and submit to Board's Secretariat with duplicate and triplicate copies for custody and dispostion. Colonel Promotion Recommendation Reports are temporary documents maintained only at HQ Air Force level and are destroyed after their purpose has been served.

Active duty Enlisted: Grades E–3 through E–6: On separation or retirement, Enlisted Performance Reports (EPRs) are forwarded to the National Personnel Records Center, St. Louis, MO unless data subject holds a reserve obligation, in which case they are forwarded to Air Reserve Personnel Center.

Grades E–7 through E–9: On separation or retirement, original copies, those retained in Senior NCO selection folders and those in field record closing before 1 January 1967, are forwarded to the National Personnel Records Center, or to Air Reserve Personnel Center if data subject holds a reserve obligation. Duplicate copies closing January 1, 1967 or later (field record) are returned to the member at separation or retirement.

Non-Active Duty Reserve Enlisted: Air Force Reserve Forces Noncommissioned Officers Performance Report; upon separation, retirement or assignment to a non-participating reserve status, they are forwarded to Air Reserve Personnel Center for file in the master personnel record and disposed of as a part of that record. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington, DC 20330–5060; Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330–1000; and the Director, Air National Guard, Washington, DC 20310–2500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquires to the system manager or directly to agency officials at the respective system location. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written inquiries to the system manager or directly to agency officials at the respective system location. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The basis of the ratings is observed on-the-job performance or by the education/training progression of the individual. Further, effectiveness reports may have as an additional source of information Letters of Evaluation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

F035 AF MP P

System name:

F035 AF MP P—General Officer Personnel Data System.

Changes:

* * * * *

System location:

Delete the word "Manpower and" and replace with "Military."

Categories of individuals covered by the system:

Delete entry and replace with "Retired, Active Duty, and Active Status Reserve of the Air Force General Officers."

Categories of records in the system:

Delete "Form 11" and replace with "officer military record." Add to end of entry, "effectiveness reports, and promotion recommendations."

Authority for maintenance of the system:

Add to end of entry "and Air Force Regulation 36–9, General Officer Promotions and Evaluations."

Purpose(s):

Delete entry and replace with "To record active duty service and performance data about general officers for use in personnel management decisions and officer effectiveness, to include assignments, promotions and retirements.

To provide source data for preparing or compiling personnel management data to include career profiles, seniority and retirement lists, memorandums for record concerning actions taken on general officers and statistical analyses."

* * * * *

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Add to end of entry "on microfilm, in computers and on computer output products."

Retrievability:

Delete entry and replace with "Records are retrieved by last name and/or grade."

Safeguards:

Delete entry and replace with "Access to these records is given only to the Chief of Staff, Deputy Chief of Staff/Personnel, Assistant for General Officer Matters, Chief of Air Force Reserve, Chief National Guard, and other persons responsible for servicing or reviewing the record system in performance of their official duties, who are properly screened and cleared for need-to-know."

Retention and disposal:

Delete entry and replace with "Retired General Officer records are maintained indefinitely; retired Lieutenant General, Major General, and Brigadier General Officer records are retained for 3 years, then reviewed to determine if there are any materials of historical value which warrant indefinite retention. If not, records are destroyed by tearing into pieces, shredding, pulping or macerating. Computer records are destroyed by degaussing or overwriting.

System manager(s) and address:

Delete the words "Manpower and" and add to end of entry, "Washington, DC 20330–5060."

Notification procedures:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address written inquiries to the Deputy Chief of Staff/Personnel, Headquarters, United States Air Force, Washington, DC 20330–5060.

For verification purposes, the individual should provide full name, Social Security Number, and active duty grade.

Individuals may also visit the Office of the Assistant for General Officer Matters, room 4E212, The Pentagon, Washington, DC, to obtain information. A requester should present a military identification card when appearing in person for information."

Record access procedures:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Chief of Staff/Personnel, Headquarters, United States Air Force, Washington, DC 20330–5060.

The individual may also visit the Office of the Assistant for General Officer Matters, room 4E212, The Pentagon, Washington, DC. to obtain information.

A requester should present a military identification card when appearing in person for information."

* * * * *

Exemptions claimed for the system:

Delete entry and replace with "Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager."

F035 AF MP P

SYSTEM NAME:

FO35 AF MP P—General Officer Personnel Data System.

SYSTEM LOCATION:

Headquarters, United States Air Force, Washington, DC 20330–5060, and Headquarters, Air Force Military Personnel Center, Randolph Air Force Base, TX 78150–6001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Retired, Active Duty, and Active Status Reserve of the Air Force General Officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Promotion board data; "Career Brief" data/cards; officer military record; photographs; biographies; retirement letters; dependent data; education data; promotion orders; assignment orders; demotion data; frocking letters; case studies; language data; effectiveness reports, and promotion recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 805, The Air Staff, and Air Force Regulation 36–9, General Officer Promotions and Evaluations.

PURPOSE(S):

To record active duty service and performance data about general officers for use in personnel management decisions and officer effectiveness, to include assignments, promotions and retirements.

To provide source data for preparing or compiling personnel management data to include career profiles, seniority and retirement lists, memorandums for record concerning actions taken on general officers and statistical analyses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of the Department of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets/card files, on microfilm, in computers and on computer output products.

RETRIEVABILITY:

Records are retrieved by last name and/or grade.

SAFEGUARDS:

Access to these records is given only to the Chief of Staff, Deputy chief of Staff/Personnel, Assistant for General Officer Matters, Chief of Air Force Reserve, Chief National Guard, and other persons responsible for servicing or reviewing the record system in performance of their official duties, who are properly screened and cleared for need-to-know.

RETENTION AND DISPOSAL:

Retired General Officer records are maintained indefinitely; retired Lieutenant General, Major General, and Brigadier General Officer records are retained for 3 years, then reviewed to determine if there are any materials of historical value which warrant indefinite retention. If not, records are destroyed by tearing into pieces, shredding, pulping or macerating. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff/Personnel, Headquarters, United States Air Force, Washington, DC 20330–5060.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address written inquiries to the Deputy Chief of Staff/Personnel, Headquarters, United States Air Force, Washington, DC 20330–5060. For verification purposes, the individual should provide full name, Social Security Number, and active duty grade.

Individuals may also visit the Office of the Assistant for General Officer Matters, room 4E212, The Pentagon,

Washington, DC, to obtain information. A requester should present a military identification card when appearing in person for information

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Chief of Staff/Personnel, Headquarters, United States Air Force, Washington, DC 20330–5060.

Individuals may also visit the Office of the Assistant for General Officer Matters, room 4E212, The Pentagon, Washington, DC, to obtain information. A requester should present a military identification card when appearing in person for information.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personnel data base; member, and Inspector General's investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 91–11505 Filed 5–17–91; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Form EIA–867, "Annual Nonutility Power Producer Report"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of proposed revision and extension of the Form EIA–867. "Annual Nonutility Power Producer Report," and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revision and extension of the Form EIA–867, "Annual Nonutility Power Producer Report."

DATES: Written comments must be submitted within 30 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Ms. Mary Kimbrough, Energy Information Administration, Department of Energy, Mail Stop: EI–541, 1000 Independence Avenue SW., Washington, DC, 20585, Telephone (202) 254–5666.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the proposed changes to the form and instructions should be directed to Ms. Kimbrough at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Current Actions.
III. Request for Comments.

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the EIA is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources. To help meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA is tasked to conduct surveys that encompass every major electric power supply and demand activity in the United States. Nonutility power supply data in terms of generating capacity, actual generation, and fuel consumption are needed by the EIA to support its electric power data collection program.

II. Current Actions

The Form EIA–867 was initially cleared by the Office of Management and Budget (OMB) (OMB No. 1905–0177) in January 1990, to collect data for calendar year 1989, and was extended by the OMB on December 26, 1990, to collect data for calendar year 1990. The EIA will request that the OMB approval be extended through December 1992 to collect data for calendar year 1991.

The Form EIA–867 will be required of the owner/operator of existing and planned electric generating facilities with a facility generator nameplate rating of 5 megawatts or more; only facilities of 1 megawatt or more, but less than 5 megawatts, that did not report data for calendar years 1989 and 1990 will be required to submit Schedules I and II during the 1991 reporting year.

Since the beginning of the survey, EIA has made every effort to clarify the data required based upon telephone discussions with respondents. Minor editorial changes were made for 1990 reporting, and the number of calls from respondents have declined substantially since the first survey year. One question that will require revision of 1991 is item 5, Schedule IIIA, page 4, which requests the maximum capacity delivered to one or more electric utility companies. This question will be revised to request the amount of firm capacity under contract with an electric utility company, and the maximum capacity that could be provided under emergency conditions. Additional editorial changes and definitions may be necessary; however, the changes will have no effect on burden, but should reduce the response time by clarifying the data required.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed survey within 30 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average 2.27 hours per response. How much time, including time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the form?

E. What is the estimated cost of completing the form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, data element(s) and means of collection.

As a potential data user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purposes would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data? What are their deficiencies and/or strengths?

The EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the Annual Nonutility Power Producer Report.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the form; they also become a matter of public record.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b) and 790a.

Issued in Washington, DC May 14, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-11793 Filed 5-17-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-413-000, et al.]

Public Service Co. of New Mexico, et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Public Service Company of New Mexico

[Docket No. ER91-413-000]

May 7, 1991.

Take notice that on April 30, 1991, Public Service Company of New Mexico (PNM) submitted for filing a 1991-1994 Power Sale Agreement (Agreement) between Arizona Electric Power Cooperative, Inc. (AEPCO) and PNM. Under the terms of the 3-year power purchase provided for in the Agreement, PNM will provide AEPCO with up to 15 MW of contract demand.

PNM is requesting a waiver of the Commission's notice requirements to permit service under the Agreement to be effective as of June 1, 1991.

Copies of the filing have been served upon AEPCO and the New Mexico Public Service Commission.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Power & Light Corporation

[Docket No. ER89-401-007]

May 7, 1991.

Take notice that on April 25, 1991, Citizens Power & Light Corporation (Citizens) filed certain information as required by Ordering Paragraph (M) of the Commission's August 8, 1990 order in this proceeding. 48 FERC ¶ 61,210 (1989). Copies of Citizens' informational filing are on file with the Commission and are available for public inspection.

3. Florida Power & Light Company

[Docket No. ER91-412-000]

May 7, 1991.

Take notice that Florida Power & Light Company (FPL), on April 30, 1991, tendered for filing eight (8) revised exhibits A which provide for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Fort Pierce Utilities Authority; City of Homestead; Utilities Commission, City of New Smyrna Beach; City of Starke; City of Vero Beach; City of Jacksonville Beach; and City of Green Cove Springs, and one (1) Initial Exhibit A for the city of Clewiston under Rate Schedule PR-3 of FPL's FERC Electric Tariff Second Revised Volume No. 1. The proposed effective date for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Fort Pierce Utilities Authority; City of Homestead; Utilities Commission, City of New Smyrna Beach; City of Starke; and City of Vero Beach is May 29, 1991. The proposed effective date for the contract demands for the City of Jacksonville Beach and the City of Green Cove Springs is June 1, 1991. The proposed effective date for the contract demand for the City of Clewiston is May 1, 1991.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Central Illinois Public Service Company

[Docket No. ER91-411-000]

May 7, 1991.

Take notice that on April 29, 1991, Central Illinois Public Service Company ("CIPS") tendered for filing a Rate Schedule for Full Requirements Service to Mt. Carmel Public Utility Company ("Mt. Carmel") and a Service Agreement between CIPS and Mt. Carmel. Under the agreement, beginning July 1, 1991, CIPS will provide full-requirements service to Mt. Carmel. The initial term of the Service Agreement is for ten years, commencing on July 1, 1991 and continuing through June 30, 2001.

CIPS requests an effective date of July 1, 1991 for both the Rate Schedule and the Service Agreement. Copies of the filing were served upon Mt. Carmel and the Illinois Commerce Commission.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. ER88-83-007]

May 7, 1991.

Take notice that on April 29, 1991, Southern California Edison Company tendered for filing its refund report in this docket in compliance with the Commission's letter order issued February 27, 1991.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Chicago Energy Exchange of Chicago, Inc.

[Docket No. ER90-225-004]

May 7, 1991.

Take notice that on April 24, 1991, Chicago Energy Exchange of Chicago, Inc. (Energy Exchange) filed certain information as required by Ordering Paragraph (L) of the Commission's April 19, 1990 order in this proceeding. 51 FERC ¶ 61,054 (1990). Copies of Energy Exchange's informational filing are on file with the Commission and are available for public inspection.

7. Pacific Gas and Electric Company

[Docket No. ER91-415-000]

May 7, 1991.

Take notice that on May 1, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing a change in rate schedule for Rate Schedule FERC

No. 108, a contract with the City of Santa Clara, California (City) entitled "System Bulk Power Sale and Purchase Agreement Between City of Santa Clara and Pacific Gas and Electric Company" (Agreement). The Agreement and its appendices were accepted for filing by the Commission on September 23, 1987 in Docket No. ER87–498–000, and contain capacity and energy rates for firm, baseload power sold to City of PG&E.

PG&E proposes to change the energy rate, pursuant to appendix A of the Agreement, from 26.3 mills to 26.8 mills based on the new 1991 Average Thermal Cost Index. Since the increase is under $1,000,000 and City has agreed to the proposed rate, PG&E is filing in accordance with § 35.13(a)(2) of the Commission's regulations (18 CFR § 35.13(a)(2)). In addition, PG&E is requesting a waiver of the Commission's notice requirements in accordance with § 35.11 of the Commission's regulations (18 CFR 35.11) so that the energy rate change may become effective on April 1, 1991 pursuant to the Agreement.

Copies of this filing were served upon City and the California Public Utilities Commission.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Electric Power Company

[Docket No. ER91–414–000]

May 7, 1991.

Take notice that on April 30, 1991, Southwestern Electric Company ("SWEPCO") tendered for filing amendment I to the Attachment to Letter Agreement, which attachment is an integral part of a Letter Agreement, dated May 31, 1989, between SWEPCO and Cajun Electric Cooperative, Inc. ("Cajun"). Under the agreement, SWEPCO provides as-available transmission service to Cajun, from SWEPCO's point of interconnection with Gulf States Utilities Company ("GSU") across SWEPCO's system to SWEPCO's points of interconnection with Southwestern Power Administration ("SWPA") and Associated Electric Cooperative, Inc. ("Associated"). Amendment I provides for a second transmission service path from SWEPCO interconnections with SWPA to the SWEPCO interconnection with GSU.

SWEPCO requests an effective date of April 1, 1991 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon Cajun, GSU, SWPA, the Arkansas Public Service Commission, the Louisiana Public Service Commission, and the Public Utility Commission of Texas.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. UNITIL Power Corp.

[Docket No. ER91–418–000]

May 7, 1991.

Take notice that on May 1, 1991, UNITIL Power Corp. tendered for filing pursuant to Schedule II section H of supplement No. 1 to Rate Schedule FERC Number 1, the UNITIL System Agreement, the following material:

A. Statement of all sales and billing transactions for the period January 1, 1990 through December 31, 1990 along with the actual costs incurred by UNITIL Power Corp. by FERC account.

B. UNITIL Power Corp. rates billed from January 1, 1990 to December 31, 1990 and supporting rate development.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Robert E. Kennington, II

[Docket No. ID–2546–000]

May 7, 1991.

Take notice that on May 2, 1991, Robert E. Kennington, II (Applicant) filed an application under section 305(b) of the Federal Power Act to hold the following positions:

Director: Mississippi Power & Light Company.

Director: Sunburst Financial Group, Inc.

Chairman of the Board and CEO: Grenada Sunburst System Corp.

Comment date: May 24, 1991 in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER91–395–000]

May 7, 1991.

Take notice that on April 22, 1991, Northeast Utilities Service Company (NUSCO) tendered for filing on behalf of the Connecticut Light and Power Company and Western Massachusetts Electric Company a notice of termination of the Transmission Service Agreement dated November 1, 1988.

NUSCO states that the agreement will be terminated because it will no longer be utilized by the parties of the agreement. NUSCO requests an effective date of April 30, 1991.

Comment date: May 21, 1991, in accordance with Standard Paragraph E end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER91–410–000]

May 7, 1991.

Take notice that Niagara Mohawk Power Corporation ("Niagara Mohawk"), on April 29, 1991, tendered for filing an agreement between Niagara Mohawk and The City of Watertown ("The City") dated March 19, 1991. Niagara Mohawk states that this agreement provides for transmission and distribution service by Niagara Mohawk to certain municipal loads of the City. The services under this agreement have commenced as of January 1, 1991.

Niagara Mohawk requests waiver of the Commission's notice requirements, 18 CFR 35.3(b), 35.11.

Copies of this filing were served upon The City of the New York States Public Service Commission.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Glassboro Cogeneration, Inc

[Docket No. QF91–25–000]

May 8, 1991.

On May 7, 1991, Glassboro Cogeneration, Inc. tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of the shareholders and board of directors management prerogatives of the Applicant.

Comment date: 21 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

14. Encogen Northwest, L.P.

[Docket No. QF91–111–000]

May 8, 1991.

On May 3, 1991, Encogen Northwest, L.P., tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of facility's operation and computation of operating and efficiency standards.

Comment date: 21 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power Corporation

[Docket No. ER91–426–000]

May 9, 1991.

Take notice that on May 2, 1991, Florida Power Corporation (Florida Power) tendered for filing amended revisions to the capacity charges, reservation fees and energy adder for various interchange services provided by Florida Power pursuant to

interchange contracts with Florida Power & Light Company, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Orlando Utilities Commission, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., Tampa Electric Company, Reedy Creek Improvement District and the Cities of Gainsville, Homestead, Key West, Lakeland, Lake Worth, New Smyrna Beach, St. Cloud Starke, Tallahassee and Vero Beach, Florida, and Cajun Electric Power Cooperative, Inc. and Entergy Services, Inc. The interchange services which are affected by these revisions are Services Schedule B—Short Term Firm, Service Schedule F—Assured Capacity and Energy, Service Schedule G—Backup Service, Service Schedule H—Reserve Service, and the Contract for Assured Capacity and Energy and Florida Power & Light Company. Florida Power states that the revised capacity charges, reservation fees, and energy adder were developed using the same methodology as used in the original filings.

Florida Power requests that the amended revised capacity charges, reservation fees and energy adder be made effective on May 1, 1991 and remain effective through April 30, 1992. Florida Power therefore requests waiver of the Commission's sixty-day notice requirement. According to Florida Power the filing has been served on each of the affected utilities and the Florida Public Service Commission.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

16. Wallkill Generating Company, L.P.

[Docket No. ER91–401–000]

May 9, 1991.

Take notice that on April 25, 1991, Wallkill Generating Company, L.P. (Wallkill) tendered for filing an initial rate schedule and supporting documents.

Wallkill states that this initial rate schedule is contained in a Power Sales Agreement with Orange & Rockland Utilities, Inc. (O&R) dated June 1, 1990. Wallkill further states that this rate schedule resulted from the selection of Wallkill under a Request for Proposal issued by O&R pursuant to the competitive bidding process of the State of New York, and the subsequent arms'-length negotiations between O&R and Wallkill.

According to Wallkill the rate schedule is a negotiated contract providing for the sale of approximately two-thirds of the electric capacity and corresponding energy generated by an approximately 150 MW electric generating facility proposed to be constructed in the Town of Wallkill, New York.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

17. Municipal Resale Service Customers v. Ohio Power Company

[Docket No. EL91–30–000]

May 9, 1991.

Take notice that on April 16, 1991, Municipal Resale Service Customers (MRS) tendered for filing a complaint against Ohio Power Company (Ohio Power). MRS state that Ohio Power has charged and is charging wholesale rates that are unjust, and unreasonable and unduly discriminatory and therefore unlawful under the Federal Power Act.

Comment date: May 24, 1991 in accordance with Standard Paragraph E at the end of this notice.

18. Lakewood Cogeneration, L.P.

[Docket No. QF86–418–001]

May 9, 1991.

Lakewood Cogeneration, L.P. tendered for filing on May 2, 1991, an amendment to its filing this docket.

The amendment further clarifies the steam use profile of the proposed cogeneration facility.

Comment date: 21 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

19. Robert S. Mars, Jr.

[Docket No. ID–2539–000]

May 9, 1991.

Take notice that on April 26, 1991, Robert S. Mars, Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director: Minnesota Power & Light Company.

Chairman: W.P.&R.S. Mars Company.

Comment date: May 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

20. Arizona Public Service Company

[Docket No. ER91–419–000]

May 9, 1991.

Take notice that on May 2, 1991, Arizona Public Service Company (Arizona) tendered for filing a notice of cancellation of the Seasonal Energy Agreement between Arizona and Nevada Power Company.

Arizona requests waiver of the Commission's notice requirements to allow for an effective date of May 15, 1991.

Comment date: May 23, 1991, in accordance with Standard Paragraph E end of this notice.

21. Orange and Rockland Utilities, Inc.

[Docket No. ER91–358–000]

May 9, 1991

Take notice that on May 2, 1991, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing an amendment to Orange and Rockland's previous filing of March 27, 1991, pursuant to the Federal Energy Docket No. ER88–112–000, of an executed Service Agreement between Orange and Rockland and Dickerson's Mill.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

22. Tampa Electric Company

[Docket No. ER91–417–000]

May 9, 1991

Take notice that on May 1, 1991, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the City of Lakeland, Florida (Lakeland) of up to 85 megawatts of capacity and energy. Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule J (negotiated interchange service) under the existing agreement for interchange service between Tampa Electric and Lakeland, designated as Tampa Electric Rate Schedule FERC No. 21.

Tampa Electric proposes an effective date of April 30, 1991 for the commitment of capacity and energy, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Lakeland and the Florida Public Service Commission.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

23. Public Service Company of New Mexico

[Docket No. ER91–421–000]

May 9, 1991

Take notice that on May 2, 1991, Public Service Company of New Mexico (PNM) tendered for filing a Letter Agreement (Agreement) providing for the sale of interruptible block energy to San Diego Gas and Electric Company (SDG&E).

PNM states that the service to be provided to SDG&E under the Agreement is the sale of approximately 275,400 megawatt hours of block energy at a maximum rate of delivery of 75

megawatts per hour. The service commences on May 1, 1991 and terminates on September 30, 1991. The rates were negotiated based upon on-peak and off-peak hour deliveries, and taking into consideration market factors.

PNM is requesting a waiver of the Commission's notice requirements to permit service under the Agreement to be effective as of May 1, 1991.

Copies of the filing have been served upon SDG&E and the New Mexico Public Service Commission.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

24. Arizona Public Service Company

[Docket No. ER91–406–000]

May 9, 1991

Take notice that on April 22, 1991, Arizona Public Service Company (Arizona) tendered for filing a Notice of Cancellation of Arizona Public Service Company FERC Rate Schedule No. 79, the Arizona-Southern California Edison Cholla No. 4 Layoff Agreement.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

25. Montana Power Company

[Docket No. ER91–420–000]

May 9, 1991

Take notice that on May 2, 1991, the Montana Power Company (Montana Power) tendered for filing pursuant to part 35 of the Federal Energy Regulatory Commission's Regulations under the Federal Power Act its proposed Rate Schedule REC–91, applicable for sales of electricity by Montana Power for resale to Central Montana Electric Power Cooperative, Inc., (Central Montana) (Rate Schedule FPC No. 39) and Bighorn County Electric Cooperative, Inc., (Bighorn) (Rate Schedule FPC No. 40). This filing has been served upon Bighorn and Central Montana.

Montana Power states that Rate Schedule REC–91 will provide it with a decrease in revenues from sales to these customers of $1,357,800 (−8.97%) during the year starting June 30, 1991, and concludes the annual rate adjustment pursuant to a Settlement Agreement approved in Docket No. ER84–359–000, 31 FERC ¶ 61,060 (1985).

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

26. Appalachian Power Company

[Docket No. ER91–402–000]

May 9, 1991

Take notice that on April 26, 1991, Appalachian Power Company (APCo) tendered for filing a two (2) electric service agreements that were executed by APCo and Old Dominion Electric Cooperative (ODEC) on July 2, 1990, and March 6, 1991, respectfully. The agreements set forth the terms pursuant to which APCo proposes to provide electric service to ODEC at ODEC's existing Whitehouse delivery point and at its new Lynch delivery point.

To match the effective date requested by ODEC, APCo proposes an effective date of on or about June 1, 1991. In its filing, APCo requests waiver of the requirement that an initial rate schedule be tendered for filing not less than sixty (60) days prior to the date on which the electric service is to commence and become effective.

APCo states that copies of its filing were served on ODEC the Virginia Electric and Power Company, which currently provides service to ODEC's Whitehouse delivery point, and APCo's existing wholesale purchasers.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

27. Public Service Company of Oklahoma

[Docket No. ER91–409–000]

May 9, 1991

Take notice that on April 29, 1991, Public Service Company of Oklahoma (PSO), on April 29, 1991, tendered for filing its Customer Supplied Fuel Rider (CSF), which supplements and amends its Wholesale Full Requirements Rate, FERC Rate Schedule Nos. 170, 171, 189 and 198.

Under the CSF, certain municipal wholesale full requirements customers of PSO may elect to supply PSO with the gas supplies required to generate a portion of or a specified percentage of their requirements for electricity. PSO requests that the CSF be permitted to become effective as of June 29, 1991.

Copies of the filing were served upon PSO's full requirements wholesale customers and Oklahoma Corporation Commission.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

28. West Texas Utilities Company

[Docket No. ER91–408–000]

May 9, 1991

Take notice that on April 29, 1991, West Texas Utilities Company (WTU) tendered for filing an Amendment, dated February 28, 1991, to the Remote Interrogation of Metering Records Agreement (Agreement), dated August 22, 1990, between WTU and Brazos Electric Power Cooperative of Texas, Inc. (Brazos).

The Agreement, accepted for filing by Commission order of September 24, 1990, includes an "exhibit A" which lists each point of delivery to which the Agreement pertains. Due to the impracticability at the time of obtaining telephone service to the Clairemont point, the point was omitted from the initial list. Service is now available at the Clairemont Point and revised "exhibit A" amends the Agreement to include the Clairemont Point.

WTU requests waiver of the notice requirement in order that the Amendment may become effective as of August 1, 1990, the effective date of the underlying Transmission Service Agreement. Accordingly, WTU seeks waiver of the Commission's notice requirements.

Copies of the filing were served upon Brazos and the Public Utility Commission of Texas.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

29. PacifiCorp Electric Operations

[Docket No. ER91–345–000]

May 9, 1991

Take notice that on May 6, 1991, PacifiCorp Electric Operations (PacifiCorp), tendered for filing an amendment to its filing for the Long-Term Power Sales Agreement with the Department of Water Resources of the State of California (CDWR).

PacifiCorp requests waiver of the Commission's notice requirements to allow an effective date of June 1, 1991.

Copies of this filing amendment have been supplied to CDWR, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

30. Jackson Valley Energy Partners, L.P.

[Docket No. QF82–208–004]

May 9, 1991

On May 3, 1991, Jackson Valley Energy Partners, L.P. 4655 Coal Mine Road, Ione, California 95640, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Ione, Amador County, California, and will include a fluid bed combustion boiler, and an extraction steam turbine generator.

Thermal energy recovered from the facility will be used in the montan wax extraction plant.

The original certification was issued on November 16, 1982 (21 FERC ¶ 62,272 (1982)). The instant recertification is requested due to an increase in the net electric power production capacity from 14.2 MW to 15.1 MW and a change in the ownership structure. NRG Energy Jackson Valley I, and NRG Energy Jackson Valley II, Inc., both subsidiaries of Northern State Power Company, a utility will have 50% ownership in the facility.

Comment date: 15 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

31. Jackson Valley Energy Partners, L.P.

[Docket No. QF82–208–005]

May 10, 1991.

On May 3, 1991, Jackson Valley Energy Partners, L.P., 4655 Coal Mine Road, Ione, California 95640, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Ione, Amador County, California, and will include a fluid bed combustion boiler, and an extraction steam turbine generator.

The original certification was issued on October 6, 1983 (25 FERC ¶ 61,054 (1983)). The instant recertification is requested due to an increase in the net electric power production capacity from 14.2 MW to 15.1 MW and a change in the ownership structure. NRG Energy Jackson Valley I, and NRG Energy Jackson Valley II, Inc., both subsidiaries of Northern State Power Company, a utility will have 50% ownership in the facility.

Comment date: 15 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

32. General Electric Company

[Docket No. QF91–106–000]

May 13, 1991.

On May 6, 1991, General Electric Company tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of the configuration of the proposed cogeneration facility, and the thermal usage of its steam host.

Comment date: 21 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

33. Martin E. Fate, Jr.

[Docket No. ID–2607–000]

May 13, 1991.

Take notice that on May 6, 1991, Martin E. Fate, Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director: Public Service Company of Oklahoma.

President: Public Service Company of Oklahoma.

Chief Executive Officer: Public Service Company of Oklahoma.

Comment date: May 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

34. Montana Power Company

[Docket No. ER91–336–000]

May 13, 1991.

Take notice that on May 7, 1991, the Montana Power Company (Montana) tendered for filing amendment 1 to its original filing of a "Firm Energy Sales Agreement Between The Montana Power Company and The Washington Water Power Company." This amendment 1 provides additional information requested by Commission staff.

A copy of the filing was served upon The Washington Water Power Company.

Comment date: May 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

35. Cincinnati Gas & Electric Company

[Docket No. ER91–353–000]

May 13, 1991.

Take notice that on May 6, 1991, The Cincinnati Gas & Electric Company tendered for filing certain cost information related to proposed changes in its FERC Electric Tariff, Original Volume No. 1. Due to the submission of the additional information, CG&E requests waiver of the Commission's notice requirements, and an effective date of June 1, 1991, as agreed to by CG&E and its customers.

Copies of the supplemental filing were served upon the Villages of Bethel, Blanchester, Georgetown, Hamersville, Ripley and the City of Lebanon, municipalities in the State of Ohio; and the Public Utilities Commission of Ohio.

Comment date: May 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

36. PSI Energy, Inc.

[Docket No. ER91–416–000]

May 13, 1991.

Take notice that on April 30, 1991, PSI Energy, Inc. (PSI) tendered for filing the executed contracts and related information for the Economic Development incentives applicable to Indiana Packers Company (Packers) in Carroll County, Indiana.

Comment date: May 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

37. Central Vermont Public Service Corporation

[Docket No. ER91–422–000]

May 13, 1991.

Take notice that on May 1, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing a Notice of Termination of Electric Service concerning Allied's participation in Central Vermont's FERC Electric Tariff, Original Volume No. 3.

Comment date: May 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

38. South Carolina Electric & Gas Company

[Docket No. ER91–423–000]

May 13, 1991.

Take notice that South Carolina & Gas (SCE&G) on May 2, 1991, tendered for filing proposed changes in its FPC Electric Service Tariff, Volume No. 1. This amendment is being made to establish a new delivery point for sale of power to Saluda River Electric Cooperative as well as to document that two existing delivery points for sale of power to Little River Electric Cooperative are being assigned to Saluda River Electric Cooperative. In effect SCE&G is herewith cancelling the current tariff with Little River Electric Cooperative which has two delivery points and replacing that tariff with a new tariff with Saluda River Electric Cooperative which incorporates the above two referenced delivery points and adds a third.

The amendment is being made as a result of an agreement between Little River Electric Cooperative and Saluda River Electric Cooperative in which the latter assumed all the duties and obligations of the former with the respect to the supply of wholesale electric power service by SCE&G.

Copies of the filing were served upon the public utility's jurisdictional customers, including Saluda River Electric Cooperative, Inc.

Comment date: May 28, 1991, in accordance with Standard Paragraph E end of this notice.

39. Central Vermont Public Service Corporation

[Docket No. ER91–424–000]

May 13, 1991.

Take notice that on May 1, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing a Notice of Termination of Electric Service concerning Allied Power & Light Company's participation in CVPS' FPC Electric Tariff, First Revised Volume No. 1.

Comment date: May 28, 1991, in accordance with Standard paragraph E at the end of this notice.

40. Central Vermont Public Service Corporation

[Docket No. ER91–425–000]

May 13, 1991.

Take notice that on May 1, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing a Notice of Termination of Electric Service concerning Hyde Park Electric Light Department.

Comment date: May 28, 1991, in accordance with Standard paragraph E at the end of this notice.

41. New England Power Company

[Docket No. ER91–427–000]

May 13, 1991.

Take notice that on May 7, 1991, New England Power Company (NEP) submitted a letter agreement between itself and the Massachusetts Municipal Wholesale Electric Company (MMWEC) providing the back-up transmission service for the municipals' allocation of New York Power Authority (NYPA) power. NEP states that the letter agreement, dated April 3, 1989, allows the NYPA power to be wheeled from New York over the ties of Northeast Utilities (NU), through a contract between NEP and NU, in the event NEP is unable to wheel for MMWEC under their current contract. Under the letter agreement, MMWEC has agreed to reimburse NEP for a certain level of service from NU.

NEP requests waiver of the Commission's notice requirements so that the letter agreement may be effective May 1, 1991, in accordance with its terms. According to NEP, the letter agreement will terminate April 30, 1994.

Comment date: May 28, 1991, in accordance with Standard paragraph E at the end of this notice.

42. Florida Power & Light Company

[Docket No. ER91–428–000]

May 13, 1991.

Take notice that on May 3, 1991, Florida Power & Light Company (FPL) tendered for filing a document entitled Contract For Interchange Service Between Florida Power & Light Company and Reedy Creek Improvement District.

FPL states that under the interchange contract FPL will provide Service Schedule B—Short Term Firm Interchange Service, Service Schedule C—Economy Interchange Service, and Service Schedule X—Extended Economy Interchange Service. Rates for these services are similar to rates charged by FPL to other Florida utilities.

FPL requests that waiver of the Commission's Regulations be granted and that the proposed Contract be made effective May 15, 1991. FPL states that a copy of the filing was served on Reedy Creek improvement District.

Comment date: May 28, 1991 in accordance with Standard paragraph E at the end of this notice.

Standard paragraphs

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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–11818 Filed 5–17–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–153–000]

East Tennessee Natural Gas Co.; Rate and Tariff Filing Pursuant to Stipulation and Agreement

May 13, 1991.

Take notice that on May 7, 1991, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, tendered for filing the following tariff sheets to its Original Volume No. 1A, proposed to be effective July 1, 1991:

First Revised Sheet No. 6
First Revised Sheet No. 7
First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 23
First Revised Sheet No. 40
First Revised Sheet No. 41
Original Sheet No. 41A
Second Revised Sheet No. 42
First Revised Sheet No. 43
First Revised Sheet No. 102
First Revised Sheet No. 103
First Revised Sheet No. 104
First Revised Sheet No. 105
First Revised Sheet No. 106
First Revised Sheet No. 107
First Revised Sheet No. 108
Second Revised Sheet No. 109
Original Sheet No. 109A
First Revised Sheet No. 110
Second Revised Sheet No. 111
First Revised Sheet No. 112
First Revised Sheet No. 113
First Revised Sheet No. 114
First Revised Sheet No. 115
First Revised Sheet No. 116
First Revised Sheet No. 117
First Revised Sheet No. 122
First Revised Sheet Nos. 123–129
First Revised Sheet No. 130
First Revised Sheet No. 131
First Revised Sheet No. 151
First Revised Sheet No. 152
First Revised Sheet No. 153
First Revised Sheet No. 154
First Revised Sheet No. 156
First Revised Sheet No. 161
First Revised Sheet No. 162
First Revised Sheet No. 163
First Revised Sheet No. 164
First Revised Sheet No. 167
First Revised Sheet No. 173
Original Sheet Nos. 181–199
First Revised Sheet Nos. 200–229

East Tennessee states that the filing includes tariff sheets for Rate Schedules FT and IT, including rates for such service, General Terms and Conditions for FT and IT, and Forms of Service Agreements. East Tennessee states that the filing establishes the terms and conditions under which it intends to provide open-access transportation pursuant to section 311 of the Natural Gas Policy Act, and part 284, subpart G of the Commission's regulations, effective July 1, 1991, assuming acceptance of the instant tariff filing. East Tennessee states that it will conduct an open season for interruptible transportation from May 20 through May 29, 1991. The open season will establish the interruptible transportation queue under part 284 of the Commission's regulations for both subpart B and G

transportation. East Tennessee avers that it will provide transportation pursuant to subpart G after approval and acceptance of the April 4, 1991 Stipulation and Agreement filed in Docket No. RP90–111 (Stipulation and Agreement), and in accordance with the terms provided therein and in Original Volume No. 1A of the FERC Gas Tariff.

East Tennessee requests waiver of § 284.10 of the Commission's Regulations pending Commission approval of the Stipulation and Agreement, citing *Midwestern Gas Transmission Corp.*, 50 FERC 61,084 (1990). East Tennessee also seeks waiver of certain provisions of its tariff, including: (1) Section 3.1 of its IT Rate Schedule which requires that a request for service be made no earlier than 90 days prior to the proposed commencement date; (2) section 3.4 of its IT Rate Schedule to allow certain shippers not eligible for transportation under section 311 to establish and maintain a place in East Tennessee's interruptible transportation queue after East Tennessee accepts its blanket certificate pursuant to the settlement; and (3) the sole supplier provisions of the current SG Rate Schedule. East Tennessee asserts such waivers are necessary in order to ensure that potential Shippers under part 284, subparts B and G, of the Commission's regulations are treated in a non-preferential manner.

East Tennessee states that a copy of the filing has been mailed to all affected customers and the regulatory Commissions of each state in which any such customer distributes gas.

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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–11820 Filed 5–17–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–354–000]

Nantahala Power and Light Co.; Clarification of Filing

May 13, 1991

On April 2, 1991, Nantahala Power and Light Company (Nantahala) tendered for filing the 1990 revised "PL" (COSAC) rate tariff, pursuant to the Settlement Agreement in Docket No. ER80–574 (Settlement Agreement). On April 16, 1991, the Secretary issued a notice of the filing which stated that motions to intervene or protests were to be filed on or before April 30, 1991. On May 7, 1991, the Town of Highlands, North Carolina, Haywood Electric Membership Corporation and North Carolina Electric Membership Corporation (Resale Customers) filed an uncontested motion to intervene out-of-time, uncontested request for extension of protest and comment period and an alternative, conditional protest and request for hearing. Resale Customers note that the terms of the Settlement Agreement permit Resale Customers to file a complaint by June 30 of each year pursuant to Nantahala's annual COSAC filing.

The April 16, 1991 notice of filing is hereby clarified to provide that the comment period established for the filing of motions to intervene or protests does not preclude any party to the Settlement Agreement from exercising rights under the Settlement Agreement including the right to file a complaint on or before June 30, 1991 in accordance with terms of the Settlement Agreement.

Lois D. Cashell,

Secretary.

[FR Doc. 91–11819 Filed 5–17–91; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3957–5]

Agency Information Collection Activity Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that a previously-announced Information Collection Request (ICR), titled Survey of Pharmaceutical Industry (ICR no. 1460.02), has been amended and resubmitted to the Office of Management and Budget (OMB) for review and comment.

DATES: Comments must be submitted on or before June 4, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Organization of this Notice

Office of Water

A. Summary of Previously-announced ICR

On May 23, 1990, EPA announced that ICR #1460.02 had been forwarded to OMB for review and comment (55 FR 21235). As the announcement stated, EPA's Office of Water intended to use the survey to collect information from pharmaceutical manufacturing facilities for the purpose of developing effluent limitations. The questionnaire instrument was comprised of two major parts; part A requested technical information, and part B requested financial information.

Part B requested financial information from both the facility to which the questionnaire would be sent and the company owning the facility. EPA explained its rationale for seeking both facility and company-level information in the Supporting Statement for the ICR.

During the comment period for that ICR, EPA received comments from an industry trade association and from several pharmaceutical companies. EPA also met with industry representatives to discuss their comments. All of these comments and memoranda recording the meetings will be included in EPA's rulemaking record.

B. Summary of OMB Response

In a document dated August 20, 1990, OMB responded to EPA's request with partial clearance of the survey (labelled OMB #2040–0146). The terms of clearance that accompanied OMB's Notice of Action were published on October 2, 1990 (55 FR 40229).

Briefly, OMB's response provided clearance to all of part A and to the company-level financial information in part B, but denied clearance to the facility-level financial information in part B. OMB directed EPA, among other things, to consider making the denied portion of part B "optional for those companies willing to * * * certify no financial impact * * * for selecting the best available technology economically achievable." Today's notice announces EPA's intention to rely on such a certification.

C. Amendments to Questionnaire

As submitted to OMB for review in May 1990, section 1 of part B included questions on facility operations and finances. Section 2 of part B was comprised of questions about the company(ies) that own the facility. OMB's terms of clearance disapproved Section 1—the facility questions.

EPA has amended part B to allow respondents the option of completing section 1 or signing a certification concerning the economic impact of effluent regulations that EPA may eventually promulgate. The survey instrument will be revised to include an insert explaining the certification and the certification itself. Other editing and format revisions may also appear. The questionnaire insert and certification are drafted as follows:

Important

Section 1 of part B asks questions on the operations and finances of the manufacturing facility. Section 2 of part B asks questions on the operations and finances of the company(ies) that owns the facility. Refer to page 100 for definitions of "facility," "owner company," and "ultimate parent company."

Instead of completing all of section 1 of part B, respondents have the option of certifying certain conditions about the economic impacts that will result from costs incurred to comply with effluent limitations guidelines and standards. The certification must be signed by an official of the owner company with sufficient decision-making authority for this certification to be legally binding. It is likely that this official will be the President, Chief Executive Officer, or their designee. In addition, where the owner company has an ultimate parent company, this questionnarie requests certain financial information from both the owner company and the ultimate parent company. Hence, duly authorized officials of both companies must sign the certification.

A company that signs the certification need only respond to question 5 of seciton 1, which requests employment data. All companies, that do not sign the certification must complete all of section 1.

Read the certification carefully. The Agency's findings of economic achievability for the facilities owned by any company that signs will be based, in whole or in part, on the company's certification. A company that signs this certification is representing, under penalty of law, that the cost of compliance with the effluent guidelines will not be the cause of any adverse financial impacts at any of its facilities, so long as the per-facility cost of compliance of the effluent guideline ultimately promulgated by EPA is less than the dollar amount calculated for each facility using the equation found in Attachment X. Note that the dollar amount calculated using the equation in Attachment X represents additional costs imposed by the guideline beyond any treatment costs presently incurred by the facililty.

The certifying company also forgoes the right to challenge this aspect of the guideline. A company having any doubts as to the contents of the certification should not sign it and should instead complete section 1 in full. Aside from the legal implications of the certification, EPA believes that it is in a company's best interests to have the Agency accurately project economic impacts. If a company suspects that compliance costs may result in an adverse economic impact, the Agency will be able to more accurately consider such impacts in the rulemaking process if the company responds to all questions in section 1.

Certification

The undersigned hereby certify that, if the effluent guideline which EPA promulgates pursuant to this rulemaking imposes a per-facility total annual treatment cost in 1990 dollars, as estimated by EPA, or less than the dollar amount calculated for each facility using the equation found in Attachment X, the guideline is economically achievable for the owner company and each of the owner company's facilities, and the cost of compliance will not be the cause of any adverse financial impacts at any of the facilities owned by the owner company, including without limitation, the following:

(1) Facility closures;

(2) Product line closures;

(3) Employment impacts (including the firing or laying-off of employees, or the reduction in hours, pay or benefits of employees).

This certification should not be interpreted to ensure that any of the above impacts will not occur for reasons other than the cost of compliance with the effluent guideline.

As long as EPA's estimated per-facility compliance cost is less than the dollar amount calculated for each facility using the equation found in Attachment X, the undersigned hereby agree and covenant that neither the owner company nor the ultimate parent company, not any of their representatives, will bring any legal action challenging the guideline that EPA promulgates pursuant to this rulemaking, or seek any administrative or other remedy, on the ground that the guideline is not economically achievable, or on any related ground, including without limitation the ground that EPA did not properly demonstrate or determine the economic achievability of the guideline, or that EPA did not collect sufficient information or the appropriate information to demonstrate or determine the economic achievability of the guideline. This does not limit the right of the undersigned, at promulgation, to bring a legal action based on any other analyses (e.g., technical assessments, cost-effectiveness, etc.) prepared by EPA in developing the effluent limitations and standards, except that the undersigned will not challenge the use of the certification in lieu of facility-level financial data in such analyses.

In addition, the undersigned recognize and acknowledge that EPA will use the information regarding economic impacts provided in this certification for the purposes of any regulatory analyses to which EPA may determine the certification is relevent, including without limitation, analyses in support of:

(1) The division of this industry into different regulatory categories or subcategories in the effluent guideline;

(2) Determinations made under the Regulatory Flexibility Act (e.g., no significant impact on a substantial number of small entities); and

(3) Any determinations under the Clean Water Act regarding facility costs.

The undersigned agree and covenant that neither the owner company nor the ultimate parent company will bring any legal action or seek any administrative or other remedy regarding the use of such information in these analyses or the result of these analyses to the extent they are based on such information.

Finally, the undersigned hereby agree that the fact that the owner company and the ultimate parent company agreed to sign this certification is not confidential business information and that this fact will appear in the public record of the effluent guideline promulgated pursuant to this rulemaking.

Owner company	Date
Ultimate Parent Company (if applicable).....	Date.

Purpose: This attachment explains how to derive the per-facility compliance cost to be considered for the certification alternative presented in part B of the questionnaire.

The total annual plant costs calculated using the equations contained in this Attachment do not represent a projection by EPA of the actual cost to the plant of the guideline which EPA will eventually promulgate. EPA, of course, has not yet determined the technology bases for the guideline, nor has the Agency evaluated individual plants to determine what technologies are already in place and what individual plants' costs of compliance will be. The figures calculated using these equations represent upper bound annual costs for the purpose of this certification only.

Direct Dischargers: To compute the total annual plant cost that will provide the basis for your decision whether to sign the certification, substitute the average process wastewater flow in millions of gallons per day (MGD) in 1990 for X in the following equation. For example, if the average flow is 2,000,000 gallons per day, substitute 2 for X. If the average flow is 700,000 gallons per day, substitute 0.7 for X. This flow should be consistent with your responses in tables 4–1 and 4–2 in Part A of the questionnaire.

Total Annual Cost=$1,000 (9,212 X+2,341)

Underlying Assumptions:

1. The equation reflects the installation, operation, and maintenance of the following wastewater treatment technologies: Steam stripping, air stripping, biological treatment (with nitrification), dualmedia filtration, and granular activated carbon adsorption.

2. The cost equation was developed assuming no wastewater treatment technologies are currently in place.

3. Costs are presented in 1990 dollars.

4. Total annual cost is the sum of the annualized portion of capital costs (based on a capital recovery factor of 0.22, which reflects a cost of capital of 15 percent and equipment life of 8 years) plus operating and maintenance costs.

Indirect Dischargers: To compute the total annual plant cost that will provide the basis for your decision whether to sign the certification, substitute the average process wastewater flow in millions of gallons per day (MGD) in 1990 for X in the following equation. For example, if the average flow is 2,000,000 gallons per day, substitute 2 for X. If the average flow is 700,000 gallons per day, substitute 0.7 for X. This flow should be consistent with your responses in Tables 4–1 and 4–2 in part A of the questionnaire.

Total Annual Cost=$1,000 (3,836 X+1,345)

Underlying Assumptions:

1. The equation reflects the installation, operation, and maintenance of the following wastewater treatment technologies: Steam stripping, air stripping, dualmedia filtration, and granular activated carbon adsorption.

2. The cost equation was developed assuming no wastewater treatment technologies are currently in place.

3. Costs are presented in 1990 dollars.

4. Total annual cost is the sum of the annualized portion of capital costs (based on a capital recovery factor of 0.22, which reflects a cost of capital of 15 percent and equipment life of 8 years) plus operating and maintenance costs.

D. Conclusion and Solicitation of Comment

EPA believes that including this certification as an option responds to OMB's direction and to industry's comments. Further, if OMB approves section 1 with this insert and certification, EPA will remain able to make the determinations required by statute concerning the economic achievability of the regulation.

A toll-free telephone helpline will be available to all respondents who have questions concerning the certification or any other aspect of the questionnaire.

The Agency solicits comment on the revised approach to section 1 of part B. EPA specifically solicits comments on whether the certification published above is responsive to OMB and industry concerns.

Send comments regarding this amended ICF to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dated: May 16, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–12007 Filed 5–17–91; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3057–8]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed May 6, 1991 Through May 10, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910144, FINAL EIS, UMC, NC, Camp Lejeune Marine Corps Base Camp, Expansion and Realignment for Additional Training Needs, Implementation, Onslow County, NC, Due: June 17, 1991, Contact: Paula Anderson (804) 445–2334.

EIS No. 910145, DRAFT SUPPLEMENT, FRC, NJ, Mount Hope Pumped Storage Hydroelectric Project Construction, Operation and Maintenance, New and Additional Information, License, section 404 Permit, Morris County, NJ, Due: July 1, 1991, Contact: James Haimes (202) 219–2780.

EIS No. 910146, FINAL EIS, AFS, AK, North Sea Otter Sound Area Resources Management Plan, Implementation, Tongass National Forest, Ketchikan Area, AK, Due: June 17, 1991, Contact: Pete Johnson (907) 828–3304.

EIS No. 910147, DRAFT EIS, USA, MA, NJ, VA, MA, MI, Army Materials Technology Laboratory Closure and Realignments, Transfers to Detroit Arsenal, MI; Picatinny Arsenal, NJ; and fort Belvoir; VA Middlesex, Norfolk, Suffolk and Essex Counties, MA, Due: July 1, 1991, Contact: Susan Brown (617) 647–8536.

EIS No. 910148, FINAL EIS, FHW, KY, Richmond Bypass Extension, US 25/421 North to US 25/421 South, Funding, Madison County, KY, Due: June 21, 1991, Contact: Paul E. Toussaint (502) 227–7321.

EIS No. 910149, DRAFT SUPPLEMENT, AFS, IL, Shawnee National Forest Land and Resource Management Plan, Amended Forest Plan, Implementation, Several Counties, IL, Due: August 15, 1991, Contact: Rodney K. Sallee (618) 253–7114.

EIS No. 910150, DRAFT EIS, COE, OH, Cleveland Harbor Dike 14 Confined Disposal Facility (CDF) for Dredged Material Modifications, Cuyahoga County, OH, Due: July 1, 1991, Contact: Timothy Daly (716) 879–4171.

EIS No. 910151, FINAL EIS, UAF, NV, Tonopah Test Range 37th Tactical Fighter Wing Relocation and other Tactical Force Structure Actions at Holloman and Nellis AFB, Nye County, NV, Due: June 17, 1991, Contact: David Clark (804) 764–7844.

EIS No. 910152, FINAL EIS, USA, CA, GA, KY, MD, NC, CO, HI, MO, PA, SC, TX, WA, DC, Presidio of San Francisco Army Base, Closure and Relocation to other Facilities, Implementation, Alternates are in CA, CO, GA, HI, KY, MD, MO, NC, PA, SC, TX, WA and DC, Due: June 17, 1991, Contact: Bob Verkade (916) 551–2350.

EIS No. 910153, DRAFT EIS, EPA, TX, Brazos Island Harbor (BIH) Entrance Channel 42 Foot Project, Ocean Dredged Material Disposal Site (ODMDS) Designation, Brownville, TX, Due: July 8,

1991, contact: Norm Thomas (214) 655–2260.

EIS No. 910154, FINAL EIS, EPA, FL, Martin Coal Gasification/ Combined Cycle Project, Construction and Operation, Issuance of New Source NPDES Permit, section 404 Permit, Martin County, FL, Due: June 17, 1991, Contact: Chris Hoberg (404) 347–3776.

Dated: May 14, 1991.

Willaim D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91–11800 Filed 5–17–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

220–222 MHZ Band Removed From Amateur Services, Amateur Operation Prohibited After August 27, 1991

May 13, 1991.

On March 14, 1991, the Commission adopted a *Report and Order* in PR Docket No. 89–552 to adopt service rules for land mobile use in the 220–222 MHz frequency band.[1] The rules adopted also remove the 220–222 MHz band from the amateur services. These rules become effective May 29, 1991.[2] The part 97 rules governing the amateur services, however, were waived to permit continued amateur station operation on the 220–222 MHz band in accordance with the former rules that governed operation on that band for a period of ninety (90) days from the effective date of the rules removing that band from the amateur services.

Now that the effective date of these rules changes has become certain, amateur operators are hereby placed on notice that amateur stations may not transmit in the frequency band 220.000 to 222.000 MHz after 0000 hours UTC, August 28, 1991.

Land mobile applications for this band are currently being accepted for filing. Part 90 licenses will be granted as soon as type accepted equipment is available for land mobile operation in this band. For this reason, requests for wavier of the rules to permit continued amateur station operation in this band will generally not be viewed favorably. Amateur operators were placed on notice September 6, 1988, that they should provide for an orderly transition from this band.[3] When it initiated PR Docket No. 89–552, the Commission warned amateur operators that if the rules proposed to establish private land mobile radio systems in the 220–222 MHz band were adopted, amateur stations would be required to terminate operations at the end of that proceeding. At that time the Commission again encouraged amateur operators to arrange for orderly transition from the 220–222 MHz band to avoid abrupt termination of amateur station operations.[4]

Any requests for continued amateur station operation in the 220–222 MHz frequency band, whether couched as requests for waiver, requests for special temporary authority, requests for experimental or developmental licenses, or in any other form, will be strictly scrutinized in light of the Commission's actions in General Docket No. 87–14 and PR Docket No. 89–552. Any such request must overcome the heavy burden of demonstrating that the arguments made in support thereof are substantially different from those that have been carefully considered in both rule making proceedings.[5] Any such request must include acceptable justification for failing to provide for an orderly transition from the band over the past three years, notwithstanding the Commission's repeated notifications to amateur operators that failure to provide for such a transition could result in abrupt termination of operation.

For further information about this matter, contact the Personal Radio Branch, Special Services Division, Private Radio Bureau, at (202) 632–4964, or the Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, at (202) 634–2443.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–11801 Filed 5–17–91; 8:45 am]

BILLING CODE 6712–01–M

[1] *Report and Order*, PR Docket No. 89–552 (FCC 91–74) (released April 17, 1991).

[2] Two of the rules adopted have different effective dates. 47 C.F.R. 90.711 is effective May 1, 1991. 47 CFR 90.713 is effective July 29, 1991.

[3] *Report and Order*, General Docket No. 87–14, 3 FCC Rcd 5287 (1988), *recon. denied*, 4 FCC Rcd 6407 (1989), *aff'd American Radio Relay League, Inc.* v. *FCC and United States of America*, No. 89–1602 (DC Cir. Dec. 3, 1990).

[4] *Notice of Proposed Rule Making*, PR Docket No. 89–552, 4 FCC Rcd 8593 (1989).

[5] *See, e.g., Industrial Broadcasting* v. *F.C.C.*, 437 F.2d 680, 683 (DC Cir. 1970); *WAIT Radio* v. *F.C.C.*, 418 F.2d 1153, 1156 (D.C. Cir. 1969).

FEDERAL RESERVE SYSTEM

Bancorp Employee Stock Ownership Plan; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 10, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

. *1. Bancorp Employee Stock Ownership Plan*, Benton, Kentucky; to acquire an additional 0.50 percent of the voting shares of Benton Bancorp, Inc., Benton, Kentucky, for a total of 10.44 percent, and thereby indirectly acquire Bank of Benton, Benton, Kentucky, and Calvert Bank, Calvert City, Kentucky.

Board of Governors of the Federal Reserve System, May 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-11837 Filed 5-17-91; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 10, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial, Inc., Des Moines, Iowa; to acquire 100 percent of the voting shares of Dial National Bank of South Dakota, Sioux Falls, South Dakota.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Fremont Bank Corporation, Canon City, Colorado; to acquire 100 percent of the voting shares of The First National Bank of Arvada, Arvada, Colorado.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. A.N.B. Holding Company, Ltd., Terrell, Texas; to become a bank holding company by acquiring 30 percent of the voting shares of The American National Bank of Terrell, Terrell, Texas.

Board of Governors of the Federal Reserve System, May 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-11838 Filed 5-17-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that a meeting of the Federal Accounting Standards Advisory Board will be held on June 5, 1991, from 9 a.m. until 4 p.m. in room 7116 of the General Accounting Office, 441 G St. NW., Washington, DC.

The agenda for the meeting will consist of a review of the minutes of the May meeting, continuation of the discussion of title 2, GAO's Policy and Procedures Manual for the Guidance of Federal Agencies, a status report on the User Needs Task Force, and an update on credit reform. Other items may be added to the agenda; interested parties should contact the Staff Director for more specific information.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F St. NW., room 302, Washington, DC 20548, or call (202) 504–3336.

DATES: June 5, 1991.

ADDRESSES: 441 G St. NW., room 7116, Washington, DC 20548.

Authority: Federal Advisory Committee Act, Pub. L. No. 92–463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: May 15, 1991.

Ronald S. Young,

Staff Director.

[FR Doc. 91–11858 Filed 5–17–91; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91C–0131]

Ciba Vision Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Vision Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of carmine to color contact lenses.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, (202) 472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 1C0232), has been filed by Ciba Vision Corp., 2910 Amwiler Ct., Atlanta, GA 30360, proposing that 21 CFR part 73 of the color additive regulations be amended to provide for the safe use of carmine to color contact lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 13, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–11843 Filed 5–17–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91C–0132]

Ciba Vision Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Vision Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of mica to color contact lenses.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, (202) 472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 1C0233) has been filed by Ciba Vision Corp., 2910 Amwiler Ct., Atlanta, GA 30360, proposing that 21 CFR part 73 of the color additive regulations be amended to provide for the safe use of mica to color contact lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 13, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–11844 Filed 5–17–91; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Cardiovascular and Renal Drugs Advisory Committee

Date, time and place. June 6 and 7, 1991, 9 a.m., Jack Masur Auditorium, Clinical Center Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD. Parking in the Clinical Center visitor area is reserved for Clinical Center patients and their visitors. If you must drive, please use an outlying lot such as Lot 41B. Free shuttle bus service is provided from Lot 41B to the Clinical Center every 8 minutes during rush hour and every 15 minutes at other times.

Type of meeting and contact person. Open public hearing, June 6, 1991, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion June 7, 1991, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211, or Linda McGahey, Advisors and Consultants Staff (HFD–9), 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. On June 6, 1991, the committee will discuss Monocor (bisoprolol fumarate) new drug application (NDA) NDA 19–982, and (bisoprolol/hydrochlorothiazide) NDA 20–186, for use once daily for hypertension, Lederle Laboratories; and intravenous Cardizem (diltiazem), for use in supraventricular tachycardia, NDA 19–960, Marion Merrell-Dow. On June 7, 1991, the committee will dscuss Norvasc (amlodipine besylate), a new drug application NDA 19–787, Pfizer, Central Research, to be indicated for hypertension and stable and vasospastic angina.

Antiviral Drugs Advisory Committee

Date, time, and place. June 12, 1991, 8:30 a.m., Holiday Inn Crowne Plaza, Plazas II and III, 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5:30 p.m.; Anna J. Baldwin, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immunodeficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 5, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a new drug application for foscarnet (Astra Pharmaceuticals) for use in the treatment of cytomegalovirus retinitis infection.

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. June 13 and 14, 1991, 8:30 a.m., Ramada Inn, Embassy Ballrooms I, II, and III, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, June 13, 1991, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, June 14, 1991, 8:30 a.m., to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–54555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 3, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 13, 1991, the committee will discuss: (1) Background of interpretation of carcinogenicity bioassays: (2) experiences with carcinogenicity studies of antihistamines (Methapyrilene, diphenhydramine, and chlorpheniramine; (3) NDA's 18–066 and 19–440 (doxylamine, Pfizer); and (4) NDA 19–658 (loratadine, Schering-Plough Corp.). On June 14, 1991, the committee will discuss NDA 19–835 (ceterizine, Pfizer).

The committee discussion and conclusions regarding the use of doxylamine succinate may be considered by the agency in its preparation of a final monograph for over-the-counter (OTC) antihistamine drug products. This monograph is being developed as part of the OTC drug review. The advance notice of proposed rulemaking for OTC antihistamine drug products was published in the **Federal Register** of September 9, 1976 (41 FR 38312). The tentative final monograph for OTC antihistamine drug products was published in the **Federal Register** of January 15, 1985 (50 FR 2200). An amended tentative final monograph was published in the **Federal Register** of August 24, 1987 (52 FR 31892). Doxylamine succinate was proposed as an active ingredient to be included in the monograph.

Ophthalmic Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. June 14, 1991, 1:30 p.m., Chesapeake Conference Rm., third floor, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open public hearing 1:30 p.m. to 1:45 p.m., unless public participation does not last that long; open committee discussion, 1:45 p.m. to 4:30 p.m. Daniel W.C. Brown, Center for Devices and

Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

General function of the committee. The committee reviews and evaluates data on the safety and effectivness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 30, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues relating to approvals of premarket approval applications for surgical and diagnostic devices. The committee may also discuss general issues relating to other opthalmic devices.

Peripheral and Central Nervous System Drugs Advisory Committee

Date, time, and place. June 17, 1991, 8 a.m. to 5. p.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4020.

General function of the committee. The committee reviews and evaluates data on the safety and effectivenesss of marketed and investigational human drugs for use in neurological disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 10, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the safety and effectiveness of Intrathecal Baclofen for spasticity in patients with multiple sclerosis or spinal cord injury who are intolerant to or unresponsive to oral Baclofen.

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. June 20 and 21, 1991, 9 a.m., Parklawn Bldg., Conference Rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, June 20, 1991, 9 a.m. to 10 a.m., unless participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, June 21, 1991, 9 a.m. to 5 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3510.

General function of the committee. The committee reviews and evaluates data on the safety and effectivenesss of marketed and investigational human drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 6, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 20 and 21, 1991, the committee will discuss the current status of unopposed estrogen replacement therapy and combined estrogen and progestogen replacement therapy in the menopause.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public adminsitrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of comittee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and

FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 14, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-11905 Filed 5-17-91; 8:45 am]

BILLING CODE 4160-01-M

HEALTH AND HUMAN SERVICES

[Docket No. 91N-0162]

FDA Report of Consumer Research on Alternative Nutrition Label Formats; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the public availability of a report on research on food label formats conducted by the agency. The report is entitled "A Study of Nutrition Label Formats: Performance and Preference" (the FDA Study). FDA is inviting comments on the FDA study and on additional format research the agency intends to conduct. Guided by the findings of its research and other relevant information, the agency intends to propose to require the use of the design for nutrition labels that appears to most accurately and completely inform consumers of the nutritive content of foods.

DATES: Comments by July 5, 1991.

ADDRESSES: Submit written comments and requests for single copies of "A Study of Nutrition Label Formats: Performance and Preference" and format suggestions to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockeville, MD 20857. Comments and requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that branch in processing your requests. A copy of the report and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Raymond E. Schucker, Center for Food Safety and Applied Nutrition (HFF-240), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-245-1457.

SUPPLEMENTARY INFORMATION:

I. Background

In response to a request by the Secretary of Health and Human Services to consider changes in the way foods are labeled, FDA published in the **Federal Register** of August 8, 1989 (54 FR 32610), an advance notice of proposed rulemaking (ANPRM) that solicited public comment on a wide range of food labeling issues, including among other things: (1) Whether to revise requirements for nutrition labeling, and (2) whether to change the nutrition label format. Subsequently, FDA held four public hearings on food labeling. The last hearing, held in Atlanta, Georgia, on December 13, 1989, focused on the nutrition label format. During the same time period, FDA held about 50 district consumer exchange meetings (DCEM's) to address the food labeling issues discussed in the NAPRM. The DCEM's were held in 22 states and were attended by about 1,500 individuals.

In the **Federal Register** of July 19, 1990 (55 FR 29487), FDA published a proposed rule entitled "Food Labeling; Mandatory Status of Nutrition Labeling and Nutrient Content Revision" (hereinafter referred to as "the mandatory labeling proposal"). FDA proposed to require mandatory labeling for most foods that are a meaningful source of nutrition and further proposed that declaration of contents be required for a minimum of 13 nutrients.

The mandatory labeling proposal also provided for the declaration of Daily Reference Values (DRV's) for up to eight food components as part of a separate voluntary section of the nutrition label under the heading "Nutrition Profile." FDA proposed the nutrition profile as a voluntary adjunct to nutrition labeling in recognition of numerous public comments expressing growing interest in the inclusion of information about how individual foods fit within general recommendations for the total daily diet. The DRV's were proposed in a companion document to the mandatory labeling proposal, entitled "Food Labeling; Reference Daily Intakes and Daily Reference Values" (55 FR 29476, July 19, 1990).

In addition, the results of a consumer research study sponsored in 1990 by the National Food Processors Association (NFPA) were submitted as a comment on the ANPRM (Ref. 1). In the NFPA study, food shoppers expressed a preference for a label design that presented tabular nutrient values in the same manner as current labeling but that added as a separate section a nutrition profile that put important food components in the context of standards of daily consumption.

On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101-535). The effects of the 1990 amendments on FDA's labeling proposals of July 19, 1990, were discussed by the agency in a proposed rule published in the **Federal Register** of January 11, 1991 (56 FR 1151). As it pertains to the nutrition labeling format, section 2(b)(1)(A) of the 1990 amendments mandates that FDA issue regulations that require that information be conveyed in a manner "which enables the public to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet." The 1990 amendments also amended the Federal, Food, Drug, and Cosmetic Act to permit FDA to require by regulation that any nutrition information required to be placed on the label be highlighted by larger type, boldface type, or contrasting color if the Secretary determines that such highlighting will assist consumers in maintaining healthy dietary practices (21 U.S.C. 343(q)(1)).

II. Need for Consumer Research

In the mandatory labeling proposal of July 19, 1990, FDA announced the agency's intention to examine various alterntives to the current tabular format for presenting nutrition information on food labels (such as bar graphs or pie charts). The agency had received public comment cautioning against making changes without first conducting consumer research to determine the communications effectiveness of alternate formats because relatively few data are available concerning the utility of various format alternatives and because there is concern that unfounded changes to the current format, familiar to consumers, may be counterproductive. In addition, the Institute of Medicine of the National Academy of Sciences recommended in a report "Nutrition Labeling—Issues and Directions for the 1990's" (Ref. 2) that consumer ability to use information to make improved dietary choices should be an important consideration in the selection of a format, and that popularity of a format alone is not a sufficient basis to recommend its use. Formal position statements advocating consumer testing also were issued by the American Dietetic Association and jointly by the American Institute of Nutrition and the American Society of Clinical Nutrition (Refs. 3 and 4).

Consequently, FDA developed a research proposal for a consumer study, the results of which could serve at a later date as a basis for a regulatory

proposal establishing a revised nutrition format. In designing the study, FDA sought and received guidance from academia, the consumer community, and the food industry. In addition, FDA conducted a series of qualitative focus group discussions to gather information on the utility and appropriateness of selected components of nutrition label formats. The agency prepared a report entitled "Summary Report; FDA Nutrition Labeling Focus Groups" on these discussions (Ref. 5).

III. Format Alternatives

Based on FDA experience with the existing nutrition label and on the suggestions received from public hearings, consumer groups, and nutrition education researchers, FDA considers the possibilities for the nutrition label format to include: (1) Use of bar graphs; (2) use of a pie charts; (3) use of adjectival descriptors; and (4) retention of the tabular numeric format with either minor or major modifications. Additionally, the utility of incorporating label standards or dietary reference points for macronutrients and other food components associated with chronic diseases is of interest.

In preliminary data-gathering activity designed to identify alternative nutrition label formats and to provide qualitative information on their utility, FDA conducted a series of consumer focus group discussions that targeted the four format categories described above, specifically bar graphs, pie charts, adjectival descriptors, and tabular numeric formats (Ref. 5). In designing the focus group sessions, FDA included specific comparison tasks or discussion issues that targeted the participants' ability to use and interpret the format. In this way, the discussions were structured to explore issues beyond stated preference and initial visual appeal.

In the FDA focus group discussions, pie charts based on percent of calories or percent dry weight elicited strong negative reactions from participants who stated that pie charts were confusing, difficult to read, and overly technical (Ref. 5). Many participants were reluctant to try to use pie charts. The pie chart format was therefore excluded from further consideration for these and the following additional reasons: (1) Cholesterol and sodium declarations cannot be accommodated; (2) neither the dry weight nor calorie basis for declaring nutrient values per serving of individual food relate to current dietary recommendations or guidelines; and (3) the pie chart arrangement permits no fixed sequence for listing nutrients and no natural starting point for reading the information.

In addition to excluding the pie chart format, FDA also concluded that graphic devices such as stars and smiling faces were inappropriate for conveying nutrition information. This decision was based on the earlier research of the Consumer Research Institute (Ref. 8), which was conducted at FDA's request in 1972 as a basis for selecting the current nutrition label. In this study, low education/income participants rejected such devices as vague, condescending, and childish and not in keeping with nutrition as a serious subject.

IV. FDA Format Study

In January 1991 FDA completed an experimental study of five nutrition label formats based on a geographically dispersed sample of 1,460 respondents representative of the U.S. population of adult primary food shoppers. From this study, FDA prepared its report (Ref. 6).

A. Formats Tested

FDA tested five nutrition label formats in use situations that required food shoppers to identify nutrient differences between food products and to make judgments about relative nutritional quality of the foods. The five formats selected were composites derived from FDA experience with the existing label, from suggestions received from public hearings, consumer groups, nutrition educators, an agency-sponsored label development contract with a professional design firm (Ref. 7), the recent FDA focus group discussion sessions (Ref. 5), and label research by other groups (Refs. 8 and 9). A sample of each format included in the FDA Study may be found in the appendix to this notice. Table 1 provides a brief description of each format used in the study.

TABLE 1

Format	Description
CONTROL	Tabular declarations of the proposed nine mandatory nutrients and food components in grams and milligrams and four vitamins and minerals as a percent of daily value.
CONTROL/DRV	In addition to the tabular content of the CONTROL label, the DRV's for fat, saturated fat, cholesterol, sodium, carbohydrate, and fiber were included.
ADJECTIVAL	In addition to the CONTROL/DRV format information, a descriptive adjective (high, medium, or low) in boldface print was added for each nutrient.
NUMERIC	In addition to the CONTROL format information, a separate table headed "Nutrition Profile" was added which included DRV's for six nutrients and, for all nutrients, a declaration of the percent of DRV or RDI under a common heading "Percent of Daily Value."
BAR GRAPH	Presented the same numeric information as for the NUMERIC format and additionally provided a bar graph.

B. Evaluation Criteria

The FDA Study evaluated formats on nine different criteria, reflecting three functional aspects of use of nutrition label information. Four criteria (objective performance measures) were based on the ability of respondents to process label information in search tasks involving the comparison of food products differing in nutrient content. Three criteria (perceived performance measures) were based on respondents' subjective evaluations of the formats in the context of the search tasks. Two criteria (preference measures) were based on respondents' preferences for the formats, independent of and unconstrained by the search tasks. In the case of preference measures, two forced choice selections were made by the respondents. Table 2 provides a brief description of the nine criteria.

TABLE 2

1. Objective performance measures	
a. Accuracy	Number of correct identifications of nutrient differences between pairs of foods.
b. False positives	Number of perceptions of nutrient differences where in fact none exist.
c. Task time	Amount of time as a measure of effort required to complete the product comparison task.
d. Nutritional quality judgment	Correct identification of the more nutritious product in a pair.
2. Perceived performance measures	
a. Helpfulness	Rated helpfulness of the format for making food selections.
b. Confidence	Rated self-confidence that major nutrition differences were found.
c. Confusion	Number of respondent comments indicating confusion about some aspect of the formats.
3. Preference measures	
a. Most helpful	The format considered most helpful of the five for food selection and meal planning.
b. Least helpful	The format considered least helpful of the five for food selection and meal planning.

C. Findings and Their Implications

The five formats tested in the FDA study varied in complexity. The simpler CONTROL and CONTROL/DRV formats contained the least amount of information. The more complex NUMERIC and BAR GRAPH formats carried the most information, with a number of the elements of information being fully or partially redundant. The simpler formats performed significantly better on the objective criteria during the search task but, independent of the search task, were considered less helpful because they were seen as providing less information than the more complex formats. The ADJECTIVAL format was considered most helpful and came closer to striking a balance between perceived ease of use and providing enough information. However, objective performance of the ADJECTIVAL format, although better than for NUMERIC and BAR GRAPH, was lower than for CONTROL and CONTROL/DRV.

The focus group findings provided additional insight into the relative effectiveness of the formats. A number of participants had difficulty interpreting bar graphs when using them to compare the levels of nutrients in foods. Some observed that bar graphs were unnecessary if the information on the percent of the DRV was already available in numeric form. Some participants recognized that the tabular numeric format required less effort to interpret when compared with bar graphs. Virtually all participants favored some type of label standard or DRV for macronutrients and other food components associated with chronic disease conditions.

FDA intends to conduct additional research on format alternatives. The agency interprets the research findings as suggestive that bar graphs are not acceptable alternatives, but that variations of numeric and adjectival presentations are worthy of further consideration. FDA will examine approaches to eliminating redundant information without loss of useful information. One possibility is to retain either percentage or absolute declarations for the NUMERIC format, but not both. Another possibility is to replace adjective descriptors in the ADJECTIVAL format with highlighting devices, such as boldface type, in order to facilitate ease of use while preserving accuracy of nutrient comparisons between foods. The agency has also received comments that the nutrition label should provide more diet-related guidance to consumers than was reflected in the formats tested in the first study.

In response to these suggestions, FDA is considering a third possible format arrangement which would classify nutrients according to the dietary guidelines for Americans, by grouping together those nutrients for which dietary intake should be moderated versus those components that should be consumed in adequate amounts. Rough executions of the additional formats are shown in the appendix.

The agency is requesting comments on the FDA study and on additional format research suggested by the findings. FDA encourages persons submitting format suggestions to attempt to remedy the weaknesses of the original test formats through changes that would improve performance on the aforementioned criterion measures or by suggesting other measures of objective performance based on tasks requiring demonstration of consumer ability to use nutrition information in realistic situations.

FDA resources are limited with respect to the additional formats that can be tested. Consequently, the agency will include those formats that, on the basis of judgment an guided by the results of the FDA Study and comments received, it considers to have the highest potential for effective performance on the evaluation criteria.

FDA is requesting the submission of any available consumer research in support of format suggestions. The agency particularly seeks data that measure consumer ability to process nutrition label information in realistic usage situations, such as, but not limited to, comparisons of the nutrient content of different foods.

FDA also is seeking comment on the relative weight the agency should give to consumer preferences, format objective performance characteristics, and label space requirements in reaching a decision about the format that it will propose to standardize nutrition labeling.

V. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Food Processors Association, "Food Labeling and Nutrition: What Americans Want," Washington, DC, 1990.

2. Institute of Medicine—National Academy of Sciences, "Nutrition Labeling: Issues and Directions for the 1990's," Washington, DC, National Academy Press, 1990.

3. The American Dietetic Association, "Nutrition and Health Information on Food Labels," Journal of the American Dietetic Association, 90:583, 1990.

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Consumer Research Institute, Inc., Washington, DC, August 1972.

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Dated: May 13, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

BILLING CODE 4160-01-M

APPENDIX

Formats Tested in FDA Study

CONTROL FORMAT

CONDENSED SOUP

NUTRITION INFORMATION PER SERVING

Serving Size: 4 ounces condensed
1 cup (250g) as prepared

Servings per Container: 2¾

Calories	170
Calories from fat	30
Fat	3 g
Saturated fat	1 g
Cholesterol	5 mg
Sodium	1,000 mg
Carbohydrate	27 g
Fiber	3 g
Protein	9 g

PERCENT OF DAILY VALUE

Vitamin A	†
Vitamin C	2
Calcium	4
Iron	8

†Contains less than 2 percent of the daily value of this nutrient

INGREDIENTS: XXXXXXXXXXXXXXXXXX
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XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
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CONTROL/DRV FORMAT

CONDENSED SOUP

NUTRITION INFORMATION PER SERVING

Serving Size: 4 ounces condensed
1 cup (250g) as prepared
Servings per Container: 2¼

Calories	170	
Calories from fat	30	
	AMOUNT	**DAILY VALUE**
Fat	3 g	75 g or less*
Saturated fat	1 g	25 g or less*
Cholesterol	5 mg	300 mg or less
Sodium	1,000 mg	2,400 mg or less
Carbohydrate	27 g	325 g or more*
Fiber	3 g	25 g
Protein	9 g	

PERCENT OF DAILY VALUE

Vitamin A	†
Vitamin C	2
Calcium	4
Iron	8

*As part of a 2,350 calorie diet
†Contains less than 2 percent of the daily value of this nutrient

INGREDIENTS: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
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ADJECTIVAL FORMAT

CONDENSED SOUP

NUTRITION INFORMATION PER SERVING

Serving Size. 4 ounces condensed
1 cup (250g) as prepared
Servings per container 2¾

Calories	170
Calories from fat	30

	AMOUNT	DAILY VALUE
Fat	MEDIUM (3 g)	75 g or less*
Saturated fat	LOW (1 g)	25 g or less*
Cholesterol	LOW (5 mg)	300 mg or less
Sodium	HIGH (1,000 mg)	2,400 mg or less
Carbohydrate	LOW (27 g)	325 g or more*
Fiber	MEDIUM (3 g)	25 g
Protein	MEDIUM (9 g)	

PERCENT OF DAILY VALUE

Vitamin A	LOW †
Vitamin C	LOW 2
Calcium	LOW 4
Iron	LOW 8

*As part of a 2,350 calorie diet
†Contains less than 2 percent of the daily value of this nutrient

INGREDIENTS: xxx

NUMERIC FORMAT

CONDENSED SOUP

NUTRITION INFORMATION PER SERVING

Serving Size. 4 ounces condensed
1 cup (250g) as prepared
Servings per Container 2¾

Calories	170
Calories from fat	30
	AMOUNT
Fat	3 g
Saturated fat	1 g
Cholesterol	5 mg
Sodium	1,000 mg
Carbohydrate	27 g
Fiber	3 g
Protein	9 g

INGREDIENTS: xxxxxxxxxxxxxxxxxxx
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NUTRITION PROFILE

PERCENT OF DAILY VALUE		DAILY VALUE
Fat	4	75 g or less*
Saturated fat	4	25 g or less*
Cholesterol	2	300 mg or less
Sodium	42	2,400 mg or less
Carbohydrate	8	325 g or more*
Fiber	12	25 g
Vitamin A	†	
Vitamin C	2	
Calcium	4	
Iron	8	

*As part of a 2,350 calorie diet
†Contains less than 2 percent of the daily value of this nutrient

BAR GRAPH FORMAT

CONDENSED SOUP

NUTRITION INFORMATION PER SERVING

Serving Size 4 ounces condensed
1 cup (250g) as prepared
Servings per container 2¼

Calories	170
Calories from Fat	30
	AMOUNT
Fat	3 g
Saturated fat	1 g
Cholesterol	5 mg
Sodium	1,000 mg
Carbohydrate	27 g
Fiber	3 g
Protein	9 g

INGREDIENTS: xxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

NUTRITION PROFILE

	DAILY VALUE	PERCENT OF DAILY VALUE (0 10 20 30 40 50)
Fat	75 g or less*	4%
Saturated Fat	25 g or less*	4%
Cholesterol	300 mg or less	2%
Sodium	2,400 mg or less	42%
Carbohydrate	325 g or more*	8%
Fiber	25 g	12%
Vitamin A		†
Vitamin C		2%
Calcium		4%
Iron		8%

*As part of a 2,350 calorie diet
†Contains less than 2 percent of the daily value of this nutrient

Proposed Additional Formats

Frozen Pizza

NUTRITION INFORMATION PER SERVING

Serving Size: 6 oz(168 g) 1/3 Pizza
Servings per Pizza: 3

Calories	330
Calories from fat	110

PERCENT OF DAILY VALUE		Daily value#
Fat	16	75g or less
Saturated Fat	28	25g or less
Cholesterol	10	300mg or less
Sodium	45	2,400mg or less
Carbohydrate	15	325g or more
Fiber	8	25g
Protein	33	
Vitamin A	4	
Vitamin C	25	
Calcium	15	
Iron	15	

#As part of a 2,350 calorie diet

Frozen Pizza
NUTRITION INFORMATION PER SERVING

Serving Size: 6 oz (168g) 1/3 Pizza
Servings per pizza: 3

Calories	330
Calories from fat	110

CHOOSE A DIET LOW IN:		DAILY VALUE #
Fat	12g	75g or less
Saturated Fat	7g	25g or less
Cholesterol	30mg	300mg or less
Sodium	1080mg	2,400mg or less
CHOOSE A DIET WITH MORE:		
Carbohydrates	49g	325g or more
Fiber	2g	25g

#As part of a 2,350 calorie diet

Percent of Daily Value	
Protein	33
Vitamin A	4
Vitamin C	25
Calcium	15
Iron	15

Breakfast Cereal
NUTRITION INFORMATION PER SERVING

Serving Size: 1 oz. (28g) 1/2 cup
Servings per container: 17

	With 1/2 cup Vit A&D Fortified Skim Milk	Daily value#
Calories	110	
Calories from fat	10	
FAT	**1g***	75g or less
SATURATED FAT	**0g***	25g or less
CHOLESTEROL	**0mg***	300mg or less
Sodium	250mg	2,400mg or less
Carbohydrate	30g	325g or more
FIBER	**10g****	25g
Protein	6g	

As part of a 2,350 calorie diet

Percent of Daily Value	
Vitamin A	4
Vitamin C	25
Calcium	15
Iron	15

Meets dietary recommendations and FDA definitions as:
*Low or reduced in amount per serving
**High in amount per serving

[FR Doc. 91-11845 Filed 5-17-91; 8:45 am]
BILLING CODE 4160-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Program Announcement for Scholarships for the Undergraduate Education of Professional Nurses Grant Program

The Health Resources and Services Administration announces that applications will be accepted for the Fiscal Year (FY) 1991 Scholarships for the Undergraduate Education of Professional Nurses (SUEPN) Grant Program under the authority of section 843 of the Public Health Service Act, as added by Public Law 100–607.

Approximately $4,500,000 is available in FY 1991 for competing awards. An estimated 200 schools will receive grant awards averaging $22,500. In FY 1990, $2,600,000 was awarded to 685 students, for an average award of $3,795. It is estimated that 1,047 scholarships will be made in FY 1991, averaging $4,300 per award. Of the $4,500,000 available in FY 1991, approximately $1,720,000 is projected to fund 401 continuing students who were previous scholarship recipients. Approximately $2,780,000 will be available to fund 646 new students. Continuation of scholarship awards will be based on funding availability for FY 1992. The period of fund availability will be for each academic year, and a recipient must meet a statutory service obligation as indicated below.

Purpose

The SUEPN Grant Program is designed to provide financial assistance to individuals who are enrolled or accepted for enrollment as undergraduate nursing students in diploma, associate, or baccalaureate degree programs or in programs of nursing education leading to first degrees in professional nursing and who are in financial need with respect to attending these schools. A scholarship recipient must agree to serve full-time upon graduation as a registered nurse for a period of not less than two years in an Indian Health Service health center, or a Native Hawaiian health center, or a public hospital, or a migrant health center, or a community health center, or a nursing facility, or a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses.

In the **Federal Register** of May 25, 1990 (55 FR 21653) the following categories were designated as facilities meeting the criterion of "health facility having a critical shortage of nurses" for purposes of this program:

(a) All rural hospitals, as classified by the Medicare or Medicaid programs;

(b) All hospitals classified as "disproportionate share" hospitals. "Disproportionate share" hospitals are those that serve a significantly disproportionate number of low-income patients, as determined by the Medicare or Medicaid Programs;

(c) Home health agencies approved for Medicare and Medicaid reimbursement;

(d) State and local health departments;

(e) Indian Health Service hospitals and other Indian Health Service facilities approved for Medicare and Medicaid reimbursement;

(f) Veterans hospitals; and

(g) Military health care facilities of the Department of Defense.

These categories are in addition to the eligible service sites specified in the statute. HRSA plans to review the categories on a periodic basis to determine whether modifications for purposes of new scholarship recipients should be made to meet changing critical needs for nursing services.

Eligible Grant Applicants

To be eligible for a grant, an applicant must be a public or private nonprofit school which is accredited for the training of professional nurses and is located in a State. The grantee in turn awards scholarships to students who are obligated to serve.

National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Health People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238.)

Funding Preference

In FY 1989 the following funding preference was established in the award of SUEPN grants after public comments were received. This preference was also applied in FY 1990 and is being extended for FY 1991. Preference will be given to applicants whose average enrollment of underrepresented minority students (i.e., Black, Hispanic, American Indian, Alaskan Native, Native Hawaiian, Asian or Pacific Islander), for the past three years exceeds 16.4 percent, the national average enrollment of underrepresented minorities in undergraduate nursing programs for the 1989–90 school year.

As a component of the final FY 1989 and FY 1990 competing SUEPN notices, it was also announced that preference in the awarding of future scholarships would be given to grantees with previous recipients still enrolled. This is to allow recipients to continue their education. In FY 1991, preference is being given to those previous grantees whose student recipients are still enrolled and otherwise meet program requirements. No funds are proposed for this program in the President's Budget for FY 1992. However, it is proposed, should appropriations be made available, that preference in awarding future grants continue to be given to grantees with previous recipients still enrolled. These applicants would need to compete for funds for new recipients.

Eligible Students

To be eligible for a scholarship an individual must:

(1) Be enrolled or accepted for enrollment as a full-time nursing student in a program leading to a degree or diploma, which prepares individuals to qualify for licensure to practice as a registered/professional nurse in a State;

(2) Be in financial need with respect to attending such nursing school;

(3) Be a resident of the United States and either a U.S. citizen, a U.S. national, an alien lawfully admitted for permanent residence in the U.S., a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Trust Territory of the Pacific Islands, Republic of Palau, or a citizen of the Republic of the Marshall Islands or the Federated States of Micronesia; and

(4) Sign the contract prescribed by the Secretary setting forth terms and conditions of the scholarship, including an agreement to serve as a full-time registered nurse upon graduation for a period of not less than two years in an Indian Health Service health center, or a Native Hawaiian health center, or a public hospital, or a migrant health center, or a community health center, or a nursing facility, or in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses as indicated in the Purpose section of this notice.

Statutory Requirements

In accordance with the statute, the Department will require schools:

(1) To give preference in awarding scholarships to individuals from disadvantaged backgrounds as

determined in accordance with criteria prescribed by the Secretary under section 827(a) of the Act (formerly section 820(a)(1)). These criteria, as set forth in regulations at 42 CFR 57.1905(b) are as follows:

(a) The individual comes from an environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a school of nursing; or

(b) The individual comes from a family with an annual income below a level based on low-income thresholds by family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and which have been multiplied by a factor for adaptation to this program (These income levels are included below);

(2) To assure that a scholarship provided for full-time attendance will not, for any year of such attendance, exceed the amount of the tuition and any fees for the year involved; and

(3) To require scholarship recipients to sign a contract.

The following income figures determine what constitutes a low income family for purposes of the SUEPN Program for FY 1991.

Size of parents family [1]	Income level [2]
1	$8,800
2	11,400
3	13,500
4	17,300
5	20,400
6 or more	23,000

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to the nearest $100. Adjusted gross income for calendar year 1990.

Application Deadline

One grant cycle will be held annually for the SUEPN Program. To receive consideration for FY 1991 funds, applications must meet the deadline of July 8, 1991.

Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Postmarked on or before the deadline date and received in time for submission for review. A legible dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

The application form and instructions are being submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. Application materials will be available when OMB approval is received.

Requests for application materials and requests for technical assistance and information should be directed to:

Student and Institutional Support Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–34, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–4776.

Completed applications should be returned to the Division of Student Assistance at the above address.

The Scholarships for the Undergraduate Education of Professional Nurses Grant program is listed at 93.182 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented by 45 CFR part 100).

Dated: April 4, 1991.

John H. Kelso,

Deputy Administrator.

[FR Doc. 91–11906 Filed 5–17–91; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1991.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: June 22–25, 1991, 4 p.m.–6 p.m.

Place: Hyatt Regency Los Angeles Hotel, 711 South Hope, Los Angeles, California 90017.

The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The agenda will include a Bureau and division update, Scholarship and Loan Repayment Programs and National Health Service Corps placement activities. The meeting will begin on Saturday at 4 p.m. and adjourn at 6 p.m. On Sunday, the business meeting will begin at 8:30 a.m. and adjourn at 5 p.m. The Council will leave the hotel via bus at 8 a.m. on Monday to make site visits to the Watts Health Foundation, the White Memorial Medical Center and the Arroya Vista Family Health Center in Los Angeles. The Council will continue their business meeting on Tuesday at 8:30 a.m. and adjourn at 2 p.m.

The meeting is open to the public, however, no transportation will be provided to the site visits.

Anyone requiring information regarding the subject Council should contact Anna Mae Voigt, National Advisory Council on the National Health Service Corps, room 7A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1470.

Agenda items are subject to change as priorities dictate.

Dated: May 14, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–11841 Filed 5–17–91; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1991.

Name: Statistical Review Committee of the Advisory Commission on Childhood Vaccines.

Date and Time: June 19, 1991, 1 a.m.–5 p.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: This Committee will review statistics from all sources (the Compensation System, Vaccine Adverse Events Reporting System (VAERS), the U.S. Claims Court, etc.) that can give any reason for any alterations (additions, subtractions, or revisions) in the Vaccine Injury Table. The Committee will consider any applications for inclusion of additional vaccines and associated events to the table and make recommendations on these to the Commission. All recommendations by the Committee will be considered by the full Commission and, if accepted, will be forwarded to the Secretary. This Committee will also be the first line of study for all outside studies and literature reports with subjects affecting the Vaccine Injury Table.

Agenda: The Committee will discuss: (1) Preliminary review of statistics, (2) new vaccine applications, (3) criteria setting for injury table, (4) analysis of types of claims receiving payouts, and (5) CMV vaccine application from the University of Pennsylvania.

*Name:*Accounting Review Committee of the Advisory Commission on Childhood Vaccines.

Date and Time: June 19, 1991, 1 p.m.–5 p.m.

Place: Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Committee reviews quarterly with the administrative staff, the financing of the Vaccine Injury Compensation Trust Fund, the output of funds resulting from each vaccine and each adverse event, and the relationship of each vaccine and each adverse event to the rate of depletion of the Trust Fund. If these studies justify any increase or any decrease of surtax for each vaccine, these recommendations can be made to the full commission and if accepted, can be forwarded to the Secretary.

Agenda: The Committee will discuss: (1) Preliminary review of Trust Fund and all finances, (2) Trust Fund countdown, (3) review of Treasury correcting adjustment of 25% of surtax and recommendation.

Name: Advisory Commission on Childhood Vaccines.

Date and Time: June 20, 1991, 9 a.m.–5 p.m.

Place: Conference Room G & H, Parklawn Building, 56 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: Agenda items for the full commission will include, but not be limited to: the routine Program reports, reports from the National Vaccine Program and the National Vaccine Advisory Committee, a report from the Actuarial Firm regarding the results of the analysis of the retrospective cases, a presentation from a representative of the Department of Treasury concerning the Trust Fund correcting adjustment, Commission vote on policy paper; and reports from the ACCV committees of the previous day.

Public comment will be permitted at the end of the second day, June 20. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation, by June 7 to Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Health Resources and Services Administration, room 7–02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room G & H before 10 a.m., June 20. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Commission should contact Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, room 7–02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Agenda Items are subject to change as priorities dictate.

Dated: May 14, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–11842 Filed 5–17–91; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–91–3163; FR–2812–N–02]

National Manufactured Home Advisory Council—Request for Nominations; Notice of Extension

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Request for nominations; notice of extension.

SUMMARY: On October 25, 1990, the Department published a notice in the **Federal Register** giving the public an opportunity to nominate persons for appointments to the National Manufactured Home Advisory Council. The published notice requested that nominations be submitted in writing to the Assistant Secretary for Housing—Federal Housing Commissioner (Attention: Office of Manufactured Housing and Regulatory Functions) on or before November 26, 1990. The purpose of this document is to extend an open invitation to interested persons to submit nominations until actual selection of the Advisory Council members.

EFFECTIVE DATE: May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Henry Omson, Coordinator, National Manufactured Home Advisory Council, Office of Manufactured Housing and Regulatory Functions, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street, SW., room 6270, Washington, DC 20410, Telephone: (202) 708–0798. The TDD number is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On October 25, 1990 (56 FR 43040), the Department published a notice in the **Federal Register** providing an opportunity to nominate, until November 26, 1990, persons for appointments to the National Manufactured Home Advisory Council. The twenty-four member Council was created under the National Manufactured Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.* (The Act) to provide the Department with an opportunity to obtain balanced views on manufactured home standards issues. The Council consists of representatives from consumer, government and industry organizations or agencies, and is consulted to the extent feasible before the Department establishes, amends, or revokes manufactured home construction and safety standards.

The Department has recognized that the 30 days provided for nominations in the published notice was too restrictive and has decided to reopen the nominating period until the members of the Advisory Council are actually selected. The Secretary will appoint a total of 24 new members to the Council, selecting eight members from each of the three groups that make up the Council. Nominations may be made for representatives of consumer, industry and government organizations or agencies. Interested persons may nominate themselves.

Accordingly, until selection of a new Advisory Council by the Secretary is announced by publication in the **Federal Register** notice is given that members of the public wishing to nominate persons for appointment to the National Manufactured Home Advisory Council should submit such nominations in writing to the Assistant Secretary for Housing—Federal Housing Commissioner (Attention: Officer of Manufactured Housing and Regulatory Functions), Department of Housing and Urban Development, 451 7th Street, SW., room 6270, Washington, DC 20410.

Dated: May 10, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91–11866 Filed 5–17–91; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement (DEIS) for the Proposed Stone Lakes National Wildlife Refuge in South Sacramento County, CA

AGENCY: U.S. Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the draft Environmental Impact Statement on the feasibility of establishing a National Wildlife Refuge on or near Stone Lakes in south Sacramento County, California is available for public review. A proposed action with five alternative plans are being considered. Comments and suggestions are requested.

The Stone Lakes area represents remnants of a variety of native plant communities such as willow, cottonwood, and oak riparian forests. Seasonally flooded wetlands and vernal pools occur throughout the study area. The area provides an important component of the Pacific Flyway and provides wintering, nesting, and feeding habitat for 23 species of waterfowl. In addition, the area provides habitat for several species of flora and fauna that are candidates for the endangered species list. The location of Stone Lakes to urban populations provides opportunities for environmental education and interpretation. Key issues addressed in this DEIS are identified as the effects that implementation of the proposed action would have on (1) water quality, supply and availability, (2) wildlife habitats and populations, (3) existing and future agricultural resources and farming practices, (4) land use, and (5) economic and fiscal resources.

DATES: Written comments should be received by August 1, 1991.

ADDRESS WRITTEN COMMENTS TO: Mr. Peter J. Jerome, U.S. Fish and Wildlife Service, 2233 Watt Avenue, suite 375, Sacramento, California 95825–0509, Telephone: (916) 978–4420.

Copies of the Executive Summary of the DEIS have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies. Copies of the full DEIS are available for review at several locations within the Sacramento metropolitan area including most local public libraries.

PUBLIC WORKSHOPS AND PUBLIC HEARINGS: Public workshops and a public hearing will be scheduled during the comment period.

SUPPLEMENTARY INFORMATION: The Stone Lakes project area is a remnant of what was once a vast complex of permanently and seasonally flooded wetlands flanked by riparian forest and prairie. The native plant communities have been greatly changed by the effects of flood control and agricultural operations. Remnants of a variety of native plant communities still exist, particularly in the riparian scrub-shrub zones. The needlegrass grasslands that were native to many dryer sites may now be locally extinct.

Perennial lakes, sloughs, and streams cover approximately 1,500 acres. Additionally, there are thousands of acres of seasonally flooded wetlands and vernal pools. Emergent vegetation, primarily cattails and hardstem bulrush, is present around the edges of the larger lakes and widespread in the sloughs and seasonally flooded wetlands.

The area provides an important link in the Pacific Flyway. The proposed refuge provides nesting, migration, and wintering habitat for 23 species of waterfowl. Suitable habitat for more than 30 state and federal candidate or listed species occurs within the project area, including Valley elderberry longhorn beetles, giant garter snakes, Swainson's hawks, and Aleutian Canada geese.

In little more than a century, wetlands in California have diminished approximately four percent of their historic acreage. Wetland losses have occurred as a direct result of the agricultural, residential, commercial, and industrial development of California lands. The specific threats to the project area come from various quarters. Agricultural conversions to vineyards as well as commercial and residential development of large portions of the project area is imminent. The Sacramento metropolitan area is one of the fastest growing areas within California.

Five alternatives and a preferred action are presented in the DEIS. Each alternative description includes refuge acquisition boundaries, acquisition programs and habitat restoration objectives. Each alternative is evaluated for its ability to achieve wildlife and resource goals for the proposed Stone Lakes National Wildlife Refuge. Those goals include the protection of a diverse assemblage of Central Valley habitats and species, protecting and enhancing habitats for threatened and endangered species, protecting and enhancing wetland habitats and adjacent agricultural lands for waterfowl, creating linkages to reduce habitat fragmentation, coordinating land acquisition and management activities with other agency and private refuge managers, providing for public environmental education and wildlife oriented public use, and managing riverine wetlands and adjacent floodplains consistent with flood control objectives.

The U.S. Fish and Wildlife Preferred Alternative, C1 recommends that approximately 8,500 acres be acquired in fee title, 3,000 acres be acquired through conservation easements, primarily on farmland to benefit wildlife, and 6,500 acres through cooperative agreements with land management agencies on existing public lands. Alternative C1 would seek to preserve 5,700 acres of existing natural habitats, restore 9,000 acres to natural habitat, and enhance 4,000 acres of agricultural lands to benefit wildlife by modifying current management practices. A diversity existing natural and restored habitats will include permanent wetlands, seasonal wetlands, riparian and oak woodlands, perennial grasslands, and vernal pools.

The remaining alternatives represent various boundary configurations and programs ranging from approximately 7,500 acres to 74,000 acres. The No-Action Alternative (Alternative A) represents the areas that would remain in public ownership without a national wildlife refuge. Alternative B reflects the minimum land acquisition alternative. The original proposed action is defined by Alternative C. Alternatives D and E represent refuge configurations that reflect expanded acquisition areas which include the Cosumnes River floodplain.

The DEIS examines the environmental consequences associated with each alternative. Impacts related to the conversion of agricultural land to natural habitats include the loss of agricultural production, increased risk of drainage and seepage problems from created wetlands to existing fields, crop depredation by wildlife, increased pest management problems, and the potential for increased trespass. Fiscal impacts related to refuge establishment include changes in economic activity, changes in economic development opportunities, reductions in the property tax base, and

increased riskiness of agricultural investments.

Dated: May 6, 1991.

William E. Martin,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 91–11324 Filed 5–17–91; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 4, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 4, 1991.

Beth L. Savage,

Acting Chief of Registration, National Register.

ARKANSAS

Carroll County

Winona Church and School, Rockhouse Rd., Winona Springs, 91000688

Chicot County

Carlton House, 434 S. Lakeshore Dr., Lake Village, 91000692

Clark County

Bank of Amity, Old, NW corner of town square, Amity, 91000690

Grant County

Oak Grove School, US 270, 6 mi. E of Sheridan, Oak Grove Community, 91000693

Hempstead County

Foster House, 420 N. Spruce St., Hope, 91000683

Jefferson County

Gibson—Burnham House, 1326 Cherry St., Pine Bluff, 91000694

Polk County

Ebenezer Monument, Jct. of 9th and Church Sts., Mena, 91000689

Mena Kansas City—Southern Depot, W of jct. of Pickering Ave. and Mena St., Mena, 91000685

National Guard Armory, Jct. of DeQueen and Maple Sts., Mena, 91000682

Old Post Office, 520 N. Mena St., Mena, 91000686

St. Agnes Catholic Church, Jct. of 8th and Walnut Sts., Mena, 91000696

Saline County

Pleasant Hill Methodist Church, Jct. of Lawson and Lake Norrell Rds., Pleasant Hill, 91000684

Stone County

Bonds House, Co. Rd. 2 E of Meadow Cr., Fox vicinity, 91000691

ILLINOIS

Will County

Upper Bluff Historic District, Roughly bounded by Taylor, Center and Campbell Sts. and Raynor Ave., Joliet, 91000687

MASSACHUSETTS

Bristol County

Hixville Village Historic District, Jct. of Old Fall River, Hixville and N. Hixville Rds., Dartmouth, 91000698

Worcester County

District Five Schoolhouse, School St. between Boyden and 1st Sts., Webster, 91000697

Hayward Mill, Jct. of North and Cook Sts., on the Munford R., Douglas, 91000695

[FR Doc. 91–11904 Filed 5–17–91; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation and address of principal office: Scrivner, Inc., an Oklahoma corporation, Corporate Office, 5701 N. Shartel, Post Office Box 26030, Oklahoma City, Oklahoma 73126.

2. Wholly-owned subsidiaries which will participate in the operation and State(s) of incorporation:

Boogart, Inc., a Kansas corporation.
Pay Cash Grocery Company, Inc., a Tennessee corporation.
Scrivner of North Carolina, Inc., formerly Quinn Wholesale Company, a North Carolina corporation.
S.M. Flickinger Co., Inc., a New York corporation.
Scrivner of Illinois formerly Chris Hoerr & Son Co., an Illinois corporation.
Scrivner of Iowa, Inc., formerly Hakes Foods, Inc., an Iowa corporation
Groce Wearden Company, a Texas corporation.

Wholly-owned subsidiaries of S.M. Flickinger Co., Inc. which will participate in the operation and State(s) of incorporation:

Hudson-Thompson, Inc. an Alabama corporation.
Scrivner of Pennsylvania, formerly P.A. & S. Small Company, a Pennsylvania corporation.

B.1. Parent corporation and address of principal office: United Dairy Farmers, Inc, 3955 Montgomery Road, Norwood, Ohio 45212.

2. Wholly owned subsidiary which will participate in the operation and state of incorporation: Prescott Tank Lines, Inc., an Ohio corporation.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–11862 Filed 5–17–91; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–3 (Sub-No. 96X)]

Missouri Pacific Railroad Co.—Abandonment Exemption—in Phillips, Arkansas, and Desha Counties, AR; Exemption

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon a 73.53-mile portion of its Wynne Branch line of railroad between milepost 326.27, near Helena Junction, and milepost 399.8, near Cypress Bend, in Phillips, Arkansas, and Desha Counties, AR.

Applicant 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; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee 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. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 16, 1991 (unless stayed pending reconsideration). Petitions to stay that

do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by May 28, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by June 6, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge Street, room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 22, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 13, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–11861 Filed 5–17–91; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notifications; Phosphoric Acid Joint Venture

Notice is hereby given that, on April 26, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* (the "Act"), Diversey Corporation filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Phosphoric Acid Joint Venture ("Joint Venture") and (2) the nature and objectives of the Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Joint Venture and the general purpose of the Joint Venture are given below.

The parties to the Joint Venture are: A.B.C. Compounding Co., Inc.; A & L Laboratories; Alpha Chemical Services, Inc.; Anderson Chemical Company; Betco Corporation; Canberra Corporation; Candy & Company; Chemical Specialties Manufacturers Association; Devere Chemical Co., Inc.; Diversey Corporation; DuBois Chemical; Ecolab, Inc.; Alex C. Fergusson, Inc.; Flo-Kem, Inc.; H.B. Fuller Company, Monarch Div.; Hydrite Chemical Co.; Kay Chemical Company; Lonza, Inc.; L & F Products Group; Merit Chemical, Inc.; Morgan-Gallacher, Inc.; NCH Corporation; Nyco Products Company; Oakite Products, Inc.; Rochester Midland; Scott/Sani-Fresh International; Shepard Brothers; Spartan Chemical Company; Stearns Packaging Company; Stepan Company; Texo Corporation; Theochem Laboratories, Inc.; Turco-Purex Industrial Corporation; Van Waters & Rogers, Inc.; Wayne Chemical, Inc.; Webco Chemical; WestAgro, Inc.; and Zep Manufacturing Company.

The objective of the Joint Venture is to sponsor and conduct toxicological research on the chemical known as phosphoric acid and to submit the results of this research to the U.S. Environmental Protection Agency ("EPA") in response to the Data Call-In for List D issued by the EPA in January 1990.

The parties to the Joint Venture intend to file additional written notification disclosing all changes in membership to this Joint Venture.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–11900 Filed 5–17–91; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Notifications; Pyrethrin Joint Research Venture

Notice is hereby given that, on April 24, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants of Pyrethrin Joint Research Venture have filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of one party to and withdrawal of one party from the Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Joint Venture advised that Commonwealth Ind. Gases, Ltd. has become a party to the Joint Venture and Penick–BIO–UCLAF Corporation (Roussel Bio Corporation) has withdrawn from the Joint Venture.

No other changes have been made in either the membership or planned activity of the Joint Venture.

On March 18, 1986, a notice was published in the **Federal Register**, Vol. 51, No. 52, page 9286, describing the Joint Venture and identifying the participants of this Joint Venture. The objective of the Pyrethrin Joint Research Venture is to sponsor and conduct toxicological research on the pesticide ingredient Pyrethrin and to submit the results to the U.S. Environmental Protection Agency ("EPA") in connection with the Pyrethrin Date Call-In.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 91–11901 Filed 5–17–91; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act

(Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Catherine Wolhowe, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4) and (6) of section 552b of title 5, United States Code.

1. *Date:* June 3, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Texts/Publication Subvention applications in Anthropology, Philosophy and Religion, submitted to the Division of Research Programs, for projects beginning after October 1, 1991.

2. *Date:* June 3, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 316–2.
Program: This meeting will review applications to direct Summer Seminars for School Teachers in Foreign Literature and Culture, submitted to the Division of Fellowships and Seminars, for projects beginning after May, 1992.

3. *Date:* June 3, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Biennial applications submitted by state humanities councils to the Division of State Programs, for projects beginning after November, 1991.

4. *Date:* June 4, 1991.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after December 1, 1991.

5. *Date:* June 4, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 316–2.
Program: This meeting will review applications to direct Summer Seminars for School Teachers in History, Politics and Society, submitted to the Division of Fellowships and Seminars, for projects beginning after May, 1992.

6. *Date:* June 6, 1991.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after December 1, 1991.

7. *Date:* June 7, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Biennial applications submitted by state humanities councils to the Division of State Programs, submitted to the Division of State Programs, for projects beginning after November, 1991.

8. *Date:* June 10, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Biennial applications submitted by state humanities councils to the Division of State Programs, for projects beginning after November, 1991.

9. *Date:* June 11, 1991.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after December 1, 1991.

10. *Date:* June 13, 1991.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications in Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after December 1, 1991.

Catherine Wolhowe,
Advisory Committee Management Officer.
[FR Doc. 91–11885 Filed 5–17–91; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Division of Networking and Communications Research and Infrastructure Meeting

The National Science Foundation (NSF), in cooperation with the agencies that are part of the Federal Networking Council, has scheduled an open meeting to receive comments on the proposed solicitation for a Network Information Center (NIC) to include Internet Registration Services, Directory Services, and Information Services. These services are intended to provide support for the domestic portion of the Internet and its components NIC's and are intended to continue as the Internet evolves to the Interim NREN.

Dates: June 10, 1991.
Time: Noon–4 p.m.
Place: Room 1242, National Science Foundation, 1800 G St., NW., Washington, DC 20550.
Type of Meeting: Open.
Agenda: Receive comments on proposed Network Information Center (NIC) solicitation.
Contact: Brenda Williams, The Division of Networking and Communications Research and Infrastructure Program, National Science Foundation, room 416, Washington, DC 20550 (202 357–9717).

Dated: May 14, 1991.

Stephen S. Wolff,
Division Director.
[FR Doc. 91–11822 Filed 5–17–91; 8:45 am]
BILLING CODE 7555–01–M

Advisory Committee for the Division of Networking and Communications Research and Infrastructure; Committee of Visitors; Notice of Meeting

The National Science Foundation announces the following meeting.

Name: Committee of Visitors Review of the NSFNET Program.
Date & Time: June 4 and 5, 1991; 8:30 a.m. to 5 p.m. each day.
Place: Room 417, 1800 G Street, NW., Washington, DC.
Type of Meeting: Closed.
Contact Person: Daniel Vanbelleghem, Associate Program Director, room 416, National Science Foundation, Washington, DC 20550, (202) 357–9717.
Purpose of Meeting: To provide oversight review of the NSFNET Program within the Division of Networking and Communications Research and Infrastructure.
Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.
Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 52b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: May 14, 1991.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 91–11821 Filed 5–17–91; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment would revise the Technical Specifications deleting the requirement of section 3.15.A, table 3.15.1, that a liquid effluent radiation monitor be available during liquid effluent discharges from the radwaste processing facilities.

Prior to 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.

By June 19, 1991, 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 petitions 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 20555 and at the Local Public Document Room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. 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 petiton 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 fifteen (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 fifteen (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 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 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 facts. 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.

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 20555, by the above date. Where petitions are filed during the last ten (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) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: 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 Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, 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).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 29, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, Reference Department, 101

Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 13th day of May 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–11887 Filed 5–17–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment would revise Technical Specification Table 4.15.2, Items 2.a and 3.a, to modify Channel Functional Test requirements for the Main Stack Monitoring System (Stack RAGEMS) and Turbine Building Ventilation Monitoring System (Turbine RAGEMS) radioactive noble gas monitors currently existing in the Technical Specifications. These two systems are installed to comply with NUREG–0737, section III.F.1, Items 1 and 2, to address the equipment which was installed prior to Operating Cycle 12.

Prior to 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.

By June 19, 1991, 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 petitions 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 20555 and at the Local Public Document Room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. 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 fifteen (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 fifteen (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.

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. 20555, by the above date. Where petitions are filed during the last ten (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) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: 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 Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC. 20037, 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 2.174(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public

comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 25, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. 20555, and at the Local Public Document Room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 13th day of May 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–11888 Filed 5–17–91; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Meeting

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of Public Law 100–203 of the Nuclear Waste Policy Amendments Act of 1987, the Board's Panel on Hydrogeology and Geochemistry and the Panel on Structural Geology and Geoengineering will hold a joint meeting on June 25–27, 1991, on field testing at the proposed site for a high-level radioactive waste repository at Yucca Mountain, Nevada. This testing will play an integral part in the Department of Energy's (DOE) site characterization, a planned program aimed at determining whether this site is suitable for the development of the repository. The meeting will cover surface-based and other testing in the areas of hydrogeology, geochemistry, and rock mechanics. The meeting will run from 8:30 a.m.–5 p.m. on June 25–26, and from 8:30 a.m.–12:30 p.m. on June 27, at The Registry Hotel, 3203 Quebec Street, Denver, Colorado 80207; (303) 321–3333.

On Tuesday, June 25, panel members will hear the DOE and its consultants, the U.S. Geological Survey (USGS) and Lawrence Livermore National Laboratory discuss the conceptual framework for testing in the unsaturated zone (above the water table) and specific tests planned to characterize meteorological phenomena, infiltration, and fluid-flow in the unsaturated zone. Additional discussions will be devoted to gaseous phases, including airflow and possible releases of ^{14}C (carbon 14) and the effect of repository development upon the conduct of testing.

On Wednesday, June 26, representatives from the DOE, the USGS and Los Alamos National Laboratory will continue the briefing on testing in the unsaturated zone with an emphasis on geochemical isotope methods. The majority of the day will be devoted to testing in the saturated zone (below the water table). The conceptual framework for testing in this zone will be presented along with proposed tests of the groundwater flow system on regional and local scales, and hydrochemical tests in the saturated zone. The day will close with a general discussion of proposed hydrogeologic and geochemical testing.

On June 27, discussions will shift to proposed testing in the area of rock mechanics. Presentations will be made by the DOE's consultant in this area, Sandia National Laboratories. The overall framework of these studies will be presented along with discussions of specific planned tests of in-situ thermomechanical and mechanical properties, and design assumptions. At the close of the session, there will be a general discussion of the rock mechanics program.

Members of the public are welcome to attend the meeting as observers. Transcripts of the meeting will be available on a library-loan basis from Victoria Reich, Board librarian, beginning July 18, 1991. For further meeting information, contact Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: May 15, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91–11860 Filed 5–17–91; 8:45 am]

BILLING CODE 6820–AM–M

PRESIDENT'S EDUCATION POLICY ADVISORY COMMITTEE

Meeting

AGENCY: The President's Education Policy Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: The President's Education Policy Advisory Committee was established under Executive Order 12687 and signed by the President of the United States on August 15, 1989.

Tentative Agenda Items: The tentative agenda for the meeting will focus primarily on a discussion of issues and options related to measuring the national education goals and the September 1991 report card to the Nation.

DATES: The meeting is scheduled for Tuesday, May 28, 1991, from 1 to 4 p.m.

ADDRESSES: The meeting will be held at the Old Executive Office Building, room 180, Washington, DC.

Attendance: Please contact Rae Nelson at the White House Office of Policy Development to indicate attendance or for further information. The phone number is (202) 456–7777. For clearance purposes, please call no less than twenty-four hours in advance. Please provide over the phone, your social security number, date of birth, and name as read on your driver's license. When entering the building, you will be required to show picture identification.

Dated: May 10, 1991.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 91–12048 Filed 5–17–91; 8:45 am]

BILLING CODE 31–2701–M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records and modification to an existing system of records.

SUMMARY: The purpose of this document is to publish notice of a new system of records, USPS 130.050, Philately—United States Postal Service Olympic Pen Pal Club, and to amend existing system of records, USPS 130.040, Philately—Philatelic Product Sales and Distribution. The new system is a collection of information provided by children who register to be matched with a pen pal. USPS 130.040 is expanded to include records of U.S. Postal Service Olympic product sales.

DATES: These proposals will become effective without further notice 30 days from the date of this publication, unless comments are received on or before that date which result in a contrary determination, or unless a waiver request of the 60-day period is denied by the Office of Management and Budget.

ADDRESSES: Comments may be mailed to the Records Office, US Postal Service, 475 L'Enfant Plaza SW., Room 8141, Washington, DC 20260–5010, or delivered to room 8141 at the above address between 8:15 a.m. and 4:45 p.m.

Comments received also may be inspected during the above hours in room 8141.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268–5158.

SUPPLEMENTARY INFORMATION: The Postal Service will be maintaining information collected in connection with new philatelic initiatives that pertain to its official sponsorship of the Winter and Summer 1992 Olympic Games. Part 1 of this notice amends USPS 130.040, Philately—Philatelic Product Sales and Distribution to cover records relating to a merchandising program for the sale of clothing and products bearing the Postal Service and Olympic logos. Part 2 proposes a new system of records, USPS 130.050, Philately—United States Postal Service Olympic Pen Pal Club. This new system will contain identifying information about children who register to be matched with a pen pal.

Part 1—System Modification to USPS 130.040, Philately—Philatelic Product Sales and Distribution

The Postal Service is an official sponsor of the Winter and Summer Olympic Games in 1992. With sponsorship, it is entitled to use the Olympic symbols on products and advertising and is marketing a variety of merchandise bearing postal and Olympic logos. When customers submit orders for this merchandise, order information will be kept for the same purpose that the Postal Service now maintains philatelic product sales information within existing system of records USPS 130.040. Although USPS Olympic-related merchandise to be sold includes items of a philatelic nature that would be covered by the current system description, the system description is being amended to make it clear that like postal products sold under promotion programs are covered also.

Maintenance of these records is not expected to have any effect on individual privacy rights. Personal information collected within the system is limited to that necessary to fill an order for merchandise. This same type of information has been maintained within USPS 130.040 without incident since its origin. The information will be maintained by a Postal Service contractor under contract provisions that require the contractor to maintain the system in accordance with the Privacy Act. In addition to disclosure restrictions imposed by the Privacy Act, the Postal Service is prohibited from releasing lists of postal customers pursuant to the Postal Reorganization Act (39 U.S.C. 412). Under these conditions, an individual's privacy should not be compromised.

Although we do not consider the changes to USPS 130.040 to be substantial in scope, an altered system report as required by subsection (r) of the Privacy Act is being submitted pursuant to paragraph 4b of appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Part 2—Establishment of New System of Records

The Postal Service is organizing a U.S. Postal Service Olympic Pen Pal Club comprised of a membership of children who want to correspond with another child. The club will provide a means for children to exchange letters, trade postage stamps, learn about cultures outside their own, and experience the Olympic Games. Children in the United States will register by filling out forms that collect their name, gender, date of birth, and address. Under a sponsorship agreement, foreign postal administrations participating in the program will collect like information from children registering for the program in their country. The foreign postal administrations will provide that information to the United States Postal Service for use in matching a United States child and a foreign child as pen pals on the basis of like gender and age. Each United States member will receive the name and address of the child with whom he/she is matched under the program; and an official Pen Pal Club membership kit that includes club stationery, a membership card, an instructional comic book of suggested topics to write about, lapel button, and other various items. Birthdate information will also be used to send birthday cards to U.S. participants.

Maintenance of these records is not expected to have any effect on individual privacy rights. Information linked to a personal identifier will be limited to that named above for the purpose of matching pen pals. Although responses to profile questions (for example, do you collect stamps? have books in your home? speak other languages?) will be collected from United States registrants, the information will not be linked to a personal identifier, but will be used for research and market analysis purposes. Information will be kept in a secured environment, with automatic data processing (ADP) physical and administrative security and technical software applied to information on computer media. The information will be maintained by a Postal Service contractor under contract terms that require the contractor to maintain the system in accordance with the Privacy Act and to apply appropriate protections subject to the audit and inspection of the USPS Inspection Service. In addition to disclosure restrictions imposed by the Privacy Act, the Postal Service is prohibited from releasing lists of postal customers pursuant to the Postal Reorganization Act (39 U.S.C. 412). Although foreign postal administrations will be providing lists of registrants within their country, the United States Postal Service will not provide lists of U.S. registrants to foreign postal administrations. Under these conditions, an individual's privacy should not be compromised.

The Privacy Act permits agencies to disclose information without the consent of the individual for "routine uses," that is, for purposes that are compatible with the purposes for which the information is collected. The routine uses proposed for this system meet the compatibility requirement of the Privacy Act because they are necessary in the conduct of Postal Service business. Only five routine uses are applied. Disclosures of the name and address of a child to a matched pen pal and of collected information to the contractor operating the system are necessary to meet the system's purpose; disclosure to a Congressional office from the record of an individual at the record subject's request is permitted by the Act itself; and the potential need for disclosure for law enforcement and litigation purposes is present with regard to all Postal Service records.

A new system report, as required by subsection (r) of the Privacy Act is being submitted pursuant to paragraph 4b of appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985. Because the programs discussed are being implemented with various others related to Postal Service Olympic sponsorship, a waiver of the 60-day advance period, pursuant to OMB Circular A–130 has been requested. If the waiver is granted, and unless comments suggest the need for revisions, it is expected that system of records USPS 130.050 and amended USPS 130.040 will become effective as proposed below upon expiration of the 30-day comment period.

The systems notice for USPS 130.040 was most recently published in the **Federal Register** at 54 FR 43700 on October 26, 1989. It is proposed that USPS 130.040 be amended as shown in

italics and that USPS 130.050 be established as follows:

USPS 130.040

SYSTEM NAME:

Philately—*Postal* Product Sales and Distribution, 130.040.

SYSTEM LOCATION:

Philatelic and Retail Services Department, *Headquarters; Communications Department,* Headquarters; and at a contractor site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who have initiated correspondence by (1) responding to various philatelic *and other USPS sponsored (e.g., Olympic)* product sales promotion programs by submitting order forms, business reply cards, or cut outs from posters and promotional literature, (2) providing postal clerks with name and address information to receive future product announcements, (3) opening subscription accounts for products, or (4) requesting products in unsolicited correspondence, such as letters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customers/subscriber name and account number, address, funds on deposit, remittance type and amount order/product specifications, order history, *credit card payment information;* special lists identifying individuals who have submitted bad checks, and special service customers/ subscribers, and individuals who have registered multiple service complaints; *and customer name with date and amount of claim submitted for merchandise that was defective, not received, etc.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404.

PURPOSE(S):

(1) to operate a subscription service *or services* for customers who remit money for a particular product or products; (2) to maintain a file to send product announcements and sales literature to customers or subscribers; (3) to serve, as a source for statistical data for research and market analysis, billing and inventory data, and mailing basis for product shipment; and (4) to identify discrete groups of customers/ subscribers for better order control and service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H,* and *J listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original typed or handwritten form, or microform, and on magnetic tape or disk and computer printouts.

RETRIEVABILITY:

Customer/subscriber name and number, if assigned.

SAFEGUARDS:

Paper and microform records are maintained in closed filing cabinets under general scrutiny of program personnel. *Information* on magnetic tape and disk is protected by ADP *physical security,* technical software and administrative security or by contractors providing similar protection subject to the audit and inspection of the USPS Inspection Service.

RETENTION AND DISPOSAL:

ADP and microform records are maintained for three years after the individual has failed to make a purchase or has indicated no other interest. ADP records are obliterated after their period of usefulness; microform records are incinerated. Correspondence and other paper documents are retained for 3 years and then destroyed by shredding.

SYSTEM MANAGER(S) ADDRESS:

USPS Headquarters, APMG, Philatelic and Retail Services Department, 475 L Enfant Plaza SW., Washington, DC 20260–6700.

USPS Headquarters, APMG, Communications Department, 475 L Enfant Plaza SW., Washington, DC 20260–3100.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the System Manager above. Inquiries should contain full name and address.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual as is described in *"Categories* of Individuals Covered by the System" above.

USPS 130.050

SYSTEM NAME:

Philately—United States Postal Service Olympic Pen Pal Club, 130.050.

SYSTEM LOCATION:

Office of Olympic Marketing, Communications Department, Headquarters; and at a contractor site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Children, both United States and foreign, who register to join the United States Postal Service Olympic Pen Pal Club.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information identifying Pen Pal Club registrants that includes name, home address, gender, and date of birth; payment information (including credit card); and registrant profile data (without personal identifiers).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404.

PURPOSE(S):

1. To make a computerized matchup of children who register to become pen pals;

2. To maintain a file to send philatelic and Olympic-related promotional and informational materials; and

3. To serve as a source for statistical data for philatelic research and market analysis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records from this system may be disclosed to another Pen Pal Club registrant with whom a record subject has been matched as a pen pal.

2. Records from this system may be disclosed to the Department of Justice or to other counsel representing the Postal Service, or may be disclosed in a proceeding before a court or adjudicative body before which the Postal Service is authorized to appear, when (a) the Postal Service; or (b) any postal employee in his or her official capacity; or (c) any postal employee in his or her individual capacity whom the Department of Justice has agreed to

represent; or (d) the United States when it is determined that the Postal Service is likely to be affected by the litigation, is a party to litigation or has an interest in such litigation, and such records are determined by the Postal Service or its counsel to be arguably relevant to the litigation, provided, however, that in each case, the Postal Service determines that disclosure of the records is a use of the information that is compatible with the purpose for which it was collected.

This routine use specifically contemplates that information may be released in response to relevant discovery and that any manner of response allowed by the rules of the forum may be employed.

3. When the Postal Service becomes aware of an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, or in response to the appropriate agency's request upon a reasonable belief that a violation has occurred, the relevant records may be referred to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

4. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the prompting of that individual.

5. Records or information from this system may be disclosed to an expert, consultant, or other person who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function. This may include disclosure to any person with whom the Postal Service contracts to reproduce, by typing, photocopy or other means, any record for use by Postal Service officials in connection with their official duties or to any person who performs clerical or stenographic functions relating to the official business of the Postal Service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer media storage and paper. Paper records consisting of registrant forms or registrant lists submitted by foreign postal administrations will be kept only until the information is entered into the database.

RETRIEVABILITY:

Club member's name.

SAFEGUARDS:

Hardcopy records are maintained in a secured environment with access limited to those persons who official duties require such access. When entered into the computer, individually identified data is kept separate from profile data used for analysis. Access to automated records is restricted by authorized user identification codes. Information on computer storage media maintained at a contractor site is protected by ADP physical security, technical software, and administrative security subject to the audit and inspection of the USPS Inspection Service.

RETENTION AND DISPOSAL:

ADP records are maintained for two years after the individual has become a member of the Pen Pal Club. After that time, the records are erased. Correspondence and other paper documents are retained for two years and then destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

USPS Headquarters, APMG, Communications Department, L 475 Enfant Plaza SW., Washington, DC 20260–3100.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the System Manager. Inquiries should contain name and address.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURE:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is furnished by record subjects registering for membership in Pen Pal Club and by foreign postal administrations.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91–11848 Filed 5–17–91; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29191; No. SR–BSE–91–2]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Amendment of its Minor Rule Violation Plan

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 April 23, 1991, the Boston Stock Exchange, Inc. ("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 proposes to amend its Minor Rule Violation Plan to provide for the imposition of summary fines for violation of certain specified Exchange floor rules and policies and by revising the List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to section 4 of chapter XVIII ("List") for the imposition of fines by adding the following minor rule and policy violations: [1]

1. Failure to clear the specialist post.
2. Specialist quote maintenance.
3. Failure to adhere to floor security.
4. Damage or abuse of floor facilities and equipment.
5. Floor conduct.
6. Violation of the visitors policy.
7. Possession of an alcoholic beverage on the trading floor during trading hours.
8. Inappropriate attire.
9. Trading floor appearance.
10. Unauthorized disclosure of give-ups.[2]

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[1] The BSE also has requested approval, under rule 19d–1(c)(2), 17 CFR 240.19–1(c)(2), to amend its rule 19d–1 minor rule violation enforcement and reporting plan to include these minor rule and policy violations. See letter from Karen A. Aluise, BSE, to Mary Revell, Branch Chief, Commission, dated April 8, 1991.

[2] On April 23, 1991, the BSE submitted to the Commission an amendment to include the unauthorized disclosure of give-ups [Chapter XV (g)] in its Minor Rule Violation Plan and to amend its rule 19d–1 Reporting Plan to include violations of that rule. The BSE proposes a fine schedule of $1,000 for the initial offense of the rule and $3,500 for subsequent offenses. See letter from Karen A. Aluise, Regulatory Review Specialist, BSE, to Mary Revell, Branch Chief, Commission, dated April 12, 1991.

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

The Exchange's Minor Rule Violation Plan ("Plan"), as embodied in chapter XVIII, section 4 of the BSE's Rules of the Board of Governors, provides that the Exchange may impose a fine, not to exceed $2,500, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.[3]

The purpose of the Plan is to provide for a response to a rule violation when a meaningful sanction is appropriate but when initiation of a full disciplinary proceeding is not suitable because such proceeding would be more costly and onerous than would be warranted given the minor nature of the violation. The Plan provides for an appropriate response to minor violations of certain Exchange rules while preserving the due process rights of the party accused through specified, required procedures.

In the Exchange's initial filing which set forth the provisions and procedures of the Plan, the Exchange indicated that it periodically would amend the list of rules subject to the Plan as the Exchange deemed appropriate. The Exchange now seeks to add the following rules and policies to the List:

1. Failure to clear the specialist post.
2. Specialist quote maintenance.
3. Failure to adhere to floor security.
4. Damage or abuse of floor facilities and equipment.
5. Floor conduct.
6. Violation of the visitors policy.
7. Possession of an alcoholic beverage on the trading floor during trading hours.
8. Inappropriate attire.
9. Trading floor appearance.
10. Unauthorized disclosure of give-ups.

The proposed rule change will advance the objectives of section 6(b)(6) of the Act in that its members and persons associated with its members will be appropriately disciplined for violation of rules where the Exchange has determined that such violation is minor in nature. In accordance with sections 6(b)(7) and 6(d)(1), the Minor Rule Violation Plan provides for a fair disciplinary procedure for the imposition of sanctions.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule will impose any burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, 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 Section. 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-91-2 and should be submitted by June 10, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 14, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11884 Filed 5-17-91; 8:45 am]

BILLING CODE: 8010-01-M

[3] The BSE's Plan for enforceing and reporting minor disciplinary rule violations was approved by the Commission in Securities Exchange Act Release No. 26737 (April 17, 1989), 54 FR 16438-I (April 24, 1989) (File No. SR-BSE-88-2).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reductioin Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth Zaic, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Score Counseling Evaluation.

Form No.: SBA Form 1551.

Frequency: On occasion.

Description of Respondents: Recipients of Score Counseling.

Annual Responses: 6,400.
Annual Burden: 1,067.
Title: Quarterly Guaranty Loan Status Report.
Form No.: 1175
Frequency: Quarterly.
Description of Respondents: SBA Guaranty Lenders.
Annual Responses: 313,959.
Annual Burden: 13,256

Cleo Verbillis,

Acting Chief, Administrative Information Branch.

[FR Doc. 91–11825 Filed 5–17–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2503]

Louisiana (With Contiguous Counties in Arkansas & Mississippi); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 3, 1991, and amendments thereto on May 4, 6, and 8, 1991, I find that the Parishes of Caldwell, Claiborne, East Carroll, Madison, Morehouse, Ouachita, Richland, Union, and West Carroll in the State of Louisiana constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on April 27. Applications for loans for physical damage may be filed until the close of business on July 2, 1991, and for loans for economic injury until the close of business on February 3, 1992 at the address listed below:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155,

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Parishes of Bienville, Catahoula, Franklin, Jackson, LaSalle, Lincoln, Tensas, Webster, and Winn in the State of Louisiana; Ashley, Chicot, Columbia, and Union Counties in the State of Arkansas; and Issaquena, Warren, and Washington Counties in the State of Mississippi may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 250306 and for economic injury the numbers are 731300 for Louisiana; 731400 for Arkansas; and 731500 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 8, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–11827 Filed 5–17–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2497]

Texas; Amendment #1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated April 23, 1991, to the President's major disaster declaration of April 12, to include the counties of Brazoria, Jackson, Victoria, and Willacy in the State of Texas as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on April 5, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Calhoun, Colorado, DeWitt, Fort Bend, Galveston, Goliad, Harris, Kenedy, Lavaca, Matagorda, Refugio, and Wharton in the State of Texas may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physcial damage is June 11, 1991, and for economic injury until the close of business on January 13, 1992.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 2, 1991.

Michael E. Deegan,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–11828 Filed 5–17–91; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/01–0342]

Milk Street Partners, Inc.; License Surrender

Notice is hereby given that Milk Street Partners, Inc., 75 State Street, Boston, MA 02109 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Milk Street Partners, Inc., was licensed by the Small Business Administration on September 17, 1987.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 23, 1991, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 6, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91–11826 Filed 5–17–91; 8:45am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1394]

Shipping Coordinating Committee Council and Associated Bodies; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on June 4, 1991, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. The purpose of the meeting is to finalize preparations for the 66th Session of Council and associated bodies of the International Maritime Organization (IMO) which is scheduled for June 10–14, 1991, at the IMO Headquarters in London. The purpose of the meeting is to discuss the papers received and the draft U.S. positions for the Council.

Among other things, the items of particular interest are:

—Reports of the various IMO Committees.
—Report of the Ad Hoc Working Group on Financial Matters (particularly loss of voting rights and proposals for apportioning member's contributions) and the IMO biennial budget for 1992–1993.
—Report on the outcome of the Conference on International Cooperation on Oil Pollution Preparedness and Response.

—Preparations for the 17th regular session of the IMO Assembly.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Gene F. Hammel, U.S. Coast Guard (G–CI), room 2114, 2100 Second Street, SW., Washington, DC 20593 or by calling (202) 267–2548.

Dated: May 7, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91–11809 Filed 5–17–91; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: Parallel Runway, New Orleans International Airport, New Orleans, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for a north-south parallel runway which would accommodate air carrier traffic at New Orleans International Airport (NOIA), New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Tim Tandy, Airport Environmental Specialist, ASW–611E, Federal Aviation Administration, Southwest Regional Office, 4400 Blue Mound Road, Fort Worth, Texas 76193–0611. Telephone (817) 624–5859 or FTS 734–5859.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the U.S. Army Corps of Engineers (USACE), U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service (USFWS), and New Orleans Aviation Board, will prepare an EIS for a proposed north-south parallel runway which would accommodate air carrier traffic at New Orleans International Airport. The FAA will be the lead agency and the USACE, USEPA, and USFWS will serve as cooperating agencies. The primary components of the proposed action would consist of the following items: (1) 8,000-foot by 150-foot north-south parallel runway; (2) high intensity runway lights; (3) medium intensity approach lighting system with runway alignment indicator lights; (4) 8,000-foot by 75-foot parallel taxiway; (5) medium intensity taxiway lights; and (6) instrument landing system for both ends of the new runway (to include localizer, glide slope, and middle and outer markers).

Since the aviation project would impact a proposed U.S. Army Corps of Engineers hurricane protection levee and rail lines belonging to the Illinois Central and Kansas City Southern Railroads, the EIS will also take into account the interaction of alternative locations and alignments for the runway, hurricane protection levee, and railroads.

The New Orleans Aviation Board intends to request Federal Airport Improvement Program funds for development of the proposed airport improvements.

Known alternatives to the proposed action include no action and various runway locations and alignments. Variables which interact to form additional alternatives are various locations and alignments for the previously mentioned hurricane protection levee and railroads. The proposed new runway was recommended by both the 1980 NOIA Airport Master Plan and the 1990 Strategic Growth Plan for NOIA.

The FAA intends to consult and coordinate with Federal, state, and local agencies which have jurisdiction by law or have special expertise with respect to any environmental impacts associated with the proposed project. Scoping for the EIS will include both an agency scoping meeting and a public scoping meeting concerning the range of actions, alternatives and impacts to be considered. The agency scoping meeting will be held at 9 a.m. on May 21, 1991, in the board room of the New Orleans Aviation Board at New Orleans International Airport. The public scoping meeting will be held at 7 p.m. on May 22, 1991, in Hall B of the Ponchartrain Center, located at 4545 Williams in Kenner, Louisiana. In addition to this notice, a notice will be placed in local newspapers of general circulation announcing the intent to prepare an EIS and the scoping meetings, and soliciting comments on the scope of the study. Those unable to attend the scoping meetings or who prefer not to make oral statements are encouraged to submit written scoping comments to the agency contact listed above.

Issued on: May 6, 1991.

Donald C. Harris,

Acting Manager, Airports System Capacity and Planning Branch.

[FR Doc. 91–11961 Filed 5–16–91; 12:08 pm]

BILLING CODE 4910–13–M

[Summary Notice No. PE–91–20]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 10, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 13, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26533.

Petitioner: Parachute Laboratories, Inc. dba Jump Shack.
Sections of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought: To allow employees, representatives, and other volunteer experimental parachute test jumpers under the direct control of petitioner to make intentional parachute jumps wearing a dual harness, dual pack parachute having at least one main parachute and one approved auxiliary parachute packed in accordance with the requirements of § 105.43(a).

Dispositions of Petitions

Docket No.: 17681.
Petitioner: Kenmore Air Harbor.
Sections of the FAR Affected: 14 CFR 135.103(a)(1).
Description of Relief Sought/ Disposition: To extend Exemption No. 2528, as amended, which allows petitioner to conduct operations under visual flight rules (VFR) outside of controlled airspace, over water, at an altitude below 500 feet.
Grant, March 1, 1991, Exemption No. 2528C.

Docket No.: 20583.
Petitioner: Tenneco, Inc.
Sections of the FAR Affected: 14 CFR 61.58(c)(1).
Description of Relief Sought/ Disposition: To extend Exemption No. 3106, as amended, which allows petitioner's pilots to complete the pilot-in-command 24-month check in an FAA-approved flight simulator.
Grant, January 24, 1991, Exemption No. 3106E.

Docket No.: 20816 and 20817.
Petitioner: Zephyrhills Parachute Center.
Sections of the FAR Affected: 14 CFR 91.307(a)(2), 91.607, and 105.43(a)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 4301, as amended, which allows foreign nationals to participate in petitioner's competitive skydiving events without complying with the parachute equipment and packing requirements. Exemption No. 4301, as amended, also allows carrying of 40 parachutists in the DC-3/C47 aircraft for parachuting activity.
Grant, March 7, 1991, Exemption No. 4301C.

Docket No.: 22451.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.613, 121.619, 121.625.
Description of Relief Sought/ Disposition: To extend Exemption No. 3585F, which allows petitioner and other similarly situated part 121 certificate holders to dispatch airplanes, under instrument flight rules, where conditional language in the remarks section of the weather forecast states that the weather at the destination airport, alternate airport, or both will be below the required weather minimums when the main body of the weather forecast or weather report states that the weather conditions will be at or above the authorized weather minimums.
Grant, October 18, 1990, Exemption No. 3585G.

Docket No.: 22558.
Petitioner: Boeing Commercial Airplane Co.
Sections of the FAR Affected: 14 CFR 47.69(b).
Description of Relief Sought/ Disposition: To extend Exemption No. 3513, which allows operation of aircraft outside the United States using a Dealer's Aircraft Registration Certificate.
Grant, April 16, 1991, Exemption No. 3513H.

Docket No.: 22690.
Petitioner: Boeing Commercial Airplane Co.
Sections of the FAR Affected: 14 CFR 61.57(c)
Description of Relief Sought/ Disposition: To extend Exemption No. 4779, as amended, which permits certain pilots employed by the petitioner to satisfy the general recent flight experience requirements of § 61.57(c) by alternate means.
Grant, April 23, 1991, Exemption No. 4779B.

Docket No.: 23430
Petitioner: Douglas Aircraft Co.
Sections of the FAR Affected: 14 CFR 61.57(c).
Description of Relief Sought/ Disposition: To extend Exemption No. 3754, as amended, which allows certain pilots employed by the petitioner to meet the pilot-in-command landing recency requirements by using a Level B airplane simulator.
Grant, April 26, 1991, Exemption No. 3754D.

Docket No.: 23653.
Petitioner: University of North Dakota.
Sections of the FAR Affected: 14 CFR part 141, appendix D, paragraph 8(c).
Description of Relief Sought/ Disposition: To amend Exemption No. 3825E to allow aviation students allowable credit for more than the present 50-hour limitation.
Denial, April 8, 1991, Exemption No. 5295.

Docket No.: 25628.
Petitioner: Moody Aviation.
Sections of the FAR Affected: 14 CFR 141, appendix A.
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5032, which allows petitioner to graduate a Part 141 student with a "night flying prohibited" limitation on the private pilot certificate. The amendment would remove the stipulation against reducing total flight hours.
Grant, March 29, 1991, Exemption No. 5032A.

Docket No.: 25657.
Petitioner: General Motors Corporation.
Sections of the FAR Affected: 14 CFR 21.181.
Description of Relief Sought/ Disposition: To allow petitioner to operate its Cessna aircraft, model number 650, serial numbers 094, 095, 096, with three deviations from the master minimum equipment list. These deviations include allowing one analog function for the ITT Indicating System (Engine) to be inoperative if the corresponding digital function is operative, allowing comparable requirements for fan speed indicators, and allowing the mechanical indicating system for the main cabin door to be used when the electrical system is malfunctioning.
Denial, October 30, 1990, Exemption No. 5249.

Docket No.: 25827
Petitioner: Ameriflight, Inc.
Sections of the FAR Affected: 14 CFR 135.225 (a), (f), and (g).
Description of Relief Sought/ Disposition: To allow petitioner's pilots to begin instrument approach procedures to airports without an approved weather reporting facility and without the latest weather report indicating that weather conditions are at or above the authorized IFR landing minimums for that airport. In addition, exemption would allow petitioner's pilots to take off in IFR conditions without obtaining the latest airport weather report from an approved weather reporting facility indicating that weather conditions are at or above the authorized IFR takeoff minimums for that airport.
Denial, September 17, 1990, Exemption No. 5238.

Docket No.: 25862.
Petitioner: Cessna Aircraft Co.
Sections of the FAR Affected: 14 CFR 47.69(b).
Description of Relief Sought/ Disposition: To extend Exemption No. 5042, which allows operation of aircraft outside the United States

using a Dealer's Aircraft Registration Certificate.
Grant, April 16, 1991, Exemption No. 5042A.

Docket No.: 26163
Petitioner: USAir, Inc.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (d)(2) and (d)(3); 61.67(d)(2); 61.157 (d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H.
Description of Relief Sought/ Disposition: To allow petitioner to use FAA-approved simulators to meet certain training and testing requirements.
Grant, March 8, 1990, Exemption No. 5158.

Docket No.: 26223.
Petitioner: Airbus Service Company/ Training Center, Inc.
Sections of the FAR Affected: 14 CFR 121.411; 121.413; and part 121, appendix H.
Description of Relief Sought/ Disposition: To allow petitioner to use certain highly qualified instructor pilots and, if appropriate, flight engineer instructors, trained by petitioner, to train the initial cadre of pilots and, if appropriate, flight engineers of part 121 certificate holders. In addition, the exemption, if granted, would allow the petitioner to train part 121 certificate holders' airmen in initial, transition, upgrade, differences, and recurrent training in an approved simulator and in turbojet-powered airplanes manufactured by petitioner without the instruction meeting all of the applicable training requirements of subpart N and the employment requirements of appendix H of part 121 and without petitioner holding an air carrier operating certificate.
Grant, April 25, 1991, Exemption No. 5302.

Docket No.: 26340.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.391(d) and 121.311(f).
Description of Relief Sought/ Disposition: To extend Exemption No. 4298, as amended, which allows required flight attendant(s) to be located at the midcabin flight attendant station during takeoff and landing on B–767 aircraft operated by petitioner's member airlines and other similarly situated part 121 certificate holders who my apply for approval for their Principal Operations Inspectors.
Grant, March 8, 1990, Exemption No. 4298D.

Docket No.: 26374.
Petitioner: Corsair, Inc.
Sections of the FAR Affected: 14 CFR 36.7(d)(2) and 91.805.
Description of Relief Sought/ Disposition: To allow petitioner to transport a Boeing 727 freighter from Miami International Airport to Brazil where the aircraft will be leased for 4 years to be used exclusively in foreign commerce.
Denial, March 11, 1991, Exemption No. 5285.

Docket No.: 26376
Petitioner: Bolivar Aviation
Sections of the FAR Affected: 14 CFR 61.187(b).
Description of Relief Sought/ Disposition: To allow petitioner to utilize flight instructors who have held the flight instructor certificate for less than the required 24 months preceding the date of instruction.
Grant, April 26, 1991, Exemption No. 5304.

Docket No.: 26412.
Petitioner: The Soaring Society of America, Inc.
Sections of the FAR Affected: 14 CFR 61.69.
Description of Relief Sought/ Disposition: To allow petitioner's members to provide glider tow services as private pilots meeting the requirements of § 61.69 rather than operating as commercial pilots under part 135.
Partial Grant, April 25, 1991, Exemption No. 5303.

Docket No.: 26478.
Petitioner: Department of the Air Force.
Sections of the FAR Affected: 14 CFR 91.209.
Description of Relief Sought/ Disposition: To allow petitioner to conduct counternarcotics training without external lighting in certain Air Traffic Control Assigned Airspace.
Grant, April 26, 1991, Exemption No. 5305.

Docket No.: 26503.
Petitioner: ABX Air, Inc.
Sections of the FAR Affected: 14 CFR 121.623 and 121.643.
Description of Relief Sought/ Disposition: To allow petitioner to comply with the domestic flight release and on-board fuel reserve requirements applicable to carriers that possess domestic air carrier operating certificates, in lieu of the requirements applicable to supplemental air carriers.
Partial Grant, May 2, 1991, Exemption No. 5307.

[FR Doc. 91–11836 Filed 5–17–91; 8:45 am]
BILLING CODE 4910–13–M

Maritime Administration

[Docket No. M–012]

Identification of American Market Capacity for Marine Hull Insurance

On June 2, 1988, the Maritime Administration (MARAD) published in the **Federal Register** a final rule to govern the placement of marine hull insurance on subsidized and title XI program vessels (53 FR 23112). The rule was effective July 20, 1988. Section 249.9 of the rule requires that the American market be given an opportunity to compete for the placement of marine hull insurance on each vessel. If less than 50% of the placement is made in the American market, the owner or broker must certify that 50% or 75% of the American market (measured in terms of capacity) were offered the risk.

This procedure requires MARAD to identify all qualified American underwriters and their respective capacities, and to make such information available to vessel owners and brokers. MARAD published an initial notice soliciting this information in the **Federal Register** on August 2, 1988, and the information received was compiled and published in the **Federal Register** on November 16, 1988. The purpose of this notice is to up-date such information from American underwriters and distribute it to owners and brokers.

All underwriters licensed to do business in a state, and having at least a B Security rating as published in the latest edition of A.M. Best's Insurance Reports, and who wish to be included in MARAD's list of American market capacity must advise MARAD of their per risk capacity to write marine hull insurance. They must state separately, per risk capacity for blue water and non blue water vessels. In addition, if there are any other capacity limits which only apply to certain types of vessel/rigs, such limits must also be stated separately.

For purposes of determining American market capacity, the American Hull Syndicate and its member companies are to be treated separately, provided they remain able to write independently. Therefore, MARAD expects that the Syndicate members will individually submit their capacity to write independently.

Responses to this notice must be sent to the Secretary, Maritime Administration, Department of Transportation, 400 Seventh Street SW., room 7300, Washington, DC 20590. Responses must be received by close of business on July 5, 1991.

Dated: May 15, 1991.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 91-11847 Filed 5-17-91; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 130, Revision 3]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This revised order will enable the Assistant Commissioner (Examination) to grant permission to taxpayers who apply to the Commissioner, in accordance with § 48.4071-2(b) of the regulations, for approval to use an alternative method for determining total weight of tires on the basis of average weight for each type, size, grade and classification.

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: Ron Linden, EX:E:D, room 2008, 1111 Constitution Ave. NW., Washington, DC 20224, 202-566-6471 (not a toll-free call).

Authority to Execute and Terminate Average Weight Agreements

Pursuant to the authority vested in the Commissioner of Internal Revenue by 26 CFR 48.4071-2(b), 26 CFR 301.7701-9, and T.D. 8152, there is hereby delegated to the Assistant Commissioner (Examination), the authority to:

1. Sign all agreements granting approval to determine total weight of tires and inner tubes sold on the basis of average weight schedules published by the tire industry.

2. Sign all agreements granting approval of a taxpayer's method of determining total weight of tires on the basis of average weight for each type, size, grade or classification.

3. Terminate and issue notice of termination agreements described above.

4. This authority may not be redelegated.

5. This Order supersedes Delegation Order No. 130 (Rev. 2), issued March 21, 1982.

Dated: April 10, 1991.

David G. Blattner,

Chief Operations Officer.

[FR Doc. 91-11805 Filed 5-17-91; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 97
Monday, May 20, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 F.R. 20643.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:30 a.m., Friday, May 24, 1991.

CHANGE IN THE MEETING: The Commodity Futures Trading Commission has cancelled the closed surveillance review meeting.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–12049 Filed 5–16–91; 2:51 p.m.]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 F.R. 20643.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Thursday, May 30, 1991.

CHANGE IN THE MEETING: The Commodity Futures Trading Commission has postponed the open meeting to discuss the Registration of Broker Associations/final rules. This discussion will be rescheduled for the June calendar.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–12050 Filed 5–16–91; 2:51 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 am, Friday, June 7, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–12051 Filed 5–16–91; 2:51 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 14, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–12052 Filed 5–16–91; 2:51 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 21, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–12053 Filed 5–16–91; 2:51 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 28, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–12054 Filed 5–16–91; 2:51 pm]

BILLING CODE 6351–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Thirteenth Annual Meeting of the Board of Directors

TIME AND DATE: 10:00 a.m., Wednesday, May 22, 1991.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, N.W.-8th Floor Board Room, Washington, D.C. 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Martha A. Diaz-Ortiz, Acting Secretary (202) 376–2421.

Agenda

I. Call to Order
II. Approval of Minutes
  a. January 10, 1991, Regular Meeting
  b. February 21, 1991, Special Meeting
III. Election of Chairperson
  Election of Vice Chairperson
IV. Committee Appointments
  a. Personnel Committee
  b. Budget Committee
  c. Audit Committee
V. Election of Officers
VI. Executive Director's Quarterly Management Report
VII. Budget Financial Reports
VIII. Adjourn

Martha A. Diaz-Ortiz,

Acting Secretary.

[FR Doc. 91–12014 Filed 5–16–91; 1:27 p.m.]

BILLING CODE 7570–09–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 2:35 p.m., Tuesday, May 14, 1991.

PLACE: Chairman's Office, 6th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTER CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously to hold a closed meeting, under the exemptions listed above, to clarify an action taken at an earlier closed meeting on the same date. General Counsel Robert Fenner certified that the meeting could be closed under those exemptions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91–12000 Filed 5–16–91; 12:12 pm]

BILLING CODE 7535–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session following the adjournment of the FDIC open meeting beginning at 2:00 p.m. on Tuesday, May 21, 1991 to consider the following matters:

Summary Agenda: None.

Discussion Agenda:

A. *Memorandum re:* Proposed policy regarding the sale of RTC properties through negotiated purchase offers.

B. *Memorandum re:* Proposed policy regarding the payment of real estate taxes on RTC properties.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282.

Dated: May 15, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91–11952 Filed 5–16–91; 9:41 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:02 p.m. on Tuesday, May 14, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Administrative enforcement proceedings.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: May 15, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–11947 Filed 5–15–91; 5:06 pm]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 56, No. 97
Monday, May 20, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN-91-004]

Amendment to the Procedure for the Conduct of Referenda in Connection With Cotton Research and Promotion Orders

Correction

In proposed rule document 91-10213 beginning on page 20378 in the issue of Friday, May 3, 1991, make the following corrections:

1. On page 20379:

a. In the first column, in the first full paragraph, in the second line, insert the following after "proposed":

"rule. A 15 day comment period is considered appropriate".

b. In the same column, in the same paragraph, in the fourth line from the bottom, insert the following after "prevent":

"unnecessary delays in implementing any order that may result".

§ 1205.200 [Corrected]

c. In the second column, in § 1205.200, in the third line, the first "of" should read "or".

§ 1205.201 [Corrected]

d. In the same column, in § 1205.201(r), in the fifth line from the bottom, insert "de" after "the".

§ 1205.202 [Corrected]

e. In the same column, in § 1205.202(a)(2), in the second line, insert "advance" after "reasonable".

§ 1205.205 [Corrected]

2. On page 20380, in the third column, in § 1205.205(c), in the third line from the bottom, the first "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Parts 735, 736, 737, 738, 739, 740, 741, 742

Liquidation and Informal Hearing Procedures Under the U.S. Warehouse Act

Correction

In proposed rule document 91-10647 beginning on page 21452 in the issue of Thursday, May 9, 1991, make the following corrections:

1. On page 21452, in the third column, in the third paragraph, in the seventh line, "warehouse" should read "warehouses".

§ § 735.89, 736.99, 737.78, 738.72, 739.80, 740.81, 741.73, 742.84 [Corrected]

2. On page 21453, in the third column, in § § 735.89, 736.99, 737.78, 738.72, 739.80, 740.81, 741.73, 742.84, in paragraph (e), in the sixth line remove the "(" before "If".

3. On the same page, in the same column, in amendatory instruction 3, in the second line, "hearing" should read "heading".

§ 736.87 [Corrected]

4. On page 21454:

a. In the first column, in § 736.87(b), in the fifth line, "gains" should read "grains".

b. In the same column, in § 736.87(d)(1), in the second line, the first "of" should read "to".

c. In the 2d column, in § 736.87(d)(8), in the 12th line, "bases" should read "basis"; and in the 21st line, "office's" should read "officer's".

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions

Correction

In notice document 91-10542 appearing on page 20414, in the issue of Friday, May 3, 1991, in the second column, in the fifth line from the bottom, after "8410-01-277-3610" insert "thru".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AD-FRL-3923-5]

Preparation, Adoption, and Submittal of State Implementation Plans; PM-10, Sulfur Dioxide, and Lead Nonattainment and Unclassifiable Area Designations

Correction

In rule document 91-9369 beginning on page 16274, in the issue of Monday, April 22, 1991, make the following correction:

On page 16276, in the second column, under **Table II**, in the second column of the table, after "Harris Co." in the first column of the table, insert "X" in the second column.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinate

Correction

In rule document 91-9026 beginning on page 15498, in the issue of Wednesday, April 17, 1991, in the second column, under **FOR FURTHER INFORMATION CONTACT**, in the second line "(HFC-135)" should read "(HFV-135)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91-0143]

Optical Radiation Corp.; Premarket Approval of OrcolonU, Intraocular Fluid for Use as a Surgical Aid in Anterior Segment Procedures

Correction

In notice document 91-9815, beginning on page 19118, in the issue of Thursday, April 25, 1991, in the third column, in the

first full paragraph, in the second line insert "data" after "effectiveness".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Rel. Nos. 33-6882; IC-18005; S7-13-90]

RIN 3235-AD91

Revisions to Rules Regulating Money Market Funds

Correction

In rule document 91-4438 beginning on page 8113 in the issue of Wednesday, February 27, 1991, make the following corrections:

§ 270.2a-7 [Corrected]

On page 8126:

1In the first column, in § 270.2a-7 (a)(20)(ii)(A), in the first line "with" should read "was".

2In the same column, in § 270.2a-7 (a)(21)(a), delete "(a)" after "(21)".

3In the third column, in § 270.2a-7 (c)(3) in the second line "NRSRO and" should read "NRSRO) *and*".

BILLING CODE 1505-01-D

federal register

Monday
May 20, 1991

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 4, 16, 375, and 380
Regulations Governing Submittal of Proposed Hydropower License Conditions and Other Matters; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 16, 375, and 380

[Docket No. RM89-7-000; Order No. 533]

Regulations Governing Submittal of Proposed Hydropower License Conditions and Other Matters

Issued: May 8, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting a final rule to codify many existing practices of the Commission in the hydropower area, such as procedures for conducting hearings by notice and comment. The final rule establishes deadlines for participation by resource agencies, Indian tribes and other parties. The final rule clarifies Commission practices in a number of areas, such as when the prefiling consultation applies to amendments of license, when water quality certifications are deemed waived or must be renewed, and when and how the Commission will commence its review of applications.

The final rule establishes a dispute resolution mechanism, by which the Commission may resolve disputes over necessary scientific studies that arise during the pre-filing consultation process. The final rule incorporates into the regulations procedures for the Federal Power Act section 10(j) consultation process. The final rule also provides for greater notice and opportunity for involvement by the public and by Indian tribes in the hydropower licensing process.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER LEGAL INFORMATION CONTACT: Merrill Hathaway, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0825.

FOR FURTHER TECHNICAL INFORMATION CONTACT: William Wakefield, Office of Hydropower Licensing, Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, (202) 219-2784.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in, room 3308 at the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission's Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Table of Contents

I. Introduction

On March 6, 1990, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) proposing to revise its regulations governing submittal of proposed hydropower license conditions and other matters.[1] In response to the comments received,[2] the Commission has decided to adopt a final rule in this proceeding. The regulations adopted implement, in part, provisions added to the Federal Power Act (FPA) [3] by the Electric Consumers Protection Act of 1986 (ECPA).[4]

The Commission is adopting this final rule in order to streamline the hydropower licensing process by making it more efficient, fairer and more understandable for all participants. The final rule codifies many existing practices of the Commission in the hydropower area, such as procedures for conducting hearings by notice and comment. The final rule expedites the preparation and processing of hydropower applications by establishing deadlines for participation by resource agencies, Indian tribes, and other parties. The final rule also clarifies Commission practices in a number of important areas, such as when the pre-filing consultation applies to amendments of license, when water quality certifications are deemed waived or must be renewed, and when and how the Commission will commence its review of applications.

The final rule establishes a dispute resolution mechanism, by which the Commission may assist in resolving disputes over necessary scientific studies that arise during the pre-filing consultation process. The final rule incorporates into the regulations procedures for the FPA section 10(j) consultation process, pursuant to ECPA. The final rule also provides for greater notice and opportunity for public involvement in the hydropower licensing process, by requiring applicants for an original license to maintain public files, conduct a public meeting prior to filing, and provide public notice of the filing of their applications. These requirements are similar to those already in effect for applicants for a new license.

The final rule also explains the relationship of the administrative processes under FPA section 10(j), the Fish and Wildlife Coordination Act (FWCA),[5] and the National

[1] 50 FERC ¶ 61,270, 55 FR 9894 (March 16, 1990).

[2] The commenters are listed in appendix A.

[3] 16 U.S.C. 791a *et seq.* (1988).

[4] Pub. L. No. 99-495, 100 Stat. 1243 (Oct. 16, 1986) (codified at 16 U.S.C. 791a *et seq.*).

[5] 16 U.S.C. 661 *et seq.* (1988).

Environmental Policy Act (NEPA),[6] clarifies the application of the Commission's *ex parte* rules to consultation with governmental agencies on license and exemption conditions, and clarifies the role of other governmental agencies, Indian tribes, citizens' groups and members of the public in the hydropower licensing and exemption processes.

II. Reporting Burden

The public reporting burden for this collection of information is estimated to average 832 hours per response for water power projects having more than five megawatt (MW) capacity and 178 hours per response for water power projects having five MW capacity or less, 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 these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of Information Policy and Standards, (202) 208–1415); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

III. Summary of the Final Rule

The final rule defines a number of terms used in the procedural regulations governing hydropower proceedings. Fish and wildlife agencies are those agencies, state or federal, with responsibility for managing fish and wildlife resources. There may be more than one fish and wildlife agency in a particular state. Fish and wildlife recommendations are those filed by fish and wildlife agencies pursuant to the FWCA to be considered for inclusion in licenses and to be included in exemptions, but do not include recommendations by other parties or recommendations that a proposed hydropower project not be built or for prelicensing scientific studies.

Indian tribes are defined in reference to the list published annually by the U.S. Department of the Interior. To have a right to be consulted fully in the pre-filing consultation process for a particular hydropower proposal, an Indian tribe's legal rights must be affected by the proposal, as where the project would be located on Indian lands or could interfere with the tribe's statutory or treaty rights.

A fishway is defined as a structure that is part of a hydropower facility's project works that is used for the upstream passage of fish around or through a hydropower project. An application is deemed ready for environmental analysis when all of the significant additional information requested by the Commission is filed.

The pre-filing consultation process adopted in the regulations for applicants for original licenses or exemptions parallels that previously adopted for applicants for new licenses, and specifies time limits for various actions during the pre-filing process. The process requires applicants to inform the public, resource agencies and Indian tribes of their plans; to conduct necessary scientific studies on the impact of the proposed project on resources; to submit a draft application to the resource agencies and Indian tribes; and to attempt to resolve differences with these parties and to consider all significant resource impacts prior to filing an application with the Commission. The potential applicant must keep the Commission informed of its progress, and the applicant or interested resource agencies or affected Indian tribes would have a right to request that the Commission resolve any disputes between the applicant and the resource agencies or tribes concerning necessary scientific studies that the applicant must conduct or information that it must furnish as part of its application. The final stage of the pre-filing consultation process is the filing of a complete application with the Commission, with service of copies on the parties consulted.

The Commission may waive the requirements of the pre-filing consultation process when appropriate, and the regulations make clear which applications for amendment of license are subject to the pre-filing consultation requirements. These provisions are designed to encourage licensees to improve the efficiency of their hydropower facilities and to allow for expedited submission of applications when called for by emergencies or other special circumstances.

The Commission has decided not to codify in the regulations at this time any specific standards for determining when a particular scientific study must be conducted by an applicant, but the preamble discusses the standards that the Commission will consider in making these determinations, both during the pre-filing dispute resolution process and after an application is filed. The Commission's regulations also do not generally distinguish between different types of applications in terms of the procedural requirements applied during the pre-filing consultation and hearing stages, but any difference in the complexity and number of issues raised by an application may be used as a basis for the Commission's granting waivers or extensions of time to comply with the deadlines set forth in the regulations, when appropriate.

The new regulations clarify that hearings on hydropower applications are typically conducted by notice and comment, with all interested parties having an opportunity to participate in writing. Parties, resource agencies, and Indian tribes must submit their comments, recommendations, and any terms and conditions or prescriptions within specific time limits after an application is deemed ready for environmental analysis. These time limits may be extended by the Commission only for good cause shown.

The final rule addresses the Commission's responsibilities to consult with state and federal agencies. Under FPA section 4(e), the Commission may issue a license for a hydropower project located within a federal reservation only after it finds that the license will not interfere or be inconsistent with the purpose for which the reservation was created or acquired, and the license is subject to conditions set by the agency (such as the Forest Service) supervising the reservation. Under section 18, the Commission requires fishways at licensed projects as prescribed by the Secretary of the Interior or Commerce. Under section 10(j), the Commission is required to include in licenses conditions for the protection, mitigation, and enhancement of fish and wildlife, based on recommendations made by fish and wildlife agencies. If the Commission believes that such a recommendation may be inconsistent with applicable law, the Commission must attempt to resolve such inconsistency, and the Commission may reject such recommendation only if it finds that it is inconsistent with the law.

The Commission has not revised its *ex parte* or NEPA regulations, but the preamble discusses the relationship of these regulations to hydropower hearings and the FWCA and FPA 10(j) process. In specified respects the final rule grants to parties participation rights beyond those required by the *ex parte* rule. The Commission intends to consider generic revisions to its *ex parte* rule in a separate proceeding; the

[6] 42 U.S.C. 4321 *et seq* (1988).

regulations adopted herein, therefore, are subject to modification in that proceeding. The Commission may also consider proposals for alternative NEPA procedures in a future proceeding.

The new regulations codify the Commission's section 10(j) procedures and set forth in detail the rights of parties, resource agencies, and Indian tribes to participate in the process. The Commission will consult with fish and wildlife agencies, make preliminary determinations of inconsistency of section 10(j) recommendations with applicable law, and attempt to resolve any differences with fish and wildlife agencies. Notice of all such determinations will be given to all parties and to affected resource agencies and Indian tribes, which will have an opportunity to submit comments in response to the Commission. All of these entities will have advance notice of and an opportunity to participate in any meetings held to discuss section 10(j) recommendations with fish and wildlife agencies.

The Commission has decided to limit intervention rights of all persons, resource agencies, and Indian tribes to those specified in the regulations. As at present, those entities will be able to intervene in any hydropower proceeding after the application is filed, and motions to intervene will be invited after the application is accepted for filing as well as in response to a draft environmental impact statement if one is prepared in the proceeding. Order No. 511, allowing fish and wildlife agencies to intervene after a Commission decision on a hydropower application is issued, is rescinded.

These new regulations significantly expand the rights of participation in hydropower proceedings for Indian tribes and the public. Applicants are required to consult affected tribes in the pre-filing consultation process. Applicants must hold public meetings at the beginning of this process and must maintain a public file of their application materials and make copies of these materials available to the public on request and at reasonable cost. Applicants must give public notice when they file their applications with the Commission. As under current practice, members of the public and Indian tribes may intervene as parties in any hydropower proceeding and may file protests of any hydropower application. Anyone may file recommendations and comments on the application with the Commission. All parties may request rehearing of a Commission decision on a hydropower application and thereafter seek judicial review under the FPA.

The final rule contains transition provisions that generally do not require the repetition of steps previously taken under the Commission's procedural regulations as they existed prior to this revision. All applicants, however, must conduct a public meeting prior to the filing of any application with the Commission after the effective date of the final rule. The rule changes the authority delegated to the Director of the Office of Hydropower Licensing (OHL), to clarify his authority to issue waivers of the pre-filing consultation requirements and to conduct section 10(j) consultations. The Commission rejects the suggestion made in the comments that it declare that FPA section 4(e) mandatory conditions of a federal land management agency do not apply to applications for new licenses.

In order to assist in the processing of the large number of applications for new licenses due to be filed this year, this order also changes the filing requirements for all applicants for a new license whose application is due between June 19, 1991 and January 1, 1992. All such applicants must serve copies of their applications on the Commission Regional Office, the U.S. Bureau of Land Management District Office, and U.S. Corps of Engineers District Office for the area in which the project is to be located, as well as the U.S. Department of the Interior in Washington, DC. Applicants hand-delivering their applications to the Commission must deliver five copies to the Director, Division of Project Review, Office of Hydropower Licensing. The number of copies required to be filed with the Secretary is reduced by the number of copies mailed or served under this new requirement.

IV. Discussion

A. Definitions

1. *Fish and Wildlife Agencies.* We proposed to include in the definition of "fish and wildlife agencies" the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency in charge of administrative management over fish and wildlife resources of the state in which a proposed hydropower project is located.[7]

In the NOPR, we stated that we would not include Indian tribes in the definition because they are not fish and wildlife agencies. We noted that Congress used these terms distinctly in ECPA section 3 and decided not to extend the procedural requirements of FPA section 10(j) to apply to other parties and resource agencies. Thus, the recommendations of Indian tribes would not be subjected to the specific requirements of FPA section 10(j). However, we also stated that it might be appropriate to give Indian tribes that might be affected by a particular hydropower project a role in the pre-filing consultation process that parallels the role of fish and wildlife agencies in other respects. Thus, we stated that, pursuant to FPA section 10(a)(2) and (3),[8] the Commission would solicit recommendations (including fish and wildlife recommendations) from Indian tribes and consider those recommendations in its final decision on a hydropower application. Furthermore, we included Indian tribes among the parties to be consulted in the applicant's pre-filing consultations, and proposed appropriate revisions to the regulations to make this obligation clear.

The Indian tribes [9] suggest that the Commission is limiting their role to pre-filing consultation, and therefore is relegating them to the same category as the general public and citizen's groups. They maintain that by doing this the Commission ignores the fact that the Indians' rights are significant, distinct, and often different from those of the state, which therefore cannot represent them. The Indian tribes also argue that tribes should be accorded a consultation role parallelling that of federal and state fish and wildlife agencies because pursuant to tribal law they operate their own fish and wildlife agencies, which they assert are equivalent to their state and federal counterparts and have the expertise to provide the most accurate information of fish and wildlife resources in a particular area.

The participation of Indian tribes in pre-filing consultation is not a limitation of their role but an expansion of it beyond the consideration of their recommendations which the FPA requires. Indeed, they are not treated like the public, which does not have a consultation role prior to filing, but are given treatment parallel to that of the resource agencies.[10] However, it is clear that they are not fish and wildlife agencies within the meaning of the FPA, but that they have a special status of their own under the FPA. The FPA does not refer to Indian tribes as fish and

[7] Proposed § 4.30(b)(9)(i).

[8] 16 U.S.C. 803(a) (1988) (this section was added by ECPA).

[9] Nez Perce, Pueblo de Cochiti, Klamath, the Native American Rights Fund, and California Indian Legal Services.

[10] See the discussion of participation of Indian tribes, section IV.D.1., *infra*.

wildlife agencies, but where the Indian tribes are to be consulted, the statute refers to them in addition to and separately from the agencies.[11] There is no reference to Indian tribes in section 10(j).[12]

Some commenters [13] suggest technical corrections to the proposed regulation. They note that the proposed regulation's reference to "the state agency" implies that each state has a single agency in charge of administrative management over fish and wildlife. They suggest that the reference to states be made plural, since some states may have more than one agency with such responsibility.[14] They also suggest that the reference to "the state in which a proposed hydroelectric power project is located" be revised to read "the state or states in which * * *," since a project may be located in more than one state. These changes are unnecessary, because our regulations state that the singular includes the plural.[15]

2. *Fish and Wildlife Recommendation.* We proposed to add a definition for "fish and wildlife recommendation." [16] This term is important because under ECPA only fish and wildlife recommendations of a fish and wildlife agency are subject to the procedures set forth in FPA section 10(j). As used in the proposed rule, this term means any recommendation designed to protect, mitigate potential damages to, or enhance any wild member of the animal kingdom.[17] We stated that the term does not include a request that the proposed project not be constructed or operated, a request for additional studies that can be completed prior to licensing, or, as the term is used in those sections of the proposed rules that implement FPA section 10(j), a recommendation for facilities, programs or other measures to benefit recreation or tourism.[18]

Energy and EEI support the rule's exclusion from the definition of recommendations that projects not be constructed and recommendations for additional pre-licensing studies or for facilities, programs, or other measures to benefit recreation or tourism. However, EEI suggests additional language be added to exclude from the definition other non-fish and wildlife related recommendations from the definition. We believe that the definition is clear that only fish and wildlife recommendations are within the definition, and that no additional language is necessary.

Conversely, other commenters [19] object to the exclusion of recommendations that projects not be constructed, recommendations for additional pre-licensing studies, and recommendations for measures to benefit recreation or tourism. They state first that, if no other measures are available to adequately protect or mitigate fish and wildlife resources and/or the project is in direct conflict with state water management plans, a recommendation against licensing constitutes a recommendation designed to protect, mitigate damages to, or enhance fish and wildlife.[20] Some add that, whether or not the Commission adopts such a recommendation, it cannot by rule limit the bounds of the required section 10(j) recommendations, and that such a recommendation is consistent with the intent of NEPA that federal agencies identify and assess reasonable alternatives that will avoid or minimize adverse effects on the environment. In addition, South Carolina states that under the proposed regulation it is unclear what appropriate comments should be submitted under section 10(j) if the agency is requesting denial of the license under section 10(a) or section 4(e).

These commenters [21] also argue that, since the Commission imposes strict evidentiary burdens and time limits on the agencies, requests for additional pre-licensing studies should be permitted under section 10(j) where agencies have identified fish and wildlife information needs early and repeatedly in the consultation process, but the Commission has deferred resolution of information needs, or the applicant has refused to conduct studies in a manner that provides adequate results.

In addition, Wildlife Federation argues that providing the information on which section 10(j) recommendations are based is the responsibility of the applicant, subject to the Commission's control, that requests for additional information are a part of the process of preparing section 10(j) recommendations, and that the agency expertise to which the Commission is required to defer under section 10(j) is the expertise to assess what studies are necessary for formulating fish and wildlife recommendations. Washington Fisheries adds that fish and wildlife agencies have neither sufficient staff nor budget to do their own studies, or to be, in short, biological consultants for applicants.

These commenters argue that the fish and wildlife agencies have a duty under the FWCA to make recommendations for public uses of fish and wildlife, and that nothing in the statutory language supports the idea that some FWCA recommendations relating to fish and wildlife are to be excluded from consideration under section 10(j) because they address recreational uses of fish and wildlife. The commenters also argue that a recommendation for fish and wildlife protection, mitigation, or enhancement should not be precluded simply because it might also benefit recreation or tourism. Finally, Washington Fisheries adds that it is not always possible or desirable to provide in-place, in-kind mitigation and that the form or content of a mitigation package should be up to the discretion of the resource agency.

The commenters' objections to the regulation are inapposite. Section 10(j) of the FPA requires that licenses issued under the FPA include conditions based on the recommendations of the state and federal fish and wildlife agencies for the protection, mitigation, and enhancement of fish and wildlife. It is inherent in this requirement that the recommendations

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[11] See, for example, section 10(a)(2)(A), which refers to "the recommendations of Federal and State agencies * * * and the recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project." See also section 10(a)(3), which states that the Commission shall solicit recommendations "from the agencies and Indian tribes."

[12] Section 10(j) only states that section 10(j) license conditions shall be based on recommendations received from the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and state fish and wildlife agencies.

[13] Washington Wildlife, American Rivers, and Wildlife Federation.

[14] Oklahoma Water argues that state agencies that implement water quality standards should be treated as fish and wildlife agencies for purposes of section 10(j), since such standards relate to fish and wildlife use, among other things. Clearly, many different kinds of resource agencies may administer programs that have an effect on fish and wildlife. However, we believe that section 10(j) is intended to include only those agencies exercising direct administrative management over fish and wildlife.

[15] See 18 CFR 1.102(a).

[16] Proposed § 4.30(b)(9)(ii). This definition is based on those definitions used in federal statutes cited by the legislative history of ECPA. H.R. Rep. No. 99-507, 99th Cong., 2nd Sess. 31 (1986) (citing 16 U.S.C. 1532(8) and 3371(a)).

[17] The term includes a recommendation to protect fish, birds and reptiles, whether or not hatched or born in captivity, and their eggs or offspring (including juveniles), related breeding or spawning grounds and habitat. See NOPR, IV FERC Stats. & Regs. ¶ 32,470 at 32,382 (March 6, 1990).

[18] Proposed § 4.34(e)(2) and 4.34(f)(3).

[19] Interior, Commerce, Oklahoma, Oklahoma Wildlife, Oklahoma Water, Michigan, California Fish and Game, Montana DFWP, West Virginia, South Carolina, Washington Fisheries, Washington Wildlife, American Rivers, and National Wildlife.

[20] Interior quotes, without citation, a statement of the Conference Report on ECPA that, "if nonpower values cannot be adequately protected, FERC should exercise its authority to restrict or * * * even deny a license * * *."

[21] Interior, Washington Fisheries, Washington Wildlife, and wildlife Federation.

be for conditions that will be included in a license. A recommendation that a project not be licensed simply is not such a recommendation. Clearly, if an agency believes that a project's effects cannot be mitigated, it is free in its comments on the application [22] to recommend that a project not be licensed, but such a recommendation is not a section 10(j) recommendation and is not subject to section 10(j) procedures.

Likewise, while requests for studies that can be completed prior to licensing may be very important in forming the data base necessary to formulate fish and wildlife recommendations, such requests are not themselves recommendations as the term is used in section 10(j). Section 10(j)(1) states, in pertinent part, that "each license issued under this part shall include conditions * * * (which) shall be based on recommendations received pursuant to the Fish and Wildlife Coordination Act * * *." Thus, the plain meaning of this provision excludes from "section 10(j) recommendations" agency requests for pre-licensing studies, because such studies are not conditions imposed on "issued licenses," as specified in the section.

Furthermore, what pre-licensing studies should be conducted is not an issue that should be resolved late in the administrative process as part of the FPA section 10(j) negotiations. Those negotiations must focus, as the law requires, on the fish and wildlife recommendations on which terms and conditions for license can be based. However, as stated in the preamble to the NOPR,[23], the Commission has established a procedural system, to be enhanced by the rule, that addresses, at the outset of the Commission's review of an application tendered for filing, issues concerning necessary pre-licensing studies.[24]

Finally, we recognize that the FWCA encompasses recommendations by fish and wildlife agencies that promote recreation, which has long been a waterway use included in the hydropower program.[25] But ECPA section 3 uses the term in a narrower sense, and clearly distinguishes between recommendations dealing with fish and wildlife and those dealing with other concerns such as recreation. ECPA directs only that the former recommendations, and not the latter, be subject to the provisions in FPA section 10(j) (requiring determinations, negotiations, and findings). As stated in the preamble to the NOPR,[26] Congress mandated that the Commission go through extra procedural steps to protect, mitigate damages to, and enhance members of the wild animal kingdom, but did not require such special measures on the issues of constructing access roads or picnic areas, etc., to facilitate recreation.

3. *Indian Tribe.* In the NOPR, we proposed to add a definition for "Indian tribe" which would make clear what entities are entitled to participate in the pre-filing consultation process and to file recommendations (including fish and wildlife recommendations) with the Commission on proposed hydropower projects.[27] The proposed definition included all Indian groups that are united under one governing body, inhabit a particular and distinct territory, and are appropriately recognized as Indian tribes by the United States. A nexus test was also included in the proposed definition, so that consulted Indian tribes would also have to have tribal (as distinct from individual or social) legal rights that could be affected by the proposed project. Thus, where a proposed project could adversely affect the harvest of anadromous fish to which an Indian tribe had treaty rights, or was located within a particular reservation, that tribe would be identified by the applicant and be able to participate in the pre-filing consultation process and to file comments (including fish and wildlife recommendations) on the proposal.[28] If a group of Indians failed to qualify as an Indian tribe in the context of a particular hydropower project, the group could still participate in the administrative proceeding as a member of the public.[29]

The Indian tribes [30] argue that the definition is unnecessarily elaborate, relies upon an improper racially-based classification, and does not adequately reflect the governmental status of tribes. Most of them argue that the key, perhaps only, criterion should be federal recognition.[31] Interior and the Indian tribes note that federally recognized tribal governments are ascertainable through a list compiled annually by the Bureau of Indian Affairs of the United States Department of the Interior,[32] and suggest that since this established method of determining Indian tribes exists, the Commission should refer to it instead of trying to create its own definition. The Pueblo de Cochiti suggests that the Commission use the definition found in the Indian Self-Determination and Education Assistance Act of 1975, as amended.[33] It adds that use of the established criterion would render proposed §§ 4.30(10) (i) and (ii) superfluous.

The Indian tribes and Interior also argue that the nexus test is too restrictive. They argue that the FPA requires the Commission to consider "the recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project," [34] and

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[22] These comments may be made pre-filing, in response to the draft application, or post-filing, after the application is declared by the Commission to be ready for environmental analysis.

[23] *See* NOPR, IV FERC Stats. & Regs. ¶ 32,470 at 32,382, n. 157.

[24] *See* §§ 4.38 and 4.32(b)(7).

[25] Section 10(a) of the FPA referred to "recreational purposes" long before enactment of ECPA. See *Udall* v. *Federal Power Commission*, 387 F. 2d 428 (1967).

[26] NOPR, IV FERC Stats. & Regs. ¶ 32,470 at 32,382, n. 158.

[27] Proposed § 4.30(b)(10).

[28] This situation would arise where the proposed project could impede the migration of anadromous fish on a particular river, and the Indian tribe had statutory or treaty rights to manage or harvest some of the fish runs on that river. Another example would be where the proposed project works would be located within an Indian reservation. On the other hand, if a group of Indians objected to the construction of a hydropower project not located on such a river or within their reservation, and the basis of their objection rested on aesthetic, recreational, or other grounds shared by some local residents but not rooted in rights of the tribe, the Indian group (even if it were a recognized Indian tribe for other purposes) would not be treated as an Indian tribe for purposes of that project.

[29] Such participation would entitle the tribe to attend the joint meeting in the first stage of the pre-filing consultation process, to inspect and obtain copies of the complete application filed by the applicant, and to file comments (including fish and wildlife recommendations) that the Commission would consider in reaching a decision on the merits of the application.

[30] National Congress of American Indians, Pueblo de Cochiti, Pueblo Nambe, California Indian Legal Services, Klamath, Native American Rights Fund, Nez Perce, and Choctaw.

[31] The Klamath Tribe, on the other hand, argues that lack of formal federal recognition should not be used as a criterion to exclude tribes from the process, and suggests that § 4.30(b)(10) (i) and (iii) be combined into a single criterion as "and/or" conditions, in order to prevent such a result. It argues that a tribe should not be excluded because it no longer inhabits a particular territory.

[32] See 25 CFR 83.6(b). Under § 83.6(b), the Secretary of the Interior publishes annually, in the **Federal Register**, a list of all Indian tribes which are recognized and receive services from the Bureau of Indian Affairs.

[33] 25 U.S.C. § 450b(e) (1988). This section states:

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

[34] 16 U.S.C. 803(a)(2)(B) (1988).

that nothing in the statute or its legislative history suggests that Congress intended this provision to be limited to tribes whose "legal rights" may be affected. Interior suggests that the Commission will have difficulty in determining which rights are "tribal" as opposed to "individual" and when an interest is a "legal" right.[35] Some Indian tribes assume that "legal" rights include only treaty rights, and object to the exclusion of rights protected by statute but not by treaty. A number of Indian tribes argue that the limitation of the definition to "legal" rights is too narrow to permit their participation as a tribe when important Indian interests not protected by treaty or statute (such as effects on ancestral lands, or on cultural or religious sites) are affected.

Citing *Three Affiliated Tribes* v. *Wold Engineering, P.C.*, 467 U.S. 138, 149 (1984), the Pueblo de Cochiti argues that statutes that establish or reserve Indian rights are to be construed broadly, while statutes that would abrogate or narrow Indian rights are to be construed narrowly. It maintains that the statutory language of FPA section 10(a)(2) was passed for the benefit of Indians and thus should be liberally construed. It adds that the tribe should determine whether its interests are affected by a particular project, and the Commission should defer to the tribe's determination.[36]

The Pueblo de Cochiti acknowledges that the Commission may authorize a project despite tribal objections, but argues that it is improper to bar the voicing at the consultation stage of the tribes' important non-power interests. It also recognizes that a tribe which is not found to have "legal rights" under the proposed definition might still participate as a member of the public, but notes that this status does not recognize the sovereignty of the entity involved. The Indian tribes also argue that the definition's reference to situations where "the project works would be located within the tribe's reservation" unduly limits the definition. They maintain that, because the definition of reservation in FPA section 3(2) applies only to those tribal lands within Indian reservations, it appears to exclude lands on the reservation which they do not own, but in which they have reserved rights. They also maintain that the definition should include lands which are not reservation lands but which they own in fee, and lands which are no longer reservation lands but in which they have some remaining interest (such as hunting, fishing, gathering, water, sacred sites, burial grounds, etc.). They also argue that the definition appears to exclude tribes threatened with destruction of sites within a reservation from project works located off the reservation unless some treaty specifically recognizes a tribal right in those sites.[37]

After considering all these arguments, as a matter of law and policy we agree that since Interior has a well-established definition and listing of Indian tribes it is appropriate to rely on that definition, and we have revised the regulations accordingly.[38]

We recognize that Indian tribes have a special status, and that with that status come distinct interests. In promulgating the final rule, we are not attempting to confine these interests, but rather, to design a consultation process that is procedurally manageable. While the statute requires that we solicit the recommendations of Indian tribes upon receipt of an application for a license,[39] it does not suggest that tribes must be involved in consultations prior to the filing of a license application. Any tribal participation in the pre-filing consultation process is therefore an expansion of their statutorily prescribed role.

The pre-filing consultation requirement was developed by the Commission to increase the efficiency of the application process. However, in order to keep the pre-filing consultation process manageable, it is reasonable to require that those participating in it have some readily identifiable and tangible interest in the proposed project. Since it is affected Indian tribes, not Indians as individuals, to which the statute refers in section 10(a)(2), it is reasonable for the Commission to refer to affected Indian tribes when granting pre-filing consultation privileges. It is also reasonable to define qualifying Indian tribes as those with rights that may be affected by the development and operation of the hydropower project. Furthermore, for the purpose of pre-filing consultation, it is reasonable to require the rights to be legal rights, so that they are readily ascertainable. As we have stated previously, interests which are not encompassed by the definition can still be raised during the licensing proceeding, if and when a development application is filed with the Commission.

Finally, the references in the definition to interference with the management and harvest of anadromous fish, and the location of the project works within the tribe's reservation, are examples of how tribal legal rights may be affected and are not intended to be exclusive.

4. *Fishway.* The NOPR proposed the following definition of a fishway: [40]

> "Fishway" means any structure, facility, or device used for the safe passage, either downstream or upstream, of migratory or nonmigratory fish (including juveniles) through, over or around a hydropower project, and includes fish ladders, fish locks, lifts and elevators, and fish bypass facilities, devices for guiding fish to an upstream or downstream fish passage facility and flow regulation necessary for proper operation of the fishway itself, but does not include screens, barriers or other devices that are not used to guide fish to a fish passage facility, minimum flow releases or other terms and conditions of license.

The comments in response to this definition may be divided between those that consider the proposed definition too broad and those that consider it too narrow.

Among the commenters in the former category,[41] NHA, EEI, and Energy urge us to limit application of the term "fishway" to migratory fish. NHA, in particular, argues that Commission reports and literature contemporary with the enactment of section 18 and its subsequent 1935 amendment indicate that fishways were considered appropriate for anadromous species of fish, and that extending the term to encompass passage of resident fish would go beyond the statute's original intent.

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[35] Citing *Covelo Indian Community* v. *FERC*, 895 F.2d 581 (9th Cir. 1990). Interior suggests that a responsible consultation process can avoid years of litigation, and advises generous tribal consultation.

[36] The Pueblo de Cochiti suggests that the Commission's determination of whether a tribe may be affected should parallel the process established by regulations issued by the Council on Environmental Quality implementing the National Environmental Policy Act (NEPA). In the NEPA process, potentially affected tribes are contacted during scoping and are invited to participate in the process, with the option of becoming co-operating agencies. See 40 CFR 1501.2(d)(2), 1501.7(a)(1), and 1508.5. In addition, regardless of whether they participate in scoping, potentially affected tribes are provided with copies of draft environmental impact statements, and their comments are requested. See 40 CFR 1503.1(a)(2)(ii).

[37] Choctaw requests that § 4.30(b)(10)(iv) be revised to read: "where the project works would be located within the tribe's reservation, adjacent to the tribe's reservation, or upstream from the tribe's reservation on a waterway which flows through or adjacent to the tribe's reservation."

[38] This revision is made to § 4.30(b)(10). The conflicting definition in § 16.2(f) is deleted, as the definition in § 4.30(b)(10) applies to both parts 4 and 16 of the regulations.

[39] FPA section 10(a)(3).

[40] Proposed § 4.30(b)(9)(iii).

[41] NHA, EEI, Energy, Public Generating Pool, and Wisconsin River.

Similarly, NHA and EEI insist that application of the term should be limited to provision of upstream passage. Again referring to literature from the time of the section's passage, these commenters argue that contemporary discussions of the need for and operation of fishways focused on ensuring upstream passage of fish, and that the concept of a fishway as a structure to facilitate upstream passage was well-established at the time.

EEI cites modern authorities that continue to treat a fishway as something devised to address upstream passage problems. It argues that, both earlier in the century and today, authorities have viewed downstream passage problems as solvable by remedies other than fishways, such as screening of intakes, spills, and chutes.

Public Generating Group, conceding that the FPA does not definitively reveal whether fishways might include devices facilitating downstream passage, argues, on a policy basis, that we should not needlessly concede to the Secretaries the authority to prescribe such devices. In the absence of a clear indication that section 18 contemplated downstream passage, Public Generating Group would prefer that we retain the maximum amount of discretion to balance economic and environmental considerations in licensing proceedings by adopting a definition that does not specify upstream and downstream passage and by making determinations on a case-by-case basis. Nevertheless, it points out that downstream passage issues do not really involve providing a *means* of passage but rather involve reducing the mortality associated with that passage.

These commenters also argue that a "fishway" should embrace a more restricted concept of fish passage measures. While approving of the proposed definition's limitation of a fishway to a "structure, facility, or device," they contend that these physical aspects should not include screens and barriers. Although the proposed definition excluded screens and barriers not used to guide fish to a fish passage facility, Public Generating Group would exclude even those screens and barriers that, although having a secondary guiding function, are designed primarily to protect fish from mortality at turbines. Leaving the prescription of such dual-purpose devices to our discretion, Public Generating Group would view a fishway as including only screens and barriers having the sole purpose of guiding fish to a fish passage facility.

The commenters argue that inclusion in the definition of such non-structural elements as flows, temperature regimes, and project operation procedures and scenarios would be unsupported by the legislative history of the section and the customary usage of the term. However, only EEI clearly objects to our inclusion of "flow regulation necessary for proper operation of the fishway itself," and Public Generating Group specifically includes similar language in its own proposed definition.

EEI contends that section 18 authority does not extend to prescription of structures or devices at locations removed from a project's physical structures. It also urges us to make it clear that prescription authority does not entitle agencies to dictate design specifications. Wisconsin Power objects that the proposed definition would codify our position that fishway prescription authority applies to relicensing, contrary to its view of Congressional intent. It urges us to limit this authority to original license proceedings only.

Public Generating Pool [42] and EEI [43] submitted their own proposed definitions, illustrating the disagreements these parties have with our proposed definition, as well as with each other's position.

Conversely, a number of commenters consider the proposed definition too narrow.[44] Interior submitted a recommended definition[45] hich illustrates the concerns of these commenters generally. Interior's definition, like our proposed definition, includes measures to protect resident as well as migratory fish; neither Interior nor other commenters elaborate on a rationale for this inclusion. Similarly, although measures to facilitate or ensure downstream fish passage are included in this definition, and although downstream fish passage is implicitly assumed in several of the comments, few of them mention the issue specifically. Instead, the comments focus primarily on the need for broad inclusion of measures, both structural and non-structural, necessary for fish passage.

The commenters urge that the definition include even screens and barriers not used to guide fish to a fishway. Several point out that, even when screens and barriers are clearly part of a fishway, their purpose is to prevent entrainment and turbine mortality. Therefore the essential criterion for their inclusion in the definition should not be whether these devices are designed to protect fish from turbine mortality but whether they are required to accomplish upstream and downstream fish passage (Interior) or are components of a passage scheme (Michigan and Minnesota).

The commenters object equally to the definition's basic exclusion of non-structural measures facilitating fish passage. Commenters would include such specific non-structural elements as flows and temperature regulation, and more general measures, such as "project operation scenarios designed to promote or enhance fish passage" (Commerce and California Indian Legal Services). Several commenters note that adoption of such non-structural measures as flows can eliminate the construction and maintenance costs of structural measures. Wisconsin argues that changes in project operations are sometimes not only the most cost-effective fish passage measures but are also biologically preferred. In the view of Wisconsin and Wildlife Federation, exclusion of operational changes and other non-structural measures from the definition could cause Commerce and Interior to prescribe expensive and technically complicated systems to

[42] Public Generating Pool proposed the following definition: "Fishway" means any structure, facility, or device that facilitates the passage of fish through, over or around a hydroelectric project. The term includes such structures as fish ladders, fish locks, and elevators, and the minimum flows necessary for operation of the fishway itself. The term does not include screens, barriers or other devices unless their sole purpose is to guide fish to a fish passage facility, and does not include minimum flow releases or other terms and conditions of a license. The precise scope of the term may vary from project to project, and the Commission will make this determination on an individual basis.

[43] EEI proposed the following definition: "Fishway" means any structure, facility, or device used for the safe upstream passage of migratory fish through, over and around the project works of a hydropower project, particularly fish ladders, but does not include screens, barriers or other devices that are used to guide fish to an upstream fish passage facility, screens, barriers or other devices for downstream passage or guidance of fish (including juveniles), structures, facilities, or devices for the upstream or downstream passage of nonmigratory fish, operation and maintenance procedures, minimum flow releases or other terms and conditions of license.

[44] Interior, Commerce, American Rivers, Wildlife Federation, California Indian Legal Services, and several state agencies.

[45] Interior proposed the following definition: Any structure, facility, device, or other measures used for safe and timely passage of all life stages of migratory and non-migratory fish, either upstream or downstream, through, over, or around a hydropower project including: (1) Temperature regulation; (2) such structural measures as fish ladders, fish locks, lifts, elevators, and fish bypass facilities and devices such as screens needed for guiding fish unimpeded to an upstream or downstream passage facility, as well as flows sufficient for guiding, attracting, or transporting fish to the fishway and for operation of the fishway itself; and (3) such nonstructural measures as periodic spill flows, gate opening, breaches, notches, or other openings in the dam.

ensure that fishways are provided, even though cheaper alternatives may exist.

The proposed definition's inclusion of "flow regulation necessary for proper operation of the fishway itself" does not satisfy the commenters, who, as Interior's definition indicates, seek a broader inclusion of flows sufficient to guide, attract, or transport fish to the fishway. Various commenters suggest that these would include flow releases over spillways for downstream migrants, flows needed for passage through critical shoals below a project, and minimum flows during spawning season. Oregon points out that often physical fishway structures are not feasible and adequate flow conditions function best. Washington Wildlife argues that a device unaccompanied by a flow release sufficient to attract fish is not a fishway. In a similar vein, Wildlife Federation contends that, without operating and attraction flows, installation of physical fish passage facilities may be useless, and that section 18 would be rendered meaningless if hydroelectric project operators were required to install physical facilities but not to provide flows necessary to convey fish safely through them.

A number of commenters also stress the importance of temperature controls and regimes. Oregon believes temperature controls should be included where data indicate that temperature-related fish passage barriers exist as a result of a hydropower project. Washington Wildlife also points out that temperature can affect upstream and downstream passage.

It is probably safe to state that, taken as a whole, these commenters seek a broad definition of "fishway" that would include any structural or non-structural measures facilitating fish passage. Wildlife Federation argues that the definition should be expanded to include "all license conditions that contribute to the safe passage of fish around a dam or diversion."

Finally, Commerce, Interior, and other commenters take issue with statements in the concurring opinion of Commissioner Trabandt to the NOPR. These include his statements that Interior and Commerce, in prescribing fishways, should formulate requirements in the context of current operations of an existing project, rather than of past fishery resource conditions; should refrain from requiring fishways that do not reflect current fishery resources; should not impose requirements that would materially interrupt the operation of existing projects, disrupt the scheduling of electric power generation, or degrade the amount of electric power generation capacity; and should avoid prescribing fishway facilities not in harmony with the over-all balancing of competing power and non-power resource interests required by ECPA. The commenters argue that fishway prescription is mandatory and not subject to the Commission's balancing requirements; that there is no presumption against fishways that would interfere with power generation; and that, especially in relicensing proceedings, fishway prescription may transcend consideration of current operations and resources at a project site.[46]

Our consideration of the term "fishway" is not undertaken to develop an abstract definition but rather to reflect the meaning of the term as used in section 18. We are not at liberty to formulate a definition from the comments as if we ourselves had originated the term. That is to say, we solicited comments on our proposed definition to determine what a fishway was intended to be, not necessarily what commenters might wish it to be. It is necessary to consider Congress's understanding of the term to the extent that can be determined. Congress, however, failed to define the term at the time either section 18 or its predecessors, section 3 of the General Dam Acts of 1906 and 1910, were enacted; nor did Congress comment on or modify the term in subsequent amendments to section 18. Therefore, it is also relevant to consider what meaning the term generally conveyed during that period. At the same time, we would not want to adopt a definition that ignores present-day conditions or technological developments affecting achievement of the purposes for which section 18 was enacted.

Among the commenters, those supporting a narrow definition of "fishway," especially NHA and EEI, place the greatest reliance on historical and conventional meaning. These sources provide considerable support for the assumption that Congress understood a fishway to apply to upstream passage only. For example, NHA cites reports of the U.S. Commission on Fish and Fisheries of 1872 and 1873 that refer to fishways as facilities to permit passage of fish upstream, over or around an obstruction. EEI cites a 1908 report of the Bureau of Fisheries referring to the authority of the Secretaries of Commerce and Labor to prescribe fishways under the General Dam Act of 1906, discussing the design criteria for fishways, and defining fishways as devices for upstream passage.[47]

Moreover, EEI cites authority to indicate that the common understanding of "fishway" still restricts the term to upstream passage. C.H. Clay, an expert in the field, defined a fishway, in 1961, as a water passage around or through an obstruction "designed to enable fish to ascend without undue stress."[48] The same definition was used by the U.S. Fish and Wildlife Service in a 1982 publication.[49] Another authority, Milo C. Bell, devoted a chapter of a 1986 book to various types of fishways, all of which were structures for upstream passage of fish.[50] Finally, the Columbia River Basin Fish and Wildlife Program adopted by the Northwest Power Planning Council discusses fishways as a means for promoting upstream migration of salmonids and defines fishway, in its glossary, as a device that enables adult fish to migrate up a river past dams.[51] Reference to these authorities indicates that restricting the definition of fishways to upstream passage measures would not constitute rigid adherence to past usage of the term in disregard of contemporary meaning.

This emphasis on upstream passage does not indicate that the need for safe downstream passage has been unrecognized. However, authorities have often regarded downstream passage measures as separate from fishways. Participants in a discussion of fishways in 1892, in an annual meeting of the American Fisheries Society, treated downstream passage of juveniles as either presenting no problem or at least as not being addressed by the use of fishways.[52]

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[46] Interior also suggests that we address the definition of fishway and other section 18 issues in a separate rulemaking proceeding and that regulations be drafted jointly by the Fish and Wildlife Service, the National Marine Fisheries Service, and this Commission. We consider the present proceeding sufficient for resolving the issue of defining a fishway, and we reject Interior's suggestion.

[47] Von Bayer, H., General Principles of Fishway Construction, Bulletin of the Bureau of Fisheries, vol. XXVIII (1908).

[48] Clay, C. H., Design of Fishways and Other Fish Facilities, Queen's Printer, Ottawa, Canada (1961), at p. 12.

[49] Schnick, Rosalie A., *et al.*, Mitigation and Enhancement Techniques for the Upper Mississippi River System and Other Large River Systems, U.S. Fish and Wildlife Service Resource Publication 149 (1982) at p. 270.

[50] Bell, Milo C., Fisheries Handbook of Engineering Requirements and Biological Criteria (1986), chapter 34.

[51] Northwest Power Planning Council, Columbia River Basin Fish and Wildlife Program, Portland, OR (1987), at p. 192.

[52] Rogers, W. H., Fishways, in Transactions of the American Fisheries Society, Twenty-First Annual Meeting, New York (1892).

Bell, cited above, states that adult fish at dams are protected by the requirement of construction and operation of fishways, while downstream migrants are protected from diversion from a stream by requirements for screening of intakes.

Those commenters favoring inclusion of downstream passage in the definition do not advance authority in conflict with those authorities cited above. American Rivers argues only that the term "fishway" is broad enough to encompass downstream passage facilities and that a limitation would undermine Interior's authority to protect and enhance anadromous fisheries, contrary to section 18. Most of the other commenters barely argue the point. Nevertheless, we acknowledge that a fishway has not been understood, unanimously and at all times, as solving only upstream passage problems. For example, the Department of Commerce, in 1917, referred to the function of a fishway as "to permit fish to pass over a dam from the stream below to the stream or pool above the dam, and also to permit the same or other fish to pass in the reverse direction without injury."[53] Baker and Gilroy, in 1933, refer to fish ladders as a means by which fish can pass over obstructions in traveling up and down stream. They also describe the design of a mechanical device, which they refer to as a fishway, for the handling of upstream and downstream migrating fish.[54] During House debates in 1918 on the proposed section 18, Representative Graham of Illinois, in supporting fishway prescription authority, complained that the absence of a fishway in the Keokuk Dam had been preventing fish from passing "up and down" the Mississippi River.[55]

We note that, in orders issued in the last several years, we have not limited the concept of "fishway" to only upstream passage. In *Lynchburg Hydro Associates*, 39 FERC ¶ 61,079 (1987), we found certain fish screens to be a component of the project because they were designed to be incorporated into a system for upstream and downstream fish passage. In *Eugene Water and Electric Board*, 49 FERC ¶ 61,211 (1989), We cited section 18 in requiring the licensee to construct fish facilities for downstream passage of juveniles. Our treatment of the concept of "fishway" in these orders, which treatment in retrospect we consider unduly broad, and the usage of the term by others as cited above, reflects a tendency to regard the term at times as denoting any fish passage facility, in contrast to its more restricted meaning.

We are confronted, then, with a term that conveyed different meanings to different people. It would be treacherous to conclude that either the broad (bi-directional) or the narrow (upstream) interpretation has constituted the single common usage of the term. But inability to divine a definitive, universally understood meaning does not render our formulation of a "fishway" definition here either impossible or arbitrary. To the contrary, we are persuaded that adoption of the narrower interpretation is the more justifiable approach, for several reasons. First, experts in the field appear more apt to use the term in a precise, technical, and narrow sense, to describe particular devices whose purpose is to move fish up-stream past a dam or the like. Conversely, these experts are often apt to use different terms and concepts in describing the methods of protecting downstream-moving juveniles from mortality at dams. In addition, it seems uncontroverted that, especially during the time prior to passage of section 18, the inability of fish to ascend dams during their spawning migration appears to have constituted the principal incentive for the construction of fishways, which were designed particularly to overcome that problem.

Finally, a narrow interpretation comports more closely with the statutory scheme that Congress has chosen for this Commission's operation. At the heart of that scheme is section 10(a)(1) of the FPA, which requires us, in licensing hydropower projects, to balance the improvement and development of waterways for the benefit of commerce, the improvement and utilization of waterpower development, the adequate protection, mitigation, and enhancement of fish and wildlife, and other beneficial public uses. This statutory provision clearly seeks to afford us latitude in determining the conditions under which a project is to be licensed, if it is to be licensed at all. Section 18, which allows other agencies to be involved in the conditioning process, is best construed narrowly to avoid imbuing it with the potential for interfering with the exercise of our judgment in balancing the factors Congress instructed us to consider.

As a practical matter, our adoption of this restrictive interpretation of "fishway" will not result in any lessening of our efforts to ensure safe downstream passage of fish in licensing hydroelectric projects. Agencies are free to propose recommendations relating to downstream passage under their authority granted under section 10(j). We are required to adopt conditions based on these recommendations unless they are inconsistent with the requirements of the FPA or applicable law. Even if fishways were traditionally constructed for the purpose of ensuring upstream passage, we have always recognized the importance of downstream passage in the life-cycle of migratory fish and will continue to treat conditions for downstream passage as seriously as conditions for upstream passage.

Limiting the application of "fishway" to "anadromous" or "marine migratory" fish, as NHA urges, is not supportable. As with downstream passage, Congress was silent on this issue. However, there is nothing in the literature of the time or in the legislative history of previous dam acts to indicate that Congress would have contemplated such a limitation. Even before the General Dam Acts of 1906 and 1910, acts authorizing the building of individual dams reserved approval of fishways to the United States Fish Commissioner (Commission of Fish and Fisheries), even as to streams that did not have marine migratory fish.[56]

Several authorities that discuss fishways as measures to promote upstream passage also refer to migratory fish, but we cannot assume that the term "migratory" necessarily means "anadromous" in this context. The Department of Commerce, in the 1917 circular referred to above, noted that some fishes not ordinarily called anadromous, since they spend their entire lives in fresh water, still show a tendency to move toward headwaters at the time of spawning and therefore require fishways. Rogers, cited previously, refers to the fact that almost all river fish are more or less migratory at certain seasons of the year. Wildlife Federation, in its comments, points out that the limitation would fail to provide for the migratory behavior patterns of resident fish. We are convinced that no limitation should be placed on the type of fish for which fishways may be prescribed.

[53] Department of Commerce, Bureau of Fisheries, Economic Circular No. 24 (1917).

[54] Baker, S. and Gilroy, U.B., Problems of Fishway Construction, Civil Engineering (1933), at pp. 671–675.

[55] Congressional Record, Vol. 56, p. 10037 (September 5, 1918).

[56] This Commission, which in 1911 evolved into the Bureau of Fisheries in the Department of Commerce, was created to address the depletion of food fish, apparently without restriction, throughout the country's coastal waters and lakes. Thompson, Seton H., The National Marine Fisheries Service Agencies, 1871–1987: An Historical Overview.

The most strongly contested element of the proposed definition is its limitation to particular structures, facilities, and devices. But this physical limitation is well rooted in the traditional meaning of "fishway," as reflected in literature from the period of the enactment of the General Dam Acts and of section 18. For instance, von Bayer, in 1908, refers to the "construction" of fishways. He further classifies fishways in four systems by "style of construction:"

I. The inclined plane system, in which a series of baffle or deflecting plates are so arranged in an inclined flume as to cause the water to follow in its descent a long sinuous route.

II. The pool and fall or step system, in which the water is brought down to a lower level by a series of short falls with intervening pools.

III. The counter current system, in which the descending volume of water is being checked by meeting a current opposing it at certain intervals.

IV. The lock and gate system, in which a higher level is reached through one or more locks operated by gates.

The structural nature of these fishways is immediately apparent from their descriptions.[57]

This insistence on the essential physical or structural nature of a fishway persists in more modern times. Clay (1961) refers to a fishway as a "device" by which fish may swim by their own efforts past an obstruction. In addition, even modern authorities have often observed strict limits on the types of structures they would consider fishways. Both Clay and Bell (1973) treat fish locks and fish elevators differently from fishways because those devices lift fish over obstructions, rather than letting them move by their own efforts. Not all experts have observed this distinction; von Bayer, for example, states that "fishways" include both locks and ladders. Moreover, we would consider such a strict interpretation inflexible and impractical in the context of section 18 authority. Nevertheless, the exactness with which authorities define fishways illustrates the unlikelihood that Congress would have intended the term to encompass a wide variety of non-structural elements, such as minimum flow and temperature control regimes, not to mention such all-embracing concepts as "project operation scenarios designed to promote or enhance fish passage."

While practically no commenters object to the specified structures and devices included in the definition, numerous commenters object to our exclusion of some screens and barriers and emphasize the necessarily mixed purpose of some of these devices. In contrast, Public Generating Pool urges that the definition include only screens and barriers whose sole purpose is to guide fish to a fish passage facility. Imposition of such a restriction would seem capricious. While we do not necessarily exclude screens and barriers that serve more than one purpose, as a practical matter, they must clearly be designed to guide upstream-moving fish directly to the fishway and thereby past the project works.[58] Consequently, we envision geographical proximity of these devices to the other physical structures of the fishway. We reject the position of several commenters that the definition should include even screens and barriers designed only to prevent injury to fish at a hydropower facility. There is no indication that Congress contemplated the prescription of fishways to protect fish from project works in situations where no actual fish passage would occur.

Our proposed definition included "flow regulation necessary for proper operation of the fishway itself," although this is a non-structural feature. The importance of adequate flows in fishway operation was recognized early. Von Bayer refers to "an abundant discharge of water through the outlet [of the fishway] so as to attract the fish" as an important condition for a fishway's successful operation.[59] Another authority, Schoklitsch, indicates that for fish to find a fishway "the flow through the fishway must be ample; the water must leave it with a high velocity and, if possible, with some noise." [60]

We agree with Washington Wildlife and Wildlife Federation that a physical facility lacking sufficient flows to attract and pass fish through it is not a functioning fishway. We consider the provision of such flows so intimately related to the purpose and effective operation of a fishway that we will continue to include this flow regulation in the definition, but we will substitute the term "flow within the fishway necessary for its operation." This inclusion is not meant as an invitation for prescription of an elaborate minimum flow regime. By "flow within the fishway necessary for its operation," we mean, specifically, regulation of flow required for attraction water to guide fish into a fishway; for transport water to provide a medium for fish to pass through a facility, such as through a fish ladder; and for water necessary for holding fish in a facility, such as in the collection channel of a fish lift prior to operating the lift.

In all other respects, we would consider minimum flow prescriptions not to be embraced by the term "fishway," but rather to be simply a condition of fishway operation, and thus of project operation. As with other conditions of project operation, as well as with detailed design specifications of a project, we would consider such a prescription so intrusive as to be outside the scope of authority that Congress granted to Commerce and Interior. As we stated in *Lynchburg Hydro Associates,*[61] we consider section 18 to be a narrow and specific grant of authority. It does not authorize Commerce and Interior to impose far-reaching conditions or to require substantial revision with respect to the design and operation of a proposed project. These are matters which we must weigh and balance and which are entrusted to our ultimate judgment, since we have the final responsibility and authority to balance the various public uses of a waterway under FPA section 10(a)(1).

Moreover, ECPA furnished these agencies a separate mechanism for submitting recommended license conditions for the protection, mitigation of damage to, and enhancement of fish resources, and we are obligated by section 10(j) of the FPA to include conditions based on such recommendations unless the recommendations are inconsistent with the purposes and requirements of applicable law. We stated this position in *Lynchburg Hydro Associates* and subsequent orders, and the comments do not convince us to change it. Commenters urging us to adopt a broad definition of "fishway" seem to argue only that authority to prescribe wide-ranging conditions of license would be desirable in ensuring the proper operation of fishways. They do not attempt to demonstrate that Congress, in enacting and amending section 18, meant

[57] Von Bayer, *supra,* at pp. 1043–44. The only possible exception, considered superficially, might be the counter current system, which might seem to consist only of the provision of current. But von Bayer (at pp. 1050–51) includes diagrams and descriptions of two such fishway systems, one of which involves "a series of centrally located buckets inclined downstream into another series of buckets at either side of the fishway" and the other a "chute submerged in the water * * * provided with a series of slits in the bottom." The nature of these fishways as "structures, facilities, or devices" is thus clear.

[58] Our conclusion that a fishway applies only to upstream passage of fish naturally restricts the definition's inclusion of screens and barriers to those facilitating upstream passage.

[59] Von Bayer, *supra,* at p. 1043.

[60] Schoklitsch, Armin, Hydraulic Structures, Vol. II (1937), at p. 682.

[61] 39 FERC ¶ 61.079 at p. 61.218.

to equate prescription of fishways with the exercise of such extensive authority by Commerce and Interior over project operation and design.

Our revised definition reflects the above discussion, but several other modifications to the proposed definition require explanation. We are eliminating reference to the "safe" passage of fish, because the goal that fish passage through a fishway should be safe is implicit. Since "migratory or nonmigratory fish (including juvenile)" embraces all fish, reference simply to "fish" is sufficient. "Fish bypass facility" strikes us, on reflection, as an overly inclusive term and will be eliminated; it should be adequately clear from the revised definition what physical features qualify as a fishway. Finally, we will not enumerate the various structural and non-structural features that would be excluded from the definition. We do not wish to encourage an interpretation that items not specifically excluded would be encompassed by the definition. Again, it should be reasonably clear from the revised definition's language and this discussion what kinds of features and conditions we intended to exclude.

5. *Ready for Environmental Analysis.* The rule requires that, within 14 days of filing an application, an applicant is required to publish a notice setting forth the fact that the application has been filed and requesting comment on whether additional information or studies are needed before the Commission can process the application. Once the Commission has determined that adequate studies have been completed, the Commission will accept the application for filing and normally will publish a notice inviting comment on the application and interventions in the proceeding. In some cases, where studies are still ongoing or there are requests for additional information from the applicant, we stated that the Commission will accept the application for filing but delay the request for comment until the studies have been completed and the requested information has been filed, at which point the application is ready for environmental analysis.

In setting out the proposed regulation for notice and comment hearings,[62] we stated that all comments (including mandatory and recommended terms and conditions or prescriptions) on an application for exemption or license must be filed with the Commission no later than 60 days after issuance by the Commission of notice declaring that the application "is ready for environmental analysis."

Public Generating Pool and Seattle Light suggest that, since the notice declaring that the application is ready for environmental analysis will become a critical event in the licensing process, the rule should include a definition of the status of "ready for environmental analysis." They suggest that the rule describe the form and substance of information or other material which is required of the applicant to obtain an application that is ready for environmental analysis. They add that it should also describe the relationship of this determination to the determination that the application is "accepted for filing," together with a description of the differences in the level of data which will trigger either of these determinations.[63]

Inasmuch as the regulations themselves set forth what must be submitted by applicants, we do not perceive a need to include in a definition a list of all the information which constitutes readiness for environmental analysis.

As we stated in the preamble to the NOPR,[64] the determination that an application for license or exemption is "ready for environmental analysis" may or may not coincide with the determination that the application is accepted for filing. In some cases, an application will be sufficiently informative that both determinations can be made simultaneously, in which case the public notice accepting an application for filing and inviting interventions would also call for public comment and all proposed license conditions. However, there may be cases where, although the application is not deficient and is therefore accepted for filing, for some reason additional information is needed to conduct a complete environmental analysis of the application (as when a study is requested too late in the consultation process to be undertaken before filing, or where a study reveals the need for further studies). In order to clarify that an application which is "ready for environmental analysis" means an application which has been accepted for filing and regarding which any additional information requested by the Commission has for the most part been filed and found adequate, we will add a new § 4.30(b)(26) which defines the term.

6. *Resource Agency.* The NOPR proposed to define "resource agency" as: [65]

> * * * a Federal, state, or interstate agency with responsibilities in the areas of flood control, navigation, irrigation, recreation, fish and wildlife, water resource management, or cultural or other relevant resources of the state or states in which a project is located.

EPA suggests that agencies with responsibilities in the areas of water quality management and protection be added to the definition. Public Generating Pool suggests that the regulation should define the nature of "responsibilities" that might qualify an agency as a resource agency, and that the language of FPA section 10(a)(2)(B), which refers to the recommendations of agencies "exercising administration over" the matters listed in the regulation is more appropriate than the regulation's reference to agencies "with responsibilities in the areas of" these matters.

Interior argues that Indian tribes should be included in the definition of "resource agency" because they have significant natural resource management authority both on and off reservations by virtue of their inherent sovereignty, treaty rights and federal statutes; in some circumstances they possess exclusive jurisdiction, while in other circumstances they share jurisdiction with the states. Interior contends that ECPA did not limit or define the terms "resource" or "fish and wildlife" agency, and therefore there is nothing to prevent the Commission from including Indian tribes in the definition.

The final rule incorporates the change recommended by Public Generating Pool, so that the definition of resource agency refers to any agency "exercising administration over" the specified resources.

We do not believe that any of the other proposed changes are needed. Agencies with responsibilities in the areas of water quality management and protection are included within the definition, since they are agencies exercising administration over water resource management. Indian tribes are not included in the definition because they are not resource agencies, and the Commission does not believe that trying

[62] Proposed § 4.34(b).

[63] Public Generating Pool also notes that some commenters inquired about the relation of this term to NEPA and suggest that the term be renamed so as to indicate that it is the notice of the start of the official 10(j) recommendations process, and to eliminate any confusion of this determination with the environmental review process under NEPA. However, there is no confusion involved, since the notice stating an application is ready for environmental analysis signals the beginning of both the section 10(j) process and the NEPA process.

[64] See NOPR, IV FERC Stats. & Regs. ¶ 32,470 at 32,378.

[65] Proposed § 4.30(b)(26) (emphasis added). As adopted in the final rule, it is new § 4.30(b)(28).

to equate tribes with resource agencies is necessary or appropriate. However, we recognize that some Indian tribes have authority to manage resources, and have special knowledge and contributions to make to the licensing process. Therefore, although not defined as a resource agency, they have been given treatment that is parallel to the treatment given to a resource agency in part of the rule.[66]

However, we will make two further changes in the definition of resource agency in § 4.30(b)(28). In order to eliminate unnecessary language and to make it consistent with the relicensing definition of a resource agency now in § 16.2(d), we will change § 4.30(b)(28) to apply to "the state" [67] in which a project "is or will be located." The duplicative definition in § 16.2(d) is deleted.

Finally, although unrelated to the matters addressed in the NOPR, we will take this occasion to delete the definition of "initial license" in § 4.30(b)(11) because it is confusing and unnecessary.

B. Pre-hearing Procedures and Related Issues.

1. *Pre-filing Consultation.* In the NOPR the Commission proposed that § 4.38 be comprehensively revised. The revision follows the structure of § 16.8 governing applications for a new license, a nonpower license, or exemption from licensing or for surrender of a project subject to sections 14 and 15 of the FPA.[68]

The final rule clarifies exactly when each of the three stages of the consultation process begins and ends. The first stage begins with contact by the potential applicant of the resource agencies to be consulted and the delivery to the agencies of an information package describing in reasonable detail the proposed facilities the potential applicant is considering, and ends with written comment by each resource agency to the potential applicant on its project proposal.[69] The second stage begins with the conduct by the potential applicant of all reasonable and necessary studies not yet completed, and ends with the conclusion of any necessary negotiation between the potential applicant and the resource agencies on their comments on the applicant's draft application.[70] The third stage consists of the filing of the application with the Commission and its service on all resource agencies consulted.[71]

Like the previously existing § 4.38, the final rule requires a potential applicant to furnish the resource agencies with a detailed information package. Unlike the previous regulation, the final rule expressly requires the potential applicant to seek in the first stage the resource agencies' views on reasonable hydropower alternatives to the proposed hydropower facilities and on what studies it should conduct on the impact of the facilities.[72] The rule imposes a requirement that the applicant conduct a joint meeting with all consulted resource agencies between 30 and 60 days after the information package on the proposed facilities is delivered to the agencies.[73]

The final rule requires all agencies consulted to respond to the potential applicant in writing, no later than 60 days from the date of the joint meeting.[74] This response must include a description of the resource issues the agency believes the proposal presents and of what studies the potential applicant should conduct and what information it should gather to form an adequate factual basis for complete evaluation of the proposal.[75] An applicant and an agency that disagree as to what studies or additional information are reasonable and necessary must negotiate in good faith in an attempt to resolve their disagreement.[76]

The final rule clarifies that, prior to filing its application with the Commission, an applicant need not complete any study requested by a resource agency or supply any information the agency requested be obtained by the applicant if the study or information-gathering would take longer to complete than the time between the conclusion of the first stage of the pre-filing consultation and the expiration of the applicant's preliminary permit or any application filing deadline set by the Commission.[77] This additional time, after filing, for completing studies requested before filing would be allowed only if the applicant has promptly begun and diligently conducted the pre-filing consultation. Once the study is completed, the applicant must amend or supplement its application, as appropriate, before resource agency comments are requested.

The heart of the second stage of consultation is, as in the previous regulation, the potential applicant's submittal to the resource agencies of a copy of its draft application and the agencies' submittal of comments thereon. The final rule requires that this draft include a response to any comments and recommendations of the agencies made during the first stage of consultation and a discussion of potential project impacts and mitigation measures based on the results of any additional studies conducted and information obtained by the potential applicant.[78] The resource agencies then would have 90 days (instead of the 30 to 60 days under the previous regulation) to review and provide written comments on the draft application.[79] If the resource agency substantively disagrees with the potential applicant as to the proposal's "resource impacts or its proposed protection, mitigation, or enhancement measures," the rule directs that no later than 60 days from the date of that agency's written comments [80] the

[66] See the definition of Indian tribe, in section IV.A.3., *supra*, and Participation of Indian Tribes, in section IV.D.l., *infra*.

[67] In the Commission's regulations, the singular includes the plural. See 18 CFR 1.102(a).

[68] See 54 FR 23,756 (1989), *reh'g*, 55 FR 4 (Jan. 2, 1990), FERC Stats. & Regs. ¶ 30,869 (1989).

[69] Section 4.38(b).

[70] Section 4.38(c).

[71] Section 4.38(d).

[72] Section 4.38(b)(1).

[73] Section 4.38(b)(2). The meeting must include an opportunity for a site visit, and members of the public and Indian tribes may fully participate. The previous § 4.38 did not require a meeting.

[74] Section 4.38(b)(4). This date may be extended for an additional 60 days at the option of the resource agency. This extension option does not appear in § 16.8, applying to pre-filing consultation by renewal applicants.

[75] We stress that a resource agency must, as early as possible in the pre-filing consultation process, inform a potential applicant of the specific scientific studies, criteria and methodologies the agency believes are necessary to evaluate the impact of the proposed project. Without a prompt response on these issues a potential applicant may be unable to complete the necessary studies prior to the expiration of its preliminary permit. *E.g.*, Natural Energy Resources Co., 48 FERC ¶ 61,032 (1989).

[76] Section 4.38(c)(1) directs a potential applicant to "diligently conduct all reasonable studies and obtain all reasonable information requested by resource agencies under paragraph (b) of this section that are necessary for the Commission to make an informed decision regarding the merits of the application."

[77] Section 4.38(c)(1). If holders of preliminary permits were not allowed to complete such studies after filing, their applications might be deemed unacceptable for filing, and the applicant could lose the comparative advantage of holding a preliminary permit simply because it could not complete a lengthy study requested prior to the expiration of its permit. See Natural Energy Resource Co., *supra*. The Commission might also set a specific deadline for the filing of a license application, as in the case of an unlicensed project. An operator should not be deemed to have failed to meet this deadline merely because it could not diligently have completed all required studies before this deadline. *Id.*

[78] Section 4.38(c)(4).

[79] Section 4.38(c)(5).

[80] Comments should be dated when they are mailed or delivered.

applicant must meet with the disagreeing agency (and with any other agencies of similar or related areas of interest, expertise, or responsibility) in an attempt to reach agreement on project impacts and appropriate remedial or corrective measures.[81] Signed, comprehensive agreements with resource agencies are not expected or required, nor are they binding on the Commission, which will determine whether the terms of any such agreement are in the public interest. The filed application must reflect any areas where disagreements between an applicant and a resource agency still exist.

The third stage of consultation consists of the filing of the application with the Commission and service of a copy on each consulted agency.[82] The final rule provides that a resource agency may waive in writing its consultation rights for a stage of the pre-filing process, as, for example, by consenting to a potential applicant's completion of necessary scientific studies after it files its application.[83] A resource agency may also waive compliance with all consultation requirements, as in the previous regulation.[84] The final rule also sets forth material the applicant must submit with its application, including a summary of the consultation process, comments of resource agencies, and any disagreements between the applicant and any resource agency regarding the need for a study or information on any environmental protection, mitigation, or enhancement measures.[85]

A number of industry representatives [86] object to the new requirement in proposed § 4.38(b)(1) that the applicant describes in its information package, for resource agencies and the public, reasonable hydropower alternatives to the proposed project. These parties fear distraction from the applicant's proposal and the cost of conducting studies on alternatives. Criticism is also directed at the new requirement for a public meeting, on the ground that frequently the public had not taken advantage of the similar requirement in § 16.8, applicable to applicants for new licenses (at relicensing). Teleconferencing or other less expensive alternatives are suggested.

Public power representatives, environmental groups, and resource agencies [87] support the proposed public meeting requirement. They generally consider the proposal as expediting the licensing process by helping to identify as early as possible all significant environmental and other concerns. American Rivers and EPA want an expansion of the requirement that the applicant study hydropower alternatives to its proposal, so that the applicant would also have to explore non-hydro alternatives, such as energy conservation and energy demand management.

Wildlife Federation and American Rivers seek greater participation by Indian tribes and the public in the pre-filing consultation process. PG&E recommends a greater role for the Commission in the pre-filing consultation process, as by giving the Commission advance notice of meetings and promptly serving the transcript of the initial public meeting on the Commission.[88]

Interior raises a number of issues. It asks that the National Park Service be listed as a resource agency that the applicant must consult and that the Commission clarify an applicant's duty to consult with agencies controlling an existing dam site when it proposes to add new hydropower facilities. Interior also is concerned by a possible conflict between proposed §§ 4.38(a)(4)(ii) and 4.38(a)(6), which deals with the kinds of applications that are subject to the pre-filing consultation requirements of § 4.38. Interior is not sure which joint meeting sets the 60-day clock running under proposed § 4.38(b)(6). The agency claims that there should be a required meeting between the applicant and the resource agencies whenever there is a conflict over necessary scientific studies, project design, and similar issues, and that the Commission should participate in the meeting if there is a conflict over appropriate protection for endangered species. Finally, Interior claims that the 90 days allowed for a resource agency to respond to draft applications pursuant to proposed § 4.38(c)(5) is insufficient for complex projects. Extensions of time should be allowed, and the starting date should run from the time the agency receives the draft application.

The Commission has decided not to make any further change in the proposed regulations governing the applicant's obligation to consider reasonable hydropower alternatives in the pre-filing consultation process under § 4.38(b)(1). Since the applicant's proposal is often not fixed precisely at this point, as the applicant itself considers the alternatives available to achieve its hydropower objective, it would not be productive to limit the consultation process to the one alternative selected by the applicant at this early stage. At the same time, the Commission is sensitive to the concerns expressed by industry representatives that the consultation process not encompass alternatives that the applicant has no intention of pursuing at the Commission. For this reason, we stress that the pre-filing exploration of alternatives must be "reasonable" and have a meaningful relationship to the applicant's objectives, not the least of which is pursuit of a project that is efficient and makes economic sense.

The Commission will not expand this required consideration of alternatives in the pre-filing consultation process to the non-hydro arena. The Commission fully recognizes its obligation to consider energy conservation in deciding whether to issue licenses, pursuant to FPA section 4(e). The Commission is concerned, however, that requiring the study of issues such as energy conservation potential and energy demand management in the pre-filing consultation process would needlessly complicate and prolong it. Such issues, where relevant, are best addressed in the hearing process, where they can be examined as appropriate.

The Commission retains the public meeting requirement in § 4.38(b)(2). As discussed more fully below, it is important to apprise the public of the applicant's intentions at the earliest possible stage, before they have ripened into a concrete proposal before the Commission. In this way, the applicant can adjust its Proposal as appropriate to respond to any public criticism and address in its application the significant environmental and other issues raised by the public during the pre-filing process. We believe that the experience gained from this requirement in § 16.8, for relicensing, has been successful and will continue to serve a useful purpose, especially for controversial projects.

Consistent with the addition to § 4.38 of a mechanism for resolving disputes

[81] Section 4.38(c)(6).

[82] Section 4.38(d)(2). The previous regulation only required service on the consulted agencies at the time of filing of minor applications. In the case of major applications, the previous regulation required a copy to be served on each consulted agency only when (and if) the application is accepted for filing by the Commission. See § 4.38(b)(3).

[83] *E.g.*, Natural Energy Resources Co., *supra*.

[84] Compare new §§ 4.38(e) and (f)(4) with previous § 4.38(e)(1).

[85] Compare new §§ 4.38(f)(1)–(3) and (5) with previous §§ 4.38(c)(1) and (d).

[86] *E.g.*, Alabama Power and American Paper.

[87] *E.g.*, Seattle Light, American Rivers, and Energy.

[88] PG&E proposes changes to § 4.38(c)(6)(ii) to parallel § 16.8(c)(6)(ii), and proposes to make § 4.38(f)(8) part of § 4.38(b)(3)). PG&E also asks that the term "or Indian tribe" be inserted after the term "resource agency" at appropriate places.

between applicants and resource agencies,[89] the Commission is changing § 4.38(c)(6) to more closely parallel § 16.8(c)(6) by requiring 15-day notice to the Commission of all meetings. Similarly, the Commission is changing § 4.38(b)(3) to require a copy of the transcript of the public meeting to be served on the Commission as soon as it is available.

We have revised § 4.38 to ensure that it refers to Indian tribes as well as resource agencies.[90] We have not added the National Park Service to the list of resource agencies that applicants subject to § 4.38 must consult during pre-filing. The Commission does not have authority to issue original licenses for hydropower projects in national parks.[91] The regulations adopted clearly require consultation with any federal agency (such as the Bureau of Reclamation or the Corps of Engineers) operating a federal dam at which the applicant proposes to construct a hydropower facility.

Additional meetings during the pre-filing consultation process, as between the applicant and the resource agencies, will not be required. Section 4.38 already requires two such meetings, one during the first stage and one during the second stage (if there were disagreements between the applicant and a resource agency). If additional meetings are appropriate under the circumstances of the proposal and the particular consultation process, the Commission encourages the applicant and resource agencies to schedule them, but we do not believe it would serve any useful purpose to require them in all cases.

As new § 4.38 grants to resource agencies a substantially expanded time frame in which to respond to an applicant's draft application, and since this time frame is the same as that adopted in § 16.8, there does not appear to be any reason to extend this time still further based on the comments in the record. The Commission is also concerned about the burden on the applicant of allowing for additional extensions of time in the pre-filing consultation process, since as proposed the process can take a minimum of 270 days to complete.[92]

2. *Dispute Resolution.* The Commission did not propose to include any dispute-resolution mechanism in § 4.38, unlike in § 16.8. The Commission deliberately omitted such a proposal due to the high attrition rate experienced in recent years by potential applicants for original licenses, as contrasted to the very low attrition rate by applicants for new licenses.[93] The Commission was concerned about preserving its limited staff resources for the processing of filed applications of all kinds and for dispute resolutions for potential applicants for new licenses, where the prompt resolution of the dispute would most likely expedite the filing of an acceptable and complete application with the Commission. In contrast, the Commission was concerned that adding a dispute-resolution mechanism to § 4.38 would in most cases waste the Commission's time, as such potential applicants would not likely ever file with the Commission an application for license or exemption.

Commenters of every description [94] strongly recommend that the Commission reconsider this omission and insert into § 4.38 a mechanism for resolving disputes between applicants and resource agencies, especially as the disputes relate to what scientific studies the applicant must conduct prior to filing any application for license or exemption with the Commission. These commenters point out the risk to an applicant of rejecting an agency's study request: The risk that its application will be subject to rejection by the Commission as deficient. Potential applicants must estimate the amount of time and money that will be required to perfect their applications; enabling them to request the Commission's decision on disputes over needed studies gives them guidance and certainty early in the pre-filing consultation process, so that the licensing process becomes more efficient. One commenter believes that adding such a mechanism to § 4.38 will encourage agencies to be more flexible in their demands for scientific studies and will reduce the number of irrelevant and burdensome study requests with which potential applicants have to contend.

EEI and Interior recommend a dispute-resolution mechanism based on that contained in § 16.8(b)(5), which could be substituted for proposed § 4.38(b)(5). PG&E also asks the Commission to add language to proposed § 4.38(c)(2) that would require an applicant to conduct a study only if the Commission concludes that it is proper.

The Commission is revising §§ 4.38 (b) and (c) to incorporate a dispute-resolution mechanism for applicants for original licenses and exemptions that parallels the mechanism in § 16.8 for relicensing proceedings. The Commission agrees with the commenters that this change should make the hydropower procedures more efficient and less burdensome for potential applicants and resource agencies and should help to achieve the principal objective of the pre-filing consultation regulation, the filing with the Commission of complete applications that are ready for processing. The Commission remains concerned about the potential for this dispute-resolution mechanism to divert limited staff resources from those proposals that are eventually filed with the Commission but is hopeful that this demand will be more than outweighed by the assistance provided to applicants and resource agencies that have serious disagreements about the nature or scope of scientific studies that are necessary. The Commission's experience to date under Part 16 does not reveal an extremely large number of such requests, suggesting that the existence of this option may encourage all concerned to reach agreement on the study question without contesting the issue before the Commission in the pre-filing consultation process.

As explained in the most recent rulemaking on part 16,[95] opinions expressed in response to requests for resolution of disputes concerning necessary pre-licensing studies may be reconsidered by the Commission after an application is filed, where this reconsideration is necessary to address concerns raised by intervenors or to comply with legal requirements. Such reconsideration will not, however, cause any application to be dismissed as deficient, so long as the applicant conducts any study ordered by the Commission. It should also be pointed out that Commission decisions on requests for resolution of disputes over necessary studies during the pre-filing consultation process can be no more helpful than the facts on which the requests are based, and of course

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[89] *See* section IV.B.2., below.

[90] *See* the discussion of the definition of Indian tribe in section IV.A.3., above.

[91] Certain existing hydropower projects are located in national parks. The consultation requirements for applicants for new licenses for such facilities are set forth in § 16.8, and these applicants would have to consult the National Park Service.

[92] The 60-day or 120-day period under § 4.38(b)(6) starts running from the date of the public meeting held by the potential applicant pursuant to, § 4.38(b)(2)(i).

[93] The FPA refers to the first license issued for a project as the original license. The FPA refers to all subsequent licenses for the project as new licenses. These subsequent licenses are also sometimes referred to as "relicenses."

[94] *E.g.*, EEI, Alabama Power, American Paper, Wisconsin River, American Rivers, and Wildlife Federation, and various state and federal agencies.

[95] Order No. 513, 54 FR 23,756 (June 2, 1989), III FERC Stats. & Regs. ¶ 30,854 (May 17, 1989).

changes in those facts (such as in the hydropower proposal itself) may require further environmental analysis, supplements to scientific studies, or even, in some cases, entirely new studies. The standards the Commission will use in making such determinations are discussed in section IV.B.3. below.

The Commission declines to require only those pre-licensing studies expressly approved by the Commission. As the experience under Part 16 illustrates, in most cases it is possible for applicants and resource agencies to reach agreement on necessary studies without obtaining a decision on the matter from the Commission. The Commission desires to do everything possible to encourage all concerned with a hydropower proposal to attempt to work out their differences at every stage of the process. Requiring the Commission to decide every study request, no matter how routine, would place a severe burden on the Commission's limited staff resources and could cause unnecessary delays in the hydropower licensing process.

3. *Scientific Studies.* The NOPR discussed one of the most critical questions facing the hydropower program relating to consultation with resource agencies: "What kinds of scientific studies are necessary to be conducted on the impact of the proposed project to satisfy the statutory requirements for the licensing process?" Taking measures to protect the environment is a cost of doing business of applicants for and holders of hydropower licenses and exemptions. Conducting scientific studies is often necessary in order to determine what measures should be taken at a hydropower project to protect, mitigate damages to, and enhance fish and wildlife and to achieve other resource goals. These studies are typically the responsibility of the applicant, who must coordinate with resource agencies and other involved parties in the consultation process on what studies are appropriate.

In this context it is important for the Commission to have in place consultation and hearing procedures that will enable all concerned to address, and the Commission to resolve, as logically and efficiently as possible, questions about what scientific studies should be conducted, who should conduct them, what data are needed to determine the environmental impact of a hydropower project, and the level of mitigation required to reduce those impacts. The Commission is entrusted by the FPA with the responsibility of establishing a reasonable approach to processing license applications for hydropower projects. The Commission seeks to strike an appropriate balance between the sometimes conflicting goals of complete, thorough analysis and timely license decisions.

The NOPR asked a number of questions on this issue of scientific studies. As part of the consultation process, should resource agencies be entitled to expect potential hydropower applicants to finance and conduct any requested scientific study related to the impact of the proposed project, so long as the study and its methodology are generally accepted in the scientific community as necessary or appropriate to determine the project's resource impacts? What procedures would best ensure a reasonable balance concerning required studies that satisfies legal requirements and facilitates development and maintenance of the nation's hydropower resources while protecting and enhancing the environment and achieving other resource objectives? What procedures would best ensure development of the data that is necessary and appropriate for the Commission to analyze a project on its merits without jeopardizing it through undue delay or unacceptable financial burden on the applicant or resource agencies?

The Commission welcomed comments on this issue, including what scientific studies a hydropower applicant may be expected to conduct during the consultation process, the extent of the financial resources available to developers and resource agencies to pursue such studies, and whether the regulatory revisions to §§ 4.32, 4.34 and 4.38 proposed in the NOPR adequately address this issue.

Industry representatives [96] support the requirement in proposed § 4.38(b)(4) that resource agencies specify in detail, and document the basis for, their study recommendations, on the ground that this requirement should reduce requests for studies that are irrelevant to the analysis of the impacts of the hydropower project under consideration. These commenters object to proposed § 4.32(b)(6)–(8), granting certain rights to raise, within 45 days of the filing of an application with the Commission, questions about the adequacy of the scientific studies the applicant had conducted, claiming that this new procedure will cause delay and extra costs for applicants.

Some of these commenters assert that the Commission should require resource agencies to justify each study request according to the study's economic impact on the project, comparing total costs of the project (including the costs of the study requested) and the value of the project's proposed mode of operation (*i.e.*, peaking or run-of-river) with the total costs of alternative sources of electrical energy, in order to avoid a bias in favor of the study requested. These commenters express concern about agencies requesting potential hydropower applicants to conduct unnecessary, expensive, and time-consuming studies in order to fill gaps in their databases, and a need is alleged for standards to determine what studies should be performed.

On the other hand, American Rivers argues that a potential applicant should conduct all studies requested by resource agencies unless the Commission can conclude that the study would serve no useful purpose. It claims that an applicant's duty to conduct studies extends to all reasonable mitigation and enhancement measures proposed by resource agencies or the public and a complete examination of all alternatives to the proposed project. American Rivers disagrees with the EPRI methodology for assessing the economic value of proposed resource studies and questions whether it is a workable method for resolving conflicts over study requests.

Wildlife Federation contends that there should be no limit on what studies an applicant may be required to conduct to evaluate a project's effect on the environment. It suggests that, if the costs of such studies are too great for the developer to absorb, the proposed project ought not to be approved or built.

Energy asks the Commission to approve all study requests in the first stage of pre-filing consultation and would limit the Commission's discretion subsequently to require additional studies unless there was a change in the developer's proposal or the results of the approved studies indicated a need for additional studies. Resource agencies would have to demonstrate a need for and the reasonableness of requested studies, and Energy recommends that the Commission set forth in the regulatory text the procedures it will use in deciding issues concerning requested studies, as well as criteria for the final determination.[97]

[96] *E.g.*, EEI, American Paper, Alabama Power, Wisconsin River, Grant, and PG&E.

[97] Energy specifically recommends, as a minimum, the following criteria for the Commission to use in deciding on necessary studies: (1) That the study will produce relevant information not otherwise in the record; (2) that the study objectives and methodology demonstrate an understanding of

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Interior agrees with Energy that the Commission should codify in its regulations the standards it will use in deciding on appropriate studies. These standards should relate to the potential impact on fish and wildlife resources and not be based on the size, power output, or economics of the proposed project. Interior wants a rebuttable presumption that studies recommended by fish and wildlife agencies are appropriate and necessary to obtain information needed to develop the recommendations of the agencies to protect, enhance, and mitigate damage to fish and wildlife resources that may be caused by a hydropower project.[98] Applications should not be accepted for filing if an applicant has "patently refused to initiate studies requested by agencies."

Commerce also supports proposed § 4.32(b), which would create a review before the Commission of the adequacy of studies immediately after an application is filed. Commerce asks for a deadline for Commission action on any post-filing dispute about necessary studies and urges a deadline for an applicant to conduct necessary studies. If the applicant missed the deadline, its application would be dismissed without prejudice. Interior claims that the Commission "bears a great burden of proof should it choose to ignore the agencies' information needs."

EPA contends that requested studies must be conducted "unless license applicants provide substantial evidence why requested studies are not necessary and these agencies have adequate opportunity to respond to the applicants' claims."

The Commission has decided not to change the proposed regulations governing scientific studies, other than to insert a dispute-resolution mechanism, as discussed above. Because the Commission has just begun to gain significant experience under the dispute-resolution mechanism in § 16.8, applicable to applicants for relicensing, it appears premature now to attempt to create and codify additional standards beyond those proposed in the NOPR for determining what scientific studies an applicant may be required to conduct in specific cases.

The Commission remains very concerned about the potential for study requests to cause undue delay in the preparation and processing of hydropower applications. The need for any study requested by a resource agency must be adequately supported. Under revised § 4.38(b)(4), during the first stage of pre-filing consultation the agency must furnish the applicant with a clear description of the basis for a study request, an explanation of why the study methodology specified is more appropriate than alternatives, and documentation that the use of the study methodology is a generally accepted practice that will be useful to the agency in furthering the resource goals affected by the proposed project. Under revised § 4.38(c)(1), during the second stage of pre-filing consultation an applicant must conduct any reasonable study that is necessary for the Commission to make an informed decision on the merits of its application. While the applicant remains responsible for making a decision on these requests for studies in the first instance, if the applicant desires it can refer any request to the Commission for decision under the dispute-resolution mechanism adopted in this final rule.

Under revised § 4.32(b)(7), within 45 days after an application is filed anyone can recommend that an additional study be conducted by an applicant, but the request must be accompanied by a detailed showing:

> For any such additional study request, the requester must describe the recommended study and the basis for the request in detail, including who should conduct and participate in the study, its methodology and objectives, whether the recommended study methods are generally accepted in the scientific community, how the study and information sought will be useful in furthering the resource goals that are affected by the proposed facilities, and approximately how long the study will take to complete, and must explain why the study objectives cannot be achieved using the data already available. In addition, in the case of a study request by a resource agency or Indian tribe that had failed to request the study during the pre-filing consultation process under § 4.38 or § 16.8 of this chapter, the agency or Indian tribe must explain why this request was not made during the pre-filing consultation process and show good cause why its request for the study should be considered by the Commission.

In resolving disputes over necessary studies arising during pre-filing consultation under §§ 4.38 and 16.8, the Commission will use similar standards. In order to determine whether a study is necessary for an informed decision on the merits of an application, the Commission will consider all relevant facts before it. These facts include whether the study methodology is generally accepted, how the information sought relates to the impact of the proposed project on resources administered by the agency, and whether adequate information is already available. The Commission does not expect applicants to conduct experimental research projects on behalf of resource agencies, to expand the boundaries of general scientific knowledge, or to repeat experiments that have already been conducted by others. For example, information on fish mortality attributable to passage through turbines may be available and could in specific cases eliminate the need for an applicant to conduct new studies on this issue. If such studies are needed, it may be appropriate for a number of applicants or licensees to conduct them jointly, sharing the costs. Laboratory studies or the use of information developed to evaluate similar environmental questions may be appropriate in lieu of original, on-site field studies. Computer-generated simulations may also be used in appropriate cases to control study costs.

The Commission does not believe it is necessary to codify the criteria for evaluating study requests recommended by Energy, quoted above. The criteria for evaluating study requests in the final rule, at §§ 4.32(b)(7) and 4.38(c)(1), encompass Energy's recommendations. The Commission believes that these new regulatory provisions, together with the experience gained in deciding on study requests in specific cases, should be sufficient to ensure the gathering of information necessary for decision and place a reasonable burden on hydropower applicants that will not interfere with an expeditious licensing process.[99]

4. *Program workload.* This rulemaking proceeding was initiated, in part, to assist the Commission's hydropower program in efficiently handling the workload it faces in the near future and to comply with the consultation requirements of the FWCA, NEPA and the FPA. This workload will consist largely of applications to relicense hydropower projects under section 15 of

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the relevant environmental issues and have a reasonable probability of successfully resolving the issues to be addressed; and (3) that the proposed study and methodology be appropriate for the site-specific conditions and issues.

[98] A number of state agencies, such as Minnesota, make similar recommendations.

[99] The Commission declines to adopt any specific method to evaluate the economic impact of a study request on a proposed project. It is true that the cost of a study alone is not sufficient reason to deny a request to conduct it, but large study costs, either in absolute terms or relative to the size of the project, raise legitimate questions as to whether the information sought to be gathered by the study cannot be obtained from other sources. No study will answer with complete finality all questions about the resource impacts of a proposed project, and in the interests of an efficient licensing process it may be necessary for the Commission to limit the fact-finding process to those facts that are already available or that can be developed and analyzed with reasonable effort and cost within a reasonable period of time, using accepted scientific methods.

the FPA, applications for original licenses for environmentally sensitive proposed projects, and applications to license unlicensed operating projects.

The Commission invited comments on the relationship between this rulemaking proposal and the various types of applications being considered in the hydropower licensing program. The Commission asked whether the same regulations on consultation with resource agencies and related matters should apply to hydropower applications in each of these areas and whether there are any reasons to apply different regulations.

The comments on this issue [100] generally support the approach taken in the proposed regulation, establishing uniform procedural regulations for the Commission's pre-filing consultation and hearing process and providing flexibility where appropriate. No commenter suggested any workable regulatory standards for differentiating between different types of applications in the regulations governing an applicant's duty to consult, the type of hearing the Commission conducts on an application or other similar requirements.

The revisions adopted herein do not create any new distinctions for different types of applicants. The Commission is confident that these new procedures contain adequate flexibility, both pre- and post-filing, to deal with the great range of applications for hydropower license and exemption filed with the Commission.

5. *Non-capacity amendments.* In proposed § 4.38(a)(4)(iii), the Commission proposed to apply the pre-filing consultation requirements of § 4.38 to an application to amend an existing license if the amendment involved:

(A) The construction of a new dam or diversion or of a new hydroelectric facility;
(B) Any repair, modification or reconstruction of an existing dam that would result in a significant change in the normal maximum area or normal maximum surface elevation of an existing impoundment;
(C) The installation of additional waterpower turbines;
(D) The licensing or exemption of facilities not previously licensed to the applicant or not exempted from licensing; or
(E) Any new development or change in project facilities or operation that could result in a significant environmental impact.

A number of commenters [101] ask us to narrow the category of license amendment applications that require pre-filing consultation, on the ground that the time and burden are not justified by the benefit.

EEI suggests that increasing the number of turbines without substantially increasing the capacity or altering the operation of a project would not justify consultation, because the environmental ramifications are minimal. EEI also suggests that some amendments involve safety or environmental improvements such that the effect of requiring consultation would be to delay the benefits of the amendment: *e.g.*, installation of a fish ladder or fish screen, or dam stabilization devices. EEI also points out the overlap and interrelationship of § 4.38(a)(4)(iii) with §§ 4.200 and 4.201, which also pertain to applications for license amendment, and proposes revisions to all three of these sections.

Wisconsin River suggests that a license amendment to add recreational facilities could be processed more efficiently by consulting only the one or two agencies that have an interest in those facilities. Solano suggests that no useful purpose would be served by requiring pre-filing consultation on an application it intends to file, to amend its license to include therein certain existing facilities that are currently owned and operated by the federal government. Alabama Power suggests that the pre-filing consultation requirements be made applicable only if the amendment to the license could result in significant environmental impact. Pend Oreille suggests that we consider adopting the "material amendment" standard in § 4.35 as the determinant of when pre-filing consultation is required before filing an application to amend a license.

We originally developed the three-stage consultation process in § 4.38 in an effort to expedite our processing of the applications. The consultation requirements were designed to ensure that the applicant had considered a broad range of significant environmental factors in preparing its application, and had undertaken whatever studies were necessary and appropriate, so that the application could be evaluated more quickly once it was filed. (We note in passing that the phrase "three-stage consultation" is somewhat inapposite, in that the third stage consists merely of filing the application, an event that is elementary to the licensing process even absent any pre-filing consultation requirements.) We adapted the § 4.38 process into § 16.8 for relicensing proceedings to further the same objectives of expeditious processing.

We extended the pre-filing consultation requirement to applications to amend licenses because there are many situations in which the amendment could have a significant environmental impact. In those situations, pre-filing consultation could expedite the application review process by ensuring that these environmental impacts have been considered in preparing the application.

We recognize, however, that there is a significant category of amendments to licenses in which the pre-filing consultation requirement would slow the application process rather than facilitate it. We also are wary of discouraging beneficial amendments. We want to encourage amendments that increase capacity or efficiency by replacing older equipment with newer or better equipment under circumstances in which there is no operational impact on the environment. To the extent legally feasible, we want to do this by avoiding extraneous issues in such proceedings. We also want to encourage amendments that implement safety or environmental improvements without delaying such improvements by woodenly imposing all-purpose consultation prerequisites.

The problem we face is how to define a standard that requires pre-filing consultation when it is appropriate and omits it when it is unwarranted. The ultimate goal is to require pre-filing consultation when the license amendment has a potentially significant environmental impact, but that standard cannot be codified into a regulatory test because it begs the question. The whole purpose of the consultation process is to identify the environmental impacts.

Defining the standard in terms of additions to capacity is tempting but elusive. There are some amendments which could affect the environment without increasing capacity, while other amendments could increase capacity without any impact on the environment.

We agree with EEI that § 4.201 is integrally related to § 4.38(a)(4)(iii), and that both need to be reconsidered in conjunction with each other. We have done so in light of the comments received and the considerations discussed above, and have decided to revise them as follows:

Revised § 4.38(a) (4), (5) and (6):

(4) The pre-filing consultation requirements of this section apply only to an application for:
(i) Original license;
(ii) Exemption;
(iii) Amendment to an application for original license or exemption that materially amends the proposed plans of development as defined in § 4.35(f)(1);

[100] *See, e.g.*, Colorado, Minnesota, and Washington Fisheries.
[101] EEI, Wisconsin River, Alabama Power, Solano, and Pend Oreille.

(iv) Amendment to an existing license that would increase the capacity of the project as defined in § 4.201(b); or

(v) Amendment to an existing license that would not increase the capacity of the project as defined in § 4.201(b), but that would involve:

(A) The construction of a new dam or diversion in a location where there is no existing dam or diversion;

(B) Any repair, modification, or reconstruction of an existing dam that would result in a significant change in the normal maximum surface area or elevation of an existing impoundment; or

(C) the addition of new water power turbines other than to replace existing turbines.

(5) Before it files a non-capacity amendment as defined in § 4.201(c), an applicant must consult with the resource agencies and Indian tribes listed in paragraph (a)(1) of this section to the extent that the proposed amendment would affect the interests of the agencies or tribes. When consultation is necessary, the applicant must, at a minimum, provide the resource agencies and Indian tribes with copies of the draft application and allow them at least 60 days to comment on the proposed amendment. The amendment as filed with the Commission must summarize the consultation with the resource agencies and Indian tribes on the proposed amendment, propose reasonable protection, mitigation, or enhancement measures to respond to impacts identified as being caused by the proposed amendment, and respond to any objections, recommendations, or conditions submitted by the agencies or Indian tribes. Copies of all written correspondence between the applicant, the agencies, and the tribes must be attached to the application.

(6) This section does not apply to any application for a new license, a nonpower license, a subsequent license, or surrender of a license, subject to sections 14 and 15 of the Federal Power Act.

* * * * *

Revised § 4.201(b) and (c):

(b) *Required exhibits for capacity related amendments.* Any application to amend a license for a hydropower project that involves additional capacity not previously authorized, and that (1) would increase the actual or proposed total installed capacity of the project, (2) would result in an increase in the maximum hydraulic capacity of the project of 15 percent or more, and (3) would result in an increase in the installed name-plate capacity of 2 megawatts or more, must contain the following exhibits, or revisions or additions to any exhibits on file, commensurate with the scope of the licensed project:

* * * * *

(c) *Required exhibits for non-capacity related amendments.* Any application to amend a license for a water power project that would not be a capacity related amendment as described in paragraph (b), above, must contain those exhibits that require revision in light of the nature of the proposed amendments.

New § 4.201(b) defines a capacity related amendment as one that would result in both an increase in maximum hydraulic capacity of the project of 15 percent or more and an increase in installed name-plate capacity of two megawatts or more. We believe that these limits would minimize the pre-filing expense for licensees seeking most efficiency upgrades and small project upgrades having minimal expected impacts.

After consideration of this issue, and in response to the comments received, we have adopted these provisions in the final rule. We invite interested persons to comment on them by filing requests for rehearing of this order.

Section 4.35 of the Commission's regulations provides that, when a hydropower applicant amends its application for license or exemption in order "to materially amend the proposed plans of development," the date of acceptance of the application under § 4.32(f) of the regulations becomes the date on which the amendment to the application was filed. As a consequence, applicants disfavor such amendments, which may cause them to lose whatever priority the application has over competing applications by virtue of the filing dates.[102]

There are a number of exceptions to this general rule, set forth in § 4.35(e), that encourage certain types of amendments by allowing them to be filed without altering the application's filing date. Section 4.35(e)(4) allows an applicant to file an amendment to proposed plans of development "to satisfy requests of fish and wildlife agencies" with which the applicant has consulted under § 4.38. On further review of this exception in response to the comments received that seek to improve the Commission's consultation procedures, § 4.35(e)(4) appears too narrowly drawn, and should be revised to encourage appropriate amendments to proposed plans in order to respond to concerns raised by any consulted entity during the consultation process. As discussed in section IV.B.1. above, for example, an applicant must consult with a wide range of resource agencies and affected Indian tribes. An applicant may also wish to amend the plans in its application in response to concerns raised by the Commission, as by amending the application to change the project applied for to an alternative suggested by the staff that would reduce adverse environmental effects of the original proposal.

In order to encourage all such amendments and to promote the objectives for the FPA and related laws, the Commission is hereby revising § 4.35(e) to provide that any amendment to a license or exemption application "to satisfy requests of resource agencies or Indian tribes * * * or concerns of the Commission" may be filed without altering the application's filing date.[103]

Finally American Rivers notes that there are consultation requirements in both § 4.38 (for original licenses) and § 16.8 (for "new" licenses in relicensing proceedings). American Rivers inquires as to which procedures apply in the event that a substantial amendment of an original license results in acceleration of the license expiration date.

We recognize that there may be other situations in which questions or ambiguities may arise as to whether a proceeding involves original licensing or relicensing.[104] However, there is no need to sort out those issues here. Our intention in this final rule is to conform § 4.38 and § 16.8 in such a manner, as to prescribe substantially identical consultation procedures for both types of proceedings. To the extent that there are any inadvertent discrepancies, we invite interested persons to point them out by filing a request for rehearing, so that we can eliminate them. Thus, participants ought to be able to pursue the consultation process in the same manner, without need to consider whether the proceeding is best characterized as original licensing or relicensing.

C. Hearing Process

1. *Filing requirements.* Section 4.32(b)(3) requires an applicant to make certain information regarding its proposed project available to the public for inspection and reproduction.

American Rivers argues that § 4.32(b)(3) should be revised to include correspondence and comments received

[102] Under the Commission's hydropower regulations, for example, if two competing applications for license are equally well adapted to develop, conserve, and utilize in the public interest the water resources of the region, and neither permittee nor municipal preference is involved, the Commission will favor the applicant with the earliest application filing date. 18 CFR 4.37.

[103] Although not specifically proposed in the NOPR, this change is procedural only and is necessary to make more effective the Commission's consultation process and environmental review of hydropower applications under the FPA and NEPA, as discussed in the NOPR and in sections IV.B. and IV.C. Specific advance notice and comment on this rule change are therefore not required, and the Commission welcomes comments on this change in requests for rehearing of the final rule.

[104] *See, e.g.*, the Notice of Inquiry in Docket No. RM91-5-000, Preferences at Relicensing of Units of Development, 56 FR 8165 (Feb. 27, 1991), IV FERC Stats. & Regs. ¶ 35,522 (Feb. 20, 1991).

by the applicant in connection with the project. It suggests that language of the rule be revised by adding the words "or received by the applicant from a resource agency or the public." The additional language requested by American Rivers is unnecessary to achieve the purpose of the public file requirement for applicants for original licenses or exemptions, which is to enable the public to obtain convenient access to information about the applicant's proposal to the Commission. Should a person desire the types of additional information discussed by American Rivers, he can obtain such information from the person originating the correspondence or comments or directly from the Commission's files. Applicants for new licenses must maintain a more extensive public file, in order to give the public convenient access to information about the applicant's operating and compliance record at the project for which the new license is sought.[105]

PG&E suggests that a statement be added to § 4.32(b)(3) precluding an applicant from making cultural resource information available to other persons if this could lead to a violation of any federal law. PG&E's suggested addition is aimed at protecting archeological or Native American cultural resources in a manner consistent with the protection stated in the relicensing regulations.[106] We agree that such protection is appropriate and have added parallel language to § 4.32(b)(3).

Section 4.32(b)(4)(iii) requires the applicant to provide a copy of the complete application, as amended, to a public library or other convenient public office. South Carolina argues that, if public involvement is desired throughout the pre-filing and filing process, then applicants should also be required under § 4.32(b)(4)(iii) to make copies of the first stage of consultation document and the initial consultation packet, as well as the application, available to the public at the stated libraries and public offices.[107] Inasmuch as § 4.32(b)(3) states that information is to be made available from the date on which the applicant files its application, and the information submitted at that point provides a more complete picture of the project than does the initial consultation document, we see no need to require that the first-stage consultation document be made available at a public library or other public office.

The California Water Board requests that it be listed in § 4.38(a)(1) as a resource agency that must be consulted in stage one of the three-stage consultation process. It states that this early consultation requirement is necessary because of its dual authority in water resource allocation and water quality certification.

The specific listing of the California Water Board as a resource agency in § 4.38(a)(1) is unnecessary, since, as an agency with responsibility in water resource management, it fits the definition of a resource agency in proposed § 4.30(b)(28), and, as a certifying agency under section 401 of the Clean Water Act, it meets the stated criteria in § 4.38(a)(1).[108]

Section 4.38(f) sets out what must be included in the applicant's Exhibit E of its application to document that it has met the Commission's consultation requirements. Section 4.38(f)(2) requires that Exhibit E include any letters from the public containing comments and recommendations.

Section 4.38(h) is a transition provision that applies to applicants who file their license applications on or after the effective date of the rule, but who, because they conducted consultation before the effective date of the final rule, did not hold a public meeting in accordance with the new requirement in the rule. Section 4.38(h)(4)(i) requires such applicants to hold a public meeting within 90 days from the effective date of this rule. Section 4.38(h)(4)(iv) requires the applicant to include in its filed application a description of how the applicant's proposal addresses the significant resource issues raised during the public meeting.

American Rivers suggests that the Commission make § 4.38(f)(2) consistent with § 4.38(h)(4)(iv) by revising § 4.38(f)(2) to require that Exhibit E of the application include a description of how the applicant's proposal addresses the significant resource issues raised during the public meeting. American Rivers also requests that § 4.38(h)(4)(iv) be revised to include a reference to copies of any letters from the public containing comments and recommendations.

The proposed addition to § 4.38(f)(2) is unnecessary, because such language is already contained in § 4.38(f)(8), and thus is applicable to all applicants. The proposed addition to § 4.38(h)(4)(iv) is also unnecessary, because the transitional applicant is filing its application after the effective date of the rule and thus must comply with § 4.38(f)(2) as part of its filing requirement.

In order that the agencies reviewing Exhibit E will have a comprehensive list of all agencies the applicant consulted during pre-filing consultation, we have added § 4.38(f)(9), which requires the applicant to include such a list, including addresses, in Exhibit E. A list of agency names and addresses will be useful in identifying multiple resource agencies for projects located in more than one state, and will provide the reader with a complete and quick reference guide to all the agencies that were consulted.

2. *Water quality certification.* The NOPR proposed to modify the showing previously required by an applicant concerning its compliance with section 401(a)(1) of the Federal Water Pollution Control Act (the Clean Water Act),[109] where the state certifying agency has received a request for water quality certification but has not acted on it for one year. The previous regulations required that the applicant provide the Commission a copy of its request for certification, including proof of the date that the certifying agency received the request "in accordance with applicable law governing filings with that agency."[110] Revised § 4.38(f)(7)(i)(B) and § 16.8(f)(7)(i)(B)[111] require only that the applicant provide proof of the date on which the certifying agency received the request for water quality certification. The revised regulations make clear that the certifying agency is deemed to have waived the certification requirements of the Clean Water Act if it has not denied or granted a request for certification within one year from receipt of the request.

The NOPR explained that if a certifying agency does not have, within one year, sufficient information to analyze a request for certification, the agency can deny certification and

[105] 18 CFR 16.7.

[106] 18 CFR 16.7(d)(5)(ii). PG&E proposes the following language: "A licensee shall delete from any information made available under this section [or paragraph], specific site or property locations the disclosure of which would create a risk of harm, theft or destruction of archaeological or Native American cultural resources or to the site at which such resources are located, or would violate any federal law, including the Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470w–3, and the National Historic Preservation Act of 1966, 16 U.S.C. section 470hh."

[107] For a specified time period, a potential applicant must make the first-stage consultation package available to the public for inspection and reproduction. Section 4.38(g)(2)(i) and (h)(4)(iii)(A).

[108] In any event, the listing of resource agencies in proposed § 4.38 was not meant to be exclusive.

[109] 33 U.S.C. 1341(a)(1).

[110] 18 CFR 4.38(c)(2)(ii) and 16.8(f)(7)(i)(B).

[111] The regulations, and the amendments thereto, are substantially identical. Part 4 pertains to applications for original licenses, while part 16 pertains to applications for new licenses in relicensing proceedings.

thereby require the applicant to reapply. An applicant therefore has no incentive to withhold from the certifying agency the information that the agency considers necessary for ruling on the merits of the request.

A number of commenters [112] object to the revision, contending in various ways that it seeks to circumvent or undermine the Court of Appeals' decision in *City of Fredericksburg, Va.* v. *FERC.*[113] In that case, the court held that, under the Commission's regulations, "a valid request for certification occurs only if the prospective licensee complies with the state agency's filing procedures." [114] The prior regulation, as construed in *City of Fredericksburg,* was unduly burdensome, because it put the Commission in the frequently difficult posture of trying to ascertain and construe the procedural requirements of numerous and divergent state statutes and state agency regulations.[115] The amendment proposed in the NOPR in effect implements the Commission's original intent in adopting those regulations. The commenters misconstrue the purpose and effect of the amendment. It does *not* override the procedural requirements of state agencies. To the contrary, it fully preserves those requirements, and in that sense is fully consistent with the court's decision in *City of Fredericksburg.* Under both the old and the new regulations, there is no issue of whether state agency procedural requirements apply; clearly they do, and they must be complied with. The sole issue is who has the responsibility for determining whether the applicant has complied with those procedural requirements. The amended regulation places that responsibility squarely where it belongs, and where the Commission always intended it to be: on the state agencies responsible for implementing those procedural requirements.

The amendment to the regulations does not undermine the ability of state agencies to make this decision. If an applicant fails to comply with a state agency's procedural requirements, the agency has the power to deny the request for certification, and that denial is binding on this Commission. The denial can be issued without prejudice to the applicant's refiling of an application that complies with the agency's requirements. The only burden placed on the agency is to look at the request and make a clear decision within one year. That is ample time to determine whether the agency's procedural regulations have been complied with. If the agency does not either grant or deny the water quality certification request within one year, then the requirement for certification is deemed waived.

For all of the reasons discussed above, and after careful consideration of the comments received, we have decided to adopt the revised § 4.38(f)(7)(i)(B) and § 16.8(f)(7)(i)(B) as proposed in the NOPR.[116]

Wildlife Federation suggests that we further amend the regulations so as to preclude the possibility that a license applicant might file evidence of its request for water quality certification while not disclosing that the request had been denied within the ensuing year. Clearly, the whole thrust and purpose of the regulation is to identify situations in which water quality certification requirements have been waived through state agency inaction. A denial of certification within one year would clearly not be a waiver. Any applicant that filed with us evidence of its water certification request without disclosing that the state agency had denied the request would be guilty of a serious misrepresentation and abuse of our processes; we are not aware of any such problem having occurred in the past, and Wildlife Federation does not make any such allegations. Nevertheless, in an abundance of caution, we have added the following sentence to § 4.38(f)(7)(ii) and to § 16.8(f)(7)(ii):

> If a certifying agency denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

Wildlife Federation also suggests that the regulations be amended to provide for inclusion of the section 401 certification conditions in the license. Pursuant to section 401(d) of the Clean Water Act, these water quality certification conditions become terms and conditions of the license as a matter of law. Therefore, it is not necessary to expressly adopt them in the order issuing the license.[117]

Finally, EEI and Oklahoma Water propose revisions to § 4.38(f)(7)(iii) and its counterpart, § 16.8(f)(7)(iii), with respect to material amendments. As currently in effect, those sections require that, if an applicant amends its application for license "to materially amend the proposed plans of development," [118] it must file a new request for water quality certification.

Oklahoma Water contends that an applicant should be required to file a new request for water quality certification even if the amendment does not propose material changes to the proposed plans of development. In particular, Oklahoma Water suggests that a change in identity of the applicant might warrant requiring a new certification. EEI, on the other hand, contends that a new request for certification should not be required if the applicant has already received a water quality certification for the project, and if the material amendment to the license application does not in any way modify the project's discharge or water quality impacts. EEI, therefore, proposes a revision to the regulations that would limit the need to obtain a second water quality certification to situations in which the amendment would have some nexus to discharges or water quality.

We find some merit in both proposals. First of all, if the applicant has filed a request for water quality certification and the state agency has not yet acted upon the request at the time that the applicant files a material amendment with the Commission, we believe that the applicant has an obligation to notify the state agency of the amendment regardless of its relationship to discharges and water quality. Under those circumstances, the state agency is entitled to know all the relevant facts before it acts on the certification request, and it is the state agency's prerogative to determine which facts are relevant.

With respect to Oklahoma Water's specific example, if a state agency has issued a water quality certification to a particular applicant, and if the applicant then files an amendment with the Commission that changes the identity of

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[112] California Water Board, Oklahoma Water, Oregon, Nevada, Wildlife Federation, and American Rivers.

[113] 876 F.2d 1109 (4th Cir. 1989).

[114] *Id.* at 1111–12.

[115] *See, e.g.,* Central Maine Power Co., 52 FERC ¶ 61,033 (1990) at pp. 61,171–72, and John N. Webster, 51 FERC ¶ 61,351 (1990) at p. 62,138 n.7. At least one state has apparently allowed requests for certification to be made orally. We are amending § 4.38(f)(7)(ii) and § 16.8(f)(7)(ii) to specify that waiver can occur only if the request for certification is submitted in writing.

[116] If a request for water quality certification was filed with a certifying agency prior to the effective date of this final rule, and if that certifying agency had not accepted the request for filing as of that date, then the one year in which the certifying agency must act on the request in order to avoid the waiver commences on the date of the effectiveness of this final rule. If the certifying agency had accepted the request for filing, then the one-year period commences running on the date of that acceptance for filing.

[117] *See* Carex Hydro, 52 FERC ¶ 61,216 (1990) at p. 61,769.

[118] The quotation is from § 4.35(b)(1). Section 4.35 deals with amendments to applications. Sections 4.38(f)(7)(iii) and 16(f)(7)(iii) refer by cross-reference to § 4.35(f), which defines "material amendment to proposed plans of development."

the applicant without changing the project, a question may arise as to the transferability of the state certification to the reconstituted applicant. We recognize the issue that Oklahoma is raising, but prefer to deal with it on a case-by-case basis, on the particular facts and legal context presented if such a situation arises.

We agree with EEI that, if a state agency has issued water quality certification for a project, and if the applicant then files an amendment that materially changes the project but in a manner that has no material adverse impact on water quality, no useful purpose would be served by requiring the applicant to obtain a second certification. If, for instance, an amendment would add recreational facilities without having any effect on discharges of water, a new request for certification would clearly not be required. Similarly, if an amendment would replace outmoded electrical facilities with more efficient facilities without adversely affecting the quality of the water discharged, a new request would not be required. On the other hand, we recognize that situations may arise involving a fundamental alteration of the project or proposed project, such as adding or deleting a dam or comparably significant facility, or relocating the entire project to an area that had not previously been evaluated. In those situations, we expect the applicant to request new water quality certification, and will require it to obtain one, or a waiver thereof.

We believe that these principles are equally applicable in two situations: (1) Amendments to pending applications for license; and (2) applications to amend an existing license. Accordingly, we have amended § 4.38(f)(7)(iii) to read as follows:

(iii) Notwithstanding any other provision in Title 18, chapter I, subpart B, any application to amend an existing license, and any amendment to a pending application for a license, requires a new request for water quality certification pursuant to paragraph (f)(7)(i) of this section if the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project.

We have adopted a comparable revision of § 16.8(f)(7)(iii) with respect to amendments to applications for a new license (relicensing). In reviewing amendments to license applications and applications to amend existing licenses, the Commission will ascertain whether a water quality certification was issued or waived, and if not, whether certification or waiver is required under the circumstances presented.

Finally, we note that on March 8, 1991, the United States Court of Appeals for the District of Columbia Circuit issued a decision regarding water quality certification for hydropower projects. *Keating* v. *FERC*, No. 90–1080. The court held that, once a federal agency has issued a construction permit or license with respect to a facility which has obtained water quality certification under section 401(a)(1) of the CWA, such certification is presumed to be valid for purposes of a second federal license related to the operation of the same facility. A state may overcome that presumption and revoke certification for purposes of the second federal license, but only under the limited circumstances expressly defined in section 401(a)(3) of the CWA. Section 401(a)(3) requires the agency to whom application is made for the second federal license to notify the certifying state of that application. The state then has 60 days in which to notify the federal agency that specified changed circumstances are present, in which case certification can be revoked for purposes of the second federal license.

In light of section 401(a)(3), the court ruled that, if, based on a state's issuance of water quality certification, the U.S. Army Corps of Engineers has issued to a hydropower project a dredge and fill permit under section 404 of the CWA,[119] the Commission is at a minimum required to find that the state's purported revocation of its certification is timely and was assertedly taken in response to changed circumstances pursuant to section 401(a)(3).

The court recognized that, in some cases, the resolution of a disputed claim over "changed circumstances" may involve a question of state law or an application of state water quality standards. The court did not decide whether the Commission must go on to determine whether an asserted changed circumstance falls within one of section 401(a)(3)'s enumerated categories, but did require the Commission either to make the determination itself or to articulate "a satisfactory explanation for why Congress would have intended to leave the application of some or all of section 401(a)(3)'s categorical provisions to the state courts alone."

The Commission will, of course, implement the final rule consistent with the court's decision.

3. *Notice-and-comment hearing.* The NOPR proposed to slightly revise the existing text of § 4.34, which would become proposed § 4.34(a), to focus on those cases where the Commission decides to designate particular issues for a trial-type hearing. All other cases (and issues) would be handled by notice-and-comment procedures.

For applications for license or exemption, the NOPR proposed to add new §§ 4.34 (b) to (g).[120] The proposed rule directed that all comments on an application, including all mandatory and recommended terms and conditions for exemption or license, must be filed with the Commission within "60 days after issuance by the Commission of a notice declaring that the application was ready for environmental analysis."[121] Reply comments would be due within 90 days of that notice. These comment periods are longer than those provided by current practice (in the public notice accepting an application for filing and inviting interventions), in order to provide more time to prepare these comments, which typically serve as the primary opportunity to present argument and evidence on the issues raised by the application for license or exemption.[122]

The Commission could extend these comment periods if appropriate. Parties could ask for extensions of time for good cause shown in accordance with § 385.2008. The proposed rule also made clear that all filings in a proceeding on a hydropower application for license or exemption must be served on all parties and entities listed in the official service list in the proceeding, prepared in accordance with § 385.2010.[123]

The proposed rule expressly required that any agency responsible for mandatory terms and conditions or prescriptions for hydropower licenses and exemptions file any such terms and conditions or prescriptions with the Commission no later than the date specified for the submission of public comments.[124] The proposed rule recognized that in certain cases the proceedings before the agency to determine mandatory terms and conditions or prescriptions may not be completed. In such cases, the agency would be obligated to submit to the

[119] 33 U.S.C. 1344.

[120] Certain applications to amend a license by adding new project works may be applications for original licensing under the FPA as amended by ECPA. However, the ECPA amendments would not apply to the already licensed project. *See* Fieldcrest Mills, Inc., 37 FERC ¶ 61,264 (1986).

[121] The definition of "ready for environmental analysis" is discussed above, at section IV.A.5.

[122] *See* the discussion at section IV.C.4., below.

[123] Proposed § 4.34(b) also required that, if anyone submits written material to the Commission relating to the merits of an issue that may affect the responsibilities of a resource agency, the entity submitting this material must serve a copy on the resource agency affected.

[124] Section 4.34(b)(1).

Commission by the due date for comments on the application:

(1) Preliminary terms and conditions or prescriptions, as well as a schedule showing the status of the agency proceedings and when the terms and conditions or prescriptions are expected to become final; or

(2) A statement waiving the agency's right to file the terms and conditions or prescriptions or indicating the agency does not intend to file them.

The proposed rule required that all fish and wildlife agencies submit to the Commission their recommended terms and conditions for the protection, mitigation of damages to, and enhancement of fish and wildlife, pursuant to the FWCA and the FPA 10(j), no later than the due date for public comments on the application.[125] The proposed rule also required these agencies to discuss their understanding of the resource issues presented by the application and the evidentiary basis for the recommended terms and conditions.

The proposed rule allowed an agency to modify terms and conditions or prescriptions it had previously submitted to the Commission under two circumstances:

(1) Where the information and analysis presented in a draft environmental statement indicated a need for such modification; and

(2) Where an amendment to an application would significantly change a project's proposed plans of development.[126]

The proposed rule deleted the different deadlines set by the current regulations for the submission of fish and wildlife terms and conditions on various types of applications.

The proposed rule allowed the Commission to require additional procedures, such as a pre-hearing conference or further notice and comment on specific issues, in particular cases.[127] Such procedures would be useful in particularly complex and controversial cases.

The proposed rule stated that the Commission will analyze "all timely terms and conditions recommended by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act for the protection, mitigation of damages to and enhancement of fish and wildlife * * *."[128] This analysis would follow prior practice and be done in connection with the Commission's environmental review of an application. The analysis would be released to the public with the environmental assessment or environmental impact statement prepared on the application. In the case of an environmental impact statement, the analysis would be released in draft form as part of the draft environmental impact statement, and public comment would be invited in accordance with NEPA procedures.

The analysis of the recommended terms and conditions of license, submitted by fish and wildlife agencies for the protection of fish and wildlife, would include a preliminary determination of whether the recommended terms and conditions are inconsistent with the purposes and requirements of applicable law.[129] If a preliminary determination of inconsistency were made, the Commission's staff would consult with the fish and wildlife agency concerned in an attempt to resolve the inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of the agency.

The proposed rule specified the statutory standards under which the Commission would issue terms and conditions for licenses and exemptions. All licenses issued would include the conditions specified in FPA section 10(a)(1).[130] Fish and wildlife conditions would be based on all *timely* recommendations received pursuant to the FWCA from fish and wildlife agencies.[131] Licenses for a project located within any Federal reservation would be issued only after the required findings have been made and would be subject to such conditions as the Commission may timely receive under FPA section 4(e).[132] Fishways[133] timely prescribed by the Secretary of Commerce or the Secretary of the Interior would be required pursuant to FPA section 18. Exemptions issued for conduit facilities or for small hydropower projects would include any terms and conditions timely submitted by fish and wildlife agencies pursuant to FPA section 30(c) and PURPA section 405(d).[134]

If the Commission were not able to adopt in whole or in part the fish and wildlife recommendations of a fish and wildlife agency, the Commission would publish the findings and statements required by FPA section 10(j)(2).[135]

NHA and other industry commenters state their strong support for the proposed regulatory requirement that the resource agencies furnish the evidentiary basis for their proposed terms and conditions and prescriptions. North Carolina Electric asks that the reference to the Federal Power Act in proposed § 4.34(f)(1)(i) be broadened to include all of section 10(a). Public Generating Pool and Seattle Light want the Commission to ensure that the proposed changes in § 4.34(b)(4), allowing resource agencies to change their terms and conditions and prescriptions under certain conditions, are not used by resource agencies and tribes to delay hydropower licensing proceedings.

Environmental groups like American Rivers contend that the proposed changes in the Commission's procedural regulations are too confusing to the public, and that the proposed regulations contain too many critical stages and notices in the administrative process, *i.e.*, at the pre-filing, filing, and hearing stages. These groups want intervenors and protesters to be able to file comments on an application as soon as it is filed, prior to its acceptance for filing by the Commission. Under this view, parties should have liberal leave to intervene later in the proceeding and to revise their comments, recommendations, or terms and conditions at any time.[136] American Rivers and National Heritage argue that the proposed regulations fail to adequately address the requirement that the Commission give equal consideration to environmental and other values in the licensing process.

[125] Section 4.34(b)(2).

[126] Section 4.34(b)(4).

[127] Section 4.34(c).

[128] Section 4.34(e).

[129] Section 4.34(e)(2). The Commission's staff would make this preliminary determination, as it is also responsible for the preparation of the necessary NEPA documents. See the discussion of administrative procedures on environmental issues in section IV.C.6. and the proposed changes to the delegation of authority to the Director of OHL, in section IV.D.4., below. The preliminary determination would be made in connection with the environmental assessment or environmental impact statement.

[130] Proposed § 4.34(f)(1)(i). FPA section 10(a)(1) requires that all licenses issued under this part be based on the following standards:

That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use and benefit of interstate or foreign commerce, for the improvement and utilization of water power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e) * * *.

[131] Section 4.34(f)(1)(ii).

[132] Section 4.34(f)(1)(iv).

[133] Section 4.34(f)(1)(v). See the discussion of the definition of a "fishway" in section IV.A.4., above.

[134] Section 4.34(f)(2).

[135] Section 4.34(f)(3).

[136] Wildlife Federation asks the Commission to codify in its regulations the current practice of accepting motions to intervene and granting interventions in the period after an application is filed but before it is accepted for filing.

such as energy conservation.[137] One of these commenters urges the Commission to adopt least-cost planning in the licensing process and to incorporate energy conservation and other demand-side options into its decisionmaking process.

Interior wants proposed § 4.34(b)(4) changed to ensure that agencies can modify recommended terms and conditions whenever necessary. Interior writes that it is unfair to impose on a federal agency a requirement to show good cause in order to obtain an extension of time for a filing deadline or to show "extraordinary circumstances" to justify failure to act in a timely manner, as required by § 385.2008.[138] Interior maintains that the Commission cannot require an agency (such as a federal land management agency) to provide an evidentiary basis for FPA section 4(e) conditions; only a joint rulemaking in which all the affected agencies participate could create such a requirement. Interior also asks the Commission to undertake any service of copies required under proposed § 4.34(b); alternatively, it requests that the Commission publish the service list along with its notice declaring an application ready for environmental analysis.

Commerce contends that the proposed regulations do not contain procedures to ensure that the Commission has a sufficient record for its decision. The regulations should reflect that the applicant, not the resource agencies, has the burden of proof in hydropower proceedings.

Except for the changes discussed in other sections of this preamble, dealing with such issues as the precise time deadlines for taking certain actions in hydropower hearings, the section 10(j) process, and interventions, the Commission has decided not to make any major changes in its proposed regulations governing the hearing process for hydropower applications. These regulations accurately reflect the manner in which these proceedings have been conducted and codify many existing practices; in addition, the regulations make certain changes in the hearing process that are designed to make the process fairer to all concerned, easier to understand and administer, and more expeditious. The Commission is confident that the result should be improved decisionmaking in this important regulatory area.

Requiring agencies to set forth the evidentiary basis for their terms and conditions is elementary, and the minimum procedure required to enable the Commission (as well as the applicant and other parties) to understand those terms and conditions and to respond to them or implement them as appropriate. It is not necessary to broaden the reference in proposed § 4.34(f)(1)(i) to refer to FPA section 10(a), as requested, since the Commission is clearly obligated to comply with the entire Act in its decisions on hydropower applications. The Commission does not find that there is any reason to change proposed § 4.34(b)(4), which appears adequately to protect against the risk that agencies using their right to revise recommended terms and conditions will unreasonably delay hydropower proceedings. These agencies remain under an obligation to submit their terms and conditions to the Commission within the time frames specified.

We cannot agree that the revised procedural regulations are too confusing, given the responsibilities of the Commission to implement the FPA. The regulations clearly distinguish among the different stages through which the processes of preparing, filing, and conducting a hearing on a hydropower application must pass. As discussed more fully in section IV.D.2. below, in these revised regulations the Commission has added a number of requirements for an applicant to comply with in order to keep the public informed as fully as possible of the status of its hydropower application and the public's participation rights. Every public notice required by these regulations must clearly communicate the information specified in the regulations.

The regulations expressly recognize the many statutory and other legal requirements to which the hydropower hearing process is subject. To the extent that the law requires that the Commission give equal consideration to a specified value, such consideration will be given. The Commission will not burden its procedural regulations with additional provisions (such as an adoption of least-cost planning as a decisional criterion) not relevant to the laws governing the hydropower hearing process and clearly beyond the scope of this rulemaking.

The Commission is convinced that it is within its authority, fair, and appropriate at this time, to adopt procedural regulations that require resource agencies to submit their recommended terms and conditions and prescriptions, whatever their statutory basis, on time and in a manner that will protect the rights of all parties to the hearing process, as discussed more fully in section IV.C.4. below. Similarly, the Commission concludes that it has ample authority to set various procedural requirements for the content of these submissions, such as the requirement in these regulations that an agency explain the evidentiary basis for its recommendations, and to prevent any action (such as a revision of a previously stated position) that is untimely.

The Commission does not believe that it places an unreasonable burden on parties and participants in a proceeding (other than persons merely filing protests) to require the party or participant (such as a resource agency) to serve a copy of its submissions on all persons on the service list in the proceeding. Requirements of service are routine in judicial and administrative proceedings and are an accepted cost of participating in them. The Commission will ensure that its staff takes the necessary steps to inform all participants, after the deadline for filing interventions has passed, of the official service list in the proceeding, and to keep them informed of any changes, to help all participants comply with this service requirement. It is simply not efficient to expect the Commission to provide this service.

4. *Deadlines.* The timely submission of all resource agency recommendations, mandatory terms and conditions, and prescriptions is extremely important to avoid unnecessary delays in processing hydropower applications and to prevent the Commission from wasting its limited resources on proposals that may have to be significantly changed to address these recommendations, terms and conditions, and prescriptions. Unless the Commission is promptly informed of resource agency recommendations, mandatory terms and conditions, and prescriptions, a proper NEPA analysis may be difficult to conduct. For example, an agency's exercise of the FPA section 4(e) conditioning authority

[137] Two commenters, Commerce and California Indian Legal Services, note that the NOPR did not propose guidelines for the Commission to develop comprehensive plans for river basins, or for utilizing comprehensive plans in the licensing process. The Commission's policy on comprehensive plans has been enunciated in a series of orders. *See, e.g.,* Skykomish River Hydro, *et al.*, 42 FERC ¶ 61,283 (1988) at p. 61,880, *reh'g denied*, 43 FERC ¶ 61,123 (1988). We do not perceive a need to reopen that matter here. Section 4.38(f)(6), as proposed in the NOPR and adopted herein without change, requires the applicant to include in Exhibit E of its application an explanation of "how and why the project would, would not, or should not, comply" with any relevant comprehensive plan and a description of any relevant resource agency determination regarding the consistency of the project with any such comprehensive plan.

[138] The Commission has not proposed to change § 385.2008.

pertaining to government reservations may require a project's relocation, or a change in its design, with concomitant effects on the environmental analysis required of the Commission under NEPA. It is also important that fish and wildlife agencies timely submit their recommended fish and wildlife conditions.

In the NOPR the Commission therefore proposed to set deadlines, in the regulations, for the submission of all resource recommendations (including fish and wildlife conditions), mandatory conditions, and prescriptions. These deadlines would allow the same number of days for a response and would apply to all hydropower applications for license or exemption, regardless of application type.

Consulting agencies have a responsibility not only to submit their initial recommended or mandatory terms and conditions and prescriptions on time, but also to keep these terms and conditions and prescriptions current in light of any significant changed circumstances.[139] Under the regulations proposed in the NOPR and adopted herein, agencies may request an extension of time within which to submit their terms and conditions. Failure to submit the terms and conditions or prescriptions on a timely basis would result in the hydropower hearing process, including the NEPA process, being conducted without the input of the consulting agency and might result in a final Commission decision that does not address the needs and concerns of the agency.

If a fish and wildlife agency filed its recommended fish and wildlife terms and conditions after the due date specified by the Commission (pursuant to proposed § 4.34(b)), the recommendations would not be subject to the requirements of proposed §§ 4.34(e), 4.34(f)(1)(ii), and 4.34(f)(3). In other words, the recommendations would be considered by the Commission under FPA section 10(a) but would not be subject to the determination, consultation, and funding requirements of FPA section 10(j). Section 4.34(b). If an agency responsible for submitting mandatory terms and conditions or prescriptions to the Commission failed to do so by the deadlines specified by the Commission, the Commission would consider the terms and conditions or prescriptions under FPA section 10(a), but only if such consideration would not delay or disrupt the proceeding. Section 4.34(b). Otherwise, the terms and conditions or prescriptions may be omitted from any license or exemption issued. Extensions of time for submitting mandatory terms and conditions or prescriptions would be granted by the Commission for good cause or extraordinary circumstances shown, in accordance with § 385.2008.

The proposal to set deadlines in the regulations for participants' submissions in hydropower proceedings is supported by a large number of commenters.[140] EEI discusses in detail the Commission's authority to take this action, based on section 309 of the FPA and widely accepted concepts of administrative law.[141] Public Generating Pool calls the imposition of deadlines the cornerstone of the proposed regulations, without which the hydropower licensing process will not work. Resource agencies should not be able to disrupt or stop a hydropower hearing by delay and refusal to submit recommendations on a timely basis. All decisional bodies, judicial and administrative, use deadlines, which are necessary for them to carry out their functions. Without deadlines for comments and recommendations, parties opposing a hydropower proposal, such as resource agencies, would have a veto power over hydropower development that Congress never granted to them. Energy describes deadlines as necessary to maintain the integrity and efficiency of the licensing process.

Other commenters,[142] however, question the Commission's authority in this regard, citing a lack of any statutory provision expressly authorizing the Commission to set deadlines. Wildlife Federation argues that the Commission cannot set deadlines for agency submissions of fish and wildlife recommendations but concedes the Commission may have this authority if a fish and wildlife agency's failure to submit fish and wildlife recommendations causes undue delay in a specific case.

A large number of detailed recommendations are made to improve the deadlines set in the proposed regulations. Industry representatives[143] want to move the deadline for protests and interventions from 45 to 60 days after an application's acceptance for filing[144] to 60 days after the Commission declares an application ready for environmental analysis. These commenters want an extra 30 to 60 days (*i.e.*, 60 to 90 days after the filing of any comments on the application) for an applicant to respond to any comments filed. Criticism is levelled at proposed § 4.34(b)(4), that would allow resource agencies, in response to a draft environmental impact statement or an amendment that would significantly change the project's proposed plan of development, to revise terms and conditions and prescriptions that had been filed earlier with the Commission. EEI contends that if any revisions are permitted, they should only be made in response to a material amendment of an application (as defined in § 4.201) or on a showing of extraordinary circumstances. NHA requests a shorter deadline, 60 days rather than 90 days, for a resource agency to respond to a draft application during the pre-filing consultation process.

Wildlife Federation claims that the proposed deadlines in the regulations are "simply unworkable" and that they should be revised to allow an agency to submit revised recommendations after the NEPA analysis. Recommendations filed earlier than this stage would be tentative only, possibly expressed in the alternative, and used as a basis for the environmental analysis of the application.

Resource agencies like Interior and Commerce emphasize the need for flexibility in any deadlines, that should be set according to the size and complexity of the hydropower proposal and the difficulty of the environmental analysis. Where there is a potential impact on endangered species, it may be impossible for a resource agency to comply with the proposed deadlines for submitting recommendations. Interior

[139] Comments were invited on two situations where a resource agency may be unable to submit final mandatory terms and conditions by the deadline for comments, and on the situation where a 4(e) condition may conflict with a fish and wildlife recommendation. In the first situation a federal land management agency, such as the U.S. Forest Service, may have its own administrative procedures for determining mandatory conditions, including appeal procedures. These procedures may not have been completed by the Commission's deadline for comments. In the second situation, if a resource agency is a "cooperating agency" with the Commission under NEPA, the agency will be unable to submit to the Commission final mandatory conditions until completion of the agency's environmental analysis (issued jointly with the Commission). In these situations, the Commission stated its belief that it is appropriate to require such agencies to give preliminary terms and conditions to the Commission pending completion of their agency proceedings, at which time they would submit final terms and conditions.

[140] *E.g.*, EEI, NHA, Public Generating Pool, Grant, and Energy.

[141] EEI cites judicially recognized authority for agencies to set deadlines to deal with similar problems, such as those presented by competing applications.

[142] *E.g.* Wildlife Federation and Commerce.

[143] *E.g.*, EEI (citing §§ 4.32(d), 4.34, and 4.36), Alabama Power, PG&E, and Seattle Light.

[144] This deadline is set by the Commission in the public notice of the acceptance of an application for filing pursuant to 18 CFR 4.32(d)(2). The Commission is required to publish notice of the filing of an application by FPA section 4(e).

contends that it places an unfair burden on fish and wildlife agencies to treat late-filed fish and wildlife recommendations as comments under FPA § 10(a) as opposed to section 10(j).

Interior contends that under the *Escondido* case,[145] the Commission is powerless to impose any penalty on a federal land management agency that does not meet a deadline for submitting FPA section 4(e) conditions. Interior also contends that any system of deadlines must also take into account the need in certain cases to reserve authority for future prescriptions of fishways, when changes in circumstances make it appropriate to prescribe a specific fishway. Commerce contends that an agency should be able to modify a recommendation previously submitted whenever indicated by new biological information or a change in the agency's policy position.

Agencies insist that the Commission must consider late-filed terms and conditions under FPA section 4(e) and that there must be liberal provision for flexibility in the deadlines and for extensions of time. Commerce contends that final FPA section 10(j) recommendations should not be due until 90 days after the issuance of an EIS or EA. One commenter suggests that the term "timely" be deleted from proposed § 4.34(f)(1)(iv), and that § 4.34(b) should allow 90 instead of 60 days for comments and recommendations in response to notice that an application is ready for environmental analysis. Agriculture contends that time limits on agency participation in Commission proceedings should only be established jointly pursuant to inter-agency agreement. Interior asks that proposed § 4.34(b) be revised to allow the submission of modified recommendations whenever new information is developed in the process of environmental analysis (including by means of an EA); that the comment period be extended on amendments to a pending application that would significantly change the project or its anticipated impact on resources; and that § 4.34(d) be applied only to license applications.

Indian tribes [146] generally agree with the agencies that additional time is needed to respond to hydropower applications, as by extending the time for a response under proposed § 4.34(b) from 60 to 90 days. The Indian tribes cite their lack of funds as a reason for their difficulty in submitting comments as promptly as called for by the proposed regulations.

The Commission expected the comments it received on this aspect of the NOPR. Some parties generally seek more time for their participation in hydropower proceedings but oppose granting additional time to parties with different points of view. In the NOPR the Commission attempted to strike a reasonable balance in setting deadlines for hydropower proceedings, to allow all parties time to prepare and submit materials to the Commission that would express their concerns and assist in the resolution of all important issues presented by a hydropower application and to move the proceeding along as quickly as practicable toward a conclusion. While it is true that many hydropower applications present unique issues that take some time to present and analyze, ultimately it is in the interest of no one to postpone the development of an adequate record that the Commission can use as a basis to issue a final decision.

The Commission is confident that it has adequate authority to impose such deadlines on participants in hydropower proceedings, pursuant to section 309 of the FPA, which provides:

> The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act. Among other things, such rules and regulations * * * may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed * * *.[147]

The Commission has used this authority repeatedly since its passage; it remains the basis for a wide range of procedural regulations of the Commission (including deadlines) that apply to electric rate and hydropower proceedings; and these same procedural regulations also apply to natural gas proceedings pursuant to the similar provision in the Natural Gas Act.[148] Many of these deadlines are administered by the Commission's Administrative Law Judges, and we are not aware of any case that even raises a question about their authority to set deadlines that are necessary for the proper conduct of trial-type hearings, even though these deadlines may affect a wide range of participants in complicated proceedings, including government agencies.

The Commission also sets deadlines under its NEPA regulations that govern the participation of interested persons in the environmental review of pending applications.[149] These NEPA regulations affect other government agencies, and no claims have been made that agencies are free to dictate to the Commission the timing of important steps in the environmental review process, such as when scoping meetings are held or when comments are due on a DEIS. Since the Commission has determined that setting deadlines is a necessary part of its regulation of hydropower development, pursuant to the authorities granted to the Commission in the FPA, and since the Act does not make any distinction in the Commission's procedural powers based on the type of proceeding being conducted (*i.e.*, trial-type or notice-and-comment), we conclude that adopting the proposed scheme of deadlines for hydropower proceedings is well within the Commission's statutory authority.

After a careful review of the comments submitted, the Commission has decided to adopt in the final rule most of the specific deadlines set forth in the NOPR, but it appears appropriate to make certain adjustments in these deadlines.[150] The regulations set deadlines that are designed to fit most cases. The Commission will grant requests for extensions of time in specific cases upon a showing of good cause; additional procedures, such as further rounds of notice and comment on specific issues, may be employed as required. Thus, for example, in an exceptionally difficult or complex case, the Commission will accommodate the need to allow more time to develop the record needed for good decisionmaking.

The Commission will revise the deadline for applicants and other parties to submit reply comments. Under § 4.34(b), comments will continue to be due as a matter of course 60 days after issuance of a notice that the application

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[145] *Escondido Mutual Water Co.* v. *La Jolla Band of Mission Indians*, 466 U.S. 765 (1984).

[146] California Indian Legal Services, Klamath, Native American Rights Fund, and Tulalip.

[147] 16 U.S.C. 825h (emphasis added).

[148] 18 CFR part 385; Natural Gas Act, 16 U.S.C. 717o (1988).

[149] 18 CFR part 380.

[150] Certain state agencies recommend that the Commission require service of documents on them via certified mail and that the time period within which an agency must respond begin as of the date the agency actually receives the document. We decline to make these changes. Use of first-class mail for such purposes is routine in administrative proceedings, and the agencies have not shown that the substantial extra cost of requiring service via certified mail is justified or would result in quicker delivery of the documents. The time periods in the Commission's regulations and notices have been selected in order to allow sufficient time for a response when the period is measured from the date of mailing or issuance of a notice or decision, for example, and in order to allow the Commission and other parties to be able to determine the date when a response is due.

is ready for environmental analysis, but reply comments will be due 45 days later, *i.e.*, 105 days after issuance of this public notice.

The Commission will not provide in the regulations for additional opportunities to submit or revise recommendations, terms and conditions, or prescriptions. Adequate opportunity was provided in the proposed regulations, and where appropriate in particular cases, either upon the Commission's own initiative or in response to a request showing good cause, the Commission will afford additional opportunity for all parties to submit or revise their comments. For the reasons explained in the next section, it is unacceptable to postpone the deadline for agency recommendations until after the completion of the Commission's environmental review, since it is based in part on those recommendations.

5. *Ex parte restrictions.* As discussed in the NOPR, compliance with the FWCA and FPA section 10(j) requires the Commission staff to confer with fish and wildlife agencies, in order to understand and clarify their fish and wildlife recommendations and, as necessary and appropriate, to negotiate with those agencies on terms and conditions believed to be inconsistent with the law. Implementation of FPA sections 4(e), 18, and 30 and PURPA section 405(d) may involve a similar consultation process regarding the mandatory terms and conditions other government agencies may propose for inclusion in hydropower licenses and exemptions. Questions have been raised as to how the Commission's ex parte rule [151] applies to these communications.[152]

The NOPR stated that, if anyone has filed a protest or been granted intervention, either of which opposes a license application, Commission practice has been: (1) To apply the *ex parte* rule to communications with resource agencies, including fish and wildlife agencies on 10(j) matters; and (2) to follow the strictures set out below:

1. There can be no consideration of an *ex parte*, off-the-record communication between Commission staff and a resource agency on the merits of the case.

2. There can be communications regarding procedural matters.

3. Commission staff can communicate orally on the merits of a case with the resource agency or applicant if it gives all parties the opportunity to participate.

4. Copies of letters and documents sent to and received from any resource agency will be placed in the public file. If the letters or documents submitted relate to the merits of the case, they will be served on the applicant and all other parties, all of whom may file timely comments thereon.[153]

5. If an inconsistency exists between a fish and wildlife agency's fish and wildlife recommendation and applicable law, pursuant to FPA section 10(j) Commission staff will notify all agencies concerned and all parties in writing [154] and will attempt to resolve the inconsistency by appropriate means, keeping all parties informed of the communications used. If the inconsistency is not resolved, the staff may also decide to hold a meeting to resolve it and will notify and invite at least all affected resource agencies, the applicant, and all other parties. However, only the Commission and the fish and wildlife agency that submitted the recommendation in question are consulting parties, although all interested parties and resource agencies may participate.

6. The applicant or any other party may appeal the fish and wildlife conditions as they appear in the issued license order.

If no one has filed a protest or intervention opposing a license application, Commission practice has been: (1) To not apply the *ex parte* rule to communications with resource agencies or fish and Wildlife agencies and the 10(j) process; and (2) to follow the strictures set out below:

1. Commission staff can communicate with the pertinent resource agency orally or in writing.

2. Commission staff and a fish and wildlife agency can try to resolve an apparent inconsistency between a fish and wildlife recommendation and applicable law by correspondence or telephone calls until the environmental assessment (EA) or draft environmental impact statement (DEIS) has been completed.

3. In instances where the inconsistency has not been resolved by the time the EA or DEIS has been completed, Commission staff sends the EA or DEIS, with a letter summarizing staff's position, to the pertinent fish and wildlife agency, and sends copies of this package to all other interested resource agencies, the applicant, and all other parties for comment to try to resolve the apparent inconsistency.

4. Appropriate consultation, including meetings, will be held to resolve any remaining inconsistencies between fish and wildlife recommendations and applicable law.

The NOPR did not propose any specific regulatory text addressed to *ex parte* communications, but invited comments on the application of the Commission's *ex parte* rule to these consultation procedures.[155]

In general, most commenters agree with the Commission's practice with regard to application of its *ex parte* rule. However, they recommend that the Commission go further to impose similar restrictions in uncontested cases as well. Only two commenters appear to support a more limited application of the *ex parte* rule.

Interior questions why the *ex parte* prohibition should apply when fish and wildlife agencies are not intervenors in a proceeding. Interior adds that the addition of *ex parte* restrictions would promote inefficiencies in the licensing process without any significant benefits.

Similarly, Public Generating Pool comments that, in its experience, the extensive use and strict interpretation of limits on *ex parte* communications are not conducive to rapid resolution of differences. It observes that fair and constructive communications are possible if concerned entities are kept informed and the Commission staff makes its decisions with broad input. Public Generating Pool recommends that informal communications be allowed during as much of the section 10(j) process as possible and that the *ex parte* prohibitions be applied only during limited and specific circumstances. It adds that, once the *ex parte* rule has been invoked, it must be applied uniformly to all entities with an interest in the proceeding rather than just those with formal party status.

In contrast, most commenters not only agree with the Commission's practice with regard to its *ex parte* rule, but urge the Commission to go further than the rule would require. Commerce, American Rivers, and Wildlife Federation argue that the *ex parte* restrictions should be observed whenever there is an intervenor in a licensing proceeding, regardless of whether the intervenor opposes the project (making the proceeding "contested") or simply seeks the imposition of certain license conditions. They argue that an intervenor's interest in the merits of an agency's section 10(j)

[151] 18 CFR 385.2201. See 5 U.S.C. 554, 557; Municipal Electric Utilities Ass'n of New York, 23 FERC ¶ 61,064 (1983) (and cases cited therein).

[152] See, for example, the letter of John L. Spinks, Jr., Deputy Regional Director, U.S. Fish and Wildlife Service, to the Commission, dated August 5, 1988, concerning the relicensing of the Kingsley Dam Project No. 1417 and the North Platte/Keystone Diversion Dam Project No. 1835, located near the confluence of the North and South Platte Rivers in Nebraska.

[153] The proposed rule clarified the obligation of those submitting written material relating to the merits of a case to serve a copy of the material on any resource agency whose responsibilities may be affected. Proposed § 4.34(b). See also 18 CFR 385.2010 (obligation to serve copies of all documents submitted on all parties in a proceeding).

[154] This is now done in connection with the environmental assessment or environmental impact statement prepared on the proposal, in the same manner as for uncontested cases.

[155] The proposed rule contained a brief section summarizing the Commission's consultation procedures. See proposed § 4.34(d).

recommendations and in any negotiations regarding those recommendations does not turn on whether the intervenor opposes licensing of the project or merely supports licensing coupled with specific conditions. These commenters therefore urge the Commission to apply the same procedural protections regarding notice and an opportunity to be heard in all cases in which an intervention has been filed.

Similarly, many commenters argue that an applicant's right to be informed of and to participate in section 10(j) negotiations should not turn on whether a case is "contested," thereby triggering application of the Commission's *ex parte* rule.[156] They argue that the distinction between "contested" and "uncontested" cases is an artificial and unreasonable basis for differing application of the *ex parte* rule.[157] These commenters therefore urge the Commission to provide the same procedural protection for applicant in both "contested" and "uncontested" cases. PG&E points out that, to ensure a fair and complete process, the Commission should keep all parties informed of all consultations with agencies regarding possible license terms and conditions to protect, mitigate, and enhance resources. PG&E adds that, without the applicant's input, the Commission will risk imposing less effective or even unworkable terms and conditions.

As discussed in section IV.C.8. below in connection with the section 10(j) process, the final rule clarifies that applicants and other parties will be provided notice of meetings involving section 10(j) negotiations, and all parties, including applicants and intervenors, will be given an opportunity to comment on the Commission's proposed resolution of fish and wildlife recommendations where there is a preliminary determination that they are inconsistent with applicable law. This is consistent with the notice-and-comment hearing procedures ordinarily used in hydroelectric licensing proceedings, and is intended to ensure that the process is both equitable and efficient.

In adopting this approach, the Commission does not mean to signal agreement with comments that such procedures are required by its *ex parte* rule, the Administrative Procedure Act, or due process considerations. The Commission does not believe that the record in this rulemaking is sufficient to undertake any significant revisions to its *ex parte* rule. Accordingly, the final rule adopts the recommendations for greater involvement of applicants and intervenors in the section 10(j) process without making any changes to the existing *ex parte* rule.[158]

We note, however, that the Commission has recently begun a comprehensive review of its *ex parte* regulations. Through the use of a negotiated rulemaking process, we hope to revise the *ex parte* rule before the end of 1991. Thus, to the extent applicable, the resolution in this final rule will be subject to the outcome of the Commission's comprehensive review in the generic proceeding.

In its discussion of the *ex parte* rule in the NOPR, the Commission stated that, in contested cases, copies of letters and documents exchanged between Commission staff and resource agencies would be placed in the public file and, if related to the merits of the case, would be served on the applicant and all other parties, who could file timely comments thereon.

With regard to this aspect of the proposal, Commerce recommends that, in the interest of fairness, applicant-supplied letters and documents pertinent to fish and wildlife issues also be made a part of the public record, and that all parties be provided an opportunity to comment on these documents as well. In response, the Commission notes that its existing rule regarding service requires any participant who files a document in a proceeding to serve a copy on each person whose name appears on the official service list for the proceeding.[159] Thus, if the applicant or a resource agency files any letters or documents concerning fish and wildlife issues (or any other written communications) for the Commission's consideration in the licensing proceeding, these documents are covered by this rule and may be the subject of comments filed by other parties. If no participant files them in the proceeding, they will not be part of the public record and the rule regarding service on the parties will not apply. As a result, they will not be considered in any decision on the license application.

With regard to the service of documents, American Rivers observes that, under the Commission's service rule discussed above, this is an obligation of participants to the proceeding, and the Commission should not take on the burden of effecting service. American Rivers adds that the service rule applies to all written communications, not only those related to the merits. In contrast, American Paper suggests that the Commission serve on the applicant and all other parties copies of all written communications, both substantive and procedural, between Commission staff and the resource agencies. American Paper notes that resource agencies often do not serve the applicant or other parties and that there is no guarantee that the Commission's proposal to require such service will be effective.

The Commission believes that the existing rule regarding service of documents, coupled with language in § 4.34(b) of the final rule, is sufficient to alert participants to their obligation to serve documents on all persons whose names appear on the official service list. The Commission agrees that it would be inappropriate for the Commission to assume the burden of effectuating such service, which is an obligation of participants in Commission proceedings. To assist participants in meeting the requirements of the rules, the Commission will continue its existing practice of making copies of the official service list for a proceeding available to all participants on request.

Concerning the Commission's discussion of the *ex parte* rule in the NOPR, American Rivers states that a resource agency that comments on a pending application, especially when 10(j) negotiations are underway, is at least an interceder under the Commission's *ex parte* rule. American Rivers therefore concludes that the Commission staff could not meet with a resource agency to discuss the substance of the agency's 10(j) recommendations consistent with the Commission's *ex parte* rule without giving other agencies and every party an opportunity to participate. This is one of the issues the Commission expects to examine in the generic and comprehensive review of its *ex parte* regulations.

Concerning the types of communications covered, American Rivers also states that general

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[156] These commenters are EEI, NHA, American Paper, Alabama Power, Wisconsin River, Pend Oreille, and Vernon. American Rivers agrees with this position, as long as the Commission also recognizes the similar interests of intervenors. In its reply comments, EEI agrees with American Rivers that all parties, including applicants and intervenors, should be permitted to participate in the section 10(j) process in order to protect their interests.

[157] In that regard, American Paper points out that the applicant's right to due process is potentially at issue.

[158] Commerce recommended that the Commission include its application of the *ex parte* rule in the text of the final rule. Interior and Michigan recommended that the phrases "in opposition to" and "merits of the case" be clarified. For the reasons discussed above, the Commission has not followed these recommendations.

[159] 18 CFR 385.2010.

discussion of procedural matters should be prohibited by the *ex parte* rule. As an example, American Rivers cites the request for an evidentiary hearing on the annual licenses in the relicensing of the Platte River projects.[160] Alabama Power notes that it does not oppose communications regarding technical clarifications to agency recommendations, but that applicants should be allowed to attend and be a full participating party in substantive communications and negotiations.

The Commission disagrees with American Rivers; the *ex parte* rule expressly permits discussion of procedural matters. Once again, the Commission expects to address this issue in the comprehensive review of its *ex parte* regulations.

American Rivers comments that parties require adequate advance notice of a scheduled communication in order to have a reasonable opportunity to participate, and that if the time proposed for a telephone call or meeting is inconvenient for a party, the Commission should make some effort to accommodate that party. The Commission agrees that reasonable advance notice should be given and that an effort should be made to accommodate the parties' schedules. Obviously, the reasonableness of the measures requested and the degree of accommodation required will depend on the particular circumstances surrounding the proposed call or meeting.

With regard to timing, American Rivers argues that the *ex parte* rule should apply from the time a motion to intervene has been filed, and not only after the section 10(j) recommendations are filed. EEI comments that the combination of the Commission's late intervention policy for resource agencies and application of the *ex parte* rule encourages fish and wildlife agencies not to intervene in a timely manner so that they can discuss their recommendations with Commission staff without the applicants and other parties present.

The situations that American Rivers and EEI posit would not arise because the applicant will have a right to participate in the section 10(j) process under the final rule regardless of whether the proceeding is contested.

Finally, NHA argues that, if the Commission determines that a section 10(j) conflict exists, the Commission should treat the licensing as a contested proceeding for purposes of application of the *ex parte* rule, even if no intervention or protest opposing the license application has been filed. As noted, the final rule recognizes the interest of applicants and intervenors to participate in the section 10(j) process in the interests of fairness and efficiency, rather than as a result of any application of the *ex parte* rule.

6. *NEPA process.* The Commission did not propose to make any significant changes to its NEPA regulations, but it did discuss the relationship between the hydropower licensing process, including the new pre-filing, hearing and other procedures proposed, and the NEPA process.

The Commission regards the administrative procedures to implement FPA section 10(j), the FWCA, and NEPA in hydropower proceedings as related and having similar objectives. The Commission has the responsibility to integrate compliance with these and other applicable statutes into a single administrative process extending from pre-filing consultation through the filing with the Commission of a hydropower application for license or exemption, the submission of fish and wildlife recommendations by fish and wildlife agencies, the Commission's environmental analysis (requiring an environmental assessment or an environmental impact statement), and the resolution of inconsistencies (if any) between the fish and wildlife recommendations and applicable law, to the final order in the case with its required findings. The Commission expects applicants to be fully aware of the environmental consequences of their proposals and to consider every reasonable measure to minimize adverse impacts from hydropower projects, consistent with the goal of developing hydropower potential and other public interest concerns.

The Commission also expects consulted fish and wildlife agencies to timely recommend measures to protect, mitigate damages to, and enhance the fish and wildlife that a proposed project may affect. Alternatives that could lessen or eliminate adverse impacts or improve environmental conditions, mitigation measures, and enhancements that could benefit fish and wildlife (as well as other environmental resources) will be explored in the NEPA process as appropriate.

Each of these statutes only mandates that the Commission take certain steps in its decisionmaking process but does not indicate the appropriate outcome of the case.[161] The substantive standards affecting decisions on hydropower applications remain those of FPA sections 4(e) and 10(a)(1).

NEPA requires the Commission to evaluate whether approval of a particular hydropower proposal would constitute a major federal action significantly affecting the quality of the human environment. The steps followed in the NEPA process may include the preparation of an environmental assessment (EA) by the Commission. If approval of the proposal may significantly affect the quality of the human environment, the Commission must prepare an environmental impact statement (EIS), analyzing any adverse environmental effects of the proposal and alternatives to it. The NEPA process necessarily includes a careful evaluation of the impact of the proposed project on fish and wildlife.

Preparing an environmental impact statement involves public participation in commenting on the draft statement and may also involve public participation in scoping sessions, devoted to planning the extent and sequence of the environmental review. The Commission must consider public comment on the draft environmental impact statement (DEIS) in preparing its final environmental impact statement, which is a public document available to everyone.[162] Release of a draft environmental impact statement also allows interested persons to intervene in the proceeding as a party no later than the date on which comments on the statement are due.

While in its NEPA process the Commission does not rely solely on comments and recommendations from other government agencies, such as fish and wildlife agencies, the Commission solicits their comments in preparing an environmental impact statement. Most importantly, the Commission in its NEPA environmental document analyzes the effect of the proposal on fish and wildlife, based on the recommendations made by fish and wildlife agencies pursuant to the FWCA.[163] These FWCA

[160] These projects are cited in the footnote at the outset of this section.

[161] *See, e.g., Strycker's Bay Neighborhood Council* v. *Karlen*, 444 U.S. 223, 227 (1980) (NEPA duties are essentially procedural); *County of Bergen* v. *Dole*, 620 F. Supp. 1009 (D.C. N.J. 1985), *aff'd*, 800 F.2d 1130 (3rd Cir. 1986); and *Sierra Club* v. *Alexander*, 484 F. Supp. 455, 470 (N.D.N.Y. 1980) (the FWCA requires only that the views of fish and wildlife agencies "be given serious consideration"), *aff'd*, 633 F.2d 208 (2d Cir. 1980).

[162] Notice of the availability of environmental assessments is currently published in the **Federal Register**, and copies are usually sent to resource agencies and intervenors.

[163] In certain cases these recommendations may even constitute a separate alternative to the applicant's proposal.

recommendations thus influence the entire NEPA process and must be submitted to the Commission prior to the commencement of the Commission's environmental analysis in order for it to achieve its purposes of evaluating the environmental consequences of the applicant's proposal and of necessary mitigative measures, so that the Commission can consider these factors in its final decision. The Commission recognizes that in turn a draft environmental impact statement may lead a fish and wildlife agency to modify its fish and wildlife recommendations based on information and analysis presented in the statement.

Some commenters [164] recommend that the Commission begin the NEPA process during pre-filing consultation, prior to any filing of a hydropower application with the Commission. They argue that, pursuant to NEPA, the Commission should play a more active role in the pre-filing consultation process because it is the critical phase in the Commission's decisionmaking process on hydropower applications. In this view, during the pre-filing process the Commission should: (1) Evaluate all reasonable alternatives to the developer's proposal, including nonhydropower energy sources and conservation measures; (2) gather all relevant information; and (3) grant more opportunity for public involvement, especially to review the draft application and to participate fully in any meeting between applicant and any resource agency, during the second stage of pre-filing consultation.[165] Other commenters oppose these recommendations, because they appear impractical in light of the need to conduct studies and develop information prior to filing.[166]

American Rivers claims that the Commission relies too much on the use of EAs instead of EISs to fulfill its NEPA responsibilities for hydropower proceedings, with the result that public involvement in the environmental review process is improperly excluded. Several commenters [167] recommend that the Commission set forth the actual terms and conditions of license proposed in the EA or EIS and that a draft on any controversial project be circulated for comment by all parties and resource agencies. At the least, they contend, the Commission should wait until the EIS is completed before requiring the submission of comments and recommendations. Certain state agencies ask the Commission to require the preparation of an EIS in any case where the Commission finds that a fish and wildlife recommendation under FPA section 10(j) is inconsistent with applicable law.

CEQ believes that the Commission's NEPA process is too adversarial and that the Commission should minimize the use of trial-type hearings on environmental issues. CEQ recommends that the Commission consider the use of programmatic EISs in the hydropower licensing program in order to lessen the Commission's environmental review workload.

As stated above, the NOPR did not propose any significant change in the Commission's NEPA regulations but only explained how the Commission was applying those regulations to and integrating them into the hydropower program. The procedural regulations proposed were designed to codify the Commission's current practices in hydropower proceedings. Some changes were proposed in order to make the conduct of those proceedings fairer and more efficient. The comments offered on the NEPA process appear to reflect some misunderstanding of the Commission's procedures and suggest an altogether new and different approach to implementation of the Commission's responsibilities in this area that would require significant changes in the Commission's hearing process.[168] These comments raise more questions than they answer.

It is important to understand that the Commission's prefiling consultation procedures help the Commission to implement its statutory responsibilities, including NEPA, for regulating the development of hydropower. The procedures under §§ 4.38 and 16.8, as revised, require applicants to conduct extensive consultation with resource agencies and Indian tribes on the hydropower proposal, including hydropower alternatives, impacts on resources, and mitigation measures. Reasonable and necessary scientific studies must be considered and conducted by the applicant, who must also furnish the information required to evaluate the effects of the proposal on the environment. The public also is invited to participate in this process, and provision has been made to expand Commission involvement (as through dispute resolution).

This process is conducted collegially and directly influences any application (including environmental exhibits) filed with the Commission. An important goal of the process is to focus the applicant on an environmentally acceptable proposal (if it exists) and to furnish the Commission with the basic material it needs to complete its environmental analysis of the proposal. This analysis is conducted through an administrative proceeding on the application which is typically conducted by notice and comment, with abundant opportunity for public participation and without the adversarial spirit often found in trial-type proceedings.

Would the alternative NEPA scheme suggested by some commenters, involving the Commission's starting its environmental analysis during the pre-filing consultation phase, be compatible with the realities of the hydropower program? In the recent past, a very high percentage of proposals for new hydropower facilities were changed or abandoned by developers during the pre-filing consultation phase, or were abandoned after filing but before Commission decision. It is not entirely clear why this high rate of attrition took place and whether it is likely to continue in the future. If this trend continues, however, it raises doubts about the wisdom of committing a substantial amount of the Commission's limited resources to an intrusive environmental review by staff of proposed facilities that are highly unlikely ever to be built. Indeed, by expanding the use of the dispute resolution mechanism, the Commission will be involved even further, when necessary, in the pre-filing process. We think this strikes a reasonable balance between concentrating Commission resources on those applications that have moved beyond the pre-filing consultation process and are thus much more likely to result in additions to the nation's hydropower resources and the need to resolve disputes as early as possible in the licensing process.

As stated above, the Commission does make available to all parties and agencies, at the same time as a decision on a hydropower application is issued, any EA completed on the application. Any party seeking rehearing of the decision can thus respond to any statement in the EA with which the

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[164] *E.g.*, Alabama Power, American Rivers, Wildlife Federation, and CEQ.

[165] Wildlife Federation suggests that the Commission look to other agencies, such as the Army Corps of Engineers, that supposedly initiate the NEPA process at an earlier stage than the Commission and accept final recommendations under the FWCA in comments on the DEIS.

[166] *E.g.*, Public Generating Pool. EEI asks that the Commission complete this rulemaking without trying to evaluate these proposals, which should be considered separately.

[167] American Rivers, Wildlife Federation, and Interior.

[168] These comments raise issues that are beyond the scope of this rulemaking.

party disagrees. In appropriate cases, the Commission may issue the EA in draft form for comment, prior to reaching any decision in the case. The EA will usually not contain the exact language for terms and conditions intended to be adopted in any license or exemption but will contain a complete discussion of the proposal's environmental impact. As discussed in section IV.C.8. below, when the Commission makes a preliminary determination of inconsistency of a fish and wildlife agency's fish and wildlife recommendation with applicable law, pursuant to FPA section 10(j), the Commission will provide a copy of this determination and the EA or DEIS to all parties and affected resource agencies and Indian tribes for comment. This procedure will occur prior to the issuance of a decision on the application.

Whether the Commission is justified in issuing an EA rather than an EIS on a particular application is a matter that can be resolved only on a case-by-case basis, according to the standards set down in the Commission's NEPA regulations, NEPA itself, and cases construing that act. The Commission will not require the preparation of an EIS in all proceedings where there has been a determination that a fish and wildlife recommendation is inconsistent with applicable law, but will follow in all such cases the procedures required by FPA section 10(j), which the final rule implements [169] Where appropriate, the Commission consolidates one or more license applications for a single environmental review, as in the case of certain river basins.[170]

7. *Endangered Species Act.* The NOPR cited the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, as an element of the Commission's environmental review and noted that license applicants must include in their applications information on threatened or endangered species.[171] Several federal and state agencies commented that further discussion of the ESA and its role in the hydropower licensing process is warranted.[172]

Section 4 of the ESA authorizes the Secretary of the Interior to list species as "threatened" or "endangered" and to designate a "critical habitat" for those species.[173] Section 7 of the ESA requires the Commission to use its authority to conserve endangered and threatened species and to ensure that actions it authorizes do not jeopardize the continued existence of those species or result in the destruction or modification of their critical habitat. In doing so, the Commission must consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.[174]

Interior comments that the rule should include procedures needed to fulfill the Commission's responsibilities under section 7 of the ESA. The Commission agrees and has added language to § 4.34(d) of the final rule to address its ESA responsibilities in general terms. However, the Commission does not believe that it should attempt to set forth in detail how the requirements of the ESA will be implemented in particular cases. In view of the many different species that may be affected, the various times at which species might be listed as threatened or endangered, and the different types of actions that may be contemplated, the issues involved are more appropriately considered in particular cases.

Interior observes that the ESA consultation requirements would affect both the need for studies and the timing of fish and wildlife recommendations, and that the information required to evaluate impacts to threatened or endangered species should be collected when other resource studies are conducted. Similarly, West Virginia comments that the need for studies of affected endangered species should be acknowledged prior to licensing. In response, the Commission notes that the final rule requires the applicant to consult with resource agencies concerning the studies needed before an application is filed. Moreover, it requires the applicant to conduct all studies necessary for the Commission to reach a determination on the merits of the application. This would include any studies necessary for the Commission to determine the impact of the project on any threatened or endangered species.

Interior points out that both the ESA and the implementing regulations in 50 CFR part 402 require the Commission, rather than the applicant, to consult with Interior's Fish and Wildlife Service (or Commerce's National Marine Fisheries Service for marine species). Interior therefore recommends that the rule acknowledge the Commission's involvement during the pre-application consultation process.

The Commission agrees that, in some cases, it may be appropriate for the Commission staff to become more involved during the pre-application consultation process. To that end, the final rule includes procedures for dispute resolution that can be used if an applicant and a resource agency disagree on the studies needed to evaluate a project. However, before an application is filed, there is no federal action being considered that could call the consultation requirement of the ESA into play. For this reason and those discussed earlier, the final rule provides for the Commission's involvement in ESA consultation after the license application has been filed. Appropriate language to reflect this has been included in final § 4.34(d).

Interior also observes that, if a project may affect an endangered or threatened species, formal consultation between the Commission and the Fish and Wildlife Service (or the National Marine Fisheries Service) will be necessary. Interior argues that, because the results of that consultation could affect its recommendations for other fish and wildlife species, the Fish and Wildlife Service will be unable to provide final fish and wildlife recommendations, mandatory terms and conditions, or prescriptions until after completion of the formal section 7 consultation. Interior adds that the time provided in the proposed rule would not be adequate in these circumstances, because formal consultation usually occurs at the draft environmental impact statement stage when the preferred alternative has been identified. Interior recommends that the Commission adapt its rule to correspond with Interior's existing section 7 consultation regulations.

In response, the Commission clarifies that consultation under the ESA may take place at any time and need not await the draft EIS. In addition, proposed § 4.34(b)(1) recognized that, in certain cases, the proceedings before an

[169] *See* section IV.C.8. below.

[170] The Commission will carefully consider CEQ's suggestion that it should make use of programmatic EISs in the hydropower program. It is doubtful, however, that such an approach would be useful, given the unique nature and environmental impacts of the many different potential hydropower proposals that developers may choose to pursue under the FPA.

[171] *See, e.g.*, III FERC Stats. & Regs. ¶ 32,470 at pp. 32,356–58.

[172] These agencies were Interior, Colorado, and West Virginia.

[173] 16 U.S.C. 1533. An "endangered species" is defined as "any species which is in danger of extinction throughout all or a significant portion of its range * * *." *Id.* at section 1532(6). A "threatened species" is "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." *Id.* at section 1531(20). "Critical habitat" means "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 * * *." *Id.* at section 1532(5)(A)(i).

[174] 16 U.S.C. 1536.

agency to determine mandatory terms and conditions might not be completed by the date specified. In such cases, the agency would be obligated to submit either preliminary terms and conditions or (if appropriate) a waiver of the right to file the terms and conditions. This procedure would adequately address the situation in which consultation regarding endangered or threatened species is ongoing. A similar approach would be appropriate for fish and wildlife conditions or fishway prescriptions if consultation regarding endangered or threatened species has not been completed by the date specified for filing the recommendations or prescriptions.

Colorado points out that the applicant should be aware of state lists of threatened and endangered species and species of special concern, as well as the ESA requirements. The Commission agrees, and notes that the Commission's existing rules concerning the environmental information that the applicant must provide and the environmental analysis that the Commission must undertake are sufficiently broad to require such information.

Finally, EPA states that agency determinations of a project's compliance with the ESA and subsequent recommendations that affect such compliance "should be considered as constraints not subject to FERC staff balancing or lack of evidence determinations." [175] EPA adds that staff discretion should be restricted if federal statutory requirements could be violated.

The Commission must comply with ESA and other federal law in its licensing decisions. However, it would be inappropriate to suggest that balancing is prohibited whenever endangered species are present. For example, if there are alternative means of providing adequate protection for endangered species, other public purposes may be considered in choosing among those alternatives. In addition, the balancing that may be required under section 10(a)(1) of the FPA or the implications of the need to base Commission decisions under the FPA on substantial evidence cannot be addressed in any meaningful sense apart from the particular facts presented in specific cases. Accordingly, the Commission will not adopt the specific prescription that EPA suggests.

[175] Letter from Richard E. Sanderson, Director, Office of Federal Activities, EPA, to Lois Cashell dated June 15, 1990, Enclosure (emphasis in original deleted).

8. *Section 10(j) process.* The Commission did not propose extensive language to codify its implementation of the 10(j) process, which was discussed at length in the NOPR. In its discussion, the Commission explained that the FWCA applies to consultation with fish and wildlife agencies only. The agencies may rest their recommendations on studies conducted by others, including the applicant, or by themselves. In order for their fish and wildlife recommendations to serve their intended role in hydropower proceedings, fish and wildlife agencies must file their recommendations on a timely basis, at the beginning of the administrative process, and keep these recommendations current in light of any major changes in circumstances, such as an amendment to the application that would significantly change a project's proposed plans of development or the discovery of new and significant information on the environmental impact of the proposed hydroelectric project.[176] Under the FWCA, the Commission must consider the fish and wildlife recommendations made, with the purpose of conserving fish and wildlife resources along with promoting waterpower development.

Resource agencies must therefore provide the benefit of their technical expertise to the Commission as soon as possible in the administrative process on hydropower applications. The only sequence that works to produce an efficient administrative process is to have fish and wildlife recommendations precede the Commission's environmental analysis. A resource agency's need at times to modify its recommendation in light of the information and analysis presented in a draft environmental impact statement should not be used to delay submitting its recommendations until after the Commission has completed its environmental analysis. As discussed above, FPA section 10(j) specifically requires the Commission to include in all hydropower licenses conditions for the protection, mitigation of damages to, and enhancement of fish and wildlife. These conditions must be based on recommendations made by fish and wildlife agencies pursuant to the FWCA. In cases where the Commission believes those recommendations to be inconsistent with the law, certain additional procedures (including consultation and findings) are required.

FPA section 10(j) does not authorize the submission of fish and wildlife recommendations by fish and wildlife agencies apart from the FWCA and does not require the repetition of environmental scoping, studies, and analysis undertaken pursuant to NEPA. Compliance with FPA section 10(j) builds on compliance with the FWCA and NEPA.[177] Thus the purposes of FPA section 10(j) can be achieved only if all agencies involved, including the Commission and the fish and wildlife agencies, fulfill their responsibilities in a timely manner in the context of the Commission's conduct of a single administrative process to evaluate and decide upon a specific hydropower proposal.

In general, the commenters [178] strongly support granting to all parties, including applicants, the right to participate fully in any section 10(j) consultation between the Commission and fish and wildlife agencies. While Wildlife Federation wants the Commission to withdraw the NOPR and start anew, and American Rivers opposes any more formal regulations on the section 10(j) process, many commenters recommend that the Commission codify its section 10(j) procedures, revising them where appropriate. They request that we define in the regulations how, and at what organizational level, section 10(j) negotiations will proceed. EEI maintains that applicants should be provided with a written summary of a preliminary "no inconsistency" determination by staff and be allowed to file written comments on or objections to the preliminary determination before it is incorporated into a decision on the license applied for.

Commenters like Interior ask the Commission to clarify the standards the Commission will use in making a determination of inconsistency between a fish and wildlife agency's 10(j) recommendation and applicable law. Environmental groups like American Rivers argue that the Commission may not reject a fish and wildlife recommendation because it conflicts with the balancing of competing waterway uses under section 10(a)(1) or because there is a lack of substantial evidence in the record before the

[176] *See, e.g.*, Action for Rational Transit v. Westside Highway project, 536 F. Supp. 1225 (S.D. N.Y. 1982).

[177] Courts have recognized that overlapping legal requirements to protect the environment can be satisfied by a single administrative process. *See, e.g., Environmental Defense Fund* v. *Froehlke*, 473 F.2d 346, 356 (8th Cir. 1972) (agency complying in good faith with NEPA will "automatically take into consideration all of the factors required by the Fish and Wildlife Act"). See also Monongahela Power Company, 58 F.P.C. 2702, 2706 (1977).

[178] *E.g.*, EEI, Pend Oreille, Vernon, American Rivers, and Energy.

Commission to support the recommendation. Interior claims that ECPA places on the Commission the burden of demonstrating why any recommended fish and wildlife conditions cannot be included in any license issued.

Commerce states that final section 10(j) recommendations should not be due until 90 days after receipt by the agency of the final NEPA analysis. After this time, any necessary section 10(j) negotiations may begin and be held in the region where the project is located. Commerce and Interior contend that the section 10(j) process should be subject to reopening if needed, as in the case of a license amendment or the results of post-licensing studies. Wildlife Institute, however, wants any change to fish and wildlife recommendations to be made only according to NEPA procedures. National Heritage asks that "evidentiary hearings" be conducted on section 10(j) recommendations, with full rights of public participation and cross-examination of witnesses, in any case where conflicts between the fish and wildlife recommendation and applicable law are not resolved through negotiation. At such a trial-type hearing, expert testimony and documentary evidence could be introduced. Certain state agencies also ask for a hearing prior to the Commission's rejection of any fish and wildlife recommendation.

Wildlife Federation says that the result of the section 10(j) consultation process should be a written set of license conditions on which any party in the proceeding could submit comments prior to a Commission decision. Interior asks the Commission to clarify in the regulations the relationship between its *ex parte* rule and the section 10(j) procedures, especially in reference to explaining when the Commission will consider that a filing has been made "in opposition to" a hydropower application and what relates to the "merits of the case."

In light of the comments received, the Commission has decided to codify its section 10(j) procedures in the regulations. The Commission has now accumulated sufficient experience with the section 10(j) process, since ECPA was passed in 1986, to believe that the procedures adopted herein will be practical, fair to all parties, and consistent with the language and intent of FPA section 10(j). This codification is based on the steps outlined and discussed at length in the NOPR, to which the comments received were directed.

Accordingly, the regulations will specify that the section 10(j) process, applicable to applications for licenses, will consist of the following six steps:

(1) Submittal of fish and wildlife recommendations;

(2) Clarification of fish and wildlife recommendations;

(3) Preliminary determination (in EA or draft EIS) of any inconsistency of the fish and wildlife recommendations with applicable law by Commission staff and notification to all parties, affected resource agencies, and Indian tribes of this determination;

(4) Response by fish and wildlife agency, affected resource agencies, Indian tribes, and other parties to any preliminary determination of inconsistency;

(5) Meeting to be held at the discretion of the Commission staff, as requested by the fish and wildlife agency, any party, or affected resource agency or Indian tribe; and

(6) Issuance of the order on the license application.

The submittal of fish and wildlife recommendations must be made pursuant to the FWCA and by the deadline specified in the regulations for all comments and recommendations on a license application, *i.e.*, 60 days after the Commission declares that the application is ready for environmental analysis. Recommendations filed after this date will not be considered under the FPA section 10(j) process unless an extension of time has been granted by the Commission for such a filing.

Pursuant to delegated authority, the Director of the Office of Hydropower Licensing (OHL) will seek clarification of the fish and wildlife recommendation if it is unclear in any respect, within 45 days of receipt of the recommendation, unless this deadline is extended by OHL with notice to all parties. If the Commissions's questions are communicated in writing to the fish and wildlife agency, copies of the communication will be sent to all parties [179] and affected resource agencies and Indian tribes. In such cases, the fish and wildlife agency, as well as any party or affected resource agency or Indian tribe, may respond to the Commission's questions. In uncontested cases, or if only minor technical clarifications are involved, OHL staff may seek clarification by telephone contact with the fish and wildlife agency.

The Director will make the preliminary determination of any inconsistency of the fish and wildlife recommendation with applicable law. As explained in the NOPR, this determination may for example rest on a conflict between the recommendation and the balancing of competing values, including hydropower potential, required under FPA section 10(a)(1), or it may rest on a finding that the fish and wildlife recommendation is not supported by substantial evidence, required under section 313 of the FPA.[180] Contrary to the claims of some commenters, ECPA neither limited the basis for a determination of inconsistency by the Commission (which may be based on any applicable law) nor established a presumption of validity for any fish and wildlife recommendation, regardless of its lack of evidentiary support.[181]

The Director will notify all fish and wildlife agencies, parties, and affected resource agencies or Indian tribes of his preliminary determination of any inconsistency. The notification will be made in writing and will explain the determination and its basis. Anyone notified will have a right to file written comments with the Commission within 45 days of the date of this determination.[182] Any request for a meeting or telephone or video conference to discuss the determination must be filed with the Commission at the same time.

The Director may schedule a meeting or telephone or video conference with the fish and wildlife agency to discuss any preliminary determination of inconsistency, either on the Director's own initiative or as requested by the fish and wildlife agency, or any party or interested resource agency. If such a meeting or conference is scheduled, it may be held at such time and place as the Director determines, but every reasonable effort will be made to arrange the details of the meeting to suit the convenience of the Director and the participants. At least 15 days' prior notice will be given of any section 10(j) meeting. The Director's staff will conduct the meeting or conference and will be responsible for ensuring that it proceeds in an orderly fashion. Any fish and wildlife agency, party, or affected resource agency or Indian tribe may participate in the meeting or conference, but the focus will be on the attempts of

[179] The applicant is of course a party in all hydropower licensing proceedings.

[180] The final rule requires that a fish and wildlife agency submitting a fish and wildlife recommendation specify the evidentiary support for the recommendation. Section 4.34(b)(2).

[181] It is obvious, for example, that where there are different and conflicting fish and wildlife recommendations made by different fish and wildlife agencies concerned with a single hydropower proposal, some of the recommendations must be rejected, and the only basis to do so under section 10(j) is the conflict of the rejected recommendation with applicable law.

[182] Under the regulations adopted, anyone filing such comments must serve a copy on every party on the official service list in the proceeding. See new § 4.34(b).

OHL staff and the representatives of the fish and wildlife agency to understand each other's position and attempt to resolve their differences as required by section 10(j). After the conclusion of the meeting or conference, OHL will prepare a written summary of it, which will be circulated to everyone on the official service list in the proceeding.

The section 10(j) process concludes with the issuance by the Commission of a decision in the license proceeding, which will contain the conclusion or findings required by the FPA. Pursuant to Commission rules, any party may request rehearing of this decision to challenge the Commission's determination under section 10(j) and any relevant findings.

Interlocutory appeals of preliminary section 10(j) determinations will not be entertained, nor will trial-type hearings be conducted on section 10(j) matters. Preliminary determinations of consistency of fish and wildlife recommendations with applicable law will not be issued for comment. The rights of commenters requesting such measures are fully protected by the Commission's procedures, as they are revised in this final rule. These commenters have not shown why such measures are helpful or required by FPA section 10(j), nor have they addressed the significant potential of these measures for increasing the burden on the Commission and other participants and delaying decisions in hydropower proceedings.

9. *Intervention.* The NOPR explained that the first opportunity for persons interested in a hydropower proceeding to intervene as a party is when the Commission issues public notice of its acceptance of the application for filing, and that a second opportunity arises if comments are invited on a draft environmental impact statement. In Order No. 511, the Commission issued a policy statement allowing fish and wildlife agencies to intervene as parties "within 30 days after the issuance by staff pursuant to delegated authority of an order rejecting or materially modifying any of its fish and wildlife recommendations, for the limited purpose of permitting that agency to appeal such action to the Commission itself." [183] Order No. 511 stated that this policy would remain in effect on an interim basis pending consideration of this issue in the instant rulemaking.

The NOPR invited comment on whether the Order No. 511 policy statement should be codified in the regulations, and whether it should be expanded to allow a fish and wildlife agency to intervene if the Commission, in a contested case, rejects or materially modifies an agency's recommendation, for the limited purpose of allowing the agency to seek rehearing of the Commission's decision on this point. The NOPR indicated a tentative inclination to codify and expand this procedure, in proposed § 4.34(g), in the interest of dampening the potential for an adversarial spirit in the consultation process. The Commission's objective was to enable fish and wildlife agencies to participate in the proceeding in a less formal posture without foregoing the right to seek rehearing at a later stage, after the deadline for intervention as a party had passed.

Numerous comments were received. Many state agencies [184] request that the period for intervention be 60 days instead of 30, or that it be 30 days from the date of receipt of a notice and that such notices be sent by registered or certified mail. Washington Fisheries doubts that actively interested agencies would delay their intervention even if given a special opportunity to intervene later. California Indian Legal Services requests that the extra intervention opportunity also be extended to Indian tribes. Wildlife Federation supports the proposed regulation but suggests deleting the word "materially" in several places.

American Rivers objects to limiting the special intervention opportunity to state agencies, and advocates making the extra opportunity available to all interested persons on a non-discriminatory basis. Wisconsin River expresses hope that the proposal would reduce "adversarial posturing." NHA, on the other hand, believes that delays in intervention could increase "misunderstanding, miscommunication and hostility." NHA, EEI, and PG&E object to the proposal as unnecessary and unfair, and contend that it would discourage the full and open airing of views at the earliest stages of the proceeding. A number of commenters express doubt that the timing of opportunities to intervene would have any discernible impact on the demeanor of the participants or the adversarial spirit of the proceeding.

We are persuaded by the commenters that the policy adopted on an interim basis in Order No. 511, and the expansion of that policy in proposed § 4.34(g), are unwarranted. Accordingly, the final rule does not adopt proposed § 4.34(g). The interim policy enunciated in Order No. 511, by its terms, is not effective beyond the date of issuance of this order.

On balance, we believe that all interested persons ought to have the same opportunities to participate as formal parties in the proceeding, and that the procedural deadlines for intervening ought to be the same for everyone. We stress to fish and wildlife agencies that the filing of a timely notice or motion to intervene is not burdensome, and does not require the agency to take any position with respect to the merits of the application; a short, neutral expression of interest in the proceeding will suffice to intervene as a timely party to it. The agencies will have ample opportunity to study the applicant's proposal and express a position in later stages of the proceeding. Thus, we believe that it is reasonable to set a uniform deadline for intervention that applies equally to all participants, including fish and wildlife agencies, and we do not believe that this evenhanded approach will impart an adversarial spirit to the consultation proceedings. The Commission will continue to evaluate late requests for intervention on a case-by-case basis, pursuant to the considerations set forth in the Commission's rule governing intervention.[185]

D. Miscellaneous

1. Participation of Indian Tribes. In the NOPR, the Commission proposed to revise its consultation regulation to allow participation by affected Indian tribes.[186] The Commission observed that adoption of such a regulation should not prolong the consultation process, given the time deadlines proposed and the Commission's authority to supervise this process through its review of filed applications. The Commission noted that such a regulation may also avoid needless confrontation and delay that may result from excluding from consultation Indian tribes with important treaty rights that must be taken into account in the administrative process.

Under the proposed rule, applicants would be required to identify Indian tribes that could be affected by a proposed project.[187] The Commission

[183] Statement of Policy Permitting Limited Intervention by Fish and Wildlife Agencies at the Appeal Stage of a Licensing Proceeding, 46 FERC ¶ 61,161 (1989).

[184] Alabama, Arizona, California Fish and Game, Missouri, Montana DFWP, Montana DNRC, Wyoming, and International Ass'n.

[185] 18 CFR 385.214(d).

[186] Proposed § 4.38. The Commission noted that the definition of "Indian tribe" in § 4.30(b)(10) would be an important part of the proposed regulatory scheme, and specifically invited comment on this definition.

[187] Proposed §§ 4.38(a)(1), 4.92(a) and 4.107(a). The Commission noted that applicants could seek

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would specifically seek the comments of Indian tribes on applications as part of its hearing process and would consider those comments in reaching its final decision, as directed by ECPA.[188]

Many of the comments regarding this portion of the NOPR involved the definitions of "Indian tribe" and "fish and wildlife agency" and their implications for the participation of Indian tribes in pre-filing consultation and the section 10(j) process. Comments concerning these definitions are discussed above in section IV.A. Comments concerning the participation of Indian tribes generally, apart from the definitions, are addressed below. For the most part, they concern the role of Indian tribes with respect to two major areas: (1) Pre-filing consultation, and (2) fish and wildlife recommendations.

With regard to pre-filing consultation, all commenters [189] agree as a general matter that Indian tribes should be included. Confederated Tribes state, for example, that adoption of the new regulations would avoid needless confrontation and delay by according Indian tribes, which often have important treaty rights, an opportunity to review and have a role in the planning process for a hydropower project. Similarly, Klamath points out that Native American peoples often have a large stake in the outcome of the Commission's hydropower decisions and are in a uniquely useful position to offer insights and suggestions concerning a particular application.

PG&E suggests that the term "Indian tribes" should be added to various sections of the final rule in the same manner as it appears in part 16 of the Commission's regulations concerning relicensing. Similarly, California Indian Legal Services suggests that the provisions concerning disagreements that may arise during the first stage of consultation in § 4.38(b)(5) should include Indian tribes as well as resource agencies. The Commission agrees, and has modified § 4.38 of the final rule as suggested.

California Indian Legal Services criticizes § 4.38(a)(2) of the proposed rule, which states that the Director of the Office of Hydropower Licensing or the Regional Director responsible for the area in which the project is located will provide, on request, a list of known Indian tribes that may be affected by a project. California Indian Legal Services argues that this should be required in every case, and that the Director should also provide notice of the project by letter to all tribes included on the list. Similarly, Pueblo de Cochiti argues that, as governmental entities, tribes should be entitled to receive notice of proposed projects, along with sufficient information to determine for themselves whether a proposed hydropower project might affect tribal rights or interests.

In response, the Commission notes that § 4.38 requires that, before a hydropower application may be filed with the Commission, an applicant must consult with any Indian tribe (as defined in the regulations) that may be affected by a proposed project. Section 4.38(a)(2), which permits an applicant to request a list of known resource agencies and Indian tribes, is simply a convenient starting point and does not limit the applicant's obligation to consult with any Indian tribe that may be affected. Indian tribes will therefore receive actual, advance notice of a proposed hydropower project by virtue of the requirement that applicants consult with them before an application may be filed with the Commission. Accordingly, no changes to this section of the rule are needed.

With regard to applications for exemption, California Indian Legal Services points out that, although the proposed rule in § 4.107(a) would require the applicant to identify in its application all Indian tribes that may be affected by the project, there are no corresponding provisions in §§ 4.93 and 4.105 requiring that the Indian tribes be provided notice of the application and an opportunity to comment on it.

The Commission agrees that the notices of applications for exemption that are sent to interested agencies pursuant to §§ 4.93 and 4.105 should be sent to affected Indian tribes as well, and has amended those sections as suggested. However, as discussed in section IV.B.2. above, the final rule makes clear that the pre-filing consultation process in § 4.38 applies to applications for exemption. Therefore, Indian tribes that may be affected will be consulted before the application for exemption is filed, and will also receive a copy of the draft application during the second stage of consultation. In addition, consulted Indian tribes will receive a copy of the exemption application when it is filed. Thereafter, Indian tribes will have an opportunity to file comments on the application as filed. Thus, Indian tribes will have many opportunities to comment on the applicant's proposal for exemption, and no changes to the rule are needed.

Klamath argues that the Commission's regulations should take into account the financial situation of Indian tribes and the need for protection of their interests. Klamath asserts that, as a federal agency, the Commission has a trust responsibility toward Indian tribes. Klamath therefore argues that, at a minimum, the Commission's final rule should permit an affected Indian tribe to request additional time within the consultation framework to permit the tribe to participate in a significant manner.

Similarly, Native American Rights Fund expresses concern that the short consultation, recommendation, and comment deadlines imposed by the rule may deprive Indian tribes of meaningful participation, cause severe economic loss, interfere with treaty rights, and violate the federal trust responsibility. Native American Rights Fund argues that the proposed rule does not recognize many tribes' limited resources, which may limit their ability to meet the deadlines. Native American Rights Fund adds that the rule does not allow tribes to request additional time within the consultation framework, to permit them to participate in a significant and effective manner.

The Commission believes that the final rule provides meaningful and significant participation rights to Indian tribes, both before and after an application is filed, and that the time limits established in the rule, including those governing pre-filing consultation, are reasonable, as discussed in section IV.C.4. above. Regarding the proposal to permit requests for extensions of time during pre-filing consultation, the Commission is concerned that adoption of such a proposal could significantly prolong the consultation process and burden the Commission's staff. Once the application is filed with the Commission, any participant may file a request for additional time if it can show good cause for an extension. For these reasons, the Commission does not believe that a change to the final rule is warranted.

With regard to the second major area of interest, many commenters [190] agree

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the assistance of the Commission and the Department of the Interior's Bureau of Indian Affairs in making this identification.

[188] Proposed § 4.34(b)(2).

[189] Energy, Interior, Washington Fisheries, Washington Wildlife, PG&E, California Indian Legal Services, Confederated Tribes, Klamath, Native American Rights Fund, Pueblo de Cochiti, Tulalip, and Nez Perce. As discussed above in section IV.A.3., however, many of these commenters criticize the proposed definition of "Indian tribe."

[190] Interior, California Indian Legal Services, Klamath, Native American Rights Fund, Pueblo de Cochiti, Tulalip, and Nez Perce. As discussed above and in section IV.A., however, many of these commenters believe that Indian tribes should be treated as "fish and wildlife agencies" and that their recommendations concerning fish and wildlife should be subject to the section 10(j) process.

as a general matter that the Commission's regulations must provide for consideration of the recommendations of Indian tribes concerning fish and wildlife. Interior notes, for example, that section 3 of ECPA requires the Commission to solicit and consider the recommendations (including fish and wildlife recommendations) of Indian tribes affected by a project. Similarly, Pueblo de Cochiti points out that the legislative history of ECPA recognizes that this provision was added in recognition of the high degree of concern and unique interests of Indian tribes, which can make important contributions in hydropower licensing proceedings. Accordingly, Pueblo de Cochiti argues that the Commission must fully include tribal governments in the consultation process for fish and wildlife recommendations. As discussed above in connection with the definition of "Indian tribe," other commenters [191] urge the Commission to go further and treat the fish and wildlife recommendations of Indian tribes in the same manner as those of the fish and wildlife agencies that are subject to the provisions of section 10(j) of the FPA.

The Commission believes that, by providing for extensive involvement of Indian tribes in the hydropower licensing process, both before and after an application is filed, the final rule establishes a role for Indian tribes that, in many respects, is parallel to that of fish and wildlife agencies. As discussed above, participation in the pre-filing consultation process includes an opportunity to comment on a proposal at the earliest possible stage as well as to request studies. In addition, the final rule permits Indian tribes to file fish and wildlife recommendations for the Commission's consideration at the same time that such recommendations are required to be proposed by fish and wildlife agencies. However, as stated in the NOPR and as discussed above in section IV.A., Indian tribes are not fish and wildlife agencies within the meaning of section 10(j) of the FPA. Therefore, the Commission will not subject the fish and wildlife recommendations of Indian tribes to the section 10(j) process.

California Indian Legal Services recommends that, because Indian tribes are subject to the same technical and evidentiary requirements as fish and wildlife agencies in § 4.34(b)(1)(i), their comments and recommendations should be accorded the same procedural treatment, and that 90 days, rather than 60, should be provided for submitting terms and conditions or prescriptions. The Commission notes that § 4.34(b)(1) does not concern Indian tribes, but is restricted to agencies responsible for mandatory terms and conditions and prescriptions. Recommended fish and wildlife conditions of fish and wildlife agencies and Indian tribes are addressed in § 4.34(b)(2). They are subject to the same general requirements, in that both agencies and tribes must discuss the resource issues presented and provide the evidentiary basis for their recommended terms and conditions. The Commission believes that the 60-day time limit is sufficient as a general matter and that, if circumstances so warrant, an agency or tribe may file a request for additional time.

California Indian Legal Services notes that, although § 4.34(f)(3) provides that the Commission will "consider" the timely recommendations of Indian tribes affected by the project, there is no specification of the particular standards for the Commission's consideration of these recommendations. The Commission notes that § 4.34(f)(3) concerns the findings that are required by section 10(j)(2) of the FPA if, after attempting to resolve inconsistencies, the Commission does not adopt a fish and wildlife recommendation of a fish and wildlife agency. The fish and wildlife recommendations of Indian tribes are addressed in § 4.34(f)(1)(iii). Although no specific standards are included, the Commission does not believe that they are necessary, as no specific statutory findings must be made. The Commission notes, however, that the licensing decision should include a discussion of any conditions recommended by the tribe and why they were or were not included in the license.

2. *Participation of the public.* In the NOPR, the Commission proposed a number of revisions to its regulations on hydropower applications to improve the flow of information to the public on proposed projects and to seek public input on studies that an applicant should conduct. The NOPR stated that the existing § 4.38 concerning applications for original licenses or exemptions did not require the applicant to consult with the public during the pre-filing consultation process and limited the public's access to information about a proposed project to the Commission's public reference room located in Washington, DC.

The NOPR explained that the proposed revisions to the consultation process in § 4.38, as adopted herein, would require a potential applicant for a license or exemption: (1) To hold a joint meeting at the first stage of the process; (2) to invite the public to participate; and (3) to make available to the public a description of the proposed hydropower facilities.[192] At the meeting, the applicant would be required to summarize the potential environmental impact of the proposed project and to discuss what scientific studies are necessary to support the application. After filing its application with the Commission, the applicant would be required: (1) To maintain a file, at its regular place of business or other more accessible location, containing its complete application for license or exemption; (2) to allow public access to this file during normal business hours; and (3) to make copies of the material available to the public on request after payment of reasonable fees.[193] The applicant would also be required to provide a copy of its complete application (as amended) to a public library or other convenient public office located in each county in which the proposed hydropower project is located.[194]

The NOPR stated that, within 14 days after filing its hydropower application with the Commission, an applicant for license or exemption would be required to publish a notice in a newspaper in each county in which the proposed hydropower project is located.[195] The notice would disclose the filing date of the application, briefly summarize the application, describe the places where a copy of the application is available to the public, and set forth the date by which any requests by the public for additional scientific studies on the proposed project are due to be filed with the Commission. The notice would also inform the public that the Commission will publish subsequent notices soliciting public participation if the application is found acceptable for filing.

As a general matter, most commenters [196] support the

[191] California Indian Legal Services, Klamath, Native American Rights Fund, and Nez Perce.

[192] Sections 4.38 (b)(3) and (g). Compare § 16.8 (applying to relicense applicants).

[193] Sections 4.32(b) (3)–(5). Compare the similar regulation recently adopted for relicensing applicants in 18 CFR 16.7.

[194] Section 4.32(b)(4)(ii). The Commission noted that, under the existing rules, only applicants for relicensing subject to part 16 must maintain a public file.

[195] Section 4.32(b)(6).

[196] Energy, Washington Fisheries, Washington Wildlife, Public Generating Pool, American Rivers, and Wildlife Federation.

Commission's proposal to permit public participation in the pre-filing consultation process. However, some commenters criticize specific aspects of the proposed rule, or urge the Commission to go further to increase the role of the public in the pre-filing consultation process.

Energy, American Rivers, and Wildlife Federation expressly agree with the provisions of the proposed rule requiring the applicant to hold a public meeting during the first stage of consultation and to maintain a file on the project accessible to the public after the application is filed. Similarly, Public Generating Pool supports involving the general public in the application process for licensing and exemptions in the early stage of consultation to a degree comparable to that provided in the Commission's relicensing regulations in 18 CFR part 16. Public Generating Pool observes that this should help to minimize unnecessary adversarial confrontation and possible litigation following submittal of license applications.

American Paper questions the need for a requirement to hold a public meeting, noting that several of its members have held joint meetings with resource agencies which no member of the public attended. American Paper suggests that, in view of the expense involved, it might be as effective for the Commission simply to require the applicant to notify the public in newspaper notices when the application is filed and to offer to meet individually with members of the public or to hold a public meeting if requested. American Paper also suggests that summaries of the meetings, rather than transcripts, could be provided.

The Commission continues to believe that the applicant should be required to hold a public meeting during the first stage of the pre-filing consultation process. In the Commission's experience, meetings of this type are generally helpful in identifying issues and information needs, and many are well attended. In addition, the rule permits either audio recordings or written transcripts; therefore, the expenses of a court reporter need not be incurred if the applicant so chooses. For these reasons, the Commission has decided to retain the public meeting requirement in the final rule.

American Rivers and Wildlife Federation argue that the public should not be excluded from the pre-filing consultation process. American Rivers asserts that the pre-filing consultation process is part of a Commission proceeding to which NEPA applies, thereby mandating early and effective public involvement. American Rivers adds that the public should be given an opportunity to comment before the applicant and resource agencies reach agreement on some of the terms and conditions of the hydropower license, arguing that, if public comments are not permitted until after consultation is complete and the application has been filed, they will either be ignored or will jeopardize the agreements made during consultation. American Rivers therefore asserts that the public should be permitted an opportunity to comment on all of the applicant's pre-filing submissions to the agencies, and to attend all meetings held during the pre-filing consultation process.

Similarly, Wildlife Federation argues that the early public meeting required in the proposed rule should be used to create a list of persons interested in participating in the pre-filing consultation process with the agencies, and that those persons should be given notice and invited to participate in each meeting and telephone call throughout the pre-filing consultation process. Wildlife Federation urges the Commission to make clear that applicants may not exclude members of the public from pre-filing consultations, even if the Commission does not require applicants to invite them. Wildlife Federation also argues that there is no basis for allowing applicants the discretion to exclude members of the public from site visits coordinated with resource agencies at the time of the public meeting.

The Commission believes that, by requiring the applicant to hold a public meeting in the vicinity of a proposed hydropower site during the first stage of consultation and to maintain a public file on the project, the final rule provides a significant new opportunity for early public involvement in the hydropower process. It bears emphasizing that this opportunity is provided before the application is filed. Additional opportunities for public involvement are provided at later stages in the process: when the application is filed, when it is accepted for filing, and when it undergoes environmental review. Additional public involvement in pre-filing consultation would delay the process without significantly improving the quality of the application that is filed with the Commission. In these circumstances, the additional public participation measures suggested are neither necessary nor appropriate.

With regard to NEPA, it should be noted that at the pre-filing stage there is no "federal action" contemplated, because the applicant's proposal has not yet been submitted for the Commission's consideration. Accordingly, NEPA does not require the expanded public involvement that American Rivers urges the Commission to adopt. Moreover, there is nothing in the final rule to prevent individuals or groups interested in the proposed project from contacting the applicant or the agencies directly to obtain information or to make their concerns known. Indeed, the requirement that the applicant hold a public meeting and maintain a project file should facilitate such efforts. In the Commission's view, the public participation measures in the final rule are substantial, and inclusion of the public in the various pre-filing meetings, site visits, and telephone calls is a matter that is appropriately left to the discretion of the applicant and the agencies involved.

PG&E recommends deletion of § 4.32(b)(6), which requires the applicant to publish a notice of its filing of the application within 14 days of the filing and specifies the information to be included in the notice. PG&E argues that this additional notice is unnecessary, inefficient, and potentially confusing. As an alternative, PG&E suggests that the Commission should be responsible for publishing the notice, because applicants do not receive timely notice from the Commission of the official filing date of their applications.

It appears that PG&E may misunderstand the purpose of this notice. It is not intended to inform the public of the official filing date of the application (*i.e.*, when the application is stamped "received" by the Secretary of the Commission). Rather, it is intended to inform the public, within a reasonable time after the actual filing, that the applicant has filed its application with the Commission. In order to comply with this provision, the applicant need only publish the required notice within 14 days of filing its application, regardless of the official filing date that is later established when the Commission actually receives the application. The Commission disagrees that this additional notice is unnecessary. It is intended to provide the public with additional information about the project and invite public input on necessary studies at an earlier stage of the licensing process.[197] It is not particularly burdensome, and may have a beneficial effect by allowing issues raised by the public to be resolved earlier rather than later. Therefore, the Commission has retained this provision in the final rule.

[197] See § 4.32(b)(7).

American Rivers and Wildlife Federation argue that publication of a newspaper notice is inadequate to provide the public with actual notice of the application. American Rivers also criticizes the proposed rule for requiring the public to learn about and file comments by three separate deadlines: (1) For commenting on the adequacy of the record, (2) for filing a motion to intervene, and (3) for filing substantive comments on the application. American Rivers asserts that this places an extreme and needless burden on the public. As an alternative, American Rivers and Wildlife Federation both recommend that the Commission publish a public notice in the **Federal Register** and invite public comments and interventions immediately upon the filing of an application. Wildlife Federation adds that the Commission should codify its existing practice of accepting motions to intervene after an application has been filed but before the application has been accepted for filing.

The Commission believes that the final rules provide for adequate notice to the public. As discussed above, the applicant is required to hold a public meeting in the vicinity of the proposed project before filing the application, and to publish a notice of filing in local newspapers shortly after the application is filed. Moreover, the Commission will publish a **Federal Register** notice, inviting comments and interventions, when the application is accepted for filing, as required by FPA section 4(e). Thus, there is no need for a **Federal Register** notice at the time that the application is filed.

The Commission does not share the commenter's concern that the public will be burdened or confused by multiple notices. Different notices are appropriate at different stages of the process, and each will indicate what action is invited in response to the notice. With regard to intervention, the Commission notes that its existing practice permits the filing of a motion to intervene at any time after an application is filed, although the Commission does not formally invite such motions until after the application is accepted for filing. The Commission intends to continue this practice, but believes that its codification is not required.

Finally, American Rivers asserts that the Commission should improve the opportunity of the public to participate by requiring applicants to serve copies of their applications on all persons and entities that have been granted intervenor status. American Rivers asserts that the unreasonably high cost and administrative delays involved in obtaining copies of applications from the Commission's Public Information Office represent an unreasonable barrier to public involvement and that applicants should bear the cost of serving copies of their applications on intervenors as a cost of doing business.

The Commission disagrees with the assertion that the cost of obtaining a copy of the application represents an unreasonable barrier to public involvement in the hydropower process. Many hydropower proceedings are contested, suggesting that participants do not consider these costs prohibitive. Participation as a party necessarily involves some costs and administrative burdens, and each participant must decide whether its interests in the proceeding are such that it must intervene in order to protect them adequately, rather than merely filing a protest. In addition, the final rule requires the applicant to maintain a project file containing its complete license or exemption application at its principal place of business or more accessible location, and to provide a copy of the application, as amended, to a public library or other convenient public office located in each county in which the proposed project is located. This should alleviate the economic and administrative burdens associated with obtaining a copy of the application.

3. *Transition Provisions.* EEI suggests deleting the clause at the end of the sentence in proposed § 4.38(h)(1)[198] in order to avoid an unintended effect when that clause is read in conjunction with § 4.38(a)(4)(iii). The clause is in any event unnecessary and confusing; we have deleted it.

Interior and Michigan point out that the transition provisions in § 4.38(h) apply only to the consultation process, and request clarification as to the timing of the applicability of §§ 4.30, 4.32, and 4.34. The final rule adopted herein becomes effective 30 days after it is published in the **Federal Register**. The principal purpose of the transition provision in § 4.38(h) was to avoid the repetition of stages of the pre-filing consultation process that had already been completed even though the application had not yet been filed.

The final rule amends § 4.30 by adding and revising several definitions. These new definitions will become effective when the final rule itself becomes effective, and will be used by the Commission in its decisions on and after that date.

The amendments to § 4.32 generally impose requirements on applicants to file, maintain, and/or make available certain information, and authorize and/or require the participants in the license application process to make various requests, responses, and filings. These procedural requirements apply as of the effective date of the final rule. This does not, for instance, require the applicant to create a backdated public file of material that it was not previously required to retain and make available, but it does require the applicant to commence retaining such material and to make available in its public file whatever such material it has in its possession.

Revised § 4.34 establishes procedures for hearings and related filings, consultations, negotiations, conditions, and requests for rehearing, etc. These provisions apply as of the effective date of the final rule, and govern the conduct of the hearing processes that occur on and after that date.

4. *Clarification of Delegated Authority.* Washington Wildlife inquires about delegations of authority to the staff to implement section 10(j). The Commission recognizes that its staff has had the authority to implement section 10(j), subject to appeal or requests for rehearing. New § 375.314(s) of the regulations, proposed in the NOPR and adopted herein with changes to make the section conform to the new § 10(j) regulations adopted herein,[199] clarifies that the Director of the Office of Hydropower Licensing has the authority to make preliminary determinations of inconsistency between a resource agency's fish and wildlife recommendations and applicable law, and to conduct through staff whatever consultation with the agency that is appropriate to attempt to resolve such inconsistencies.[200]

In light of the comments received on the pre-filing consultation process, we are also delegating to the Director the authority to waive the pre-filing consultation requirements in §§ 4.38 and 16.8 whenever the Director, in his discretion, determines that an emergency so requires, or that the potential benefit of expeditiously considering a proposed improvement in

[198] Proposed § 4.38(h)(1) read: "(1) The provisions of this section are not applicable to applications filed before (insert the effective date of this rule) if such applications are subject to this section as it existed prior to this date." [Emphasis added.]

[199] See § 4.34(e).

[200] This clarification of delegated authority simply codifies past practice and conforms it directly to the provisions of this final rule. The Commission expressly rejects any suggestion that any prior finding of consistency or inconsistency by the Director was made without the authority to make such a finding.

safety, environmental protection, efficiency, or capacity outweighs the potential benefit of requiring completion of the consultation process prior to the filing of an application. This delegation of authority is adopted in new § 375.314(t).

As discussed elsewhere above, the purpose of the pre-filing consultation requirement is to expedite the license application process by ensuring that the applicant has considered the relevant environmental factors when it prepares the application for filing. There may, however, be situations in which the Director determines that the pre-filing consultation process is unwarranted, or would delay consideration of significant proposed benefits. We anticipate that such situations would be most likely to arise in the context of applications to amend a license, but have crafted the authority in broader terms in case it is needed.

Finally, as stated above in section IV.C.4., the Commission has routinely set deadlines for submissions regarding hydropower applications, including comments, recommendations under the FWCA and FPA section 10(j), mandatory conditions under FPA section 4(e), and prescriptions under FPA section 18. The final rule adopts deadlines for such submissions, but in the case of many pending applications certain deadlines in the new regulations may not apply because the hearing process is too advanced. In some of these cases there may be questions as to whether earlier submissions still reflect the positions of the parties and agencies concerned, while in other cases there may be questions as to whether agencies that have not done so may submit recommendations, mandatory conditions, or prescriptions. Therefore, the Commission clarifies and confirms herein that the Director of the Office of Hydropower Licensing has the authority, under 18 CFR 375.314, to deal with these and other transitional questions in pending hydropower proceedings, and, where necessary or appropriate, to set deadlines for submissions or to take other action in order to ensure the completeness of the record for decision.

5. *Application of FPA Section 4(e) to relicensing.* In setting out license conditions and required findings,[201] we stated that licenses for a project located within any federal reservation shall be issued only after the findings required by, and subject to any conditions timely received pursuant to, section 4(e) of the FPA.[202]

EEI argues that the authority to impose section 4(e) conditions does not extend to new licenses (relicenses), and requests that the section be modified to limit its applicability to original licenses. EEI notes the Commission's finding in *City of Pasadena* [203] that section 15 does not provide the exclusive authority to issue new licenses so as to exclude the applicability of section 4(e), but argues that the *Pasadena* decision and its codification in the Commission's regulations are inconsistent with the actual wording of the FPA and its underlying purposes. The Commission concludes that EEI's argument has no merit, for the reasons discussed in the *Pasadena* order.

6. *Filing requirements for certain applicants.* Section 15 of the FPA requires that applications for a new license [204] be filed at least two years before the existing license expires. The Commission's records indicate that approximately 170 applications for new hydropower licenses are due by December 31, 1991. These licenses expire on December 31, 1993. To facilitate the formidable task of processing all of these applications, the Commission is hereby changing specified filing requirements for all new license applications due between the effective date of this rule and December 31, 1991. The Commission hopes that these applications will be filed as soon as possible to enable staff to begin to process them.

Under the existing regulations, an applicant for a new hydropower license must file its application in accordance with the filing regulations set forth at 18 CFR 385.2004: An original and 14 copies of the application must be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The submission may either be hand-delivered or mailed, and the official filing date is when the application is actually received by the Secretary. The requirements of 18 CFR 16.8, requiring service of a copy of the application on all resource agencies consulted, must be met.

Under the regulations as revised herein, an applicant for a new license must comply with different filing requirements if the application is due between the effective date of this rule and December 31, 1991. Under the final rule, if such an applicant hand-delivers copies of its application to the Secretary, the applicant must certify in its transmittal letter for the application that it has complied with the following requirements. The applicant must hand-deliver at the same time five copies of the application to the Director, Division of Project Review, Office of Hydropower Licensing, room 1023, 810 First Street, NE., Washington, DC 20426. In addition, the applicant must serve one copy of the application on each of the following addresses: [205] (1) The Commission's Regional Office responsible for the area in which the project is located; (2) the U.S. Bureau of Land Management; (3) the U.S. Corps of Engineers; and (4) the U.S. Department of the Interior.

The number of copies the applicant must file with the Secretary may be reduced by the number of copies required to be served on the addressees listed in appendix B. For example, if an applicant for a new license serves four copies of its application on pertinent addressees listed in appendix B, the applicant need mail only an original and ten copies to the Secretary. Furthermore, if an applicant for a new license hand delivers [206] copies of its application to the Secretary, and at the same time hand-delivers five copies of the application to the Director, Division of Project Review, Office of Hydropower Licensing,[207] and serves four copies on pertinent addressees listed in appendix B, the applicant need hand-deliver to the Secretary only an original and five copies of its application.

V. Environmental Analysis

Commission regulations describe the circumstances where preparation of an environmental assessment or an environmental impact statement will be required.[208] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[209] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended.[210]

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[201] Section 4.34(f).

[202] Section 4.34(f)(1)(iv).

[203] 48 FERC ¶ 61,004 (1989).

[204] See the definition of "new license" in 18 CFR 16.2(a).

[205] These addresses are listed in appendix B.

[206] Hand-delivery is considered the delivery by means other than the U.S. mail, and includes delivery by any messenger or package or courier service.

[207] The Office of Hydropower Licensing does not have a mail stop separate from the Secretary.

[208] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), codified at 18 CFR part 380.

[209] 18 CFR 380.4(a)(2)(ii).

[210] 18 CFR 380.4.

This final rule is procedural in nature. It identifies certain information that must be included with an application, and consultation and hearing procedures that would be employed by the Commission in hydropower proceedings. Thus, no environmental assessment or environmental impact statement is necessary for the requirements implemented in the rule.

VI. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA) [211] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[212] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities, and that, even if the rule were to have a significant impact on a substantial number of small entities, it would be to their benefit. The Commission believes that most of the entities affected by the proposed rule do not fall within RFA's definition of "small entity." Even if the rule would have a significant effect on a substantial number of small entities, however, the application requirements implemented in this rule are appropriate or necessary for the Commission to grant a license or exemption to an application. Any applicant may benefit substantially by obtaining a license or exemption.

VII. Information Collection Requirements

The Office of Management and Budget's (OMB) regulations [213] require that OMB approve certain information collection requirements imposed by agency rules. The information collection requirements in this final rule are contained in FERC–500, Application for License for Water Power Projects With More Than 5 MW Capacity, and FERC–505, Application for License for Water Power Projects 5 MW or Less.

Part I of the FPA gives the Commission jurisdiction over the licensing of hydropower projects. Owners and operators of potential hydropower projects subject to this rule are the likely respondents. Applications for licenses for water power projects having more than a 5 MW capacity (FERC–500) are estimated to have a total annual reporting time of 40,768 hours. The estimated number of respondents is 49; the frequency of response per year is one; and the estimated average number of hours per response is 832. Applications for licenses for a water power project having a capacity of 5 MW or less (FERC–505) are estimated to have a total annual reporting time of 12,460 hours. The number of respondents per year is estimated to be 70; the frequency of response per year is estimated to be one; and the estimated average number of hours per response is 178.

VIII. Effective Date

This rule is effective June 19, 1991. If OMB has not approved the information collection provisions at that time, the Commission will issue a notice delaying the effective date until OMB approval of the final rule.

List of subjects

18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 16

Electric power.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 380

Environment, National Environmental Policy Act.

In consideration of the foregoing, the Commission amends parts 4, 16, 375, and 380 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission. Commissioner Trabandt dissented in part on the application of section 4(e) and section 18 to relicensing. Commissioner Moler dissented in part with a separate statement attached. Commissioner Langdon dissented in part with a separate statement to be issued later.

Linwood A. Watson, Jr.,

Acting Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for part 4 is amended to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 4.30, paragraph (b)(9) is revised, paragraph (b)(11) is removed, paragraph (b)(10) is redesignated as paragraph (b)(11), paragraphs (b)(25), (b)(26), (b)(27), and (b)(28) are redesignated as paragraphs (b)(26), (b)(28), (b)(29), and (b)(30), and new paragraphs (b)(10), (b)(25), and (b)(27) are added to read as follows:

§ 4.30 Applicability and definitions.

* * * * *

(b) * * *

(9)(i) *Fish and wildlife agencies* means the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency in charge of administrative management over fish and wildlife resources of the state in which a proposed hydropower project is located.

(ii) *Fish and wildlife recommendation* means any recommendation designed to protect, mitigate damages to, or enhance any wild member of the animal kingdom, including any migratory or nonmigratory mammal, fish, bird, amphibian, reptile, mollusk, crustacean, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any egg or offspring thereof, related breeding or spawning grounds, and habitat. A "fish and wildlife recommendation" includes a request for a study which cannot be completed prior to licensing, but does not include a request that the proposed project not be constructed or operated, a request for additional pre-licensing studies or analysis or, as the term is used in §§ 4.34(e)(2) and 4.34(f)(3), a recommendation for facilities, programs, or other measures to benefit recreation or tourism.

(iii) *Fishway* means any structure, facility, or device used for the upstream passage of fish through, over, or around the project works of a hydropower project, such as fish ladders, fish locks, fish lifts and elevators, and similar physical features; those screens, barriers, and similar devices that operate to guide fish to a fishway; and flows within the fishway necessary for its operation.

(10) *Indian tribe* means, in reference to a proposal to apply for a license or exemption for a hydropower project, an Indian tribe which is recognized by treaty with the United States, by federal statute, or by the U.S. Department of the Interior in its periodic listing of tribal governments in the **Federal Register** in accordance with 25 CFR 83.6(b), and whose legal rights as a tribe may be affected by the development and operation of the hydropower project proposed (as where the operation of the

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[211] 5 U.S.C. 601–612 (1988).

[212] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1988).

[213] 5 CFR 1320.13.

proposed project could interfere with the management and harvest of anadromous fish or where the project works would be located within the tribe's reservation).

* * * * *

(25) *Ready for environmental analysis* means the point in the processing of an application for an original or new license or exemption from licensing which has been accepted for filing, where substantially all additional information requested by the Commission has been filed and found adequate.

* * * * *

(27) *Resource agency* means a Federal, state, or interstate agency exercising administration over the areas of flood control, navigation, irrigation, recreation, fish and wildlife, water resource management, or cultural or other relevant resources of the state or states in which a project is or will be located.

* * * * *

3. In § 4.32, the heading is revised, paragraphs (a)(2)(iii)(B) and (a)(2)(iv) are revised, new paragraphs (a)(2)(v) and (b)(3) through (b)(9) are added, and paragraph (d)(4) is revised to read as follows:

§ 4.32 Acceptance for filing or rejection; information to be made available to the public; requests for additional studies.

(a) * * *

(2) * * *

(iii) * * *

(B) That owns, operates, maintains, or uses any project facilities or any Federal facilities that would be used by the project;

(iv) Every other political subdivision in the general area of the project that there is reason to believe would likely be interested in, or affected by, the application; and

(v) All Indian tribes that may be affected by the project.

* * * * *

(b) * * *

(3)(i) An applicant must make information regarding its proposed project reasonably available to the public for inspection and reproduction, from the date on which the applicant files its application for a license or exemption until the licensing or exemption proceeding for the project is terminated by the Commission. This information includes a copy of the complete application for license or exemption, together with all exhibits, appendices and any amendments, and any comments, pleadings, supplementary or additional information, or correspondence filed by the applicant with the Commission in connection with the application.

(ii) An applicant must delete from any information made available to the public under this section, specific site or property locations the disclosure of which would create a risk of harm, theft, or destruction of archeological or Native American cultural resources or to the site at which the sources are located, or would violate any federal law, including the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470w–3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(4)(i) An applicant must make available the information specified in paragraph (b)(3) of this section in a form that is readily accessible, reviewable, and reproducible, at the same time as the information is filed with the Commission or required by regulation to be made available.

(ii) An applicant must make the information specified in paragraph (b)(3) of this section available to the public for inspection:

(A) At its principal place of business or at any other location that is more accessible to the public, provided that all the information is available in at least one location;

(B) During regular business hours; and

(C) In a form that is readily accessible, reviewable and reproducible.

(iii) The applicant must provide a copy of the complete application (as amended) to a public library or other convenient public office located in each county in which the proposed project is located.

(iv) An applicant must make requested copies of the information specified in paragraph (b)(3) of this section available either:

(A) At its principal place of business or at any other location that is more accessible to the public, after obtaining reimbursement for reasonable costs of reproduction; or

(B) Through the mail, after obtaining reimbursement for postage fees and reasonable costs of reproduction.

(5) Anyone may file a petition with the Commission requesting access to the information specified in paragraph (b)(3) of this section if it believes that an applicant is not making the information reasonably available for public inspection or reproduction. The petition must describe in detail the basis for the petitioner's belief.

(6) An applicant must publish a notice of the filing of its application, no later than 14 days after the filing date, in a daily or weekly newspaper of general circulation in each county in which the project is located. The notice must disclose the filing date of the application and briefly summarize it, including the applicant's name and address, the type of facility applied for, its proposed location, the places where the information specified in paragraph (b)(3) of this section is available for inspection and reproduction, and the date by which any requests for additional scientific studies are due under paragraph (b)(7) of this section, and must state that the Commission will publish subsequent notices soliciting public participation if the application is found acceptable for filing. The applicant must promptly provide the Commission with proof of publication of this notice.

(7) If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, Indian tribe, or person must file a request for the study with the Commission not later than 45 days after the application is filed and serve a copy of the request on the applicant. For any such additional study request, the requester must describe the recommended study and the basis for the request in detail, including who should conduct and participate in the study, its methodology and objectives, whether the recommended study methods are generally accepted in the scientific community, how the study and information sought will be useful in furthering the resource goals that are affected by the proposed facilities, and approximately how long the study will take to complete, and must explain why the study objectives cannot be achieved using the data already available. In addition, in the case of a study request by a resource agency or Indian tribe that had failed to request the study during the pre-filing consultation process under § 4.38 or § 16.8 of this chapter, the agency or Indian tribe must explain why this request was not made during the prefiling consultation process and show good cause why its request for the study should be considered by the Commission.

(8) An applicant may file a response to any such study request within 30 days of its filing, serving a copy of the response on the requester.

(9) The requirements of paragraphs (b)(3) to (b)(8) of this section only apply to an application for license or exemption filed on or after May 20, 1991. Paragraphs (b)(3) and (b)(4) of this section do not apply to applications subject to the requirements of § 16.7 of this chapter.

(d) * * *

(4) For an application for a license seeking benefits under section 210 of the Public Utility Regulatory Policies Act of 1978, as amended, for a project that would be located at a new dam or diversion, serve the public notice issued for the application under paragraph (d)(2)(i) of this section to interested agencies at the time the applicant is notified that the application is accepted for filing.

* * * * *

4. Section 4.34 is revised to read as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene.

(a) *Trial-type hearing.* The Commission may order a trial-type hearing on an application for a preliminary permit, a license, or an exemption from licensing upon either its own motion or the motion of any interested party of record. Any trial-type hearing will be limited to the issues prescribed by order of the Commission. In all other cases the hearings will be conducted by notice and comment procedures.

(b) *Notice and comment hearings.* All comments (including mandatory and recommended terms and conditions or prescriptions) on an application for exemption or license must be filed with the Commission no later than 60 days after issuance by the Commission of notice declaring that the application is ready for environmental analysis. All reply comments must be filed within 105 days of that notice. All comments and reply comments and all other filings described in this section must be served on all persons listed in the service list prepared by the Commission, in accordance with the requirements of § 385.2010 of this chapter. If a party or interceder (as defined in § 385.2201 of this Chapter) submits any written material to the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, the party or interceder must also serve a copy of the submission on this resource agency. The Commission may allow for longer comment or reply comment periods if appropriate. A commenter or reply commenter may obtain an extension of time from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with § 385.2008 of this chapter. Late-filed fish and wildlife recommendations will not be subject to the requirements of paragraphs (e), (f)(1)(ii), and (f)(3) of this section, and late-filed terms and conditions or prescriptions will not be subject to the requirements of paragraphs (f)(1)(iv), (f)(1)(v), and (f)(2) of this section. Late-filed fish and wildlife recommendations, terms and conditions, or prescriptions will be considered by the Commission under section 10(a) of the Federal Power Act if such consideration would not delay or disrupt the proceeding.

(1) *Agencies responsible for mandatory terms and conditions and presentations.* Any agency responsible for mandatory terms and conditions or prescriptions for licenses or exemptions, pursuant to sections 4(e), 18, and 30(c) of the Federal Power Act and section 405(d) of the Public Utility Regulatory Policies Act of 1978, as amended, must provide these terms and conditions or prescriptions in its initial comments filed with the Commission pursuant to paragraph (b) of this section. In those comments, the agency must specifically identify and explain the mandatory terms and conditions or prescriptions and their evidentiary and legal basis. If ongoing agency proceedings to determine the terms and conditions or prescriptions are not completed by the date specified, the agency must submit to the Commission by the due date:

(i) Preliminary terms and conditions or prescriptions and a schedule showing the status of the agency proceedings and when the terms and conditions or prescriptions are expected to become final; or

(ii) A statement waiving the agency's right to file the terms and conditions or prescriptions or indicating the agency does not intend to file terms and conditions or prescriptions.

(2) *Fish and Wildlife agencies and Indian tribes.* All fish and wildlife agencies must set forth any recommended terms and conditions for the protection, mitigation of damages to, or enhancement of fish and wildlife, pursuant to the Fish and Wildlife Coordination Act and section 10(j) of the Federal Power Act, in their initial comments filed with the Commission by the date specified in paragraph (b) of this section. All Indian tribes must submit recommendations (including fish and wildlife recommendations) by the same date. In those comments, a fish and wildlife agency or Indian tribe must discuss its understanding of the resource issues presented by the proposed facilities and the evidentiary basis for the recommended terms and conditions.

(3) *Other Government agencies and members of the public.* Resource agencies, other governmental units, and members of the public must file their recommendations in their initial comments by the date specified in paragraph (b) of this section. The comments must clearly identify all recommendations and present their evidentiary basis.

(4) *Submittal of modified recommendations, terms and conditions or prescriptions.* (i) If the information and analysis (including reasonable alternatives) presented in a draft environmental impact statement, issued for comment by the Commission, indicate a need to modify the recommendations or terms and conditions or prescriptions previously submitted to the Commission pursuant to paragraphs (b)(1), (b)(2), or (b)(3) of this section, the agency, Indian tribe, or member of the public must file with the Commission any modified recommendations or terms and conditions or prescriptions on the proposed project (and reasonable alternatives) no later than the due date for comments on the draft environmental impact statement. Modified recommendations or terms and conditions or prescriptions must be clearly distinguished from comments on the draft statement.

(ii) If an applicant files an amendment to its application that would materially change the project's proposed plans of development, as provided in § 4.35, an agency, Indian tribe or member of the public may modify the recommendations or terms and conditions or prescriptions it previously submitted to the Commission pursuant to paragraphs (b)(1), (b)(2), or (b)(3) of this section no later than the due date specified by the Commission for comments on the amendment.

(c) *Additional procedures.* If necessary or appropriate the Commission may require additional procedures (*e.g.*, a pre-hearing conference, further notice and comment on specific issues or oral argument). A party may request additional procedures in a motion that clearly and specifically sets forth the procedures requested and the basis for the request. Replies to such requests may be filed within 15 days of the request.

(d) *Consultation procedures.* Pursuant to the Federal Power Act and the Public Utility Regulatory Policies Act of 1978, as amended, the Commission will coordinate as appropriate with other government agencies responsible for mandatory terms and conditions for exemptions and licenses for hydropower projects. Pursuant to the Federal Power Act and the Fish and Wildlife Coordination Act, the Commission will consult with fish and wildlife agencies concerning the impact of a hydropower proposal on fish and wildlife and appropriate terms and conditions for

license to adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat). Pursuant to the Federal Power Act and the Endangered Species Act, the Commission will consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, concerning the impact of a hydropower proposal on endangered or threatened species and their critical habitat.

(e) *Consultation on recommended fish and wildlife conditions; section 10(j) process.* (1) In connection with its environmental review of an application for license, the Commission will analyze all terms and conditions timely recommended by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act for the protection, mitigation of damages to, and enhancement of fish and wildlife affected by the development, operation, and management of the proposed project. Submission of such recommendations marks the beginning of the process under section 10(j) of the Federal Power Act.

(2) Within 45 days of the filing of any fish and wildlife recommendation, the Commission may seek clarification of it, unless this deadline is extended by the Commission upon notice to the fish and wildlife agency concerned. If the Commission's request for clarification is communicated in writing, copies of the request will be sent by the Commission to all parties, affected resource agencies, and Indian tribes, which may file a response to the request for clarification within the time period specified by the Commission.

(3) The Commission will make a preliminary determination of inconsistency of the fish and wildlife recommendation with the purposes and requirements of the Federal Power Act or other applicable law. This preliminary determination will be done in writing and shall include an explanation of its basis, including appropriate references to the environmental analysis conducted on the license application. A copy of the environmental analysis will be provided with the determination, and will be sent to all parties, affected resource agencies, and Indian tribes.

(4) Any party, affected resource agency, or Indian tribe may file comments in response to the preliminary determination of inconsistency within 45 days of its issuance. In this filing, the fish and wildlife agency concerned may also request a meeting, telephone or video conference or other additional procedure to attempt to resolve any preliminary determination of inconsistency.

(5) If the Commission decides to conduct any meeting, telephone or video conference or to adopt any other procedure to address issues raised by its preliminary determination of inconsistency and comments thereon, the Commission will give at least 15 days' advance notice to each party, affected resource agency, or Indian tribe, which may participate in the meeting or conference. The Commission will prepare a written summary of any meeting held under this subsection to discuss section 10(j) issues, and a copy of the summary will be sent to all parties, affected resource agencies, and Indian tribes. If the Commission believes that any fish and wildlife recommendation submitted by a fish and wildlife agency may be inconsistent with the purposes and requirements of the Federal Power Act or other applicable law, the Commission will attempt to resolve any such inconsistency by appropriate means, giving due weight to the recommendations, expertise, and statutory responsibilities of the fish and wildlife agency.

(6) The section 10(j) process ends when the Commission issues an order granting or denying the license application in question.

(f) *License and exemption conditions and required findings*—(1) *License conditions.* (i) All licenses issued shall include the conditions specified in section 10(a)(1) of the Federal Power Act and such other conditions as the Commission determines are lawful and in the public interest.

(ii) Subject to paragraph (f)(3) of this section, fish and wildlife conditions shall be based on recommendations timely received from the fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act.

(iii) The Commission will consider the timely recommendations of resource agencies, other governmental units, and members of the public, and the timely recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project.

(iv) Licenses for a project located within any Federal reservation shall be issued only after the findings required by, and subject to any conditions that may be timely received pursuant to, section 4(e) of the Federal Power Act.

(v) The Commission will require the construction, maintenance, and operation by a licensee at its own expense of such fishways as may be timely prescribed by the Secretary of Commerce or the Secretary of the Interior, as appropriate, pursuant to section 18 of the Federal Power Act.

(2) *Exemption conditions.* Any exemption from licensing issued for conduit facilities, as provided in section 30 of the Federal Power Act, or for small hydroelectric power projects having a proposed installed capacity of 5,000 kilowatts or less, as provided in section 405(d) of the Public Utility Regulatory Policies Act of 1978, as amended, shall include such terms and conditions as the fish and wildlife agencies may timely determine are appropriate to carry out the responsibilities specified in section 30(c) of the Federal Power Act.

(3) *Required findings.* If, after attempting to resolve inconsistencies between the fish and wildlife recommendations of a fish and wildlife agency and the purposes and requirements of the Federal Power Act or other applicable law, the Commission does not adopt in whole or in part a fish and wildlife recommendation of a fish and wildlife agency, the Commission will publish the findings and statements required by section 10(j)(2) of the Federal Power Act.

(g) *Application.* The provisions of paragraphs (b) through (d) and (f) of this section apply only to applications for license or exemption; paragraph (e) applies only to applications for license.

5. In § 4.35, paragraph (e)(4) is revised to read as follows:

§ 4.35 Amendment of application; date of acceptance.

* * * * *

(e) * * *

(4) Any amendments made by a license or an exemption applicant to its proposed plans of development to satisfy requests of resource agencies or Indian tribes submitted after an applicant has consulted under § 4.38 or concerns of the Commission; and

* * * * *

6. Section 4.38 is revised to read as follows:

§ 4.38 Consultation requirements.

(a) *Requirement to consult.* (1) Before it files any application for an original license or an exemption from licensing that is described in paragraph (a)(4) of this section, a potential applicant must consult with the relevant Federal, state, and interstate resource agencies, including the National Marine Fisheries Service, the United States Fish and Wildlife Service, the United States Environmental Protection Agency, the Federal agency administering any United States lands or facilities utilized or occupied by the project, the appropriate state fish and wildlife

agencies, the appropriate state water resource management agencies, the certifying agency under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341(c)(1), and any Indian tribe that may be affected by the proposed project.

(2) The Director of the Office of Hydropower Licensing or the Regional Director responsible for the area in which the project is located will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies and Indian tribes.

(3) An applicant for an exemption from licensing or an applicant for a license seeking benefits under section 210 of the Public Utility Regulatory Policies Act, as amended, for a project that would be located at a new dam or diversion must, in addition to meeting the requirements of this section, comply with the consultation requirements in § 4.301.

(4) The pre-filing consultation requirements of this section apply only to an application for:

(i) Original license;

(ii) Exemption;

(iii) Amendment to an application for original license or exemption that materially amends the proposed plans of development as defined in § 4.35(f)(1);

(iv) Amendment to an existing license that would increase the capacity of the project as defined in § 4.201(b); or

(v) Amendment to an existing license that would not increase the capacity of the project as defined in § 4.201(b), but that would involve:

(A) The construction of a new dam or diversion in a location where there is no existing dam or diversion;

(B) Any repair, modification, or reconstruction of an existing dam that would result in a significant change in the normal maximum surface area or elevation of an existing impoundment; or

(C) The addition of new water power turbines other than to replace existing turbines.

(5) Before it files a non-capacity related amendment as defined in § 4.201(c), an applicant must consult with the resource agencies and Indian tribes listed in paragraph (a)(1) of this section to the extent that the proposed amendment would affect the interests of the agencies or tribes. When consultation is necessary, the applicant must, at a minimum, provide the resource agencies and Indian tribes with copies of the draft application and allow them at least 60 days to comment on the proposed amendment. The amendment as filed with the Commission must summarize the consultation with the resource agencies and Indian tribes on the proposed amendment, propose reasonable protection, mitigation, or enhancement measures to respond to impacts identified as being caused by the proposed amendment, and respond to any objections, recommendations, or conditions submitted by the agencies or Indian tribes. Copies of all written correspondence between the applicant, the agencies, and the tribes must be attached to the application.

(6) This section does not apply to any application for a new license, a nonpower license, a subsequent license, or surrender of a license subject to sections 14 and 15 of the Federal Power Act.

(7) If a potential applicant has any doubt as to whether a particular application or amendment would be subject to the pre-filing consultation requirements of this section or if a waiver of the pre-filing requirements would be appropriate, the applicant may file a written request for clarification or waiver with the Director, Office of Hydropower Licensing.

(b) *First stage of consultation.* (1) A potential applicant must promptly contact each of the appropriate resource agencies and affected Indian tribes; provide them with a description of the proposed project and supporting information; and confer with them on project design, the impact of the proposed project (including a description of any existing facilities, their operation, and any proposed changes), reasonable hydropower alternatives, and what studies the applicant should conduct. The potential applicant must provide to the resource agencies, Indian tribes, and the Commission the following information:

(i) Detailed maps showing project boundaries, if any, proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of all proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the proposed project, with a description of any proposed diversion of a stream through a canal or a penstock;

(iii) A summary of the proposed operational mode of the project;

(iv) Identification of the environment to be affected, the significant resources present, and the applicant's proposed environmental protection, mitigation, and enhancement plans, to the extent known at that time;

(v) Streamflow and water regime information, including drainage area, natural flow periodicity, monthly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the point of diversion or impoundment, with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations;

(vi)(A) A statement (with a copy to the Commission) of whether or not the applicant will seek benefits under section 210 of PURPA by satisfying the requirements for qualifying hydroelectric small power production facilities in § 292.203 of this chapter;

(B) If benefits under section 210 of PURPA are sought, a statement on whether or not the applicant believes the project is located at a new dam or diversion (as that term is defined in § 292.202(p) of this chapter) and a request for the agencies' view on that belief, if any;

(vii) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(viii) Any statement required by § 4.301(a).

(2) No earlier than 30 days, but no later than 60 days, from the date of the potential applicant's letter transmitting the information to the agencies and Indian tribes under paragraph (b)(1) of this section, the potential applicant must:

(i) Hold a joint meeting at a convenient place and time, including an opportunity for a site visit, with all pertinent agencies and Indian tribes to explain the applicant's proposal and its potential environmental impact, to review the information provided, and to discuss the data to be obtained and studies to be conducted by the potential applicant as part of the consultation process;

(ii) Consult with the resource agencies and Indian tribes on the scheduling and agenda of the joint meeting; and

(iii) No later than 15 days in advance of the joint meeting, provide the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(3) Members of the public must be informed of and invited to attend the joint meeting held pursuant to paragraph (b)(2)(i) of this section by means of the public notice published in accordance with paragraph (g) of this section. Members of the public attending the meeting are entitled to participate in the meeting and to express their views regarding resource issues that should be

addressed in any application for license or exemption that may be filed by the potential applicant. Attendance of the public at any site visit held pursuant to paragraph (b)(2)(i) of this section will be at the discretion of the potential applicant. The potential applicant must make either audio recordings or written transcripts of the joint meeting, and must promptly provide copies of these recordings or transcripts to the Commission and, upon request, to any resource agency and Indian tribe.

(4) Not later than 60 days after the joint meeting held under paragraph (b)(2) of this section (unless extended within this time period by a resource agency or Indian tribe for an additional 60 days by sending written notice to the applicant and the Director of OHL within the first 60 day period, with an explanation of the basis for the extension), each interested resource agency and Indian tribe must provide a potential applicant with written comments:

(i) Identifying its determination of necessary studies to be performed or information to be provided by the potential applicant;

(ii) Identifying the basis for its determination;

(iii) Discussing its understanding of the resource issues and its goals and objectives for these resources;

(iv) Explaining why each study methodology recommended by it is more appropriate than other available methodology alternatives, including those identified by the potential applicant pursuant to paragraph (b)(1)(vii) of this section;

(v) Documenting that the use of each study methodology recommended by it is a generally accepted practice; and

(vi) Explaining how the studies and information requested will be useful to the agency or Indian tribe in furthering its resource goals and objectives that are affected by the proposed project.

(5)(i) If a potential applicant and a resource agency or Indian tribe disagree as to any matter arising during the first stage of consultation or as to the need to conduct a study or gather information referenced in paragraph (c)(2) of this section, the potential applicant or resource agency or Indian tribe may refer the dispute in writing to the Director of the Office of Hydropower Licensing (Director) for resolution.

(ii) At the same time as the request for dispute resolution is submitted to the Director, the entity referring the dispute must serve a copy of its written request for resolution on the disagreeing party and any affected resource agency or Indian tribe, which may submit to the Director a written response to the referral within 15 days of the referral's submittal to the Director.

(iii) Written referrals to the Director and written responses thereto pursuant to paragraphs (b)(5)(i) or (b)(5)(ii) of this section must be filed with the Secretary of the Commission in accordance with the Commission's Rules of Practice and Procedure, and must indicate that they are for the attention of the Director pursuant to § 4.38(b)(5).

(iv) The Director will resolve disputes by letter provided to the potential applicant and all affected resource agencies and Indian tribes.

(v) If a potential applicant does not refer a dispute regarding a request for information (other than a dispute regarding the information specified in paragraph (b)(1) of this section) or a study to the Director under paragraph (b)(5)(i) of this section, or if a potential applicant disagrees with the Director's resolution of a dispute regarding a request for information (other than a dispute regarding the information specified in paragraph (b)(1) of this section) or a study, and if the potential applicant does not provide the requested information or conduct the requested study, the potential applicant must fully explain the basis for its disagreement in its application.

(vi) Filing and acceptance of an application will not be delayed, and an application will not be considered deficient or patently deficient pursuant to §§ 4.32 (e)(1) or (e)(2), merely because the application does not include a particular study or particular information if the Director had previously found, under paragraph (b)(5)(iv) of this section, that such study or information is unreasonable or unnecessary for an informed decision by the Commission on the merits of the application or use of the study methodology requested is not a generally accepted practice.

(6) The first stage of consultation ends when all participating agencies and Indian tribes provide the written comments required under paragraph (b)(4) of this section or 60 days after the joint meeting held under paragraph (b)(2) of this section, whichever occurs first, unless a resource agency or Indian tribe timely notifies the applicant and the Director of OHL of its need for more time to provide written comments under paragraph (b)(4) of this section, in which case the first stage of consultation ends when all the participating agencies and Indian tribes provide the written comments required under paragraph (b)(4) of this section or 120 days after the joint meeting held under paragraph (b)(2) of this section, whichever occurs first.

(c) *Second stage of consultation.* (1) Unless determined to be unnecessary by the Director pursuant to paragraph (b)(5) of this section, a potential applicant must diligently conduct all reasonable studies and obtain all reasonable information requested by resource agencies and Indian tribes under paragraph (b) of this section that are necessary for the Commission to make an informed decision regarding the merits of the application. These studies must be completed and the information obtained:

(i) Prior to filing the application, if the results:

(A) Would influence the financial (*e.g.*, instream flow study) or technical feasibility of the project (*e.g.*, study of potential mass soil movement); or

(B) Are needed to determine the design or location of project features, reasonable alternatives to the project, the impact of the project on important natural or cultural resources (*e.g.*, resource surveys), or suitable mitigation or enhancement measures, or to minimize impact on significant resources (*e.g.*, wild and scenic river, anadromous fish, endangered species, caribou migration routes);

(ii) After filing the application but before issuance of a license or exemption, if the applicant otherwise complied with the provisions of paragraph (b)(1) of this section and the study or information gathering would take longer to conduct and evaluate than the time between the conclusion of the first stage of consultation and the expiration of the applicant's preliminary permit or the application filing deadline set by the Commission;

(iii) After a new license or exemption is issued, if the studies can be conducted or the information obtained only after construction or operation of proposed facilities, would determine the success of protection, mitigation, or enhancement measures (*e.g.*, post-construction monitoring studies), or would be used to refine project operation or modify project facilities.

(2) If, after the end of the first stage of consultation as defined in paragraph (b)(6) of this section, a resource agency or Indian tribe requests that the potential applicant conduct a study or gather information not previously identified and specifies the basis and reasoning for its request, under paragraphs (b)(4) (i)–(vi) of this section, the potential applicant must promptly initiate the study or gather the information, unless the study or information is unreasonable or unnecessary for an informed decision by the Commission on the merits of the

application or use of the methodology requested by a resource agency or Indian tribe for conducting the study is not a generally accepted practice. The applicant may refer any such request to the Director of the Office of Hydropower Licensing for dispute resolution under the procedures set forth in paragraph (b)(5) of this section and need not conduct prior to filing any study determined by the Director to be unreasonable or unnecessary or to employ a methodology that is not generally accepted.

(3)(i) The results of studies and information-gathering referenced in paragraphs (c)(1)(ii) and (c)(2) of this section will be treated as additional information; and

(ii) Filing and acceptance of an application will not be delayed and an application will not be considered deficient or patently deficient pursuant to § 4.32 (e)(1) or (e)(2) merely because the study or information gathering is not complete before the application is filed.

(4) A potential applicant must provide each resource agency and Indian tribe with:

(i) A copy of its draft application that:

(A) Indicates the type of application the potential applicant expects to file with the Commission; and

(B) Responds to any comments and recommendations made by any resource agency and Indian tribe either during the first stage of consultation or under paragraph (c)(2) of this section;

(ii) The results of all studies and information-gathering either requested by that resource agency or Indian tribe in the first stage of consultation (or under paragraph (c)(2) of this section if available) or which pertain to resources of interest to that resource agency or Indian tribe and which were identified by the potential applicant pursuant to paragraph (b)(1)(vii) of this section, including a discussion of the results and any proposed protection, mitigation, or enhancement measures; and

(iii) A written request for review and comment.

(5) A resource agency or Indian tribe will have 90 days from the date of the potential applicant's letter transmitting the paragraph (c)(4) information to it to provide written comments on the information submitted by a potential applicant under paragraph (c)(4) of this section.

(6) If the written comments provided under paragraph (c)(5) of this section indicate that a resource agency or Indian tribe has a substantive disagreement with a potential applicant's conclusions regarding resource impacts or its proposed protection, mitigation, or enhancement measures, the potential applicant will:

(i) Hold a joint meeting with the disagreeing resource agency or Indian tribe and other agencies with similar or related areas of interest, expertise, or responsibility not later than 60 days from the date of the written comments of the disagreeing agency or Indian tribe to discuss and to attempt to reach agreement on its plan for environmental protection, mitigation, or enhancement measures;

(ii) Consult with the disagreeing agency or Indian tribe and other agencies with similar or related areas of interest, expertise, or responsibility on the scheduling of the joint meeting; and

(iii) At least 15 days in advance of the meeting, provide the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(7) The potential applicant and any disagreeing resource agency or Indian tribe may conclude a joint meeting with a document embodying any agreement among them regarding environmental protection, mitigation, or enhancement measures and any issues that are unresolved.

(8) The potential applicant must describe all disagreements with a resource agency or Indian tribe on technical or environmental protection, mitigation, or enhancement measures in its application, including an explanation of the basis for the applicant's disagreement with the resource agency or Indian tribe, and must include in its application any document developed pursuant to paragraph (c)(7) of this section.

(9) A potential applicant may file an application with the Commission if:

(i) It has complied with paragraph (c)(4) of this section and no resource agency or Indian tribe has responded with substantive disagreements by the deadline specified in paragraph (c)(5) of this section; or

(ii) It has complied with paragraph (c)(6) of this section and a resource agency or Indian tribe has responded with substantive disagreements.

(10) The second stage of consultation ends:

(i) Ninety days after the submittal of information pursuant to paragraph (c)(4) of this section in cases where no resource agency or Indian tribe has responded with substantive disagreements; or

(ii) At the conclusion of the last joint meeting held pursuant to paragraph (c)(6) of this section in cases where a resource agency or Indian tribe has responded with substantive disagreements.

(d) *Third stage of consultation.* (1) The third stage of consultation is initiated by the filing of an application for a license or exemption.

(2) When an applicant files such application documents with the Commission, or promptly after receipt in the case of documents described in paragraph (d)(2)(iii) of this section, it must serve on every resource agency and Indian tribe consulted, a copy of:

(i) Its application for a license or an exemption from licensing;

(ii) Any deficiency correction, revision, supplement, response to additional information request, or amendment to the application; and

(iii) Any written correspondence from the Commission requesting the correction of deficiencies or the submittal of additional information.

(e) *Waiver of compliance with consultation requirements.* (1) If a resource agency or Indian tribe waives in writing compliance with any requirement of this section, a potential applicant does not have to comply with that requirement as to that agency or tribe.

(2) If a resource agency or Indian tribe fails to timely comply with a provision regarding a requirement of this section, a potential applicant may proceed to the next sequential requirement of this section without waiting for the resource agency or Indian tribe to comply.

(3) The failure of a resource agency or Indian tribe to timely comply with a provision regarding a requirement of this section does not preclude its participation in subsequent stages of the consultation process.

(f) *Application requirements documenting consultation and any disagreements with resource agencies.* An applicant must show in Exhibit E of its application that it has met the requirements of paragraphs (b) through (d) and paragraphs (g) and (h) of this section, and must include a summary of the consultation process and:

(1) Any resource agency's or Indian tribe's letters containing comments, recommendations, and proposed terms and conditions;

(2) Any letters from the public containing comments and recommendations;

(3) Notice of any remaining disagreement with a resource agency or Indian tribe on:

(i) The need for a study or the manner in which a study should be conducted and the applicant's reasons for disagreement, and

(ii) Information on any environmental protection, mitigation, or enhancement measure, including the basis for the

applicant's disagreement with the resource agency or Indian tribe;

(4) Evidence of any waivers under paragraph (e) of this section;

(5) Evidence of all attempts to consult with a resource agency or Indian tribe, copies of related documents showing the attempts, and documents showing the conclusion of the second stage of consultation;

(6) An explanation of how and why the project would, would not, or should not, comply with any relevant comprehensive plan as defined in § 2.19 of this chapter and a description of any relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan;

(7)(i) With regard to certification requirements for a license applicant under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act):

(A) A copy of the water quality certification;

(B) A copy of the request for certification, including proof of the date on which the certifying agency received the request; or

(C) Evidence of waiver of water quality certification as described in paragraph (f)(7)(ii) of this section.

(ii) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification. If a certifying agency denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

(iii) Notwithstanding any other provision in title 18, chapter I, subpart B, any application to amend an existing license, and any amendment to a pending application for a license, requires a new request for water quality certification pursuant to paragraph (f)(7)(i) of this section if the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project.

(8) A description of how the applicant's proposal addresses the significant resource issues raised at the joint meeting held pursuant to paragraph (b)(2) of this section; and

(9) A list containing the name and address of every federal, state, and interstate resource agency and Indian tribe with which the applicant consulted pursuant to paragraph (a)(1) of this section.

(g) *Public participation.* (1) At least 14 days in advance of the joint meeting held pursuant to paragraph (b)(2) of this section, the potential applicant must publish notice, at least once, of the purpose, location, and timing of the joint meeting, in a daily or weekly newspaper published in each county in which the proposed project or any part thereof is situated. The notice shall include a summary of the major issues to be discussed at the joint meeting.

(2)(i) A potential applicant must make available to the public for inspection and reproduction the information specified in paragraph (b)(1) of this section from the date on which the notice required by paragraph (g)(1) of this section is first published until the date of the joint meeting required by paragraph (b)(2) of this section.

(ii) The provisions of § 4.32(b) will govern the form and manner in which the information is to be made available for public inspection and reproduction.

(iii) A potential applicant must make available to the public for inspection at the joint meeting required by paragraph (b)(2) of this section at least two copies of the information specified in paragraph (b)(1) of this section.

(h) *Transition provisions.* (1) The provisions of this section are not applicable to applications filed before June 19, 1991.

(2) The provisions of paragraphs (a) and (b) of this section are not applicable to potential applicants that complied with the provisions of paragraphs (a) and (b)(1) of this section prior to June 19, 1991.

(3) The provisions of paragraph (c) of this section are not applicable to potential applicants that complied with the provisions of paragraph (b)(2) of this section prior to June 19, 1991.

(4)(i) Any applicant that files its application on or after June 19, 1991, and that complied with the provisions of paragraphs (a) and (b)(1) of this section prior to June 19, 1991, must hold a public meeting, within 90 days from June 19, 1991, at or near the site of the proposed project, to generally explain the potential applicant's proposal for the site and to obtain the views of the public regarding resource issues that should be addressed in any application for license or exemption that may be filed by the potential applicant. The public meeting must include both day and evening sessions, and the potential applicant must make either audio recordings or written transcripts of both sessions.

(ii)(A) At least 15 days in advance of the meeting, the potential applicant must provide all affected resource agencies, Indian tribes, and the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(B) At least 14 days in advance of the meeting, the potential applicant must publish notice, at least once, of the purpose, location, and timing of the meeting, in a daily or weekly newspaper published in each county in which the proposed project or any part thereof is situated.

(iii)(A) A potential applicant must make available to the public for inspection and reproduction information comparable to that specified in paragraph (b)(1) of this section from the date on which the notice required by paragraph (h)(4)(ii) of this section is first published until the date of the public meeting required by paragraph (h)(4)(i) of this section.

(B) The provisions of § 4.32(b) will govern the form and manner in which the information is to be made available for public inspection and reproduction.

(C) A potential applicant must make available to the public for inspection at both sessions of the public meeting required by paragraph (h)(4)(i) of this section at least two copies of the information specified in paragraph (h)(4)(iii)(A) of this section.

(D) A potential applicant must promptly provide copies of the audio recordings or written transcripts of the sessions of the public meeting to the Commission and, upon request, to any resource agency or Indian tribe consulted.

(iv) Any applicant holding a public meeting pursuant to paragraph (h)(4)(i) of this section must include in its filed application a description of how the applicant's proposal addresses the significant resource issues raised during the public meeting.

7. In § 4.92, paragraphs (a)(2) and (a)(3) are revised and paragraph (a)(4) is added to read as follows:

§ 4.92 Contents of exemption application.

(a) * * *

(2) Exhibits A, B, E, and G;

(3) An appendix containing documentary evidence showing that the applicant has the real property interests required under § 4.31(b); and

(4) Identification of all Indian tribes that may be affected by the project.

* * * * *

8. In § 4.93, paragraph (b) is revised to read as follows:

§ 4.93 Action on exemption applications.

* * * * *

(b) The Commission will circulate a notice of application for exemption to interested agencies and Indian tribes at the time the applicant is notified that the application is accepted for filing.

* * * * *

9. In § 4.105, paragraph (b)(1) is revised to read as follows:

§ 4.105 Action on exemption applications.

* * * * *

(b)(1) *Consultation.* The Commission will circulate a notice of application for exemption from licensing to interested agencies and Indian tribes at the time the applicant is notified that the application is accepted for filing.

* * * * *

10. In § 4.107, paragraph (a) is amended by adding the following sentence at the end to read as follows:

§ 4.107 Contents of application for exemption from licensing.

(a) *General requirements.* * * * The applicant must identify in its application all Indian tribes that may be affected by the project.

* * * * *

11. In § 4.201, paragraph (b) introductory text and paragraph (c), are revised to read as follows:

§ 4.201 Contents of application.

* * * * *

(b) *Required exhibits for capacity related amendments.* Any application to amend a license for a hydropower project that involves additional capacity not previously authorized, and that would increase the actual or proposed total installed capacity of the project, would result in an increase in the maximum hydraulic capacity of the project of 15 percent or more, and would result in an increase in the installed name-plate capacity of 2 megawatts or more, must contain the following exhibits, or revisions or additions to any exhibits on file, commensurate with the scope of the licensed project:

* * * * *

(c) *Required exhibits for non-capacity related amendments.* Any application to amend a license for a water power project that would not be a capacity related amendment as described in paragraph (b) of this section must contain those exhibits that require revision in light of the nature of the proposed amendments.

* * * * *

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

12. The authority citation for part l6 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR l978 Comp., p. 142.

13. ln § 16.2, paragraphs (d) and (f) are removed, and paragraph (e) is redesignated as paragraph (d).

14. ln § 16.8, paragraphs (f)(7)(i)(B), (f)(7)(ii), and (f)(7)(iii) are revised to read as follows:

§ 16.8 Consultation requirements.

* * * * *

(f) * * *

(7)(i) * * *

(B) A copy of the request for certification, including proof of the date on which the certifying agency received the request; or

* * * * *

(ii) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification. If a certifying agency denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

(iii) Any amendment to an application for a license requires a new request for certification if the amendment would have a material adverse impact on the water quality in the discharge from the project.

* * * * *

15. In § 16.10, the heading is revised and new paragraph (f) is added to read as follows:

§ 16.10 Information to be provided by an applicant for new license: Filing requirements.

* * * * *

(f) *Filing requirements.* For all applications for new licenses due to be filed with the Commission on or after June 19, 1991, and prior to January 1, 1992, the following number of copies must be submitted to the Commission and served on resource agencies:

(1) If the application is hand-delivered to the Commission, as by messenger or courier service, only an original and five copies of the application need be delivered to the Secretary, but the filing must be accompanied by a transmittal letter certifying that at the same time five copies of the application are being hand-delivered to the Director, Division of Project Review, Office of Hydropower Licensing, and one copy is being mailed to each of the following:

(i) The Regional Office of the Commission for the area in which the project is located;

(ii) The U.S. Department of the Interior, Washington, DC;

(iii) The U.S. Bureau of Land Management District Office for the area in which the project is located; and

(iv) The U.S. Corps of Engineers District Office for the area in which the project is located.

(2) If the application is mailed to the Commission, only an original and ten copies of the application need be sent to the Secretary, but the application must be accompanied by a transmittal letter certifying that at the same time one copy of the application is being mailed to each of the offices listed in paragraphs (f)(1) (i) through (iv) of this section.

PART 375—THE COMMISSION

16. The authority citation for part 375 is revised to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, 42 U.S.C. 7178; Electric Consumers Protection Act of 1986, 16 U.S.C. 791a note; Department of Energy Organization Act, 42 U.S.C. 7101– 7532, E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557; Federal Power Act, 16 U.S.C. 791–828c, as amended; Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

17. In § 375.314, paragraphs (s) and (t) are added to read as follows:

§ 375.314 Delegations to the Director of the Office Hydropower Licensing.

* * * * *

(s) Make any preliminary determination of inconsistency between a fish and wildlife agency's fish and wildlife recommendation and applicable law, and conduct through staff whatever consultation with the agency that is necessary or appropriate in order to attempt to resolve any inconsistency, under section 10(j) of the Federal Power Act, and to take such related actions as are required under that section.

(t) Waive the pre-filing consultation requirements in §§ 4.38 and 16.8 of this title whenever the Director, in his discretion, determines that an emergency so requires, or that the potential benefit of expeditiously considering a proposed improvement in safety, environmental protection, efficiency, or capacity outweighs the potential benefit of requiring completion of the consultation process prior to the filing of an application.

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

18. The authority citation for part 380 is revised to read as follows:

Authority: National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370a; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009 3 CFR 1978 Comp., p. 142.

§ 380.3 [Amended]

19. In § 380.3, paragraph (b)(3) is amended by adding after the words "§ 4.38" the words "and § 16.8".

20. In § 380.3, paragraph (c)(1) is amended by adding after the words "Part 4" the words "or 16".

Note: This appendix will not be published in the Code of Federal Regulations

Appendix A—List of Commenters

Federal Agencies

1. U.S. Department of Energy (Energy)
2. U.S. Department of the Interior (Interior)
3. U.S. Department of Commerce (Commerce)
4. U.S. Department of Agriculture (Agriculture)
5. U.S. Environmental Protection Agency (EPA)
6. Council on Environmental Quality (CEQ)

State Agencies

7. Alabama Dept. of Conservation and Natural Resources (Alabama)
8. Arizona Game and Fish Dept. (Arizona)
9. California Dept. of Fish and Game (California Fish & Game)
10. California State Water Resources Control Board (Cal. Water Board)
11. Colorado Dept. of Natural Resources, Division of Wildlife (Colorado)
12. International Association of Fish and Wildlife Agencies (International Ass'n)
13. Michigan Dept. of Natural Resources (Michigan)
14. Minnesota Dept. of Natural Resources (Minnesota)
15. Missouri Dept. of Conservation (Missouri)
16. Montana Dept. of Fish, Wildlife and Parks (Montana DFWP)
17. Montana Dept. of Natural Resources and Conservation (Montana DNRC)
18. Nevada Dept. of Conservation and Natural Resources, Division of Environmental Protection (Nevada)
19. New Mexico Dept. of Game and Fish (New Mexico)
20. Oklahoma Attorney General (Oklahoma)
21. Oklahoma Water Resources Board (Oklahoma Water)
22. Oklahoma Dept. of Wildlife Conservation (Oklahoma Wildlife)
23. Oregon Water Resources Dept. (Oregon)
24. South Carolina Wildlife and Marine Resources Dept. (South Carolina)
25. Washington Dept. of Wildlife (Washington Wildlife)
26. Washington Dept. of Fisheries (Washington Fisheries)
27. West Virginia Dept. of Natural Resources (West Virginia)
28. Wisconsin Dept. of Natural Resources (Wisconsin)
29. Wyoming Game and Fish Dept. (Wyoming)

Indian Tribes and Representatives

30. California Indian Legal Services
31. Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians (Confederated Tribes)
32. The Klamath Tribe (Klamath)
33. Mississippi Band of Choctaw Indians (Choctaw)
34. Nambe Pueblo
35. National Congress of American Indians
36. Native American Rights Fund
37. Nez Perce Tribe (Nez Perce)
38. Pueblo de Cochiti
39. The Tulalip Tribes (Tulalip)

Municipalities, Associations, Companies, and Individuals

40. Alabama Power Company, Georgia Power Company, and Southern Company Services, Inc. (Alabama Power)
41. American Paper Institute (American Paper)
42. American Rivers, Inc., Friends of the River, Trout Unlimited, California Save Our Streams Council, and American Whitewater Affiliation (American Rivers)
43. Mark Bagdovitz (Bagdovitz)
44. Edison Electric Institute (EEI)
45. National Heritage Institute (National Heritage)
46. National Hydropower Association (NHA)
47. National Wildlife Federation (Wildlife Federation)
48. Myers Engineering Co. (Myers)
49. North Carolina Electric Membership Corp. (North Carolina Electric)
50. Pacific Gas and Electric Co. (PG&E)
51. Public Generating Pool
52. PUD District No. 1 of Pend Oreille County, Washington (Pend Oreille)
53. PUD District No. 2 of Grant County (Grant)
54. Seattle City Light (Seattle Light)
55. Solano Irrigation District (Solano)
56. City of Vernon, California (Vernon)
57. Wildlife Management Institute (Wildlife Institute)
58. Wisconsin River Power Co., Wisconsin Public Service Corp., Weyerhauser Paper Co., Nekoosa Papers, Inc., and Consolidated Water Power Co. (Wisconsin River)

Note: This appendix will not be published in the *Code of Federal Regulations*.

Appendix B—List of Addresses

U.S. Department of the Interior

Addressee	Area of Jurisdiction
U.S. Department of the Interior, 18th and C Street NW., Room 4239, Washington, DC 20240.	Nationwide.
Chief, Branch of Records, Bureau of Land Management, P.O. Box 36800, Billings, MT 59107.	Montana, North Dakota, and South Dakota.
Chief, Branch of Records, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003.	Wyoming and Nebraska.
Chief, Branch of Records, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87504.	New Mexico, Oklahoma, Kansas, and Texas.
State Director, Bureau of Land Management, 2850 Youngfield Street, Denver, CO 80215-7076.	Colorado.
Chief, Branch of Records, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.	Idaho.
Chief, Branch of Records, Bureau of Land Management, 324 South State, suite 301, Salt Lake City, UT 84111-2303.	Utah.
Chief, Branch of Records, Bureau of Land Management, P.O. Box 16563, Phoenix, AZ 85011.	Arizona.
Chief, Branch of Records, Bureau of Land Management, P.O. Box 2965, Portland, OR 97208.	Oregon and Washington.
Chief, Branch of Records, N-943.2, Bureau of Land Management, P.O. Box 12000, Reno, NV 89520, ATTN: Vienna Wolder.	Nevada.
Chief, Branch of Records, Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825.	California.
State Director, Bureau of Land Management, 701 C Street, Box 13, Anchorage, AK 99512, ATTN: Lands Section 965.	Alaska.
Bureau of Land Management, U.S. Department of the Interior, Interior Building, 1849 C Street NW., Washington, DC 20240.	All other regions.

U.S. Corps of Engineers

Lower Mississippi Valley Office

U.S. Corps of Engineers, P.O. Box 80, Vicksburg, MS 39180

Missouri River Office

U.S. Corps of Engineers, P.O. Box 103, Downtown Station, Omaha, NE 68101

South Atlanta Office

U.S. Corps of Engineers, 510 Title Building, Atlanta, GA 30303

Southwestern Office

U.S. Corps of Engineers, 1114 Commerce Street, Dallas, TX 75242-0216

New England Office

U.S. Corps of Engineers, 424 Trapelo Road, Waltham, MA 02154

North Atlanta Office

U.S. Corps of Engineers, 90 Church Street, New York, NY 10007

North Central Office

U.S. Corps of Engineers, 536 S. Clark Street, Chicago, IL 60605

South Pacific Office

U.S. Corps of Engineers, 630 Sansom Street, San Francisco, CA 94111

North Pacific Office

U.S. Corps of Engineers, 220 NW. 8th Avenue, Portland, OR 97209

Ohio River Office

U.S. Corps of Engineers, P.O. Box 1159, Cincinnati, OH 45201

Federal Energy Regulatory Commission Regional Offices

Atlanta Regional Office, 730 Peachtree Street, NE, room 800, Atlanta, GA 30308

Chicago Regional Office, Federal Building, 230 South Dearborn Street, room 3130, Chicago, IL 60604
New York Regional Office, 201 Varick Street, room 664, New York, NY 10014
Portland Regional Office, suite 1340, Portland, OR 97204
San Francisco Regional Office, 901 Market Street, suite 350, San Francisco, CA 94103

MOLER, Commissioner, *dissenting in part:*

The regulations we adopt with this rule are of paramount importance if the Commission is to address hydropower licensing responsibly in the coming years. These new regulations invest our process with much needed discipline and, at the same time, balance the varied concerns of prospective licensees, interested parties, resource agencies and the public. I am an enthusiastic supporter of this final rule in all respects except one: The definition of the term "fishway".

The Notice of Proposed Rulemaking leading to this Final Rule included both upstream and downstream fish passage facilities in the definition of what constitutes a fishway. This Final Rule redefines the term fishway as a "one way" fishway; that is, it applies only to a structure, facility, or device for upstream passage. This result cannot be justified by reference to historical documents. It represents an arbitrary departure from Commission practice and precedent. It subjects downstream fishways to the weighing and balancing of the comprehensive development criteria of section 10(a) of the FPA. Finally, defining the term this way tortures the plain meaning of the term and simply does not make good sense.

The Historical Context

Congress has not defined the term "fishway".[1] Thus the task is up to this Commission. It is not surprising that a careful review of the literature and expert opinion reveals at least two points of view as to what is intended. The majority attempts to buttress its narrow reading of the term fishway by calling it "the more justifiable approach". They selectively invoke the technical literature and perceptions of past practice near the time of the 1920 legislation. This approach cannot be taken seriously. Recourse to technical experts is inappropriate. A preferable approach would be to look at the definition used at the time by the expert agency. In this case, it is the Department of Commerce. But the majority inexplicably rejects this established position.

The Department of Commerce, as long ago as 1917, provided the following definition of the term "fishway":

It is the function of a fishway, or fish ladder, to permit fish to pass over a dam from the stream below to the stream or pool above the dam, and also to permit the same or other fish to pass in the reverse direction without injury.[2]

This is also the common sense reading of the term "fishway".[3] It should be used.

The majority argues that the term "fishway" applies only to upstream passage since that was the principal concern at the time. To be sure, upstream passage then may well have "constituted the principal incentive for the construction of fishways".[4] It does not follow, however, that Congress therefore meant fishways to cover only upstream passage.

In the first place, as the above-quoted excerpt from the Department of Commerce's 1917 report on fishways demonstrates, downstream fish passage was indeed a problem "prior to passage of section 18".[5] Commerce explains why, "[i]t is, of course just as important for the young fish to return to the ocean as for the adult breeders to ascend the streams." [6] The fact that it was not as big a problem as upstream passage cannot be used to argue that Congress meant the Secretaries to ignore the problem altogether and vest the solution with the Commission instead. More to the point, the legislative history of the 1920 Act shows, rather, the problem Congress sought to address was not narrowly drawn to upstream passage but to the impact of hydropower development on the fishing industry as a whole.[7]

Commission Practice and Precedent

This is not the first time the Commission has interpreted what constitutes a fishway under section 18. The Commission has previously included facilities for both upstream and downstream fish passage. The Final Rule does not proffer any satisfactory explanation (saying simply that the past treatment, in retrospect, is "unduly broad") as to why those precedents are not applicable and are being disregarded.[8]

Section 18 vs. Section 10

It is incredible to assume that Congress, in providing the Secretaries of Commerce and Interior authority to prescribe fishways, meant only for the Departments to be concerned with upstream passage, leaving to the Commission's balancing under section 10 whether to provide for downstream passage. Yet this is exactly the majority's position.

The majority narrowly construes section 18, "to avoid imbuing it with the potential for interfering with the exercise of our judgement in balancing the factors Congress instructed us to consider." [9] The concern is obvious, if unstated. Fishways are expensive, particularly to retrofit existing projects. If they are to include downstream facilities, this places added authority in the hands of those statutorily responsible for protecting fisheries to (at least potentially) increase the cost of hydropower development. Whether or not this concern is well founded, Congress has decided the matter.

The problem with the majority's position is that, with section 18, Congress set fishways outside of the Commission's section 10 authority to balance competing factors.[10] The Commission cannot then rely on section 10 to circumscribe the Secretaries' authority under section 18. As the Supreme Court stated in rejecting the same argument when offered to limit the Secretaries' authority under section 4(e) of the Act to protect reservations:

It is thus clear enough that while Congress intended that the Commission would have exclusive authority to issue all licenses, it wanted the individual Secretaries to continue to play the major role in determining what conditions would be included in the license in order to protect the resources under their respective jurisdictions.[11]

---

[1] Section 18 of the Federal Power Act (FPA) reads, in pertinent part:

The Commission shall require the construction, maintenance, and operation by a licensee at its own expense of * * * such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate.

16 U.S.C. 811 (1988).

[2] *The Question of Fishways,*. Department of Commerce Economic Circular No. 24 at 1 (May 8, 1917) (hereafter, Commerce).

[3] Common sense aside, this statement should be accepted as authoritative. Before the 1920 passage of the Federal Water Power Act, the Secretary of Commerce had primary responsibility for fish passage facilities at federally licensed projects. See, e.g., An Act to regulate the construction of dams across navigable waters, Pub. L. No. 262, 34 Stat. 386, § 3 (1906) ("The persons owning or operating any such dam shall maintain, at their own expense, * * * such fishways as the Secretary of Commerce and Labor shall prescribe"). With the passage of the 1920 Act, and until the reorganization of 1939 which brought Interior into the picture, Commerce had the exclusive authority under section 18 to prescribe fishways. See Act of 1920, Pub. L. No. 280, 41 Stat. 1073 (1920).

[4] Slip op. at 43.

[5] As the Solicitor General explained in a 1908 memorandum to Congress, the early dam licensing acts providing for fishways encompassed "sluiceways and ladders for fish." Memorandum by Solicitor General Hoyt (May 11, 1908) (reproduced at Papers submitted to the Committee on Commerce of the United States Senate at 50). Sluiceways are recognized as providing fish with downstream access.

[6] *Commerce* at 1.

[7] See 56 Cong. Rec. at H. 10035–36 (September 5, 1918) (colloquy discussing sections 18 and 25 of the legislation); see also *id.* at H. 10037.

[8] See, e.g., Eugene Water and Electric Board, 49 FERC ¶ 61,211 at 61,740–61,741, 61,743 and 61,757 (1989) (discussing need for and requirements of fishways to mitigate impact of project on, among other things, "downstream migrant protection"); Greenwood Ironworks, 41 FERC ¶ 62,023 at 63,032 and 63,040 (1987) (Director's Order: licensee to provide fishways as prescribed by Departments of Interior and Commerce "[t]o facilitate upstream and downstream passage of anadromous fishes"); Lynchburg Hydro Assoc., 39 FERC ¶ 61,079 at 61,219 (1987) (fish screens required under section 18 as part of "a system for upstream and downstream fish passage"); New England Power Company, 33 FERC ¶ 62,340 at 63,470 (1985)(Director's Order discussing need to modify fishways "to mitigate any adverse impacts to downstream migrating smolts or upstream migrating adults") (emphasis added in each).

[9] Slip op. at 43.

[10] The Commission, after a thorough discussion of section 18 and its history, adopted this view in its *Lynchburg* decision, *supra*, n.8 at 61,217–61,218. ("We have no discretionary authority in this regard; fishways must be required when properly prescribed by the Secretaries.") The majority rejects this precedent without discussion.

[11] *Escondido Mutual Water Co.* v. *LaJolla Band of Mission Indians*, 466 U.S. 765, 775 (1984). *Escondido*, of course, involves the mandatory conditioning authority provided the Departments under section 4(e) of the Act for the protection and

Continued

The logic applies equally here. By enacting section 18 Congress placed the protection of fish passage under the jurisdictions of the Secretaries. The Commission's attempt to change that statutory scheme as it applies to downstream fish passage facilities must fail.[12]

Conclusion

I cannot support the majority's reading of the term "fishways" in section 18 of the Act to mean devices providing for only the upstream passage of fish. Such a narrow reading—and with it the attempt to circumscribe the authority of the Secretaries of Interior and Commerce—cannot be squared with the statute or any common sense use of the term "fishway". It seems crazy to me for us to say that we think Congress meant to provide statutory protection for fish trying to make it upstream around hydropower facilities, and then to abandon that protection for fish on their way back downstream. Thus, I dissent on this important issue.

Elizabeth Anne Moler,

Commissioner.

[FR Doc. 91–11478 Filed 5–17–91; 8:45 am]

BILLING CODE 6717-01-M

utilization of reservations. But the fundamental rationale for the Commission's position there was the same as offered here: That no Department may impinge upon the Commission's licensing authority. The fault with this logic, as the Supreme Court recognized, is that the majority assumes the question presented, i.e., whether the Departments' authority is to be limited.

[12] It is no answer to claim, as the majority does, that its restrictive reading of the term fishway "will not result in any lessening of our efforts to ensure safe downstream passage of fish in licensing hydroelectric projects." Slip op. at 43. Those "efforts" are subject to the balancing mandated by section 10(a).

federal register

Monday
May 20, 1991

Part III

Department of the Interior

Bureau of Indian Affairs

Piquat Sept of Ohio Shawnee Indians; Receipt of Petition for Federal Acknowledgement as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Piquat Sept of Ohio Shawnee Indians; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

May 7, 1991.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Piquat Sept of Ohio Shawnee Indians, c/o Brian Dabe, Bancohio Building, suite 828, 4 W. Main Street, Springfield, Ohio 45502, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian Tribe. The petition was received by the Bureau of Indian Affairs (BIA) on April 16, 1991, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgement and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–11813 Filed 5–17–91; 8:45 am]

BILLING CODE 4310–02–M

federal register

Monday
May 20, 1991

Part IV

Department of the Interior

Bureau of Indian Affairs

Upper Kispoko Band of the Shawnee Indians; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Upper Kispoko Band of the Shawnee Nation; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

May 3, 1991.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Upper Kispoko Band of the Shawnee Nation, c/o Augustus J. Rosemont, 617 S. Washington Street, Kokomo, Indiana 46901, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on April 10, 1991, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–11812 Filed 5–17–91; 8:45 am]

BILLING CODE 4310-02-M

federal register

Monday
May 20, 1991

Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

May 1, 1991.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special messages has been transmitted to Congress.

This report gives the status, as of May 1, 1991, of 27 rescission proposals and ten deferrals contained in four special messages for FY 1991. These messages were transmitted to Congress on October 4, 1990, January 9, 1991, February 28, 1991, and April 16, 1991.

Rescissions (Table A and Attachment A)

As of May 1, 1991, 27 rescission proposals totaling $4,312.3 million were pending before Congress.

Deferrals (Table B and Attachment B)

As of May 1, 1991, $5,735.1 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1991.

Information From Special Messages

The special messages containing information on rescissions and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

55 FR 41436, Thursday, October 11, 1990
56 FR 1704, Wednesday, January 16, 1991
56 FR 10082, Friday, March 8, 1991
56 FR 18644, Tuesday, April 23, 1991

Richard Darman,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1991 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	4,312.3
Accepted by the Congress.....	0
Funding never withheld.....	0
Pending before the Congress.....	4,312.3 1/

1/ Of the amount pending before Congress, $790.0 million has been made available.

****

TABLE B

STATUS OF FY 1991 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	9,342.6
Routine Executive releases through May 1, 1991..... (OMB/Agency releases of $3,608.2 million, partly offset by cumulative positive adjustment of $0.7 million.)	-3,607.6
Overturned by the Congress.....	0
Currently before the Congress.....	5,735.1

Attachments

ATTACHMENT A
Status of FY 1991 Rescissions
(Amounts in thousands of dollars)

As of May 1, 1991 Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF AGRICULTURE								
Soil Conservation Service								
Watershed and flood prevention operations	R91-1		10,000	02-28-91				
DEPARTMENT OF DEFENSE								
Procurement								
Procurement of weapons and tracked combat vehicles, Army	R91-2		86,000	02-28-91				
Procurement of ammunition, Army	R91-3		13,000	02-28-91				
Aircraft procurement, Navy	R91-4		1,093,500	02-28-91				
Weapons procurement, Navy	R91-5		2,600	02-28-91				
Shipbuilding and conversion, Navy	R91-6		405,000	02-28-91				
Other procurement, Navy	R91-7		10,000	02-28-91				
Procurement, Marine Corps	R91-8		2,000	02-28-91				
Aircraft procurement, Air Force	R91-9		14,200	02-28-91				
Missile procurement, Air Force	R91-10		74,700	02-28-91				
Other procurement, Air Force	R91-11		254,200	02-28-91				
Procurement, Defense Agencies	R91-12		65,303	02-28-91				
National guard and reserve equipment	R91-13		289,900	02-28-91				
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation, Army	R91-14		60,800	02-28-91				
Research, development, test, and evaluation, Navy	R91-15		834,500	02-28-91				

ATTACHMENT A
Status of FY 1991 Rescissions
(Amounts in thousands of dollars)

As of May 1, 1991 Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Research, development, test, and evaluation, Air Force	R91-16		134,100	02-28-91				
Research, development, test, and evaluation, Defense Agencies	R91-17		29,300	02-28-91				
Military Construction								
Military construction, Navy	R91-18		48,962	02-28-91				
Military construction, Air Force	R91-19		91,800	02-28-91				
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Family Support Administration								
Interim assistance to States for legalization	R91-27		2,400	04-16-91				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R91-20		500,000	02-28-91		500,000	04-08-91	
Congregate services program	R91-21		9,500	02-28-91		9,500	04-09-91	
Nehemiah housing opportunity fund	R91-22		39,112	02-28-91		39,112	04-09-91	
Community Planning and Development								
Urban development action grants	R91-23		13,518	02-28-91		13,518	04-09-91	
Rental rehabilitation grants	R91-24		70,000	02-28-91		70,000	04-09-91	
Urban homesteading	R91-25		13,397	02-28-91		13,397	04-09-91	
Rehabilitation loan fund	R91-26		144,459	02-28-91		144,459	04-08-91	
TOTAL, RESCISSIONS PROPOSED			4,312,251			789,986		

ATTACHMENT B
Status of FY 1991 Deferrals - As of May 1, 1991
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 5-1-91
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D91-1	149,319		10-04-90					
	D91-1A		1,943,510	01-09-91					
	D91-1B		830	02-28-91	1,021,004				1,072,655
Foreign military financing	D91-8	4,820,649		01-09-91	2,559,140				2,261,509
Peacekeeping operations	D91-9	5,177		01-09-91					5,177
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D91-2	135,955		10-04-90					135,955
Cooperative work	D91-3	273,468		10-04-90					
	D91-3A		235,572	01-09-91					509,040
Timber salvage sales	D91-10	103,684		02-28-91					103,684
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D91-4	1,186		10-04-90					1,186

ATTACHMENT B

Status of FY 1991 Deferrals - As of May 1, 1991

(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 5-1-91
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction).....	D91-5	7,127		10-04-90					7,127
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive....	D91-6	14,529		10-04-90					
	D91-6A		44,507	01-09-91	28,098			665	31,603
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund).....	D91-7	538,659		10-04-90					
	D91-7A		1,068,473	01-09-91					1,607,132
TOTAL, DEFERRALS.....		6,049,754	3,292,892		3,608,242			665	5,735,069

[FR Doc. 91-11817 Filed 5-17-91; 8:45 am]

BILLING CODE 3110-01-C

federal register

Monday
May 20, 1991

Part VI

Department of Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 222

RIN 1810-571

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Impact Aid maintenance and operations assistance program (sections 2, 3, and 4 of Pub. L. 81–874). These final regulations implement two of the amendments made to Public Law 81–874 by the 1992 National Assessment of chapter 1 Act, Public Law 101–305. These provisions may affect the amounts of payments for applicant school districts under sections 2 and 3(e) of Public Law 81–874.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 222.3 and 222.23. Sections 222.3 and 222.23 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**. As discussed below, the section 2 changes made by these regulations will affect Impact Aid payments beginning with fiscal year 1990 appropriations. The section 3(e) changes, although effective beginning with fiscal year 1990, will only affect Impact Aid payments beginning in fiscal year 1991 because that section was not funded for fiscal year 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hansen, Director, Impact Aid Programs, U.S. Department of Education, 400 Maryland Avenue, SW., room 2077, Washington, DC 20202–6244. Telephone: (202) 401–3637. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

Background

Regulations governing the Impact Aid maintenance and operations assistance program are found at 34 CFR part 222. On May 30, 1990, the President signed into law the 1992 National Assessment of Chapter 1 Act, Public Law 101–305. This law contains a number of amendments to Public Law 81–874, commonly known as the Impact Aid maintenance and operations law. The final regulations in this document implement two of the changes made by those amendments.

Technical changes to §§ 222.3, 222.23 and 222.94 of the regulations as a result of Public Law 101–305 are described below.

Section 222.3 Definitions.

In the definition of "Federal property," paragraph (3)(i) is revised, and a new paragraph (4) is added to implement section 7(a) of Public Law 101–305, which requires the Secretary, beginning with fiscal year 1990, to consider as eligible for the purposes of section 2 of Public Law 81–874 real property that has been transferred out of Federal ownership, but which remains subject to certain Federal restrictions. The Secretary notes that property qualifying under this provision remains eligible only so long as the Federal restrictions remain. If the United States relinquishes those restrictions, and the property does not otherwise qualify as section 2 Federal property, it no longer would be eligible as the basis for section 2 eligibility or entitlements.

Section 222.23 Entitlements under section 3(e).

Paragraphs (a) and (c) of § 222.23 are removed based upon section 3(b) of Public Law 101–305, which revises the payment formula under section 3(e) of Public Law 81–874 beginning with fiscal year 1990. The remaining regulatory provisions, which are redesignated, implement only the eligibility provisions of section 3(e), leaving the payment amounts for eligible applicants to be determined under the statute. The heading also is changed, and other minor clarifying and editorial changes made.

Section 222.94 What criteria must be met regarding Federal acquisition of real property in a school district?

In addition to amending the definition of "Federal property" as described above to implement section 7(a) of Public Law 101–305, several revisions are made to § 222.94. Paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to clarify that, beginning with fiscal year 1990, property that the United States formerly owned, and then transferred subject to restrictions qualifying under paragraph (4) of the definition of "Federal property" in § 222.3, is considered to be "owned" by the Federal Government for section 2 purposes, notwithstanding the conditional transfer. Accordingly, language also is added to redesignated paragraph (c) to clarify that the Secretary does not redetermine a school district's eligibility under paragraph (a) on account of such a transfer. Conforming citation changes are made in redesignated paragraph (d)(2), and the authority citation also is amended.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Because these regulations merely incorporate statutory changes and make minor editorial and technical revisions, however, public comment could have no effect. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

This regulation has been reviewed in accordance with Executive Order 12291. It is not classified as major because it does not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary has determined that these final regulations will not have the type of effect on a sufficient number of small entities that would require analysis under the Regulatory Flexibility Act. These amendments merely conform the existing regulations to new statutory requirements and make other minor editorial and technical revisions.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, grant programs—education, public housing, reports and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.041, Impact Aid—Maintenance and Operations.)

Dated: May 6, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 222 of title 34 of the Code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 236–241–1 and 242–244, unless otherwise noted.

2. In § 222.3, paragraph (3)(i) of the definition of "Federal property" is revised, and a new paragraph (4) is added, to read as follows:

§ 222.3 Definitions.

* * * * *

Federal property.

* * * * *

(3) * * *

(i) Except for Indian lands described in section 403(1)(A) of the Act (20 U.S.C. 244(1)(A)), and transferred property described in paragraph (4) of this definition, any real property that the United States does not own in fee simple, such as the following:

* * * * *

(4) Beginning with fiscal year 1990, for the purpose of determining eligibility and entitlements under section 2 of the Act, and notwithstanding any other provisions of this definition, the term includes real property formerly owned by the United States and described as follows:

(i) Prior to the transfer of ownership of real property by the United States—

(A) The property was Federal property for section 2 purposes under paragraphs (1) through (3) of this definition; and

(B) Met the requirements of § 222.94(a)(1), (2), and (3).

(ii) The United States transferred a portion of the property referred to in paragraph (4)(i) of this definition to another nontaxable entity.

(iii) With respect to the transferred portion of property referred to in paragraph (4)(ii) of this definition, the United States, for the year for which the determination is made—

(A) Restricts some or any construction on the property;

(B) Requires that the property be used in perpetuity for the public purposes for which it was conveyed;

(C) Requires the grantee of the property to report to the Federal Government (or its agent) setting forth information on the use of the property;

(D) Prohibits the sale, lease, assignment or other disposal of the property unless to another eligible government agency and with the approval of the Federal Government (or its agent); and

(E) Reserves to the Federal Government a right of reversion at any time the Federal Government (or its agent) deems it necessary for the national defense.

* * * * *

3. Section 222.23 is amended by removing paragraphs (a) and (c) and the paragraph designation "(b)," redesignating current paragraphs (b)(1), (2), and (3) as paragraphs (a), (b), and (c), respectively, and revising the heading of the section, the undesignated introductory text, and redesignated paragraph (b) to read as follows:

§ 222.23 Eligibility under section 3(e).

For an applicant to be eligible under section 3(e) of the Act—

* * * * *

(b) There must have been a substantial decrease, from the prior fiscal year to the first fiscal year for which section 3(e) assistance is sought, in the number of children determined under sections 3(a) and 3(b) of the Act, as a result of a decrease or cessation in Federal activities in the State within which the applicant is located. A decrease is substantial when it equals 3 percent of the current fiscal year's total ADA and at least 10 in ADA.

* * * * *

4. Section 222.94 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, adding a new paragraph (b), adding a second sentence to redesignated paragraph (c), revising the introductory text in redesignated paragraph (d)(2), and revising redesignated paragraph (d)(2)(i) and the authority citation, to read as follows:

§ 222.94 What criteria must be met regarding Federal acquisition of real property in a school district?

* * * * *

(b) Beginning with fiscal year 1990, Federal property described in paragraph (4) of the definition of "Federal property" in § 222.3 is considered to be owned by the United States for the purpose of paragraph (a) of this section.

(c) * * * This paragraph does not apply to a transfer, described in paragraph (4) of the definition of "Federal property" in § 222.3, of real property by the United States.

(d) * * *

(2) The Secretary bases the redetermination of an LEA's eligibility under paragraph (c) of this section only upon:

(i) Records described in paragraph (d)(1) of this section; or

(ii) * * *

* * * * *

Authority: 20 U.S.C. 237(a)(1) and (e).

[FR Doc. 91–11840 Filed 5–17–91; 8:45 am]

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federal register

Monday
May 20, 1991

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Temporary Flight Restrictions in National Disaster Areas in the State of Hawaii; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26476, Amendment No. 91-222]

RIN 2120-AD97

Temporary Flight Restrictions in National Disaster Areas in the State of Hawaii

AGENCY: Federal Aviation Administration (FFA), DOT.

ACTION: Final rule.

SUMMARY: Through this regulation, the Administrator is authorized to prohibit, or otherwise restrict, aircraft overflights of inhabited areas within a declared national disaster area in the State of Hawaii. This rule implements legislation that requires the FAA to consider safety and humanitarian reasons in the issuance of temporary flight restrictions within declared national disaster areas in the State of Hawaii.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Melodie De Marr, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background and Need for Rulemaking

Section 9124 of the Aviation Safety and Capacity Expansion Act of 1990, provides in relevant part, "the Administrator (of the FAA), for safety and humanitarian reasons, shall issue such regulations as may be necessary to prohibit or otherwise restrict aircraft overflights of any inhabited area which has been declared a national disaster area in the State of Hawaii" (Pub. L. 101-508, November 5, 1990). On May 18, 1990, the area around the Kilauea volcano was declared a national disaster area. The legislation was enacted in response to problems encountered in populated areas within the national disaster area. It is the agency's understanding that the presence of low flying aircraft that were not directly involved in the relief effort or associated activities operating over affected inhabited areas interfered with and endangered those involved with the collection of scientific data and/or disaster relief efforts and adversely affected the inhabitants of those areas.

Currently, § 91.137 of the Federal Aviation Regulations (14 CFR 91.137) authorizes the Administrator to designate an area within which some or all flights are prohibited for reasons of safety. The regulation is designed to protect persons and property of the surface or in the air from a hazard associated with an incident on the surface; to provide a safe environment for the operation of disaster relief aircraft; and to prevent an unsafe congestion of sightseeing and other aircraft above an incident or event which may generate a high degree of public interest. In each case, the circumstances supporting implementation of a § 91.137 flight restriction involve issues of safety. Section 9124 of the Aviation Safety and Capacity Expansion Act of 1990 is intended to cover certain situations in the State of Hawaii that are not addressed in § 91.137. This regulation (14 CFR 91-138) is responsive to that Act and authorizes the Administrator to consider safety and humanitarian factors in the issuance of flight restrictions over inhabited areas within declared national disaster areas in the State of Hawaii.

National disaster areas are identified by Presidential declaration following a request by the Governor of the affected state. Such a request is based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and the affected local governments and that Federal assistance is necessary. National disaster areas have been declared on four occasions in the State of Hawaii in the ten years preceding this action:

(1) April 22, 1982 (heavy rains and flooding);

(2) November 27, 1982 (hurricane Iwa);

(3) January 8, 1988 (severe storms, mudslides,) flooding); and

(4) May 18, 1990 (Kilauea volcano—lava flow.)

Based on historical data, the FAA expects this rule to be invoked on an infrequent basis. Section 91.138 flight restrictions will be invoked only upon the FAA's determination that the affected inhabited area is within a declared national disaster area in the State of Hawaii and the Governor of the State of Hawaii, or the Governor's designee, has forwarded to the Administrator of the FAA a request for and justification of the need for the application of this regulation for humanitarian reasons.

This regulation provides for the authorization of certain flights in the affected area by the official in charge. Such authorizations may be given for those aircraft involved in collecting scientific data, carrying accredited news or media personnel, or participating in disaster relief activities. Aircraft departing from or landing at airports with departure/approach procedures that would cause them to transit the affected area will be required to obtain an appropriate air traffic control (ATC) clearance. All other flights will be required to comply with the restrictions issued by the Administrator and described in the NOTAM.

Discussion of the Comments

In response to Notice 91-5, the FAA received two comments. One commenter, the Airports Administrator from the State of Hawaii Department of Transportation Airports Division, was in support of the proposed rulemaking. He stated that during the preparation of the FAR part 150 aircraft noise abatement plan for Hilo International Airport and the State Helicopter System Plan, several public meetings were held to receive public comment on the impact of aircraft noise. The majority of the complaints received at the public meetings were directed at the noise and low flights of helicopters. The Hawaii Airports Division further cited that testimony at those meetings was presented by the Director of Civil Defense for the Island of Hawaii and representatives of the National Park Service concerning the hazards created by helicopters on sightseeing tours over disaster areas resulting from the ongoing volcanic eruption. However, the Hawaii Airports Division voiced concern that the bureaucratic procedures necessary before flight restrictions can be established is too lengthy. Their recommendation is that a procedure be established for the immediate issuance of a NOTAM since sightseeing flights begin as soon as the disaster occurs when rescue operations could be seriously jeopardized. They suggest that the regulations should provide for the authorization by the Administrator of a designee located in Hawaii to act on the Administrator's behalf in such an event.

The current Federal Aviation Regulations § 91.137 gives the Administrator the authority to issue temporary flight restrictions for safety reasons. When necessary, the Administrator may issue a NOTAM under that section designating an area within which temporary flight restrictions apply in order to: Protect persons and property on the surface or in the air from a hazard associated with an incident on the surface; provide a safe environment for the operation of disaster relief aircraft; or, to prevent an unsafe congestion of sightseeing and other aircraft above an incident or event which may generate a high degree of public interest. Temporary flight restrictions could be invoked under this

section on the local level without bureaucratic involvement. However, this new regulation § 91.138 will authorize temporary flight restrictions over inhabited areas within a declared national disaster area for humanitarian reasons. The FAA believes that the determination of humanitarian needs should be identified by the local government in Hawaii. The Governor of the State of Hawaii will be instrumental in both the declaration of a national disaster area and the determination of humanitarian needs for temporary flight restrictions to protect the inhabitants within that national disaster area. Therefore, the FAA will require the involvement of the Governor and/or the Governor's designee prior to the implementation of this regulation.

One commenter from Illinois felt that there is no demonstrated need for such a potentially limiting restriction on the use of the airspace. He stated that the regulation would allow unilateral issuance of flight restrictions by the FAA. By issuing this amendment to the regulations, the FAA is complying with its mandate to implement the provisions of the Aviation Safety and Capacity Expansion Act of 1990.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimates of the costs and benefits to the private sector, consumers, and Federal, state, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or to modify existing regulations only if potential benefits to society outweigh potential costs for each regulatory change. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly-defined exigencies. A "major" rule is one that is likely to have an annual impact on the economy of $100 million or more, to have a major increase in consumer costs, to have a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this rule is not "major" as defined in the Executive Order. Therefore, a full regulatory analysis that includes the identification and evaluation of cost-reducing alternatives has not been prepared. Instead, the Agency has prepared a more concise regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. The complete regulatory evaluation, which contains more detailed economic information than this summary provides, is available in the docket.

Cost-benefit Analysis

The primary objective of this rule is to protect victims within national disaster areas in the State of Hawaii from aircraft that are operating in the area as a result of the occurrence of a national disaster. An examination of the costs and the benefits associated with the rule are presented below.

Costs

The FAA believes that there will be negligible costs associated with compliance with the rule. Because the rule will be invoked only in the case of a declared national disaster in the State of Hawaii and will apply only to those inhabited areas within those declared areas that are designated by the Governor or the Governor's representative, the only economic impact will be a slight inconvenience to scenic tour operators who want to operate in the area of the temporary flight restriction. Because such occurrences are expected to be infrequent and the restricted areas are expected to be limited in size, the FAA believes that any loss of business by the tour operators will be negligible.

Benefits

This rule is expected to produce potential benefits in the form of relief from noise and anxiety caused by low-flying aircraft. Although these benefits cannot be quantified, the FAA believes the benefits exceed any possible cost attributed to the temporary inconvenience of the flight restriction for commercial tour operators. Also, the agency notes that the rule is required by legislation, without regard to its cost-effectiveness.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) requires Federal agencies to review rules that may have a "significant economic impact on a substantial number of small entities." The FAA has adopted criteria and guidelines (U.S. Department of Transportation, FAA Order 2100.14A) for rulemaking officials to apply when determining whether a rule has a significant economic impact on a substantial number of small entities. The small entities that could be potentially affected by the implementation of this rule are the scenic tour operators who own nine or fewer aircraft.

Because there will be negligible costs associated with compliance with this rule, there will be no significant economic impact on a substantial number of small entities.

International Trade Impact Statement

This rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. The rule will not impose costs on aircraft operators or aircraft manufacturers (U.S. or foreign) that would result in a competitive disadvantage to either.

Federalism Implications

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

Environmental Effects

This action will establish temporary flight restrictions in designated areas for safety and humanitarian reasons and will curtail or limit certain aircraft operations within the affected area. As such, this rule will not establish specific operating procedures, nor will it limit the operation of an aircraft to a specific route or procedure. The designation of temporary flight restrictions pursuant to this action will be temporary in nature and effective only for the time necessary to protect inhabitants of an affected area within a declared national disaster area in the State of Hawaii. Air traffic control (ATC) will retain the ability to direct aircraft through the affected area in accordance with normal traffic flows. Therefore, this rule will accommodate the operation of an aircraft in compliance with existing safety and environmental requirements and procedures and will not alter or supersede those requirements.

The establishment of temporary flight restrictions under the regulation will result in a reduction of aircraft operations at low altitudes over

inhabited areas within a declared national disaster area. As a result of these restrictions, the FAA believes that the number of aircraft operations in the vicinity of inhabited portions of national disaster areas will be reduced and noise levels will be lower than would have been if the temporary flight restrictions were not in place. Aircraft operators complying with the NOTAM restrictions will not be routed over any particular area or confined to operate within certain airspace. For the reasons stated above, the FAA concludes that any action taken under this rule will not significantly impact the quality of the human environment and that further environmental assessment is unnecessary.

The Rule

This amendment to part 91 adds a new § 91.138 which implements the provisions of the Aviation Safety and Capacity Expansion Act of 1990, that requires the FAA, through regulation, to prohibit or otherwise restrict aircraft overflights of any inhabited area that has been declared a national disaster area in the State of Hawaii, for both safety and humanitarian reasons. Except for minor editorial changes, this amendment is the same as that proposed in the notice.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation will not be major under Executive Order 12291. In addition, the FAA certifies that this regulation 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. This regulation is considered signficant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of the Federal Aviation Regulations (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. App. 1301(7), 1303, 1344, 1348, 1352, through 1355, 1401, 1421 through 1431, 1433, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Part 91 is amended by adding a new § 91.138 to subpart B to read as follows:

§ 91.138 Temporary flight restrictions in national disaster areas in the State of Hawaii.

(a) When the Administrator has determined, pursuant to a request and justification provided by the Governor of the State of Hawaii, or the Governor's designee, that an inhabited area within a declared national disaster area in the State of Hawaii is in need of protection for humanitarian reasons, the Administrator will issue a Notice to Airmen (NOTAM) designating an area within which temporary flight restrictions apply. The Administrator will designate the extent and duration of the temporary flight restrictions necessary to provide for the protection of persons and property on the surface.

(b) When a NOTAM has been issued in accordance with this section, no person may operate an aircraft within the designated airspace unless:

(1) That person has obtained authorization from the official in charge of associated emergency or disaster relief response activities, and is operating the aircraft under the conditions of that authorization;

(2) The aircraft is carrying law enforcement officials;

(3) The aircraft is carrying persons involved in an emergency or a legitimate scientific purpose;

(4) The aircraft is carrying properly accredited newspersons, and that prior to entering the area, a flight plan is filed with the appropriate FAA or ATC facility specified in the NOTAM and the operation is conducted in compliance with the conditions and restrictions established by the official in charge of on-scene emergency response activities; or,

(5) The aircraft is operating in accordance with an ATC clearance or instruction.

(c) A NOTAM issued under this section is effective for 90 days or until the national disaster area designation is terminated, whichever comes first, unless terminated by notice or extended by the Administrator at the request of the Governor of the State of Hawaii or the Governor's designee.

Issued in Washington, DC on May 13, 1991.

James B. Busey,

Administrator.

[FR Doc. 91–11850 Filed 5–15–91; 12:06 pm]

BILLING CODE 4910–13–M

federal register

Monday
May 20, 1991

Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Nehemiah Housing Opportunity Grants Program; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3258; FR-2948-N-01]

Nehemiah Housing Opportunity Grants Program; Notice of Funding Availability

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability (NOFA).

DATES: The deadline for submission of an application for funding under this notice will be at least 30 days after the latter of the following: The date of publication of this notice or the date on which application packages become available. The actual deadline date will be specified in the application package.

SUMMARY: This NOFA announces HUD's funding for FY 1991 of the Nehemiah Housing Opportunity Grants Program (NHOP). In the body of this document is information concerning the purpose of the NOFA and information regarding eligibility, available amounts, selection criteria and information processing, including how to apply and how selections will be made.

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director, Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, Room 9272, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2700. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.) Application packages (request for grant application) may be obtained at the above address.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection contained in this NOFA has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C 3501–3520) and assigned OMB control number 2502–0385.

Purpose and Substantive Description

I. Authority

Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) established the Nehemiah Housing Opportunity Grants Program (NHOP). Under NHOP, HUD is authorized to make grants to nonprofit organizations to enable them to provide loans to families purchasing homes that are constructed or substantially rehabilitated in accordance with a HUD-approved program. On May 22, 1989, HUD published a final rule (24 CFR part 280) establishing the requirements for NHOP at 54 FR 22248. This final rule became effective on July 13, 1989.

II. Allocation Amounts

In the Departments of Veterans Affairs and Housing and Urban Development, Independent Agencies Appropriations Act, 1991 (Pub. L. 101–507, approved November 5, 1991), the Congress appropriated $35 million for NHOP. This notice announces the availability of this $35 million for NHOP, together with uncommitted carry-over balances of $4,111,259, and solicits applications for the use of these funds.

III. Eligibility

Under NHOP, HUD is authorized to make grants to nonprofit organizations to enable them to provide loans to families purchasing homes from the grantee that are constructed or substantially rehabilitated by the grantee in accordance with a HUD-approved program. The loans to the families must conform to the following criteria: (1) They may not exceed $15,000; (2) may bear no interest; (3) must be secured by a second mortgage held by the Secretary; and (4) must be repayable to the Secretary upon the sale, lease, or other transfer of the property.

IV. Selection Criteria/Ranking Factor

All applications must meet the threshold criteria of 24 CFR 280.215. If the amounts applied for with applications satisfying these threshold requirements exceed the amount available, applications will be ranked to determine the award in accordance with 24 CFR 280.225.

In accordance with 24 CFR 280.220(b), HUD announces that the maximum number of points that may be awarded under each of the ranking criteria is:

1. Contributions of land in accordance with §280.220(b)(1)—20 points.

2. Other contribution in accordance with § 280.220(b)(2)—15 points. Under this criterion, applicants that will receive non-Federal financial and other contributions under a State-designated enterprise zone program will be awarded additional points. HUD has decided to award an additional two points to such applications. Accordingly, the maximum number of points that may be awarded under this criterion to an applicant that will not receive contributions under a State-designated enterprise zone program is 13 points. The maximum number of points that may be awarded to an applicant that will receive such contributions is 15 points.

3. Cost effectiveness in accordance with § 280.220(b)(3)—15 points.

4. Neighborhood blight in accordance with § 280.220(b)(4)—20 points.

5. Construction cost in accordance with § 280.220(b)(5)—15 points.

6. Local resident involvement in accordance with § 280.220(b)(6)—15 points.

Additionally, HUD intends to use the appropriate quarterly local cost multipliers listed in the Residential Cost Handbook published by Marshall and Swift Publication Company to adjust for the construction costs between market areas as required under the ranking criteria in § 280.220 (b)(3) and (b)(5).

Application Process

An application package (request for grant application) describing the information that applicants for NHOP assistance must submit will be made available to the public on or after May 20, 1991. The application package will be provided upon the written request of any party made to: Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, room 9272, 451 Seventh Street, SW., Washington, DC 20410–8000. Applications must be submitted on the forms or photocopies of the forms prescribed by HUD and must be received no later than 5 p.m. on deadline date specified in the application package.

Following the expiration of the deadline for submission of applications, HUD Headquarters will review, and, if necessary, rate and rank applications in accordance with the procedures announced in the final rule. Each applicant awarded a NHOP grant will be notified of its selection or non-selection, in accordance with 24 CFR 280.225, as soon as practicable following the completion of the selection process. An announcement of all funding awards made under this NOFA will be published in the **Federal Register.**

Checklist of Application Submission Requirements

The following is a list of the contents of a NHOP application. The application package will provide additional details.

(A) Application for Nehemiah Housing Opportunity Grant Program (Form HUD–91102)

(B) Exhibits:

Section A—Program Identification and Location

1—Location Maps
2—Tax Exemption Letter
3—Applicant's Financial Statements
4—Description of Applicant Activities
5—Resumes of Principal Personnel
6—Articles of Incorporation & Bylaws
7—Resolution Authorizing Submission
8—List of Officers and Directors
9—Waiver Request for Project Size (if applicable)
10—Census Update Documentation (if applicable)
11—Certification from Local Government for multiple sites (if applicable)
12—Evidence Demonstrating Cost Reduction for multiple sites (if applicable)
13—Evidence Demonstrating Improvement to the Neighborhoods (if applicable)
14—Description of Impact on the Area
15—Documentation Designating Enterprise Zone (if applicable)
16—Documentation of Median Family Income in Census Tract (if applicable)
17—Documentation of Median Family Income in the Neighborhood (if applicable)
18—Alternative Documentation of Unemployment Rate (if applicable)
19—Documentation of Crime Rate
20—Neighborhood Location Maps; Census Tract and Exact Sites

Section B—Site and Construction Exhibits

21—Site and Floor Plans
22—One Page Narrative Describing the Construction or Rehabilitation Program
23—Applicant's Certification re: Complying with Home Quality Standards
24—Demonstration of Site Control
25—Demonstration of Permissive Zoning
26—Market Analysis; Demand
27—Description of Home Sales Program
28—Local Resident Participation: Publications and comments
29—Local Government Approval of Program
30—Program Schedule
31—Local Government Approval of Schedule
32—Projected Annual Budgets During Development

Section C—Program Financial Data

33—NHOP Cost Worksheet
34—Letters of Commitment for Financial Assistance
35—Appraisal of Property Contributed
36—Other "In-Kind" Contributions
37—Documentation that State Law Prohibits Government Contributions (if applicable)

Section D—Local Resident Involvement

38—Number and Types of Jobs Created for Local Residents
39—Local Resident Participation in Developing Proposal

Additional Statements

40—Byrd Amendment Disclosure (Form SF–LLL) and Certification
41—Drug Free Workplace Certification
42—Acknowledgement of Certain Program Requirements

Corrections to Deficient Applications

(a) Applicants will be given an opportunity to cure nonsubstantive, technical deficiencies in their applications. HUD will notify an applicant in writing, after the expiration of the application response deadline, of any technical deficiencies in the application. The applicant must, within 14 days of receipt of HUD's deficiency notification letter, correct the deficiency or supply the additional information requested. HUD will consider an applicant's failure to respond appropriately within the 14-day period as an abandonment of the application.

The kinds of technical deficiencies which can be cured after the submission date for applications has passed relate to items that: (1) Are not necessary for HUD review under the selection criteria/ranking factors; and (2) would not improve the substantive quality of the proposal.

Other Matters

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

To the extent that HUD makes assistance under the program available on a competitive basis, part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14(b)) HUD will provide further guidance on how this material may be accessed in a later Notice published in the **Federal Register.**
—Publish a Notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

Subpart C of the rule requires that applicants who seek assistance from HUD for a specific project or activity must make the disclosures required under § 12.32. If HUD makes assistance available for a specific housing project that contains other government assistance, Subpart D requires HUD to certify that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources. (§ 12.52)

These Subparts will be made effective through later publication of a Notice in the **Federal Register.** Since they will apply to applications solicited on or after the effective date of the Notice, this NOFA is not subject to their provisions.

Lobbying Activities—Prohibition and Disclosure

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (Pub. L. 100–121) and the implementing regulations at 55 FR 6736 (February 26, 1990). These authorities generally prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Additionally, a recipient must file a disclosure if it has made or agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA will not have a potentially significant impact on family formation, maintenance, or general well-being and, therefore, is not subject to review under the order. The NOFA, insofar as it funds loans to families purchasing homes that are constructed or substantially rehabilitated in accordance with a HUD-approved program, increases family homeownership.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The NOFA provides financial assistance to families purchasing homes, and none of its provisions has a direct effect on the relationship of the States or their jurisdictions with the Federal government.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410. An environmental review will be performed on each project before execution of a grant agreement.

The Catalog of Federal Domestic Assistance program number is 14.179.

Authority: Section 611 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 3, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91–11863 Filed 5–17–91; 8:45 am]

BILLING CODE 4210–27–M

federal register

Monday
May 20, 1991

Part IX

Department of Agriculture

Cooperative State Research Service

Small Business Innovation Research Grants Program for Fiscal Year 1992; Solicitation of Applications; Notices

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Small Business Innovation Research Grants Program for Fiscal Year 1992; Solicitation of Applications

Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law 99–591, 100 Stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through Phase I of its Small Business Innovation Research (SBIR) Grants Program. This program will be administered by the Office of Grants and Program Systems, Cooperative State Research Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging minority and disadvantaged participation in technological innovation.

The total amount expected to be available for Phase I of the SBIR Program in fiscal year 1992 is approximately $2,000,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of September 1, 1991. The research to be supported is in the following topic areas:

1. Forests and Related Resources.
2. Plant Production and Protection.
3. Animal Production and Protection.
4. Air, Water, and Soils.
5. Food Science and Nutrition.
6. Rural and Community Development.
7. Aquaculture.
8. Industrial Applications.

The award of any grants under the provisions of this solicitation is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR part 3403. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations, as amended (7 CFR part 3015), Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-free Workplace (Grants), (7 CFR part 3017), New Restrictions on Lobbying, (7 CFR part 3018), and Managing Federal Credit Programs, (7 CFR part 3), apply to this program. Copies of 7 CFR part 3403, 7 CFR part 3015, 7 CFR part 3017, 7 CFR part 3018, and 7 CFR part 3 may be obtained by writing or calling the office indicated below.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted SBIR proposals for 1991 or who have recently requested placement on the list for 1992, will automatically receive a copy of the 1992 solicitation.

Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250–2200, Telephone: (202) 401–5048.

Done at Washington, DC, this 13th day of May 1991.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 91–11872 Filed 5–17–91; 845 am]

BILLING CODE 3410–22–M

federal register

Monday
May 20, 1991

Part X

The President

Proclamation 6293—Emergency Medical Services Week, 1991 and 1992

Federal Register
Vol. 56, No. 97
Monday, May 20, 1991

Presidential Documents

Title 3—

The President

Proclamation 6293 of May 15, 1991

Emergency Medical Services Week, 1991 and 1992

By the President of the United States of America

A Proclamation

Each year millions of Americans require immediate medical attention for illnesses and injuries. The Department of Health and Human Services reports that, on an average day in the United States, more than 170,000 men, women, and children are injured seriously enough to require professional emergency treatment. Responding to the needs of these Americans are members of the Nation's emergency medical services (EMS) systems.

Members of the Nation's EMS teams help to save thousands of lives each year by providing swift, specialized care for seriously ill and injured persons. The highly dedicated and specially trained paramedics, physicians, nurses, and medical technicians who serve on these teams are supported in their work by a vital network of transport specialists, dispatchers, administrators, and instructors. Thanks to the expertise and the hard work of all of these men and women, Americans are assured high quality emergency medical care.

Today emergency medical care providers are available on a 24-hour basis to anyone who needs immediate medical attention. Both professional and volunteer members of EMS teams respond to calls for help at all hours, often while working under difficult and even hazardous conditions.

In addition to their courageous, lifesaving efforts in the field, EMS personnel have made many important contributions to education and research in trauma care and cardiopulmonary resuscitation. They have also played an integral role in educating the public about accident prevention and wellness. For example, members of the Nation's EMS teams have helped to inform citizens of all ages about the dangers of drunk driving and the need to use automobile safety belts, child restraints, and motorcycle helmets.

This week we proudly salute the Nation's EMS personnel and gratefully acknowledge their outstanding contributions to the health and safety of their fellow Americans.

The Congress, by House Joint Resolution 109, has designated the weeks beginning May 12, 1991, and May 10, 1992, as "Emergency Medical Services Week" and has authorized and requested the President to issue a proclamation in observance of these occasions.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of May 12 through May 18, 1991, and the week of May 10 through May 16, 1992, as Emergency Medical Services Week. I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-12095
Filed 5-17-91; 10:27 am]
Billing code 3195-01-M

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

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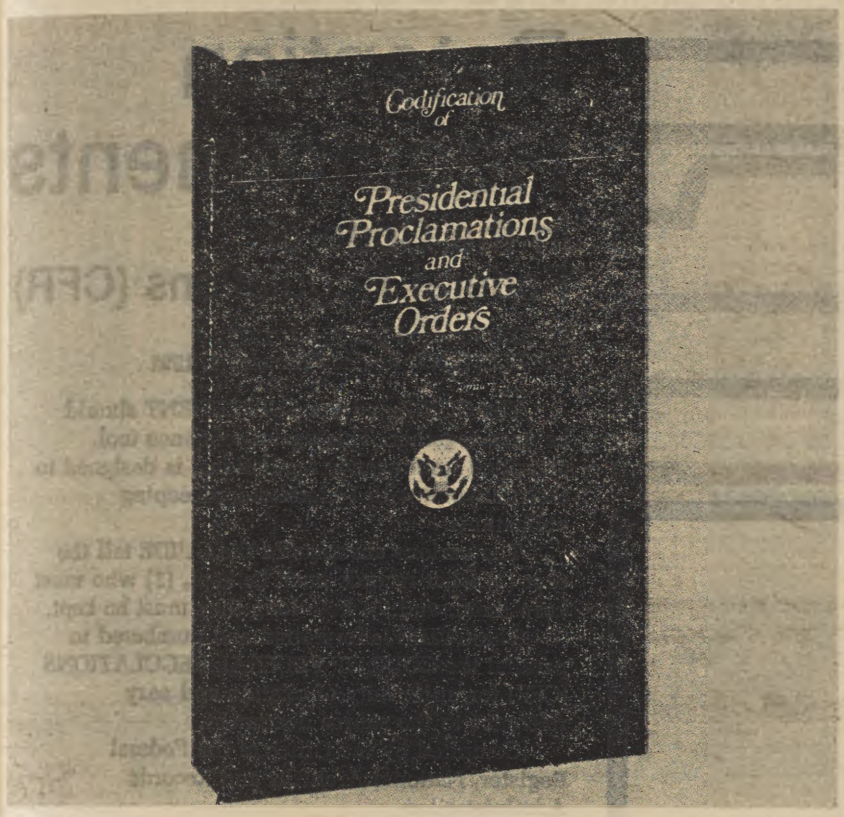

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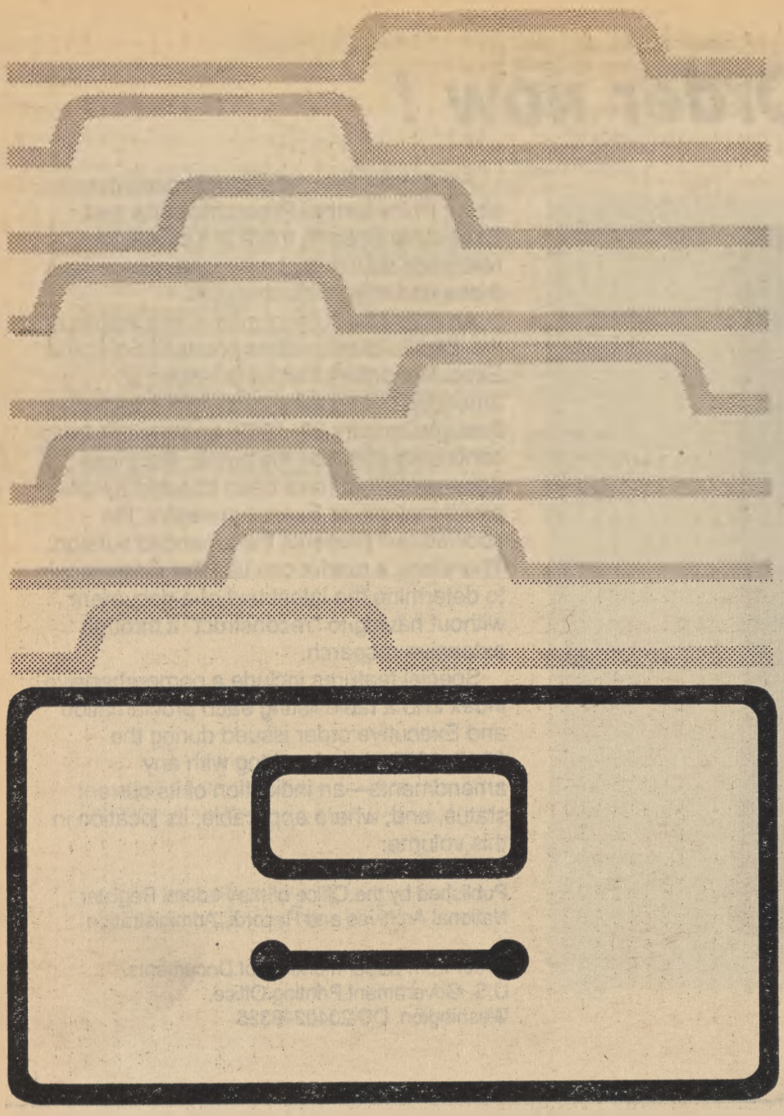

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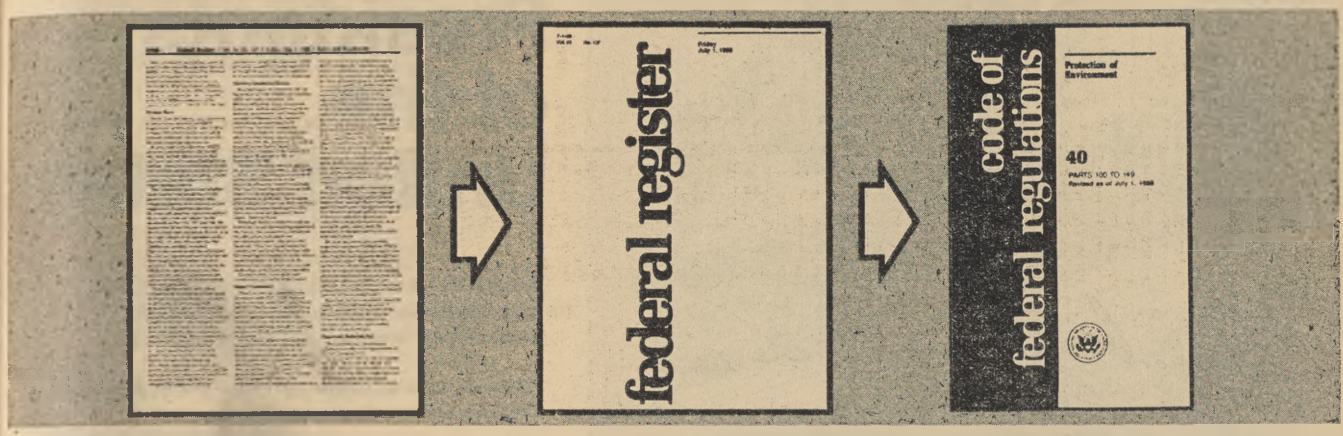

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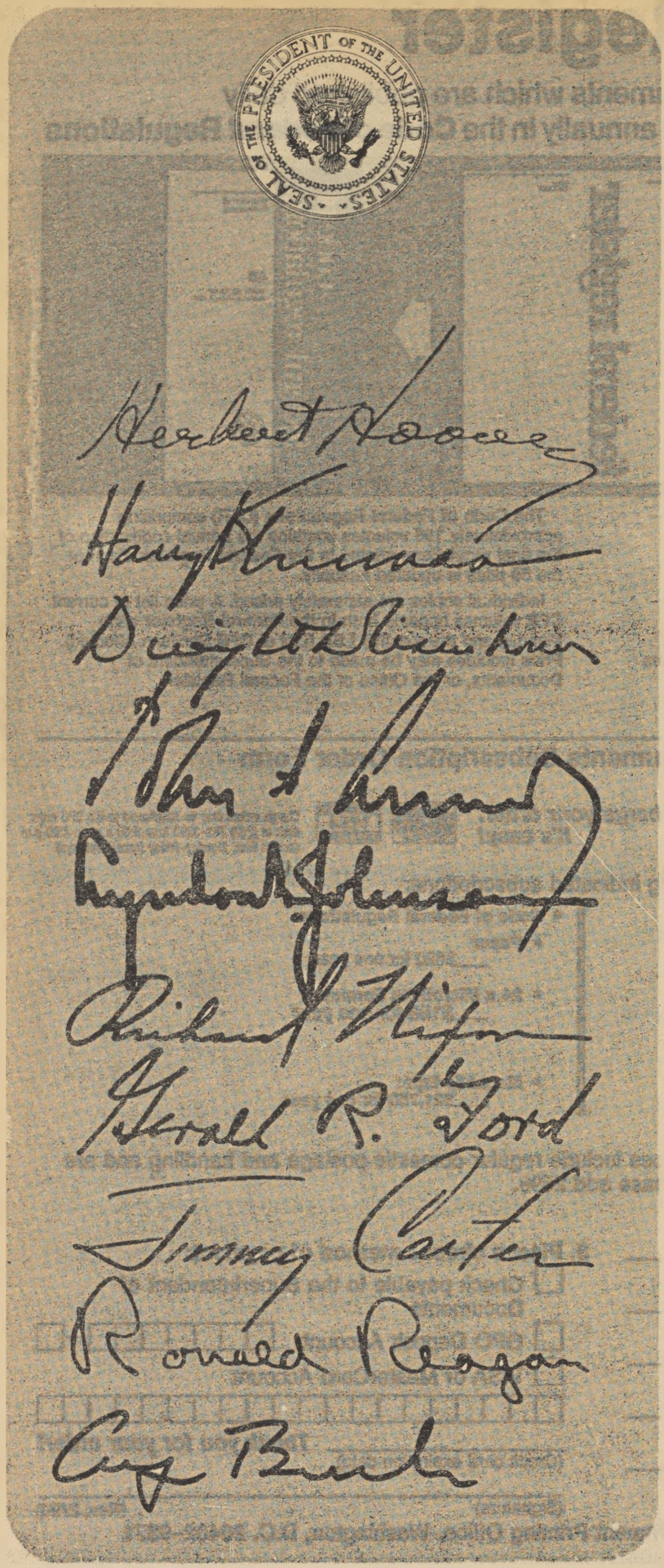

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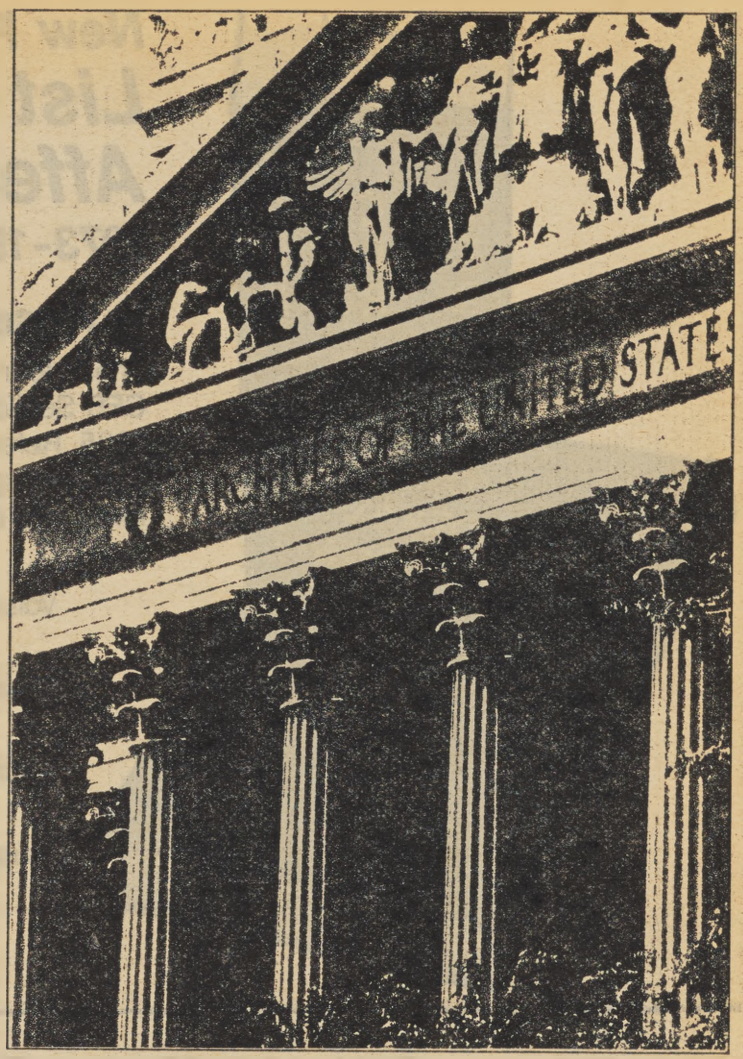

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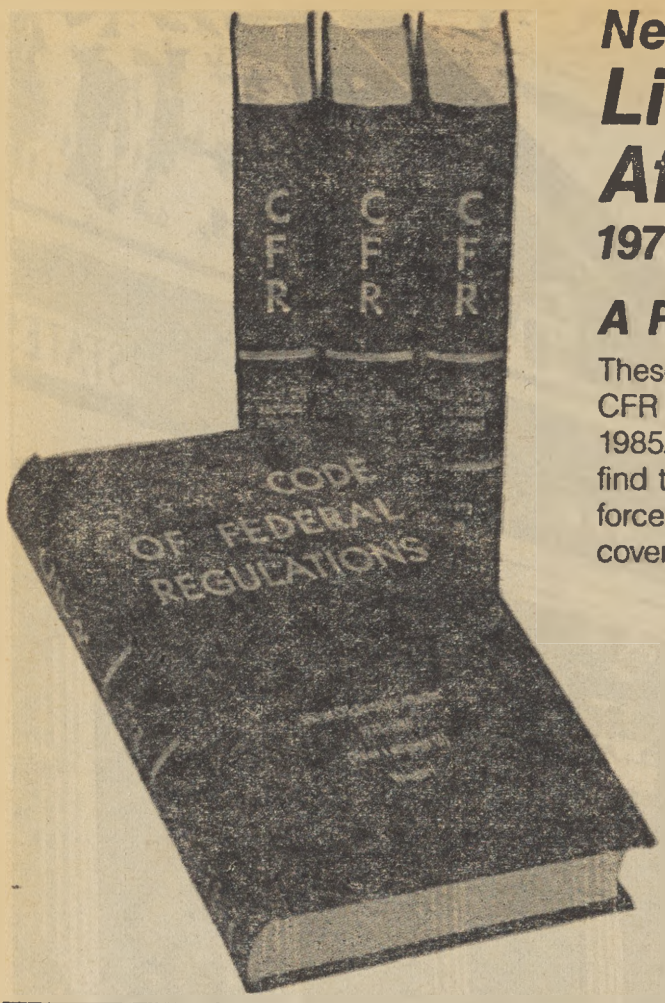

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